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STATEMENT OF SENATOR ROBERT J. DOLE

THE AMERICANS WITH DISABILITIES ACT

AUGUST 2, 1989

MR. PRESIDENT, I RISE TODAY TO EXPRESS MY  
FORMAL SUPPORT FOR S. 933, THE AMERICANS WITH  
DISABILITIES ACT.

971-0745-

LAST MONTH, WE CELEBRATED THE 25TH  
ANNIVERSARY OF THE CIVIL RIGHTS ACT OF 1964. THE  
PASSAGE OF THE CIVIL RIGHTS ACT WAS ONE OF  
CONGRESS' AND AMERICA'S SHINING MOMENTS. IT WAS  
ONE OF THE GREAT MILESTONES IN AMERICA'S LONG  
JOURNEY TOWARDS CIVIL RIGHTS JUSTICE. SO I AM  
PLEASED TODAY TO JOIN WITH PRESIDENT BUSH IN  
ENDORING THE AMERICANS WITH DISABILITIES ACT --  
THE NEXT MAJOR STEP IN THE CIVIL RIGHTS STRUGGLE --  
AND A BILL THAT WILL FINALLY EXPAND CIVIL RIGHTS  
PROTECTIONS FOR PEOPLE WITH DISABILITIES.

EARLIER THIS MORNING, PRESIDENT BUSH  
ANNOUNCED HIS ENDORSEMENT OF THE ADA. AND I  
COMMEND HIM FOR HIS GENUINE COMMITMENT AND  
LEADERSHIP ON THIS LANDMARK CIVIL RIGHTS  
LEGISLATION. HIS COMMITMENT AND LEADERSHIP WILL  
HELP TO CREATE A MORE INCLUSIVE AMERICA, AN  
AMERICA THAT IS MORE FULLY INTEGRATED, AN AMERICA  
THAT DOES NOT PLACE NEEDLESS AND HARMFUL  
BARRIERS IN THE WAY OF HER CITIZENS WITH  
DISABILITIES.



THE SUBSTITUTE BILL PASSED BY THE LABOR  
COMMITTEE THIS MORNING REFLECTS THE BROAD  
BIPARTISAN SUPPORT FOR THE ADA. THIS SUPPORT WAS  
GAINED AFTER A SERIES OF NEGOTIATIONS AMONG THE  
ADMINISTRATION, MEMBERS OF THE LABOR COMMITTEE,  
AND OTHER INTERESTED SENATORS. I KNOW THAT THE  
WHITE HOUSE AND SENATE STAFFS HAVE SPENT MANY,  
MANY HOURS TOGETHER. AND I COMMEND BOTH STAFFS  
FOR THEIR HARD WORK, THEIR PERSEVERANCE, AND  
THEIR WILLINGNESS TO SIT DOWN AND HAMMER OUT A  
COMPROMISE PACKAGE.

THIS BIPARTISAN SUBSTITUTE BILL ADDRESSES MANY  
OF MY PREVIOUS CONCERNS, CONCERNS THAT I RAISED  
DURING MY TESTIMONY BEFORE THE LABOR COMMITTEE  
LAST MAY. THE COMPROMISE REACHED IN THE  
SUBSTITUTE BILL GOES FAR TO STRIKE A FAIR BALANCE --  
A BALANCE THAT FULLY EMBRACES THE VISION OF A  
BARRIER-FREE SOCIETY FOR ALL AMERICANS, BUT ONE  
THAT ALSO RECOGNIZES THAT THIS VISION WILL HAVE  
SOME COSTS.

I AM PARTICULARLY PLEASED WITH THE SUBSTITUTE  
BILL'S TOUGH -- BUT FAIR -- REMEDIES PROVISIONS AND  
THE PHASE-IN PERIOD FOR SMALL BUSINESSES. I AM  
ALSO PLEASED THAT A TECHNICAL ASSISTANCE  
AMENDMENT WAS ADOPTED IN THE COMMITTEE  
MARK-UP. I INTEND TO WORK WITH OTHER SENATORS  
AND OTHER INTERESTED PARTIES TO STRENGTHEN THIS  
AMENDMENT AS THE LEGISLATIVE PROCESS UNFOLDS.

BUT A FEW OUTSTANDING ISSUES STILL NEED SOME  
FURTHER CLARIFICATION. FOR EXAMPLE, I AM  
CONCERNED ABOUT THE IMPACT OF THE ADA'S PRIVATE  
TRANSPORTATION PROVISIONS ON BUS SERVICE IN OUR  
RURAL COMMUNITIES. I WANT TO ENSURE THAT RURAL  
BUS SERVICE WILL NOT -- IN ANY WAY -- BE DIMINISHED BY  
THESE PROVISIONS.



I AM ALSO CONCERNED ABOUT THE NEED TO  
EDUCATE THE PRIVATE SECTOR ABOUT THE  
REQUIREMENTS OF THE ADA. FOR THE ADA IS SWEEPING  
LEGISLATION -- LEGISLATION THAT WILL AFFECT NOT JUST  
THE FORTUNE 500, NOT JUST OUR LARGE CITIES, BUT  
JUST ABOUT EVERY PRIVATE BUSINESS, EVERY STATE AND  
LOCAL GOVERNMENT, AND EVERY COMMUNITY IN  
AMERICA.

SO I LOOK FORWARD TO ADDRESSING THESE -- AND  
OTHER -- ISSUES WHEN THE ADA REACHES THE SENATE  
FLOOR. AND I AM PLEASED TO STAND HERE TODAY TO  
ENDORSE THIS IMPORTANT PIECE OF LEGISLATION.

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## NEWS RELEASE

# Tom Harkin *OF IOWA*

UNITED STATES SENATOR

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COMMITTEE ON LABOR AND HUMAN RESOURCES  
HEARING ON S. 933  
THE AMERICANS WITH DISABILITIES ACT OF 1989  
JUNE 22, 1989

### OPENING STATEMENT OF TOM HARKIN

The Americans with Disabilities Act is the most important legislation affecting the lives of people with disabilities ever considered by the Congress. We now have 43 co-sponsors of this historic legislation from both sides of the aisle. The ADA has now been endorsed by over 140 national organizations, including most of the major religious organizations.

After three days of hearings this year and one hearing last year, several conclusions have emerged.

First, discrimination against people with disabilities remains pervasive in our society.

Second, people with disabilities are entitled to lead independent and productive lives, to make choices for themselves, and be integrated and mainstreamed into society. People with disabilities must be judged on the basis of their abilities and not on the basis of misperceptions, ignorance or irrational fears. These are inalienable civil rights.

Third, people with disabilities are entitled to meaningful access to all aspects of American society, which includes access not limited to places of employment, restaurants, and hotels but also includes, among other establishments, doctors offices, cleaners and shopping malls.

Fourth, in order to ensure independence, productivity, and integration into the community for people with disabilities, it is necessary to adopt comprehensive civil rights legislation. For example, transportation is the linchpin that ensures access to jobs, access to a social life, ability to go to restaurants and participate in community activities.

Fifth, it is not economically feasible to remove all architectural, communication, and transportation barriers in existing facilities but we must improve access in such existing facilities. However, we can and we must insist on full accessibility in all new facilities.



Sixth, a right without a meaningful remedy is like a bell without a clapper, hollow and empty.

Seventh, the Americans with Disabilities Act balances the rights of people with disabilities with the legitimate concerns of the business community. The ADA does not create undue burdens on small businesses.

Eighth, the Americans with Disabilities Act is not only the right thing to do for people with disabilities but it is also the right way to help strengthen our economy and enhance our international competitiveness. The ADA will save the government and society billions of dollars by getting people off the dependency/social welfare rolls and into jobs, into restaurants, into shopping centers, and into community activities.

Two days before Mr. Bush's inauguration, he stated that "I said during the campaign that disabled people had been excluded for far too long from the mainstream of American life...One step that I've discussed will be action on the Americans With Disabilities Act in order, in simple fairness, to provide the disabled with the same rights afforded others, afforded other minorities."

I look forward to hearing the testimony of the Attorney General on behalf of President Bush and from my friend and colleague Lowell Weicker, the chief sponsor of the ADA of 1988.





# Statement of the U.S. Chamber of Commerce

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ON: THE AMERICANS WITH DISABILITIES ACT  
OF 1989

TO: SENATE COMMITTEE ON LABOR AND  
HUMAN RESOURCES

BY: ZACHARY FASMAN

DATE: MAY 9, 1989

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The U.S. Chamber of Commerce is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents nearly 180,000 businesses and organizations, such as local/state chambers of commerce and trade/professional associations.

More than 92 percent of the Chamber's members are small business firms with fewer than 100 employees, 59 percent with fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business--manufacturing, retailing, services, construction, wholesaling, and finance--numbers more than 10,000 members. Yet no one group constitutes as much as 32 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 59 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of its members serving on committees, subcommittees and task forces. Currently, some 1,800 business people participate in this process.



STATEMENT  
on  
THE AMERICANS WITH DISABILITIES ACT OF 1989  
before the  
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES  
for the  
U.S. CHAMBER OF COMMERCE  
by  
Zachary Fasman  
May 9, 1989

I. STATEMENT OF INTEREST

I am Zachary Fasman, a partner in the Washington office of the law firm Paul, Hastings, Janofsky & Walker. I am a labor lawyer by trade and have substantial experience in the employment discrimination field. My firm is represented on the U.S. Chamber of Commerce's Labor Relations Committee, and it is in this capacity that I appear before you today.

I appreciate the opportunity to express the Chamber's views on the Americans with Disabilities Act of 1989. I will direct my comments this morning to the employment provisions of the Act.

The Chamber shares the goal of the authors of this Act: that all individuals should have the opportunity to participate in our society. Workers with disabilities have demonstrated that their job performance competes with and frequently exceeds that of other workers in productivity, efficiency and favorable accident and absentee rates. Full participation in our economic life by people with disabilities is essential as we face global economic challenges, as well as important for the dignity of the individuals in question.

We have concluded, however, that this legislation, as

presently drafted, is not an appropriate or equitable vehicle for achieving the Congressional goal with which we agree. We have several very significant concerns about this bill.

## II. STRUCTURE OF THE ACT

Initially, I would note that two titles of this Act regulate the employment relationship. Title I of the Act contains broad general prohibitions that apply to "benefits, jobs, and other opportunities," while Title II is a more specific, traditional and straight-forward prohibition on employment discrimination. We see no reason for two separate prohibitions and especially are concerned because the provisions of Title I are extremely unclear and appear to impose unwarranted obligations in the workplace. For example, Title I states that it is discriminatory to provide "an individual with a service, program, activity, benefit, job or other opportunity that is less effective than that provided to others" (emphasis added) (Section 101(a)(1)(C)). We have no idea what the bill might mean by a "less effective" job or benefit. Nor do we understand what the bill means when it prohibits providing an individual "with a service, program, activity, benefit, job or other opportunity that is different or separate" (emphasis added). This vague language is an invitation to litigation. We believe that it would be a terrible mistake to empower the courts to determine whether one job or benefit is "less effective" than or "different from" another.

In our view, if Congress wishes to regulate the employment relationship, it should do so directly. There are many useful models already on the books, and we believe that a straight-forward prohibition on employment discrimination avoids the disturbing questions. We see nothing to be gained by applying vague prohibitions of the sort contained in Title I of this Act to the employment relationship. We suggest that all references



to employment be deleted from Title I; that the bill clarify that the only obligations placed upon private employers are contained in Title II; and that the bill concentrate on creating an effective and specific prohibition on employment discrimination in Title II.

### III. DEFINITIONS

Before turning to Title II itself, let me address two definitional sections in the Act.

The first is the Act's definition of "reasonable accommodation," which we believe is overly broad, unclear and unnecessary. The Act defines "reasonable accommodation" to include "adoption or modification of procedures and protocols, the provision of qualified readers or interpreters, and other similar accommodations" (Section 3(3)(B)). Does this language require all employers, as a matter of legal obligation, to provide interpreters and readers for all disabled employees or applicants who might benefit thereby? Would a job be deemed "less effective" for a visually or hearing-impaired employee if a reader or interpreter were not provided? Does the bill require employers to alter production methods to suit the needs of every disabled employee or applicant? If so, how broad must the modification be? What if the needs of different disabled employees conflict -- whose disability governs?

These are real questions that will be decided by the courts if the bill is passed as drafted. If Congress does not intend to impose such broad obligations upon all employers, we suggest that "reasonable accommodation" in employment not be defined in the proposed bill, but rather left to the courts, or that the term be defined in a specific and limited fashion in Title II.



If Congress intends to require all private employers to provide readers and interpreters and to engage in wholesale modification of the workplace, we believe that Congress is acting very unwisely. It is one thing to require recipients of federal grants to use some of those federal monies to ensure that the workplace is as hospitable as possible to the disabled, as Congress traditionally has done under Section 504 of the Vocational Rehabilitation Act of 1973. It is quite another to impose such obligations upon all employers as a matter of positive law.

The costs of this action would be enormous and obviously could have a disastrous impact upon many small businesses struggling to survive. If the bill is intended to impose such obligations, we suggest substantial revision in its jurisdictional reach so as to exclude small businesses entirely.

Moreover, the presence of foreign competition calls into question the ability of any American business, large or small, to pass on these very substantial costs to the consumer. Imposition of these costs on employers threatens to make American business even less competitive in our increasingly global economy.

Also, we would note that the definition of a handicap does not exclude alcohol or drug abuse, nor does it exclude individuals with a contagious disease, in cases where the alcohol or drug abuse or the contagious disease poses a direct danger to the property, health or safety of others. The Vocational Rehabilitation Act of 1973 properly excludes these conditions from the definition of a handicap for employment purposes, thus allowing employers to protect employees in the workplace whose health and safety otherwise might be endangered. See 29 U.S.C. Sections 706 (8)(B), (C). This Act does allow employers to create "qualification standards" based upon drug or alcohol use or



contagious disease but also provides that all qualification standards must "be both necessary and substantially related to the ability of an individual to perform . . . the essential components" of the job (Section 101 (b)(2)).

This is a significant limitation upon employers' ability to protect their employees and it creates safety ramifications regarding customers, clients and the public at large. It is particularly inappropriate that Congress should be considering such provisions at the same time that American business is increasingly being required, by federal agencies, to create and preserve a drug-free workplace. We suggest that contrary to the current provisions, this bill specify that casual use of drugs or alcohol is not a handicap and that alcohol or drug use by an alcoholic or drug addict is not a handicap unless the employee can show that the alcohol or drug use does not pose a direct threat to the property or safety of others in the workplace. We suggest that the statute incorporate the language of the Vocational Rehabilitation Act of 1973 (29 U.S.C. Section 706(8)(C)), dealing with contagious diseases, as an exclusion to the definition of handicap as well.

#### IV. TITLE II

Our concerns with regard to Title II of the bill are less global but still highly significant.

First, the bill defines a qualified individual with a disability as one who can, with or without reasonable accommodation, perform the "essential functions" of a job; subsequently, the bill provides that tests or selection criteria are appropriate so long as they test whether an employee or applicant can perform the "essential functions" of a job. We suggest that the concept of "essential functions" of a job makes



no sense and ought to be eliminated from the bill. Either a disabled person can perform the job, with reasonable accommodation, or he cannot. It is too substantial an intrusion on the legitimate prerogatives of employers to ask federal agencies, the courts and juries to define which aspects of a particular job are "essential" and which are not.

Second, we are troubled by the manner in which the term "discrimination" is defined. Section 202(b) not only makes it unlawful to deny a reasonable accommodation but also proscribes the "failure . . . to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability. . . ." (Section 202(b)(1)). As is currently the case under the Vocational Rehabilitation Act of 1973, the initial onus clearly should be placed upon the employee or applicant to identify himself as handicapped and to advise the employer of the type of accommodation that he or she desires. Any other construction would require employers to question employees or applicants about their disabilities. By ensuring that the employee or applicant must notify the employer both of the disability and the accommodation, employers would be protected from committing completely unintentional violations of the Act, and the privacy of individuals who would prefer not to disclose their handicaps would be preserved.

Finally, we believe that it is unwise to allow the employment provisions of the Act to be enforced under 42 U.S.C. Section 1981 as well as under Title VII procedures. The Title VII enforcement scheme, built around agency expertise and conciliation in order to provide rapid relief to charging parties, proceeds from a completely different premise than does the Civil Rights Act of 1866. The latter statute allows an injured party to proceed directly into federal court, with no requirement that a charge be filed with any administrative



agency. Title VII, by contrast, requires the filing of a charge as a prerequisite to suit, and thus necessarily involves an administrative agency in the prosecution process. This statute will require substantial administrative interpretation before its provisions achieve concrete form and thus would seem particularly suitable for administrative enforcement.

Moreover, Section 1981 cases are tried to a jury, while Title VII cases are not. Relief under Title VII does not include compensatory damages, while such relief may be available under Section 1981. In short, there are significant differences between these two enforcement schemes, and we suggest that Congress choose one or the other. We strongly would support the Title VII scheme, which is aimed directly at employment matters and embodies the considered judgment of Congress on how to enforce anti-discrimination provisions in the workplace.

On behalf of the Chamber, I thank the Committee for its attention and am prepared to answer any questions regarding my remarks.

**TESTIMONY OF LAWRENCE Z. LORBER**

**ON BEHALF OF**

**THE AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION**

**AMERICANS WITH DISABILITIES ACT OF 1989**

**BEFORE THE**

**SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES**

**MAY 9, 1989**



**American Society For Personnel Administration**

**National Headquarters • 606 N. Washington Street • Alexandria, Virginia 22314 • Phone: 703/548-3440**

I am Lawrence Z. Lorber, a partner in the law firm of Kelley Drye & Warren; previously, I was Deputy Assistant Secretary of Labor and Director of the OFCCP in 1975 and 1976. During my tenure at the Department of Labor, the OFCCP was officially amalgamated with the addition of the handicapped and veterans functions of Section 503 of the Rehabilitation Act of 1973 as amended and Section 2012 of the Vietnam Era Veterans Act of 1974. And it was during my tenure that the initial regulations implementing § 503 were issued by the Department of Labor.

Today, I am testifying on behalf of the American Society for Personnel Administration (ASPA). With over 40,000 individual members, ASPA is the world's largest society dedicated exclusively to excellence in human resources management. ASPA members work for large and small employers which collectively employ more than 41 million people. We are therefore vitally concerned with the orderly evolution of laws defining, in practical terms, the meaning of equal employment opportunity.

ASPA has long recognized its special responsibility to support and encourage compliance with fundamental principles of equal employment opportunity, and has encouraged its members to actively recruit from all pools of qualified candidates. We believe that adherence to these principles is sound management practice and contributes significantly to the success of our membership and our members' organizations.



ASPA has also acted to give its members the tools to improve their efforts to recruit people with disabilities. In 1985, as part of ASPA's Human Resource Management Series, we published a monogram which is available to ASPA members entitled "Job-Match: A Process for Interviewing and Hiring Qualified Handicapped Individuals".

More recently, in December of 1988, ASPA assumed the expense of providing its 40,000 members with a copy of the Fall issue of Worklife: A Publication on Employment and People With Disabilities, published by the President's Committee on Employment of People With Disabilities (see Attachment 1). ASPA was willing to do so because we share the goal of the President's Committee -- to make companies aware of the employment potential of people with disabilities.

As you can see, ASPA has been in the forefront of employers' efforts to ensure that disabled Americans participate fully in the workplace to lend their considerable and unfortunately untapped talents to a productive and vibrant economy. We, therefore, applaud the notion of a unified statute establishing one standard to deal with the problem of lingering employment discrimination against disabled Americans. However, in reviewing the latest draft of the Americans with Disabilities Act of 1989, we are concerned that serious legal, and practical employment issues are created which will make effective implementation difficult and create an unnecessary legal quagmire.

To address those concerns, we respectfully offer these comments and suggestions on the legislation. ASPA looks forward to the opportunity to work with the Committee to structure a feasible and workable statute.

With respect to the basic premise of the proposed legislation, we suggest one significant problem. The explanatory materials provided by the Committee suggest that the drafters looked to § 504 of the Rehabilitation Act and its implementing regulations as the model upon which this legislation is based. Yet the draft legislation which is the subject of these hearings seems designed in part to specifically countermand the interpretations of § 504 by the Supreme Court in a series of cases, most notably Alexander v. Choate, 469 U.S. 287 (1985). In that case Mr. Justice Marshall, speaking for a unanimous Supreme Court stated that the serious problems faced by disabled Americans did not lend itself to a broad based impact review of all policies and procedures. Justice Marshall suggested that a more tailored response weighing the legitimate aspirations of the disabled with equally legitimate concerns of business and government was appropriate. While the Congress obviously has wide latitude in crafting new legislation, the historical interpretations of legislation which serve as the predicate for new legislation ought not to be cast aside without careful consideration.

The general definition of prohibited forms of discrimination found in Title I prohibits the employer from



providing a job that is "less effective" than those provided to others. That section goes on to require that the standards for defining equal opportunity assure that individuals with disabilities achieve the same result as non-disabled individuals. Such a legal obligation in the context of employment exposes employers to litigation potential of unimaginable complexity. In the employment context, a same result standard could compel an average compensation analysis to ensure that disabled employees achieve the same average compensation as all employees. This combination of the § 504 program access concept with general employment concerns is an unwieldy and unnecessary burden to be placed on employers.

In this context, the definitions of reasonable accommodations found in Section 3(3)(B) is a clear affirmative action requirement looking to creative efforts to ensure access rather than a legal standard against which to determine if an employer was guilty of discrimination. However, Title II defines employment discrimination as, inter alia, the failure to make reasonable accommodation to the known physical or mental limitation of a qualified individual with a disability. The only coherent construction of these obligations would compel employers to undertake continuous job restructuring to ensure that particular disabilities are accommodated. Thus, where an employer provides open bidding for jobs, whether union or not, and in which the standards for selection are based on seniority and prior

performance, an employer would be compelled to constantly restructure a job for each applicant with a disability before selection to avoid being found in violation of the non-discrimination standards of the law.

This mixing of the § 504 non-discrimination requirements with the § 503 affirmative action obligations in the employment context will be unworkable. Too, the notion of a qualified individual with a disability presumes that with accommodation the individual can perform the job. Whereas the definition of reasonable accommodation in the statute requires wholesale job and job function restructuring prior to the employment decision so as to avoid allegations of discrimination. Concepts are combined without reference to the particular concerns of the workplace.

We would further question the efficacy of including within the theories of discrimination permitted by the legislation an impact test in the context of a universal statute which in separate sections deals with every other aspect of commercial intercourse and which is additive to the already extensive requirements of the 1973 Rehabilitation Act. The impact test evolved under Title VII of the 1964 Civil Rights Act to deal with those limited circumstances in which broad based employment practices, unproven as job related, served to exclude classes of individuals. The draft legislation before this Committee would, however, establish the impact analysis as an individual standard insofar as each separate disability requires a different response



in the employment situation. Here again, Mr. Justice Marshall spoke to this issue and we would urge the Committee to examine closely the reasoning in the Alexander decision. We would suggest that the serious employment problems this legislation is designed to attack are not well suited for such a broad based assault -- and that employers will be held to standards they will be unable to address before litigation. While there might be eventual relief for certain individuals with the wherewithal and resources to conduct extended litigation, this provision will surely inhibit broad scale reasonable accommodation efforts.

In this context, we would note that Section 202(b)(3) proscribes the application of tests or selection criteria would limit opportunities for individuals or groups "unless such standards, tests or other criteria can be shown by [the employer] to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position."

This provision ought to raise several caution signals. The legislation is silent, as it must be, in defining what constitutes an "essential function" of a particular job. Courts will be asked to parse job descriptions to separate the essential from the merely additive regardless of the employer's own inputs. Job descriptions will have to be drafted with excruciating specificity in order to enumerate all "essential" functions, though for executive, professional, technical and even some

administrative jobs without defined products or specified methods of production, such specificity would be impossible. Too, this section will surely encompass performance appraisals and compensation systems which are designed for general application and would require instead tailored systems for each employed disabled worker. And actual physical employment criteria such as lifting requirements, strength and agility tests would be subjected to individual review in which the selection criteria would have to be shown to be necessary for the essential function of the job, a standard which probably cannot be met.

Such a burdensome requirement in the employment context which would require individual test validation is in contrast with the current regulations of the Department of Labor found at 41 CFR § 60-741.5(C)(2) which adopt the accepted legal standards for test validation. We would urge the Committee to look to those employment standards as its model rather than mix in the programmatic requirements of § 504 which are inapplicable in a private employment context where the employer, not the government, pays for the changes.

Too, we would note with particular concern that this legislation, which defines discrimination as the failure to undertake reasonable accommodation also provides that the affirmative action requirements of § 503 of the Rehabilitation Act for federal contractors remains in place. See Section 601(a)(b). Contractor employers are thus placed in the untenable position of



complying with the dictates of the Labor Department with respect to the affirmative action to undertake reasonable accommodation only to find that an OFCCP administrative determination that the affirmative action obligation has not been met, becomes by action of this statute, a prima facie determination of discrimination. The clash of concepts will inevitably result in more cautious explorations by employers of reasonable accommodation alternatives because of the attendant risk of legal liability.

The enforcement structure contemplated by the legislation providing both Title VII and § 1981 type relief makes little sense. Disabled Americans in particular would benefit from rapid administrative redress of concerns. Expertise in the design of feasible alternative work procedures to accommodate individual disabilities can best be accomplished in an administrative and not judicial setting. Does this Committee truly want the access of disabled Americans to employment opportunities be dependent upon resolution of disputes by overcrowded courts following a lengthy clash of experts through deposition and court testimony only to be followed by the next contest with a different disability for a different job? The case by case resolution before a jury required by the § 1981 option makes no sense nor are the extensive contract based remedies under § 1981 applicable to the disability context. Were this Committee to ensure that adequate resources were available in the EEOC to carry out the functions required by this

legislation, the Title VII model, with administrative review in the first instance is the only feasible way to proceed.

Our courts are now understandably hostile to the multiplicity of statutory and common law relief available in the employment context. We should not unnecessarily increase that problem with this legislation.

We would address this Committee's attention to the provisions of Section 101(b)(2) pertaining to alcohol and drug use in the workplace and note, at the very least, the conflict between this provision and that of the recently enacted Drug Free Workplace Act which requires government contractors and suggests to all employers to establish a drug-free workplace. While hopefully unintended, § 101(b)(2) negates that requirement by requiring an adverse causal relationship be established between drug and alcohol use in the workplace before employers can prohibit such use.

Finally, we would strongly suggest that the Committee reconsider its decision to make undue hardship the test for determining the efficacy of the reasonable accommodation. In the employment context, such a standard will prove unworkable and create significant disincentives to employers. Notwithstanding the reference to § 504, we would reiterate that this legislation covers private employers who are not receiving federal contracts or grants and who must therefore bear the entire financial burden



of compliance. Section 504 is thus an imperfect model at best for private employers.

The concerns outlined above essentially relate to technical legal issues, burdens of proof and administrative structures applied to the workplace. The legislation seems to pick and chose among the most expansive provisions of Title VII, Sections 503 and 504 of the Rehabilitation Act and Section 1981 to provide a statutory scheme for resolving employment concerns of disabled Americans. Such a weighting of the scales is unnecessary and unwise. ASPA therefore respectfully urges this Committee to review the employment requirements and structure a system designed to provide rapid and fair relief to disabled individuals, and to create understandable and feasible obligations for employers.









## The President's Committee on Employment of People With Disabilities

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202-653-5050 TDD

*Dignity, Equality, Independence Through Employment*

Dear ASPA Member:

The President's Committee on Employment of People With Disabilities takes pleasure in introducing you to our new quarterly magazine, Worklife: A Publication on Employment and People With Disabilities.

Worklife is a magazine aimed at employers across this nation, at people with disabilities and at rehabilitation professionals who work with both constituencies. Our goal is to make our readers more aware of the skills and abilities of individuals with disabilities, a vast resource of people who remain ready for employment ... people who are disabled, but able to work.

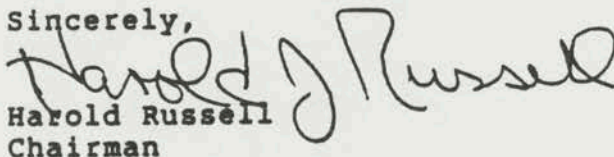
We hope that you will find the magazine an appealing addition to your read list. You may obtain a free subscription by tearing off the perforated card on the back cover, filling in your name and address (or attaching your business card) and mailing it to the Worklife editor.

Our mission, at the President's Committee, is to make companies aware of the employment potential of people with disabilities. The incentive for your company is an alternative labor pool resource and for the worker with a disability it brings independence, life where a salary is earned and taxes are paid. That is the bottom line.

Reading Worklife can create a new awareness in a movement that shows a profit for business, people with disabilities and the nation.

That is our bottom line. Keeping you informed.

Sincerely,

  
Harold Russell  
Chairman

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#### ADVISORY COUNCIL

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The Director of the United States Information Agency  
The Administrator of Veterans Affairs  
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# NFIB

National Federation of  
Independent Business

## STATEMENT OF

Sally L. Douglas  
Assistant Director of  
Federal Governmental Relations  
for Research and Policy

## NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before: Senate Subcommittee on the Handicapped  
Subject: Americans with Disabilities Act of 1989  
Date: May 10, 1989

On behalf of the 570,000-plus small and independent business owner members of the National Federation of Independent Business (NFIB), I welcome the opportunity afforded NFIB by the Chairman and members of the Subcommittee to express our views on the proposed "Americans with Disabilities Act of 1989" (ADA).

For those of you who aren't familiar with NFIB, we are a member-driven organization, comprised of more than a half million owners of small, independently-owned businesses across the nation. Our membership profile closely parallels the national business population: roughly 50% of our members own retail or service enterprises; another 25% are in manufacturing and construction; the remaining 25% operate agricultural.

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The Guardian of  
Small Business



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transportation, mining, wholesale, and financial, insurance, or real estate enterprises. NFIB's average member has 13 employees and grosses about \$350,000 in annual sales.

The proposed ADA represents both a significant expansion of existing civil rights protections for persons with disabilities, and an equally significant expansion of federal regulatory authority over private enterprises. To date civil rights statutes have targeted specific entities to shoulder the responsibilities of ensuring equal protections and opportunities to minorities, women, persons with disabilities, and other groups which, for one reason or another, have suffered from discrimination. The ADA's scope, however, is far broader and will impose requirements and enforcement procedures uniformly across the broad spectrum of the business community, affecting thousands, if not millions, of businesses which have not heretofore been affected directly by the Civil Rights Act of 1964, the Fair Housing Act, or the Rehabilitation Act of 1973.

Such sweeping legislation merits -- if not demands -- deliberative analysis and consideration by the Congress and all affected parties. Since our membership ranges across the entire spectrum of American business, the proposed ADA would have a profound impact on the

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day-to-day operations of these firms. The stakes are high. The right of every American to have the opportunities to realize his or her full potential cannot and should not be denied. Nor should we deny any American the right to conduct his or her life in a reasonable manner, without undue interference from the government. Achieving the proper balance between the rights and needs of persons with disabilities and the rights and needs of American businesses is the challenge we face, and I believe we can succeed if we can work together in the spirit of cooperation.

There is an old Chinese curse which says, "May you live in interesting times." The times we live in are, at the very least, interesting. We are in the midst of the greatest peacetime expansion in our economic history. Vast numbers of new entrants into the labor force have been accommodated, new businesses have been created in record numbers, and in their wake have come new opportunities, new jobs. The small business sector has been termed "the American miracle" by observers in other countries. Many, if not all, Americans have benefitted in some way from this dynamic process.

Yet there are substantial problems facing us today, and more are coming in the near future. There are still disadvantaged groups within our society who have not



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shared equally in the economic boom. Businesses will be facing an acute labor shortage in the next few years.

Noone can predict with any certainty how long our economic expansion will continue, nor can anyone predict with accuracy when our federal budget crisis will be stabilized. Challenges all, and no easy solutions for any of the component parts.

One of the challenges we face is integrating persons with disabilities into the mainstream of American life. Certainly discrimination exists, but in fairness not everyone -- not even all business owners -- willfully and intentionally discriminate against the disabled. This fact needs to be recognized and understood, for it is key to our accomplishing the worthwhile goal of providing the opportunities for persons with disabilities to be judged by their abilities and not their disabilities.

NFIB has been requested to focus our comments about the ADA on Title IV, "Public Accommodations and Services Operated by Private Entities." If I understand correctly the intent of the authors of this legislation, the objective of the ADA is to afford persons with disabilities the same protections currently contained in other federal civil rights laws prohibiting discrimination on the basis of race, sex, national origin, and religion. This is an objective with which hardly anyone could

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disagree. Yet as written, Title IV appears to go well beyond these protections, introducing new, more expansive concepts for the treatment of persons with disabilities.

First, the scope of coverage is significantly greater than current law. The Civil Rights Act of 1964 covered in essence establishments which lodged transient guests, public eating places, and public entertainment facilities. Subsequent court cases have refined the accommodation list to include businesses which obviously cater to tourism.

Other businesses which have been covered by other civil right statutes are establishments that receive federal assistance in one form or another, and firms that contract with the federal government. Title IV of the ADA, however, covers virtually every business in America. By definition in Section 401(2)(A), businesses that are brought within the scope of the bill are:

...privately operated establishments --

(i)(I)that are used by the general public as customers, clients, or visitors; or

(II)that are potential places of employment; and

(ii)whose operations affect commerce.



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The bill then explicitly lists the types of businesses included within this definition. I would be hard put to find a kind of business that is not covered by this list.

Further, the coverage under Title IV extends to "potential places of employment", so Title II and Title IV would appear to be inextricably linked. Clarification is therefore needed as to the exemption expressly delineated in Title II for businesses with fewer than 15 employees (itself an extension from the original 25-employee threshold contained in the Civil Rights Act of 1964). No explicit exemption is included in Title IV. Does this mean that the exemption only applies to the hiring practices of smaller firms (Title II), or does it also apply to "potential places of employment" with fewer than 15 employees (Title IV)? Is there an exemption from coverage in effect under Title IV if the person with a disability enters an establishment with the purpose of gaining employment, and does not apply if he/she enters the same business as a client, customer, or visitor? If the exemption for smaller businesses is meant to apply to both titles, or indeed to the entire bill, might it not better be placed either in the definitional section of the preamble or in Title VI - "Miscellaneous Provisions"?

There is a distinct philosophical difference between the ADA and Title VI of the Civil Rights Act, and the

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practical implications could well be overwhelming for many small firms. Title VI requires acceptance as its standard of accommodation. The ADA requires much more, requiring specific restructuring of "architectural and communication barriers, removal of transportation barriers, provision for "auxiliary aids and services," and the like.

All of these requirements would incur financial costs of varying amounts, some of which could be substantial for a smaller business. In addition, these firms would be expected to provide different "accommodations" to overcome different disabilities. The language in Title IV demands, in effect, that business owners be prepared for any and all contingencies, since the bill affords protection to all "customers, clients, or visitors" who are persons with a wide range of disabilities.

Further complicating the situation, since by definition Title IV covers all "potential places of employment," all these businesses seem to be required to go to great lengths to "accommodate" persons with disabilities -- even when there is no disabled worker requiring such accommodation.

What is being asked of small businesses is that they perform structural modifications, buy special equipment, provide qualified interpreters, readers, taped texts,



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other "effective methods", or "alternative methods" aid persons with disabilities -- whether or not any such persons ever make contact with these businesses. Business owners will be perceived as discriminating against persons with disabilities not only if they willfully exclude such individuals, but if they "fail" to make the modifications or provide the services required in accordance with Title IV, unless they can demonstrate that modifications would "fundamentally alter the nature of such privileges, advantages, and accommodations", or they can show that providing auxiliary aids and services would result in "undue burden", or that removal of architectural and communication barriers is not readily achievable. On the last point, however, they must also be prepared to adopt "alternative methods" to achieve accommodation.

What these alternative methods would be would, I presume, have to be decided on a case-by-case basis, but might include items such as a business initiating home delivery of goods and services if the business simply cannot retrofit the facility to overcome barriers. What does the business owner do, for example, as a "potential employer" if the place of business cannot readily be modified? Does he allow the disabled worker to work at home? And doesn't this contravene the requirement in Title I that an individual with a disability must be afforded "an equal opportunity to obtain the same result, to gain the same

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benefit, or to reach the same level of achievement, "in the most integrated setting appropriate to the individuals' needs" (emphasis added)?

The business owner is subject under the dictates of this bill to the same onerous requirements and enforcement procedures whether discrimination is intentional or unintentional. And since Title IV defines a business as a "potential place of employment", presumably the owner is also subject to the prohibition in Title II against "potential discrimination", that is, the claim of a person with a disability that he/she is "about to be" discriminated against.

All of this is daunting enough to the small business owner, but the enforcement procedures contained in this bill raise even more serious concerns. Different remedies are contained in each title of the bill, and access to multiple remedies is assured. I have already stated that no distinction is made between acts of intentional and unintentional discrimination, and there is nothing in the bill to suggest that first instance violations would be treated any differently than pattern and practice violations.

In Title IV, remedies include private cause of action, possible intervention by the Department of Justice, actual



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and punitive damages, recovery of attorney fees, and civil penalties. These are significant penalties, particularly for the business owner who neither willfully, intentionally, or with malice discriminates against someone with a disability.

The tone of the bill is substantially different from Title VII of the Civil Rights Act, even though we are told that ADA is intended to afford the same protections as Title VII. Where Title VII encourages conciliation and cooperation, the ADA encourages adversarial relations. No attempt is made to highlight administrative remedies as the first step in reviewing discrimination. Direct resort to civil litigation is the preferred approach in the ADA. Such procedures are a deterrent to conciliation and as such, will prove counterproductive to the purposes of the proposed legislation. Inducements for civil litigation will further clog our courts and result in substantial new grey areas of liability for small business owners who, over the past few years, have already been hit with overwhelming liability insurance rate increases, and in some instances loss of coverage.

There are other, significant problems with this bill: inconsistent standards; direct contravention of the employers' ability to define qualifications for and essential components of jobs in his/her workplace; lack of

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any clear language to determine who carries the burden of proof in which instance; inconsistencies between Acts, such as the inclusion of drug abusers as disabled individuals under the ADA versus the strict requirements imposed on employers by the drug-free workplace statute; requiring that equal, not comparable, means and outcomes be used in achieving accommodation for the individual with a disability; and the like.

One final general comment remains to be made. The ADA is intended to be implemented in addition to, rather than instead of, existing civil rights statutes pertaining to persons with disabilities. What is being created is a regulatory maze through which small business owners are expected to navigate, with no false steps or detours allowed. In addition to the federal requirements, businesses will also have to comply with pertinent state and local laws. Opportunities for duplication and/or conflicting requirements are rife within this context.

I urge the Subcommittee to deliberate carefully over this legislation. The ADA, if enacted, will be a landmark statute, affecting the day-to-day lives of millions of people. It is critical that a reasonable balance be achieved between the rights of persons with disabilities and the small business community. Let us not, in attempting to provide equal rights to the disabled, create



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new and different types of disabilities within the job-generating sector of our economy.

I referred earlier to the impending labor shortage, most notably delineated in the Hudson Institute's Workforce 2000 and Opportunity 2000. The shortage promises to have a devastating impact on small firms, by nature labor intensive and traditionally the group that hires new entrants into the labor force.

Even in boom labor markets, small businesses face heavy competition with their larger counterparts. All too often the small business owner hires the new entrant and provides him/her with the on-the-job training he/she needs to build a career. Many skilled workers are enticed away by larger firms offering fast-track career advancement, larger salaries, bigger and better benefits. Yet small business continues to generate new jobs for new workers.

As we approach the end of this century, the pool of available workers will shrink in absolute terms, and the composition of the workforce will change drastically. Competition for workers will be fiercer than ever before. The challenge to small business will be to find ways to integrate individuals outside the economic mainstream into their workplaces, and to do so in an efficient and economic manner so they can continue to compete with

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larger firms with greater resources. Businesses are, after all, economic institutions by their nature. Small firms who have hired persons with disabilities have found in most cases that the extra effort makes good economic sense. I have no doubt that, faced with the demands of the marketplace, many other small firms will soon learn the same lesson.

0361T





# National Association of Theatre Owners

Testimony of

Malcolm C. Green  
Chairman

National Association of Theatre Owners

Before The

Subcommittee on the Handicapped

Committee on Labor and Human Resources

May 10, 1989



# National Association of Theatre Owners

## STATEMENT OF NATIONAL THEATRE OWNERS ASSOCIATION

May 10, 1989

RE: Americans with Disabilities Act of 1989

The members of the National Association of Theatre Owners (NATO) operate more than 12,000 motion picture theatre screens in all 50 states. NATO includes the very largest chains in the nation as well as hundreds and hundreds of independent theatre owners.

NATO members provide entertainment that is available to all. Last year over one billion people went to the movies in the United States. Truly, everyone enjoys motion pictures. The young, the old, the highly educated and less highly educated, the wealthy and the economically less fortunate, all have an opportunity to seek out a motion picture that meets their interests and usually for a price of less than \$6. Unlike the Broadway theatre, the big city concert or professional sports, where tickets can cost \$50 each, motion picture theatres offer entertainment that is economically available to most Americans. The 12,000 NATO motion picture theatre screens are geographically diversified so that almost everybody has a choice of several theatres within a reasonable distance of his or her home.



Motion picture theatre owners are experienced at moving a large number of people into and out of semi-darkened auditoriums, rapidly and safely. Although motion picture theatre staffs have traditionally included a large proportion of young first time job holders and an increasingly large number of senior citizens, the industry trains its employees to be able to deal with a large number of people in a relatively confined space. Theatre staff members are trained to deal with normal conditions and emergency conditions. Whenever one has a large number of people in a limited physical space, it is essential that preparations be made to deal with the worst case scenario and the theatre industry has accepted this responsibility. Our staff has to be able to move quickly should the need arise. This situation has caused NATO members to spend much time considering the special problems of the disabled both as patrons and employers.

The motion picture theatre industry has been a leader in facilitating innovations in construction to insure that disabled individuals have access to the nation's motion picture theatres. New theatre construction is engineered to provide ramps and auditorium space that permit persons in wheelchairs access to all of the theatre facilities. Restrooms are fully equipped in accord with state and local building codes to meet the needs of the disabled. Special sound facilities are being installed in many auditoriums that will enable hearing impaired individuals to enjoy a "night at the movies."

The National Association of Theatre Owners supports legislation designed to prohibit discrimination on the basis of

disabilities but at the same time NATO recommends that Congress recognize that there are certain rules of reason that must be followed in connection with this legislation.

#### I. ACCESS TO PUBLIC ACCOMMODATIONS

##### A. New Construction.

NATO supports the concept that new construction should be carefully engineered to insure full access for disabled persons. Theatres should include ramps to permit access to the auditoriums. Seating for persons in wheelchairs should be provided in close proximity to exits within each facility. NATO has compiled data which shows the number of persons in wheelchairs, on crutches, or using walkers, that attend theatres on a theatre/per week basis in various areas of the country.

For example, a wheelchair count was conducted in 28 theatres in Maryland, Virginia, and Pennsylvania from December, 1987, through March, 1988. The results of the survey showed that there was very little usage of the spaces for disabled persons available. Although many of our theatres provide two to four wheelchair positions, the theatres surveyed averaged one to two wheelchair patrons per week.

The survey also showed that over sixty percent (60%) of our wheelchair patrons do not sit in the spaces for disabled persons, they prefer to be removed from their wheelchairs to a theatre seat. Our ushers and door persons provide assistance.

A similar survey conducted in 10 theatres with a total of 53 screens in the state of Massachusetts shows that in a typical week the theatres served approximately 66,000 patrons. Among



these patrons, there were an average of 38 persons in wheelchairs, 48 persons on crutches, and 28 persons using walkers.

NATO will be glad to share these data with the Congress.

There has been some discussion as to whether it is discriminatory to limit wheelchair seating to the front and back of a motion picture theatre auditorium as distinguished from seating in the center of the auditorium. We contend that it is not only reasonable, but it is essential from a safety standpoint that wheelchair patrons be seated near an exit.

Today the typical motion picture theatre auditorium is much smaller than it has been in the past. Auditoriums with 200 to 300 seats are typical. In such a facility, every seat offers an excellent view of the screen. Motion picture theatres do not have price differentials for preferred seating. Attending a motion picture can be distinguished from attending a play or concert where seating prices vary based on location within the auditorium.

There is no discrimination in placing wheelchair seating in the front and rear of a motion picture theatre. By contrast, in the environment of a motion picture theatre, placing a wheelchair in the center of the auditorium and away from an exit can create a significant safety hazard. In the rare event of a fire, the theatre staff is trained to quickly enter the auditorium and assist disabled individuals. If such individuals are close to an exit, the theatre employee can effectively assist the disabled patron. If the disabled patron was seated in the middle of the

theatre far from an exit, theatre employees would have difficulty in getting to the disabled individual. Furthermore, other patrons of the theatre would be impeded in exiting rapidly as may be required by the situation. For these reasons, state fire marshals have uniformly indicated that seating for disabled persons should be placed near an exit and not in the middle of an auditorium.

We recommend that whatever legislation is adopted by the Congress, recognition must be given to the fact that wheelchair patrons of theatres should be seated near an exit.

The proposed legislation would not only cover wheelchair theatre patrons but also patrons with other disabilities. As we indicated before, the motion picture theatre industry is now including audio equipment for the hearing impaired in new construction. The proposed legislation does discuss the need for special equipment for the visually impaired. It is our understanding that some equipment is available for such individuals but that the equipment would only meet the needs of a small number of individuals and is extremely expensive. We would recommend that studies be undertaken to determine whether such equipment would be cost effective for use in a motion picture theatre. Unless a specific benefit can be shown without undue economic burden, we would oppose legislation that such equipment be required.

#### B. Existing Facilities.

Many motion picture theatres are located in the innercity, in buildings that are quite old. These locations are often of



marginal profitability and have great difficulty in competing with modern theatres located in suburban shopping malls. The shift in the movie going population from the city to the suburb can be easily documented by analyzing new theatre construction. In our industry, it is unusual to find significant new theatre construction in downtown areas.

Due to the age of these innercity theatres and the marginal profitability, it is not feasible to require substantial expenditures for renovating such facilities to meet the needs of disabled individuals. We therefore recommend that any legislation that is approved by the Congress exempt existing structures from the requirements of the law. However, we think it is reasonable to include in the statute a provision that where an existing facility is substantially renovated, the plans for the renovation require adequate facilities to insure that disabled individuals can use the renovated theatre comfortably.

Various definitions have been proposed for what constitutes "substantial renovation." In certain state regulations dealing with this issue, it has been determined that a substantial renovation occurs in the event that the cost of the renovation is equal to at least 50% of the value of the building being renovated. NATO would support such a concept. We think that it is reasonable in light of existing economic realities. However, we caution that any legislation that is adopted should make it absolutely clear that it will constitute an undue burden to require that special facilities be put in any building unless it can be shown that such facilities will actually be used by a

reasonable number of people in a foreseeable circumstance. Statistical data should be developed showing what type of handicapped or disabled individuals actually could visit various public accommodations including theatres. Any renovations or special facilities included in new construction should be limited to situations where it can be shown that the actual work done will accomplish a real goal that can be documented.

## II. DISCRIMINATION IN EMPLOYMENT.

NATO supports legislation that would eliminate discrimination in employment on any basis whether race, religion, national origin, sex or disability. Our industry has been in the forefront of those promoting equal opportunity for all. However, we believe that it is necessary to again apply a rule of reason when evaluating specific job classifications. We would like to present three examples for consideration:

### A. Motion picture theatre ticket seller.

Today's motion picture theatres are equipped with high technology computerized ticket booths. The equipment used in these booths has not been designed for persons in wheelchairs. A person in a wheelchair sitting behind a typical ticket booth counter could not reach from the wheelchair to the counter and certainly could not reach the money being proffered by the customer or return a ticket to the customer. Due to the mechanical limitations of this type of equipment and the size limitations of existing ticket booths, it is unreasonable to require that motion picture theatre owners offer this job to all disabled individuals if in fact such individuals could not



physically perform the job under the structural limitations of the ticket book.

B. Food concession operator.

The food concession operator in a motion picture theatre is required to move back and forth down a walkway behind a food service counter, reach and obtain the various items selected by the customer, dispense certain items, i.e., popcorn and soft drinks, and obtain payment and make change. Certain types of disabled individuals can perform this function efficiently. Persons in wheelchairs would have obvious difficulties. NATO recommends the rule of reason be applied to this job classification and the employer be required to determine whether the disabled individual in question can physically perform the task in light of existing job conditions. If in fact the person cannot perform the tasks under existing conditions, it should not be considered discriminatory for an employer to refuse to hire such an individual for this job.

D. Projection operator.

The projection operator in a motion picture theatre must be able to move easily in and out of the projection booth and must be able to pick up heavy disks of film and lift the film and insert it onto the projection platter. This activity requires not only access to the facility but certain manual dexterity, upper body strength and reach. Projection booths generally are extremely limited in space. Persons in wheelchairs would have difficulty moving around within the confines of such booths and will probably be unable to lift the film and place it in the

projection equipment. Motion picture projection booths are often designed so that one booth services multiple screens. A person in a wheelchair would have great difficulty moving from one work station to another. Thus, this job classification is not one which can be reasonably engaged in by a person in a wheelchair.

Again, NATO urges that a rule of reason be applied in evaluating whether an individual with a particular disability can perform in this job classification. It could well be that individuals with limited disabilities could perform efficiently as a projectionist. However, an individual with a severe disability such as a paraplegic, could not perform as a projectionist.

NATO believes that whatever legislation is passed clear recognition must be given to the proposition that before a finding of discrimination can be made, it must be determined whether the individual claiming discrimination is in fact capable of doing the job in question within the physical limitations that may be established by the disability and the limitations that may be established by the nature of the employer's facility.

A recent decision by the state of California not to require exhibitors to hire disabled workers supports NATO's position.

In March of 1989, California exhibitors successfully defeated a state government proposal that would have forced them to hire persons with disabilities in projection booths, cashier's cages, and at theatre refreshment stands.

The issue was settled when the Handicapped Access Division of the State Building Standards Commission accepted the validity



of exhibitor's claims that the physically disabled would be unable to perform their necessary tasks in those jobs, and that the cost of mandatory accommodation (access) would be prohibitive, and further exacerbate the burden on theatre owners.

This position, supported by NATO of California, does not indicate a lack of sympathy with or understanding of the plight of the disabled. NATO simply demonstrated that after working with the disabled over a period of three years, it is physically impossible for a person in a wheelchair to serve as a projectionist, work behind a snack bar, or handle ticket-dispensing equipment.

### III. CONCLUSION

The proposed legislation continually refers to a "reasonable" standard and includes a restriction that no undue burdens shall be placed on owners of public accommodations or employers. We have provided specific examples with regard to our industry to indicate standards of "reasonableness" and "undue burden" that we think appropriate. We suggest that these examples be included in the legislative history supporting this Act.

We also recommend that when drafting regulations, the agencies in question be directed to develop specific facts to prove that the acts and practices required by the regulations will effectively meet the underlying objectives of the statute. Ultimately the increased costs required by the legislation will be paid by the public. It is senseless to require that the public pay the cost of regulatory action that does not meet its

intended purposes. Use data should be developed on an industry by industry basis that will clearly show that the regulations that apply to such industry will actually result in more jobs for the disabled and increased use of public facilities by persons with such disabilities.

NATO supports the concept of elimination of all discrimination. NATO supports the concept of federal legislation to specifically eliminate discrimination based on disability. NATO believes that antidiscrimination legislation should establish general guidelines but permit sufficient latitude to enable employers, employees, state and local officials, educators and the public, to work together to promote reasonable standards to eliminate job discrimination based on disability.

We will be glad to provide any additional information requested.

Respectfully submitted,

Malcolm C. Green  
Chairman



STATEMENT OF  
MALCOLM C. GREEN, BOSTON, MASSACHUSETTS  
CHAIRMAN OF THE BOARD, NATIONAL ASSOCIATION OF THEATRE OWNERS

MAY 10, 1989

GOOD MORNING. MY NAME IS MALCOLM GREEN. I AM FROM BOSTON, MASSACHUSETTS AND I AM CHAIRMAN OF THE BOARD OF THE NATIONAL ASSOCIATION OF THEATRE OWNERS. WE ARE THE LARGEST NATIONAL ASSOCIATION OF THEATRE OWNERS IN THE WORLD AND REPRESENT OVER 12,000 SCREENS IN THE UNITED STATES. THE MOTION PICTURE THEATRE INDUSTRY HAS BEEN A LEADER IN PROVIDING ACCESS FOR THE DISABLED TO PUBLIC FACILITIES.

I HAVE BEEN IN THE MOTION PICTURE THEATRE BUSINESS SINCE 1946 AND MOST RECENTLY SERVED AS TREASURER OF CINEMA CENTERS, INC. CINEMA CENTERS OPERATED 111 SCREENS IN THE NEW ENGLAND STATES AND IN NEW YORK STATE.

NATO HAS PREPARED A WRITTEN STATEMENT WHICH I AM SUBMITTING FOR THE RECORD AND I WOULD LIKE TO EXTEND OUR REMARKS TO PROVIDE THE MEMBERS OF THIS COMMITTEE WITH SOME OF MY EXPERIENCES IN OPERATING MOTION PICTURE THEATRES FOR MORE THAN 40 YEARS. LAST YEAR MORE THAN ONE BILLION AMERICANS WENT TO THE MOVIES. WE AT NATO ARE VERY PROUD OF THIS FACT.

MY COMPANY, CINEMA CENTERS, INC., IS CONSTANTLY SEEKING FEEDBACK FROM OUR CUSTOMERS. WE WANT TO KNOW WHETHER THEY LIKED THE MOVIE THAT THEY SAW. WE WANT TO KNOW IF THE THEATRE WAS COMFORTABLE; IF IT WAS CLEAN; IF THE PATRON HAD ANY COMPLAINTS.

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TO BETTER SERVE OUR CUSTOMERS, WE DEVELOPED A SYSTEM USING COMMENT CARDS. PATRONS WERE ASKED TO COMPLETE THESE CARDS AND MAIL THEM BACK TO US. EACH RESPONSE WAS CAREFULLY SCRUTINIZED. IN RECENT YEARS, ALL OF OUR THEATRES WERE CONSTRUCTED TO PROVIDE WHEELCHAIR ACCESS FOR DISABLED PERSONS. WE HAVE NEVER TO MY KNOWLEDGE RECEIVED A COMPLAINT FROM A DISABLED PERSON THAT OUR THEATRES WERE INACCESSIBLE OR INHOSPITABLE TO THEIR NEEDS. IN MASSACHUSETTS, TEN THEATRES TOTALLING 53 SCREENS, COMPLETED AN INDUSTRY SURVEY ON ATTENDANCE BY PATRONS WITH CRUTCHES, WALKERS AND WHEELCHAIRS DURING MARCH 1989. DURING THIS TIME PERIOD, AVERAGE ATTENDANCE FOR ALL THEATRES WAS 65,807 PER WEEK. OF THIS NUMBER 114 WERE PERSONS WITH DISABILITIES INCLUDING 38 WHEELCHAIR PERSONS, 48 WITH CRUTCHES AND 28 WITH WALKERS. DISABLED PERSONS APPROXIMATED LESS THAN 2/10 OF 1% OF TOTAL PATRONS DURING THIS TIME PERIOD.

AS AN INDIVIDUAL AND AS CHAIRMAN OF NATO, I SUPPORT LEGISLATION GUARANTEEING DISABLED PERSONS ACCESS TO PUBLIC FACILITIES AND ACCESS TO JOBS. AT THE SAME TIME, ONE MUST BE REASONABLE. IN A THEATRE, WHEELCHAIR PATRONS MUST BE SEATED EITHER IN THE FRONT OR BACK OF THE THEATRE. TO SEAT A WHEELCHAIR PATRON IN THE MIDDLE OF THE THEATRE WOULD CREATE OBVIOUS SAFETY PROBLEMS IN THE EVENT THAT THERE WAS A NEED TO EMPTY THE THEATRE QUICKLY. STATE FIRE MARSHALS HAVE CONSTANTLY TAKEN THE POSITION THAT WHEELCHAIR PATRONS SHOULD BE SEATED EITHER IN THE FRONT OR THE BACK OF THE THEATRE IN CLOSE PROXIMITY TO AN EXIT. MOTION PICTURE THEATRE STAFFS ARE TRAINED IN THE EVENT OF AN EMERGENCY



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TO QUICKLY ASSIST DISABLED INDIVIDUALS. THIS TASK WOULD BE IMPOSSIBLE IF SUCH INDIVIDUALS WERE SEATED IN THE MIDDLE OF THE AUDITORIUM.

ALTHOUGH ALL THE THEATRES THAT WE BUILT IN THE LAST 15 OR 20 YEARS ARE ACCESSIBLE TO DISABLED PEOPLE, I NOTE THAT CERTAIN INNER CITY THEATRES BUILT MANY YEARS AGO MAY NOT HAVE SUCH MEANS OF ACCESS. SOME OF THESE THEATRES ARE IN DEPRESSED INNER CITY AREAS AND ARE STRUGGLING TO STAY OPEN. THEY ARE OF MARGINAL PROFITABILITY BUT SERVE AS A FOCAL POINT FOR ENTERTAINMENT IN THEIR COMMUNITIES. ANY NEW LEGISLATION ENACTED SHOULD RECOGNIZE THAT IT WOULD BE IMPOSSIBLE TO INVEST THE CAPITAL NECESSARY TO BRING SUCH FACILITIES INTO COMPLIANCE WITH A LAW REQUIRING TOTAL ACCESS FOR THE DISABLED. SUCH FACILITIES MUST BE EXEMPT UNLESS AND UNTIL THEY ARE TOTALLY RENOVATED.

SIMILARLY, ELIMINATION OF JOB DISCRIMINATION ON THE BASIS OF DISABILITY IS A CONCEPT THAT MUST BE SUPPORTED BUT WITHIN REASON. IN A MOTION PICTURE THEATRE SETTING, CERTAIN TYPES OF DISABLED INDIVIDUALS COULD OBVIOUSLY WORK IN CERTAIN JOBS. OTHER DISABLED INDIVIDUALS COULD NOT. THE PHYSICAL LIMITATIONS OF EXISTING THEATRES WOULD PROHIBIT UTILIZING WHEELCHAIR PERSONS FROM OPERATING PROJECTORS. PROJECTION BOOTHS ARE USUALLY LOCATED BETWEEN AUDITORIUMS IN RELATIVELY LIMITED SPACE. THEY REQUIRE CLIMBING STEEP STAIRWAYS FOR ENTRANCE. PROJECTOR OPERATORS MUST LIFT HEAVY PLATTERS OF FILM WHICH AGAIN WOULD BE IMPOSSIBLE FOR PERSONS WITH A CERTAIN TYPE OF HANDICAP. RECENTLY A CALIFORNIA COMMISSION SPECIFICALLY EXEMPTED THIS JOB CLASSIFICATION FROM THE

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REQUIREMENT OF THE CALIFORNIA ANTIDISCRIMINATION STATUTE. WHILE I DON'T WANT TO APPEAR NEGATIVE, I MUST URGE THE COMMITTEE TO RECOMMEND LEGISLATION THAT IS REASONABLE IN SCOPE AND DOES NOT PLACE UNREASONABLE OR UNDUE BURDENS ON EMPLOYERS.

I THANK YOU FOR INVITING US TO TESTIFY THIS MORNING AND I WILL BE GLAD TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE.



THE AMERICANS WITH DISABILITIES ACT

(S.933)

SEPTEMBER 6, 1989

Mr. President: I rise today to urge Senate passage of S. 933, the Americans with Disabilities Act. It was a long time in coming and many -- on both sides of the aisle -- have worked long and hard to get us here today.



You know, many have called people with disabilities the last minority. Enactment of the Americans with Disabilities Act will bring this last, and largest, minority group into a position of achieving equal opportunity, access and full participation in the American Dream. Mr. President, that's what the ADA is all about.

## BI-PARTISANSHIP IN ACTION

The ADA is also a good example of bipartisanship in action. The bill originated with an initiative of the National Council on Disability, an independent federal body comprised of 15 members appointed by President Reagan and charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities.



In 1986, the Council issued an important report. The report, "Toward Independence," concluded that the major obstacles facing people with disabilities are not their specific individual disabilities but rather the artificial barrier imposed by others. The report also recommended that Congress "enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

During the last Congress, my Republican colleague, Senator Lowell Weicker, introduced a bill developed by the National Council, titled the "Americans with Disabilities Act." Although this bill was not considered by the full Senate, it initiated a dialogue and became the basis for the current revised bill introduced by Senators Harkin, Kennedy and Durenberger earlier this year. I acknowledge and commend the leadership taken by these Senators in moving the Americans with Disabilities Act forward during the 101st Congress.



President Bush also deserves to be commended for his leadership on the bill. Let's face it. We would not be here today without the support of the President. His willingness to sit down at the negotiating table demonstrated the Administration's sincere commitment to expand civil rights protections for people with disabilities.

And the fact that we have moved forward with the ADA demonstrates that the President wasn't kidding in his Inaugural Address when he said that this "is the age of the offered hand."

I would also like to take this time to commend the efforts of other members of the Administration, notably Governor John Sununu, Attorney General Dick Thornburgh, Secretary Sam Skinner of Transportation, National Council on Disability Chairwoman Sandra Swift Parrino, and Justin Dart, Chairman of the President's Committee on Employment of People with Disabilities.



The ADA has also benefitted from the input of numerous White House staff, including Bill Roper, John Wodasch, Hans Kuttner, David Sloane, Boyd Hollingsworth, Bob Funk, Bob Damus, Ken Yale and Mary Ann McGettigan. All these individuals have made significant contributions to the legislation that is before us today.

## AN IMPROVED BILL

Like President Bush, I believe that the ADA will help to create a more inclusive America, an America that does not place needless and harmful barriers in the way of her citizens with disabilities. I also believe that the bill before us today addresses many of my previous concerns -- concerns that I raised during my testimony before the Labor Committee last May.



I am particularly pleased with the bill's tough -- but fair -- remedies provisions. The remedies available in the event of employment discrimination, for example, are the familiar and well tested remedies of Title VII of the Civil Rights Act of 1964 -- enforcement through the Equal Employment Opportunities Commission with recourse to the courts. Punitive damages and immediate access to jury trials are simply not available under the ADA in it's revised form.

Furthermore, only person who can bring suit under the bill's public accommodation's section is the Attorney General. So as you can see lawyers will not be able to build careers out of law suits against public accommodations brought on a contingency fee basis. That was the case under S. 933 as originally introduced, but not now.



So those who would suggest that the ADA will unleash a mountain of litigation, I believe, are simply missing the point.

### COSTS

But let there be no mistake about it. The vision of a barrier free society for all Americans can be expensive. It is not cost-free -- particularly for our nation's small businessmen and businesswomen.

One of my primary concerns is the financial affect of the ADA on our nation's private bus industry. The private bus industry is the most affordable form of mass transportation for the poor, the elderly, and rural Americans. It is not a subsidized mass transit system. Greyhound, for example, has estimated that the annual cost of ADA to the company will range from \$40 to \$100 million dollars.



Advocates in the disability community believe this estimate is too high, but in any event it will be costly. Obviously, we cannot allow the important protections of this legislation to bankrupt an industry that provides critical service.

The bill contains a provision directing the Architectural and Transportation Barriers Compliance Board to undertake a study to determine the feasibility of equipping private intercity buses with lifts. The bill also imposes a lift requirement five to six years after the bill's enactment.



Now, some have suggested that the ADA should not impose any lift requirements until after the results of the Board study becomes known. In other words, they claim that the ADA should not put the cart before the horse.

Others argue that without statutory requirements, the issue of making private intercity buses accessible will not get the attention it deserves.

I believe both positions have merit. Nevertheless, it is easier to amend the lift requirement once the results of the study become known than it is to add these requirements at some point down the road. For this reason, I support the legislation as written.



I am fully aware inexpensive and accessible transportation is the key to employment for many disabled persons -- and one cannot distinguish between a ride to work and a ride for recreation. This is an area I intend to follow closely. My support for ADA is based upon my commitment to seeing that its provisions can work to the benefit of all and the detriment of none.

## INCENTIVES AND TECHNICAL ASSISTANCE FOR SMALL BUSINESSES

While costs alone should not be reason enough to deny the disabled their civil rights, there should be accompanying incentives for small businesses to meet the requirements of the bill. To this end, I will soon introduce an amendment to the tax code for the express purpose of ameliorating the financial burden to small businesses complying with the ADA.



This amendment will allow small businesses to deduct to some extent their expenditures on such items as "auxiliary aids and services" and "reasonable accommodations" -- all required by the ADA.

Employers, persons with disabilities, and other affected parties must have access to accurate information. As a result I intend to offer an amendment which will enable the responsible federal agencies to establish a strong government-wide technical assistance program. Such a program will help to educate the public about the requirements of the bill.



There are many such knowledgeable and qualified experts -- such as the Dole Foundation, to assist in this endeavor. Other experts include the President's Committee on Employment of People with Disabilities and the Job Accommodation Network, the National Association of Rehabilitation Facilities, the National Council on Disability and the Disability Rights and Education Defense Fund, to name a few.

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



## CONCLUSION

Mr. President, being here today demonstrates that these are not dark days for civil rights in this country. It proves our commitment to expand our civil rights so that they embrace every American. The tradition of civil rights law is one of opportunity. And the ADA is squarely in that tradition.

I would also like to make one final point here. The enactment of this huge bill will substantially benefit our Nation. The eradication of discrimination in employment against persons with disabilities will result in a stronger workforce and lessen dependency on the welfare system. It will ensure that we fully utilize the potential talents of every individual within our society. A 66% unemployment rate for persons with disabilities is simply unacceptable -- and it is simply too expensive for America to afford.

In closing, I ask consent to insert into the record the "Op-Ed" piece written by my friend James Brady, President Reagan's Press Secretary. His poignant remarks are certainly worth noting as we consider this legislation.



THE AMERICANS WITH DISABILITIES ACT (S.933)

SEPTEMBER 7, 1989

Mr. President: I speak today to urge Senate passage of S.933, The Americans with Disabilities Act. It was a long time in coming and many -- on both sides of the aisle -- have worked long and hard to get us here today.

S. 933 is the product of bipartisan effort at each and every stage of its inception. The origin of the Americans with Disabilities Act is rooted in an initiative of the National Council on Disability, an independent federal entity comprised of 15 members appointed by President Reagan and charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities, and making recommendations as appropriate to the President and Congress. In 1986, the Council issued a report which found that the major obstacles facing people with disabilities were not the disability characteristic of the person but rather those which arose from barriers imposed externally. The Report recommended that Congress "enact a comprehensive law requiring equal opportunity for



individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

During the last Congress, my Republican colleague, Senator Lowell Weicker introduced a bill developed by the National Council, titled "The Americans with Disabilities Act." Although this bill was not considered by the Senate, it initiated a dialogue and became the basis for the current revised bill introduced by Senators Harkin, Kennedy and Durenberger earlier this year. I acknowledge the leadership taken by these Senators in moving the Americans with Disabilities Act forward during the 101st Congress.

I also commend President Bush for his participation in the negotiations which have occurred over the past several weeks. ADA could not have happened so quickly without the support President Bush has given. His willingness demonstrated that his Administration would support expanding civil rights protections to include people with disabilities. That we have moved forward with legislation demonstrates the resolve in his Inaugural Address: that this "is the age of the offered hand."



The efforts of numerous members of the Administration, notably those of Attorney General Dick Thornburgh, Secretary of Transportation, Sam Skinner, National Council on Disability Chairwoman Sandra Swift Parrino, and Justin Dart, Chairman of the President's Committee on Employment of People with Disabilities and White House input from Bill Roper, John Wodasch, Hans Kutchner, David Sloane, Boyd Hollingsworth and Bob Funk all these individuals have contributed significantly to the legislation that is before us today. *Damus*

Many have termed people with disabilities the last minority. Enactment of the Americans with Disabilities Act will bring the largest minority group into a position of achieving equal opportunity, access and full participation in the American dream.

#### OPPORTUNITIES AND PROBLEMS

The Americans with Disabilities Act reaffirms our commitment to support the



individual. In so doing, however, we must go beyond rhetoric. Our responsibility is to craft legislation that can be implemented to achieve its intended effect. However, let's not try and deceive anyone, there will be costs incurred by businesses, large as well as small in meeting the requirements of this bill. In attempting to assure the civil rights of persons with disabilities we must attend to the realistic concerns associated with such an assurance.

One problem with this legislation according to some is the suggestion that a mountain of litigation will be unleashed on suspecting parties once this bill becomes law.

That is not an accurate judgement. The remedies allowed under this legislation in the case of employment are the familiar remedies of Title VII of the Civil Rights Act of 1964 -- enforcement



through the Equal Employment Opportunity Commission with recourse to the courts. Punitive damages or immediate access to jury trials are not part of ADA's remedies.

Another question deals with the public accommodations title. The only person who can bring suit under this title is the Attorney General. Lawyers cannot build careers on bringing suits against public accommodations on a contingency fee basis. That was formerly under S.933 as introduced, but not now.

The idea that the unsuspecting could be subject to suit is inconsistent with the intent of the legislation. Section 308 grants the Attorney General the authority to bring suit where there is "a pattern or practice of resistance to the full enjoyment of any of the rights" of people with disabilities.

#### TRANSPORTATION

The financial consequences of ADA language is my interest. For example, our nation's intercity bus industry is the primary form of affordable mass transportation for the poor, the elderly, and rural Americans. It is not a subsidized mass transit system. Greyhound has estimated that the annual cost of ADA to the company will range from \$40 to \$100 million dollars. Advocates in the disability community



believe the estimate is too high, but in any event it will be high. Obviously, we cannot allow the important and much needed protections of this legislation to financially bankrupt an entire industry that provides a critical service.

INSERT DOLE PLANS ON PRIVATE BUS AND HATCH AMENDMENT!

I am not willing to wager on whether the provisions in this legislation requiring lifts on buses will be implemented in five years because I am not certain they will. But I am certain that if we don't have a requirement in this legislation, this issue won't get the proper attention.

The report required by the statute to research efforts to develop better lifts, the Secretary of Transportation's rulemaking and our responsibility to provide relief through the tax code will only get the attention they deserve if we all have the feeling that a sword is about to fall. The lift requirement here provides just that.



While cost alone is no reason to deny people with disabilities their civil rights, there must be incentives and assistance for small businesses to enable them to meet their responsibilities. To this end, I will soon introduce an amendment to the tax code for the express purpose of ameliorating the financial burden to small businesses of complying with ADA.

#### PUBLIC ACCOMMODATIONS

During the negotiations on the provisions of the bill several strategies for dealing with the scope of public accommodations were examined. Specifically, there was discussion of the desirability of raising the exemption from 15 persons or less, to, 25 or less employees. During negotiations such a provision was considered and rejected for two important reasons. The fundamental problem with such an approach is that the small business exemption is not an employment right but rather an issue of access. SAY WHAT ACCESS IS-- Thus, the problem of access would not be solved by raising the ceiling of an exemption. The second reason is that such a change may be detrimental to the independent living movement. Current language in the bill was established with the input and support of the Administration. It is reasonable and workable.



private sector and those with disabilities must continue to work together to respond to questions that remain and will arise as we implement this but mere passage of the bill will not be the end but the beginning.

Later today, I will offer a technical assistance amendment designed to operationalize implementation of this legislation. We have an obligation to provide assistance to those we require to comply with the law.

#### CONCLUSION

The enactment of this huge bill will substantially benefit our Nation. The eradication of discrimination in employment against persons with disabilities will result in a stronger workforce and lessen dependency on the welfare system. Passage of this bill is a step towards ensuring that we are fully utilizing the potential and inherent talents of every individual within our society. In closing, I ask consent



to insert into the record the "Op-Ed" piece written by my friend James Brady, President Reagan's Press Secretary. His poignant remarks are certainly worth noting as we consider this legislation.



## *Administration Remarks for Dole's statement*

- o ADA could not have happened so quickly without the backing George Bush has given to the concept
  - His willingness to take this kind of step, which he expressed during last year's campaign, demonstrated to all who sought this legislation that his Administration would support expanding civil rights protections to include the disabled.
  - That we are in so short a time moving forward with legislation demonstrates the resolve George Bush presented in his Inaugural Address: that this "is the age of the offered hand"
- o Our being here today on this legislation demonstrates as well that these are not dark days for civil rights in this country. The scope of our civil rights laws can be expanded.
  - This is something we should keep in mind as the year progresses and the momentum builds to overturn a number of decisions from the last term of the Supreme Court.
  - Our civil rights laws should stand for opportunity. That is the long term tradition of civil rights laws, it is the tradition in which ADA falls, and the tradition in which future civil rights laws should also be.
  - Finally, ADA shows that civil rights laws should proceed from consensus if they are to have effect and respect.
- Unfortunately, because of the pace at which we have been moving forward, not all the news that is getting out about this legislation is accurate
  - One point I want to dispell is the suggestion that there is a lot of litigation that will be unleashed on unsuspecting parties by the ADA.
  - That is patently false. The remedies allowed under this legislation are, in the case of employment, the familiar remedies of Title VII of the Civil Rights Act of 1964 -- enforcement through the Equal Employment Opportunity Commission with the opportunity for recourse to the courts. Punitive damages or immediate access to jury trials are not part of ADA's remedies.



The remedies allowed under the public accommodations title are still narrower. The only person who can bring suit under this title is the Attorney General. There is no opportunity for members of the legal profession to build careers on bringing suits against public accommodations on a contingency fee basis. There was such an opportunity under S. 933 as introduced, and I am pleased to see that it is no longer there.

The idea that the unsuspecting are subject to suit is inconsistent with the words of the legislation. Sec. 308 grants the Attorney General the authority to bring suit where there is "a pattern or practice of resistance to the full enjoyment of any of the rights" of the disabled. That is not language that puts the Attorney General in the business of bringing suit to terrorize the innocent.

- Another area where there has been unfounded concern is ADA and illegal drugs

Some are even trying to read ADA as conferring rights on every drug user to stay in the workplace. You can only reach this conclusion through some mighty strange reasoning. This legislation is about Americans with disabilities. Why doesn't it deal with the situation of drug users who are not disabled? The question answers itself: because they are not disabled, and this legislation concerns itself only with the disabled.

\* \* \*

- o I know there has been some discomfort about this legislation within the bus industry.

I'm not willing to wager on whether the provisions in this legislation requiring lifts on buses will be implemented in five years because I'm not sure they will. But I am also sure that if we don't we have a requirement in this legislation, this issue won't get the attention it will if there is a requirement.

The report required by the statute, the research effort to develop better lifts, the Secretary of Transportation's rulemaking and our responsibility to provide relief through the tax code will only get the attention they deserve if we all have the feeling that a sword is about to fall. And that is what the lift requirement here provides.



STATEMENT OF SENATOR ROBERT J. DOLE  
ON THE AMERICANS WITH DISABILITIES ACT  
JULY 25, 1989

MR. PRESIDENT: I rise today to commend my colleagues on the Labor & Human Resources Committee for delaying their scheduled mark up of the Americans with Disabilities ADA), S.933 for the following reasons

First, the White House and Senate staff have negotiated for the past two weeks in an attempt to develop consensus on a version of the ADA.

Second, on 16 major issues, agreement has been reached in principle on all but six key issues. I am very familiar with the substance of these negotiations and their status.

Third, with perhaps further negotiations a full consensus can be reached.

There appears to be broad based if not universal support in this chamber, the other body, the Administration and the disability, business and transportation communities for expansion and clarification for the civil rights of people with disabilities.

The debate has centered around not whether such civil rights should be the law of the land but HOW such civil rights should be established.

Therefore, I think it is both imperative and judicious to continue efforts to resolve the remaining differences for all Americans -- those who would benefit from the ADA and those who must comply with it.

The intent of this legislation is to provide all Americans full access in society and rightfully so -- however, in reaching this goal modifications, renovations and changes must be made. Such as endeavor will not be easy -- this legislation will require that changes in the workplace be accommodated to a person with a disability in carrying out his/her job. This may require:

providing a computer with a speech synthesizer and appropriate software for blind persons:

consulting and hiring a rehabilitation engineer to adjust the workers environment such as making furniture of different sizes and configurations adjustable so that the individual can work:

it might require assistance from another person such as an interpreter or reader OR:

widening the isles, entrances, and widths of automatic doors, constructing a wooden or concrete ramp to assure access or adjusting desk or bookshelf heights.

If we proceed in a mark up in an atmosphere of uncertainty we are only undermining the fundamental intent of this legislation.



For the record, I would like to now review the six outstanding differences of opinion between the White House and Senate negotiating teams and suggest some alternatives to consider and thus cast this legislation in a forum all of us in this chamber can support.

First, let me comment on an interest of a small business exemption. The ADA provides an exemption for employers who have less than 15 employees. The White House has recommended that this exemption be phased in over a 4 year period. This is a pragmatic approach that will permit small businesses to prepare for and become educated about the mandates with which they will have to comply.

Equally, as important is the removal of the section 1981 provisions which would allow jury trial with compensatory and punitive damages if a person with a disability successfully sues an employer. This provision if retained in the bill may operate as a disincentive causing employers to AVOID reaching out to the disability community for workers in fear of being sued.

Enforcement is important! We all agree it must be strong, clear and effective but perhaps it could be achieved and fairly applied through other means.

Second, let me comment on bringing the ADA in sync with section 504 of the Rehabilitation Act of 1973. In many areas the negotiation teams have done just that.

The Administration would like to see synchronization apply to the definition and understanding of reasonable accommodation and undue hardship in the ADA. This is a reasonable request given the experience and understanding employers currently have.

I would also like to consider when negotiations resume. For instance making reasonable accommodation will be a matter of accessing information on how to carrying out such requirements and where an employer might purchase or seek assistance in doing so. Many renovations are easily aquired -- many are not.

Third, one of the most important is the scope of the public accommodations in the ADA. The drafters of the ADA seek unlimited scope and the Whits House asks for coverage that parallels Title II of the Civil Rights Act of 1964 with an extension of such coverage for medical offices.

We all agree that people with disabilities should have unlimited access to their doctor's offices -- to pharmacies, grocery stores, dry cleaners and other establishments. If the negotiators could come to a common understanding of lessors and lessees than I think the scope under public accommodations could be resolved.

The issue here is making the routine services of daily living accessible to everybody. It will require clarification, responsibility and practical timelines to achieve this goal. I think with further negotiations we can accomplish just that.



Fourth, negotiators have been unable to reach consensus on the fact or extent of coverage for religious entities. There should be an exemption for religious entities in the ADA. I think that given the fundamental premises of religious institutions, organizations and churches -- they have, -- they do -- and they will provide access to people with disabilities.

If they do more than what they have done in the past the choice should be theirs brought about by the awareness and sensitivity of their membership rather than by a federal mandate.

If they are forced to comply with a federal mandate than we are presented with a constitutional crisis to contend with which is the separation between church and state.

Fifth is the issue of a fully accessible private bus fleet. Over and over I have been told that in order for a person with a disability to benefit from a job he or she must have access to public transportation. I agree that all public buses should be accessible within 12 years.

I also recognize that paratransit is an important component of mainline transportation. However, requiring every bus purchased by a private transportation company to be accessible is an excessive standard at this point.

I intend to fairly address the issue of access in private transportation. I will offer legislation that will provide to such entities a tax credit for expenses incurred for all lifts put on new buses. The Department of Transportation has asked for a study as a prudent way to proceed in assessing the demand for accessible public transportation.

The sixth, area of consideration is the area of Telecommunications. Currently, there are intensive negotiations going on between Senators McCain and Harkin's staff, the Administration and the hearing and deaf community to reach consensus on the issues under this section of the bill. There is no dispute over the right of hearing impaired people to have access to functionally equivalent phone service. The remaining issue is what entity will have responsibility for assuring an accessible telephone service for people with hearing impairments.

As you can see these remaining points of disagreement are areas reasonable people can work out with time. We have come a long way in two weeks. I am confident given some more time we can achieve consensus on the ADA. People with disabilities -- expect us to do this -- we have the responsibility to do this -- and we therefore, not let the artificial pressure of time cause us to terminate, undermine or undue efforts to achieve compromise.



It is my feeling that efforts today have been in good faith, professional and open. I hope you will join me in encouraging the members of the Labor and Human Resources to continue their negotiations and not be overshadowed by a mark up which could be perceived as precipitous when we are so close.

Destiny is a matter of choice not chance. The chance in this case is ours. I know the other body is more likely to continue the Senate version of the ADA if it reflects broad consensus and support and will move more efficiently should this be the case.

Finally, if we want the President to sign the ADA during this session of the 101st Congress -- we must give the negotiators one more chance to achieve consensus. This is too important not to do so.



Hi Mitch,

☺ — — Dole has  
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THE AMERICANS WITH DISABILITIES ACT (S.933)

SEPTEMBER 6, 1989

Mr. President: I speak today to urge Senate passage of S.933, The Americans with Disabilities Act. It was a long time in coming and many -- on both sides of the aisle -- have worked long and hard to get us here today.

S. 933 is the product of bipartisan effort at each and every stage of its inception. The origin of the Americans with Disabilities Act is rooted in an initiative of the National Council on Disability, an independent federal entity comprised of 15 members appointed by President Reagan and charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities, and making recommendations as appropriate to the President and Congress. In 1986, the Council issued a report which found that the major obstacles facing people with disabilities were not the disability characteristic of the person but rather those which arose from barriers imposed externally. The Report recommended that Congress "enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."



During the last Congress, my Republican colleague, Senator Lowell Weicker introduced a bill developed by the National Council, titled "The Americans with Disabilities Act." Although this bill was not considered by the Senate, it initiated a dialogue and became the basis for the current revised bill introduced by Senators Harkin, Kennedy and Durenberger earlier this year. I acknowledge the leadership taken by these Senators in moving the Americans with Disabilities Act forward during the 101st Congress.

I also commend President Bush for his participation in the negotiations which have occurred over the past several weeks. ADA could not have happened so quickly without the support President Bush has given. His willingness demonstrated that his Administration would support expanding civil rights protections to include people with disabilities. That we have moved forward with legislation demonstrates the resolve in his Inaugural Address: that this "is the age of the offered hand."

The efforts of numerous members of the Administration, notably those of Attorney General Dick Thornburgh, Secretary of Transportation, Sam Skinner, National Council on Disability Chairwoman Sandra Swift Parrino, and Justin Dart, Chairman of the President's Committee on Employment of People with Disabilities and White House input from Bill Roper, John Wodasch, Hans Kuttner, David Sloane, Boyd Hollingsworth and Bob Funk have contributed significantly to the legislation that is before us today.

*Harkin*

*Sumner*

*Mary Ann McGinty*

*Bob Darnett  
Ken  
Yap*

Many have termed people with disabilities the last minority. Enactment of the Americans with Disabilities Act will bring the largest minority group into a position of achieving equal opportunity, access and full participation in the American dream.

### EMPLOYMENT OPPORTUNITIES AND PROBLEMS.

The Americans with Disabilities Act reaffirms our commitment to support the individual. In so doing, however, we must go beyond rhetoric. An important principle in the Act's employment provisions is the requirement that individualized determinations be made about people with disabilities -- rather than generalizations about types of disabilities. Such generalizations, based on ignorance, have long proven to be discriminatory because they eliminate many genuinely qualified candidates from the workforce, as documented by the staggering 66% unemployment rate for persons with disabilities. Persons with disabilities should be taxpaying citizens and consumers not dependents on society. Enabling people with disabilities to join the workforce and the mainstream of American society is what this bill is about.

My commitment to this area is longstanding as evidenced by the work of the Dole Foundation which was established to promote employment opportunities for persons with disabilities. My association with the business community in this regard has taught



me that the business community is committed to the goal of accessibility for, and employability of, <sup>qualified</sup> persons of with disabilities.

*T.A. will be needed in this regard to assure both the integrity of the private sector*

Our responsibility is to craft legislation that can be implemented to achieve its intended effect. However, let's not try and deceive anyone, there will be costs incurred by businesses, large as well as small in meeting the requirements of this bill. In attempting to assure the civil rights of persons with disabilities we must attend to the realistic concerns associated with such an assurance.

*as well as appropriate employment opportunities for persons with disabilities*

One problem with this legislation according to some is the suggestion that a mountain of litigation will be unleashed on unsuspecting parties once this bill becomes law.

That is not an accurate judgement. The remedies allowed under this legislation in the case of employment are the familiar remedies of Title VII of the Civil Rights Act of 1964 -- enforcement through the Equal Employment Opportunity Commission with recourse to the courts. Punitive damages or immediate access to jury trials are not part of ADA's remedies.

Another question deals with the public accommodations title. The only person who can bring suit under this title is the Attorney General. Lawyers cannot build careers on bringing suits against public accommodations on a contingency fee basis. That was formerly under S.933 as introduced, but not now.

The idea that the unsuspecting could be subject to suit is inconsistent with the intent of the legislation. Section 308 grants the Attorney General the authority to bring suit where there is "a pattern or practice of resistance to the full enjoyment of any of the rights" of people with disabilities.

#### TRANSPORTATION

The financial consequences of ADA language is my interest. For example, our nation's intercity bus industry is the primary form of affordable mass transportation for the poor, the elderly, and rural Americans. It is not a subsidized mass transit system. Greyhound has estimated that the annual cost of ADA to the company will range from \$40 to \$100 million dollars. Advocates in the disability community believe the estimate is too high, but in any event it will be costly. Obviously, we cannot allow the important and much needed protections of this legislation to financially bankrupt an entire industry that provides a critical service.



The bill contains a provision directing the Architectural and Transportation Barriers Compliance Board to undertake a study to determine the access needs of individuals with disabilities and the most cost effective methods for meeting those needs. The study will analyze the cost of providing accessibility as well as cost saving technological developments in equipment and devices. The results of this study will be of critical importance to the private transportation industry because it will provide the information needed to make cost effective decisions about the most pragmatic and effective way to proceed in service delivery.

Some have suggested that the provisions of the bill requiring the compliance of private transit providers within a maximum of six years be deleted pending the results of the ATBCB study. Others argue that without statutory requirements, the issue will not get the attention it deserves. I believe both positions have merit, however, it is easier to amend a statutory timeline subsequent to the results of a study than it is to add additional requirements once the bill becomes law. This is an area I intend to follow closely. My support for ADA is based upon my commitment to seeing that its provisions can work to the benefit of all and the detriment of none

I am hopeful that the beneficial results of this study and other provisions of ADA will generalize to other groups as well. For example, buses which are accessible to persons with disabilities may also make transportation a little easier for the elderly.

## PUBLIC ACCOMMODATIONS

Our being here today demonstrates that these are not dark days for civil rights in this country. The scope of our civil rights laws will be expanded until they embrace every American. The tradition of civil rights laws is one of opportunity. The public accommodations provisions in the ADA guarantee that Americans with disabilities will no longer be denied the opportunity to participate in any segment of American life.

The private sector and those with disabilities must continue to work together to respond to questions that remain and will arise as we implement this legislation. Mere passage of the bill will not be the end -- but the beginning.

## TECHNICAL ASSISTANCE

Later today, I will offer a technical assistance amendment designed to operationalize implementation of this legislation. We have an obligation to provide assistance to those we require to comply with the law. Technical assistance is necessary to assist private businesses, and other newly covered entities understand their legal obligations. Persons with disabilities, employers and others effected by the ADA must have access to accurate information. My amendment will enable federal agencies responsible for implementation of the law to establish a



strong government-wide technical assistance program. Such a program will help to educate concerned parties about the new terms and standards set forth in this Act. There are many knowledgeable and qualified experts available to assist in this endeavor such as the President's Committee on Employment of People with Disabilities and the Job Accommodation Network, the National Association of Rehabilitation Facilities, the National Council on Disability and the Disability Rights and Education Defense Fund to name just a few.

Given the comprehensive and far-reaching nature of the rights and responsibilities extended under the Act, I believe it is our obligation to see that those persons this bill was written for will be informed of those rights and that those asked to comply will understand the nature of their obligation.

#### CONCLUSION

The enactment of this huge bill will substantially benefit our Nation. The eradication of discrimination in employment against persons with disabilities will result in a stronger workforce and lessen dependency on the welfare system. Passage of this bill is a step towards ensuring that we are fully utilizing the potential and inherent talents of every individual within our society. In closing, I ask consent to insert into the record the "Op-Ed" piece written by my friend James Brady, President Reagan's Press Secretary. His poignant remarks are certainly worth noting as we consider this legislation.

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*Draft*

~~FLOOR STATEMENT OF SENATOR ROBERT J. DOLE~~

~~ON SEPTEMBER 7, 1989~~

THE AMERICANS WITH DISABILITIES ACT

(S. 933)

SEPTEMBER 7, 1989

*speech*

Mr. President: I ~~rise today~~ to urge Senate passage of S. 933, The Americans with Disabilities Act. ~~I am proud this bill is before the Senate.~~ It was a long time in coming and many people -- on both sides of the aisle -- have worked long and hard to get us ~~where we are~~ *here* today.

*Natl. Council on Dis.*

S. 933 truly is the product of bipartisan effort at each and every stage of its inception. ~~The~~ *Report* origin of the Americans with Disabilities Act is rooted in an initiative of the National Council on Disability, an independent federal entity comprised of 15 members appointed by the President *and* charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities, and making recommendations as appropriate to the President and Congress. In 1986, the Council issued a report which found that the major obstacles facing people with disabilities were not the disability characteristic of the person but rather those which arose from barriers imposed externally. The Report recommended that Congress "enact a comprehensive law requiring equal opportunity for



individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

During the last Congress, my Republican colleague, Senator Lowell Weicker introduced a bill developed by the National Council, titled "The Americans with Disabilities Act." Although this bill was not considered ~~before~~ <sup>by</sup> the ~~full~~ Senate, it initiated a dialogue and became the basis for the current bill introduced by Senators ~~Tom~~ <sup>X</sup> Harkin, ~~Ted~~ <sup>X</sup> Kennedy and ~~David~~ <sup>X</sup> Durenberger earlier this year. I would like to take this opportunity to acknowledge the leadership taken by ~~these~~ <sup>the</sup> Republican and Democratic Senators in ~~promoting~~ <sup>moving</sup> the Americans with Disabilities Act during the 101st Congress. raised fawnd

I ~~would~~ also like to commend President Bush for his willingness to participate <sup>in</sup> in the negotiations which have occurred over the ~~past months~~ <sup>several weeks</sup>. ADA could not have happened so quickly without the ~~backing~~ <sup>suggestion</sup> George Bush has given ~~to supporting this bill~~ <sup>for</sup>. His willingness to take this kind of step, which he expressed during last year's campaign, demonstrated ~~to all who sought this legislation~~ that his Administration would support expanding civil rights protections to include people with disabilities. That we have moved forward with legislation demonstrates the resolve ~~George Bush presented~~ in his Inaugural Address: that this "is the age of the offered hand."

The efforts of numerous members of the ~~Bush~~ Administration, notably those of Attorney General Dick Thornburgh, Secretary of Transportation, Sam Skinner, National Council on Disability Chairwoman Sandra Swift Parrino, and Justin Dart, Chairman of the President's Committee on Employment of People with Disabilities have contributed significantly to the ~~finely crafted~~ legislation ~~that is~~ before us, ~~today~~.

Many have ~~correctly~~ termed people with disabilities the last minority. Enactment of the Americans with Disabilities Act will, ~~at last~~ bring the largest minority group in ~~our nation~~ into a position of ~~enjoying~~ equal opportunity, access and full participation in the American dream. ~~That is what this meaningful legislation is about.~~

### Opportunity & Problems

Assuring equal opportunity for persons with disabilities is a more complex endeavor than simply extending the anti-discrimination protections available to other minority groups. Overcoming discrimination against a person with a disability, in some cases, will require more than a social commitment and the protection of anti-discrimination legislation. It will require structural adaptations that will effect every aspect of our infrastructure. INSERT MORE INFO!

~~Senate consideration of such legislation is an endeavor with which I am proud to be associated.~~ The Americans with Disabilities Act reaffirms our commitment to support the



individual. Our being here today on this legislation demonstrates as well, that these are not dark days for civil rights in this country. The scope of our civil rights can be expanded and will stand for opportunity. That is the long term tradition of civil rights laws, it is the tradition in which future civil rights laws should prevail.

In so doing, however, we must go beyond the ease of rhetoric. It is not enough to say that passage of the Americans with Disabilities Act is the right thing to do. There is no argument there. Our responsibility is to craft legislation that can be implemented to achieve its intended effect. There will be costs incurred by all industries and businesses, large as well as small in meeting the anti discrimination requirements of this bill. *Justly assuring* the civil rights of persons with disabilities requires us to attend to the *economic and actual reality* associated with such an assurance.

Unfortunately, because of the pace at which we have been moving forward, not all the news that is getting out about this legislation is accurate. One point I want to dispel is the suggestion that *there is a lot of litigation* that will be unleashed on unsuspecting parties *by the ADA*.

That is patently false. The remedies allowed under this legislation are in the case of employment, the familiar remedies of Title VII of the Civil Rights Act of 1964 -- enforcement

, through the Equal Employment Opportunity Commission with the  
~~opportunity~~ for recourse to the courts. Punitive damages or  
immediate access to jury trials are not part of ADA's remedies.

~~Another possible solution~~ Another question deals with  
~~the remedies allowed under the public accommodations title~~  
are still narrower. The only person who can bring suit under this  
title is the Attorney General. ~~There is no opportunity for~~  
~~members of the legal profession~~ <sup>laugh, laugh</sup> to build careers on bringing  
suits against public accommodations on a contingency fee basis.  
~~There was such an opportunity~~ <sup>This was possible</sup> under S.933 as introduced, and I am  
~~pleased to see that it is no longer there~~ <sup>but not how</sup>

<sup>could be</sup> The idea that the unsuspecting ~~are~~ subject to suit is  
inconsistent with the intent of the legislation. Section 308  
grants the Attorney General the authority to bring suit where  
there is "a pattern or practice of resistance to the full  
enjoyment of any of the rights" of people with disabilities. ~~That~~  
~~is not language that puts the Attorney General in the business of~~  
~~bringing suit to terrorize the innocent~~

<sup>Translation</sup> ~~We must consider~~ the financial consequences of the language  
~~of the ADA on the private sector~~. For example, our nation's  
intercity bus industry is the primary form of affordable mass  
transportation for the poor, the elderly, and rural Americans. It  
is not a subsidized mass transit system. Greyhound <sup>for example</sup> has estimated  
that the annual cost of ADA to the company will range from \$40 to  
\$100 million dollars. Advocates in the disability community



but, in any event, it will be  
better.

ph  
believe that ~~Greyhound's~~ estimate is too high, ~~the Administration~~  
~~testified that it is "virtually impossible to put a price tag on~~  
~~the accommodations required by any bill in this area," Thus, we~~  
~~should not focus our energy on criticizing the various estimates~~  
~~of cost to ensure compliance with various provisions of this~~  
~~bill. However,~~ <sup>Obviously</sup> we cannot allow the ~~important and much needed~~  
protections of this legislation to financially ~~handrupt~~ <sup>cripple</sup> an entire  
industry that provides ~~a needed~~ <sup>critical</sup> service. In ~~this limited~~  
~~circumstance of demonstrated onerous financial impact we must sit~~  
~~down with business and find mutually acceptable ways to achieve~~  
~~accessibility without sacrificing the viability of an entire~~  
~~industry or the dignity of the individual with a disability.~~

INSERT DOLE PLANS ON PRIVATE BUS AND HATCH AMENDMENT!

I am not willing to wager on whether the provisions in this  
legislation requiring lifts on buses will be implemented in five  
years because I am not certain they will. But I am also sure that  
if we don't have a requirement in this legislation, this issue  
won't get the attention it will if there is a requirement.

The report required by the statute, the research effort to  
develop better lifts, the Secretary of Transportation's  
rulemaking and our responsibility to provide relief through the  
tax code will only get the attention they deserve if we all have  
the feeling that a sword is about to fall. The lift requirement  
here provides just that.

While cost alone is no reason to deny people with disabilities their civil rights, there must be incentives and assistance for small businesses to enable them to meet their responsibilities. To this end, I will soon introduce an amendment to the tax code for the express purpose of ameliorating the financial burden to small businesses of complying with ADA. J

### Public Accommodations

During the negotiations on the provisions of the bill several strategies for dealing with the scope of public accommodations were examined. Specifically, there has been some discussion of the desirability of raising the exemption from compliance for ~~small businesses~~ employing 15 persons or less, to, 25 or less employees. During negotiations such a provision was considered and rejected for two important reasons. The fundamental problem with such an approach is that the small business exemption is not an employment right but rather an issue of access. SAY WHAT ACCESS IS-- Thus, the problem of access would not be solved by raising the ceiling of an exemption. The second reason is that such a change may be detrimental to the independent living movement. Current language in the bill was established with the input and support of the Administration. It is reasonable and workable. What?

The complexity of the endeavor before us must be faced head on. Everyone who has worked on this bill or will be affected by it has had to and will continue to tackle complex issues. The



*them with disabilities must continue*  
~~private sector and the disability community will have to find new~~  
~~ways of working together to answer the many questions that remain~~  
~~and will arise as we focus our attention on the implementation of~~  
~~this landmark civil rights legislation. Although many of the~~  
~~questions and concerns I raised in my testimony before the Labor~~  
~~& Human Resources Committee have been addressed, to my~~ *but,*  
~~satisfaction, let's not delude ourselves by thinking that once~~ *more passage of the bill will be that much closer to beginning*  
~~this bill is passed our work is completed. It is not. That's when~~  
~~the critical work of changing attitudes and eradicating~~  
~~stereotypes for full and fair enforcement of the law begins.~~

*Later today offer*  
~~Shortly, I will introduce a technical assistance amendment~~  
~~designed to operationalize implementation OF this landmark~~  
~~legislation. I believe that we have an obligation to provide~~  
~~assistance to those we will require to comply with the law. The~~  
~~assurance of civil rights to persons with disabilities requires~~  
~~no less.~~

### *Conclusion*

~~As I noted at the beginning of these remarks, I am proud to~~  
~~be associated with this legislation. Its enactment will~~ *of the large who*  
~~substantially benefit our Nation. The eradication of employment~~  
~~discrimination against persons with disabilities will result in a~~ *in employer*  
~~stronger workforce and greatly lessen dependency on the welfare~~  
~~system. By the year 2000, we will be facing a serious labor~~  
~~shortage. Passage of this bill is a step towards ensuring that we~~  
~~are fully utilizing the potential and inherent talents of every~~  
~~individual within our society. In closing, I would like to insert~~ *and counts*

"off. rec" from in the Aug 24.  
N.Y. Times

~~into the record~~ the eloquent editorial written by my good friend  
James Brady, ~~former~~ President Reagan's Press Secretary in the New  
York Times on August 29th. His poignant remarks serve as a  
harbinger for the civil rights movement as we prepare for the  
21st century.

on, certainly worth noting,  
as we consider the legacy -



## ADA FLOOR STATEMENT #1 (long)

Today I rise to introduce the Americans with Disabilities Act of 1989. This historic piece of legislation will prohibit discrimination against America's largest minority, people with disabilities, in employment, transportation, public accommodations, ~~certain~~ communications, and the activities of state and local government. It will provide disabled Americans comparable civil rights protections to those afforded on the basis of race, sex, national origin, age, and religion.

Most people do not regard disabled people as a large group, or as an unfairly treated group, or as an economically disadvantaged group. But these stereotypes are untrue.

Disabled people form a major portion of our society according to every survey. The last U.S. census numbered the disabled at 20%. They experience staggering levels of unemployment and poverty. The percentage of disabled persons' families earning less than \$5,000 is almost triple the national average. Some two-thirds of disabled people are unemployed, and when employed, statistics show disabled people to be consistently underpaid.

Colossal unemployment and poverty among the disabled often goes unchallenged because the public has the general impression that these are inevitable results of disabling conditions. The absence of disabled co-workers is considered confirmation of the "obvious fact" that disabled people can't work. When few disabled people are commonly seen in public places or in one's own social circle, this is generally not perceived as unnecessary segregation and exclusion but as a natural circumstance. But this could not be further from the truth. Actually, unnecessary and avoidable discriminatory conditions are what separates and impoverishes most disabled people.

For example, discriminatory attitudes hold that a person using a wheelchair, or a deaf or blind person, can't ~~accomplish~~ <sup>perform</sup> a job. Quite often, minor readjustments in schedule or work distribution among employees or office structure and equipment is enough to make a job perfectly do-able by qualified disabled applicants, and often, no adjustments are necessary at all. Similar discriminatory attitudes hold that you can't employ someone with epilepsy because you fear they may have a seizure on the job, when today the overwhelming majority of people with epilepsy have their physical conditions under excellent control through medication.

Discriminatory attitudes hold that a person with a facial disfigurement or spastic condition is so repellant that they shouldn't be employed around others. Some state and local statutes even



as or better than their nonhandicapped fellow workers. For example, a U.S. Civil Service Commission study of appointments of severely handicapped workers to federal agency jobs over a 10-year period, quoted in a 1983 publication of the Commission on Civil Rights called Accommodating the Spectrum of Individual Abilities, concluded that "their work record is excellent." The second Harris poll rated the performance of disabled workers as "good to excellent."

Disabled unemployment and underemployment <sup>of disabled persons</sup> cannot be explained by any differential in productivity. Studies dating back to a massive 1948 Department of Labor study have consistently concluded that disabled and non-disabled workers are equally productive. A survey of such research studies concluded: "...the existing literature appears to show both that the disabled who are working are as productive in their jobs as their co-workers and that employers perceive the handicapped as being comparably productive."

Another significant finding from the Harris poll dispelled a common myth about the cost of hiring a disabled person. "Seventy-five percent of managers said that the cost of employing persons with disabilities is no greater than the cost of hiring non-disabled workers." Similarly, studies show that accommodating disabled workers is viewed as inexpensive and non-burdensome to companies which have tried it.

Unfortunately, data from the Harris poll indicated that without some new stimulus, the employment of disabled people is unlikely to increase significantly. Most managers thought their company was already doing enough to employ disabled people and should not make greater efforts to do so. Employers gave the hiring of disabled people a lower priority than the hiring of people from other minority groups and elderly persons. Furthermore, disabled people are the least likely to be viewed as an excellent source of employees.

So a ban on employment discrimination will be necessary if the obvious potential of disabled Americans to work is to become a reality. Thus, the need is great for a strong national mandate such as the Americans with Disabilities Act.

Another pervasive form of disability discrimination is architectural and communication barriers in public accommodations. These facilities, including restaurants, stores, hotels, auditoriums, theaters, professional offices, parks, etc., have generally been designed for an ideal user with average physical proficiency. As such, they are inaccessible to many individuals with disabilities.

Though progress has been made in developing architectural standards to eliminate barriers in the construction of buildings, and







disallow such individuals in public places, though of course they deserve public access as much as everyone else. And it can only be called discrimination for our society to continue to establish architectural and transportation barriers by building new buildings and manufacturing new mass transit vehicles which are inaccessible to people with disabilities, who need as much as anyone else to circulate, and who represent a portion of the business-giving public as well.

A nationwide poll conducted in 1986 by Louis Harris and Associates entitled Bringing Disabled Americans into the Mainstream underscores the conclusion that discrimination is a problem frequently-experienced by the disabled. Respondents identified a variety of types of discrimination, including lack of access to public buildings and public bathrooms, and the absence of accessible transportation. One-fourth of those interviewed said they personally had encountered job discrimination because of their disabilities. In a subsequent Harris poll of employers in 1987, three-fourths of managers of businesses reported that people with disabilities "often encounter job discrimination from employers."

It is the responsibility of Congress as federal policy-makers to insure that this discrimination comes to an end, and our society is accessible to all: that wheelchair-users, for example, can travel and enter buildings in sufficient numbers to carry on normal economic and social lives; that crucial daily telephone communications can be accessed by the hearing-impaired; that jobs are not denied people with blindness and epilepsy and other disabling conditions; that ~~mentally-retarded and other mentally-disabled~~ people are accepted into their communities.

*with mental retardation or other mental disabilities*

*those with*  
I would like to analyze some of the most serious kinds of disability discrimination. First and perhaps foremost is discrimination in employment. Findings from the first Harris poll indicated that "...not working is perhaps the truest definition of what it means to be disabled. Two-thirds of all disabled Americans between the ages of 16 and 64 are not working. Only one in four work full-time, and another 10% work part-time... Furthermore, unemployment among persons with disabilities as a group is a bigger problem than among any other demographic group of working-age Americans."

Another significant finding was that 66% of working age persons with disabilities, who are not working, want to have a job. This overwhelming absence from the labor force of people with a strong desire to work is a tragic failure of the American dream.

The majority of unemployed disabled people, if given the chance, are quite capable of taking their places in the job market. Numerous studies indicate that handicapped workers perform as well



p. 1

Employment & Transpo Info

### DRAFT STATEMENT FOR DOLE

The Americans with Disabilities Act of 1989 is the most reasonable step our country can take to ameliorate the shocking degree of unemployment found amongst America's 43 million disabled citizens. A staggering 50% unemployment rate has been well-documented, and studies released by the government as recently as several weeks ago demonstrated how unemployment and underemployment is growing amongst disabled Americans in comparison to the rest of the population.

We spend billions of dollars on dependency-related expenses yearly, but we could save a great deal of it by putting people back to work. I'm proud that this bill was originally developed by the National Council on Disability, a Republican body appointed by President Reagan, because they recognized that people with disabilities should be taxpaying citizens and consumers rather than dependents on society. As a Republican and a fiscal conservative, this makes good sense to me.

An important principle in the Act's employment non-discrimination provisions is the requirement that individualized determinations be made about people with disabilities rather than generalizations about types of disabilities. Such generalizations, based on ignorance, have long proven to be discriminatory, because they eliminate many genuinely qualified candidates. The tendency to make such generalizations is fueled by myths and stereotypes about people with disabilities which are often unfounded.

For example, stereotypes have long relegated deaf, blind, and physically handicapped individuals to menial jobs. By placing them in highly-demanding positions of every kind, including engineering, computer programming, executive administration, research, and other skilled fields too numerous and varied to name, we now include many professionals with severe disabilities of all kinds, functioning outstandingly alongside their non-disabled peers, often with only minor accommodations.

For this reason, it is not appropriate for an employer to make a blanket refusal to hire anyone with a certain category of disability. For example, if a job requires particular physical skills, such as lifting 50 pounds, an employer is fully permitted to make the ability to perform this skill a job criteria. It is discriminatory, however, to assume that a person with a particular disability cannot meet this job criteria. The employer can inquire or test for specific job-related skills, but may not make general inquiries or exclusions based on an applicant's disability.



Dole p. 2

The bill also requires employers to make reasonable accommodations to an employee's disability unless the accommodation would pose an undue hardship. Reasonable accommodations can include making buildings accessible to individuals with disabilities, job restructuring, modified work schedules, reassignment, acquisition or modification of equipment or devices, adjustment of examinations and training materials, modification of procedures, provision of readers or interpreters, and other similar accommodations. Whether an accommodation is necessary for a particular employee, and what the accommodation should be, needs to be an individualized determination based on the particular employee and the particular job. This definition is consistent with the regulations governing Section 504 the Rehabilitation Act of 1973 and decisions by the U.S. Supreme Court.

Insert A

➔ According to several recent surveys, it is not costly to provide accommodations. Most employees with disabilities do not require any accommodation whatsoever. A recent survey by the Honeywell Corporation found that the average accommodation cost less than \$50. A 1982 study found that providing reasonable accommodations was, in the words of the company spokespersons interviewed, "no big deal."

The phrase "undue hardship" has appeared in the regulations implementing Sections 501, 503, and 504 of the Rehabilitation Act of 1973 for many years. These regulations explain the process for determining whether an undue hardship exists: "Factors to be considered include: (1) The overall size of the program with respect to number of employees, number and type of facilities, and size of budget; (2) The type of operation, including the composition and structure of the workforce; and (3) The nature and cost of the accommodation needed."

This approach offers great flexibility. For example, for a large corporation, it might not be a hardship to hire a part-time or full-time sign-language interpreter to assist many different deaf employees, but it would be considered a hardship for a small business to do so for one employee. However, in the case of the same small business, it would not be an undue hardship to install a \$50 amplification device to a telephone for a sales representative who develops a partial hearing-impairment.

Also like Section 504, people with hidden disabilities are protected by the Americans with Disabilities Act. These Americans also experience employment discrimination. People with epilepsy, for example, report that in job application after job application, they are summarily rejected without even an interview because of the epilepsy question which appears in each application, despite that the overwhelming majority of people with epilepsy have controlled their conditions via medication and do not pose any problem whatsoever



Dole p. 3

in an employment setting. Other examples include people with diabetes or people with histories of cancer or mental illness, who are singled out due to unfounded fears of future problems despite the lack of any substantial grounds for these fears.

Protections against employment discrimination will mean little to one segment of the disability community, the transportation disabled, without companion protections against discrimination in transportation. Like many millions of non-disabled Americans, many disabled Americans must rely on public transit in order to travel to and from work every day. The Americans with Disabilities Act provides needed protections against barriers in public transportation services. ~~It mandates a multi-modal system~~ which is the choice in more and more cities across our country every year, demonstrating a definite trend toward this combination of techniques, fixed route accessibility and paratransit, to provide the best means of transportation access.

As author of the Air Carrier Access Act of 1986, I understand the importance of the freedom to travel. This is true in every state and city, in rural and urban areas, and applies to bus transit every bit as much as air travel, if not more so. The requirements of the Americans with Disabilities Act, which include a study of the best ways to make privately-funded intercity bus transit accessible, and a delay of implementation for up to six years during which small private transit providers could still purchase inaccessible buses, are reasonable ones.

It also makes good sense to pose non-discrimination requirements in public accommodations. In new facilities where access is cheaply implemented, it would be required, along with exemptions which exist currently in the bill to ensure the requirements are non-burdensome. In existing facilities, only the most modest of requirements are posed; if a change is not readily achievable without great cost, it is not required. In addition, it should be remembered that operators of public accommodations can turn to the existing Section 190 of the Internal Revenue Service Code which allows \$35,000 in annual tax deductions for accessibility improvements.

In closing, I quote Jim Brady's recent New York Times' editorial: "Passage of the Americans with Disabilities Act will increase acceptance, dignity, and full participation of citizens with disabilities. We do not want pity or sympathy. All we want is the same civil rights and opportunities that all citizens have. We want fairness, acceptance, and the chance to contribute fully to our nation, just like everyone else."

1754A

### Attendants

The definition of auxiliary aids and services in Sec. 3 Definitions specifically includes interpreters and readers. Subsection (D) refers to "other similar services and actions." It is critical to make clear that "similar services" includes the services of attendants and personal assistance providers. Many severely physically disabled workers who are qualified for employment are not hired or are forced to quit their jobs because they may need some assistance during the work day. It makes no sense for a talented person with skills to contribute to sit idly at home receiving benefits because he needs assistance in the rest room twice a day, or needs someone to provide some assistance to him on out of town business trips. The question, as in any other accommodation, is whether it poses an undue hardship on the employer given the size of the employer's operation and the cost of the accommodation. This accommodation has been provided by employers under Section 504 for over a decade without difficulty. Attendant care can usually be arranged easily and will not be an undue hardship on most employers.



☎ 2028630010

Justin Dart, Jr.

12/17/90 14:16

P01

## TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

Justin W. Dart, Chairperson  
907 6th Street, S.W., Suite 516C, Washington, D.C. 20024  
(202) 488-7684 Voice (202) 484-1370 TDD

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Appointed by Congressman Major R. Owens, Chairman, House Subcommittee on Select Education

tfgtrtg.d17

December 17, 1990

Dear Maureen:

Enclosed are the Executive summary, the title page and two other pages of the final report of the Task Force on the Rights and Empowerment of Americans with Disabilities.

I would very much appreciate it if Senator Dole could write a couple of lines of commendation to the task force members, and the several hundred citizens throughout the nation who gave unselfishly of their time, abilities and money to enable us to complete our assignment with no public funding or private grants.

The Task Force held 63 public forums attended by more than 7,000 persons, at least one in every state, Washington, D. C., Guam and Puerto Rico - and participated in other meetings with a total attendance of over 25,000. Much material was provided to the Congress.

Our report is going to press in a few days - if you could fax me something I would be grateful.

Again, congratulations to you and the Senator on your historic leadership for the world's first comprehensive civil rights law for people with disabilities by any nation.

Sincerely,



Justin Dart  
Chairperson

## EXECUTIVE SUMMARY

The Task Force was created by Congressman Major R. Owens to assist the Congress in its consideration of the Americans with Disabilities Act (ADA), May, 1988-July, 1990. It was operated by citizen volunteers, with no public funding or private grants.

The Task Force congratulates the Congress, the President, the disability community and all who have supported ADA on the enactment of the world's first comprehensive civil rights law for people with disabilities by any nation.

## ACTIVITIES AND FINDINGS

Task Force Chairperson Justin Dart conducted 63 public forums in 50 states, the District of Columbia, Guam and Puerto Rico, and participated in other gatherings with a total attendance of more than 30,000 persons with disabilities and their advocates. Task Force members and volunteers helped to organize and participated in numerous Congressional hearings and other ADA related events throughout the nation involving additional thousands of individuals.

There is overwhelming evidence that massive, society-wide discrimination and paternalism has condemned 43 million Americans with disabilities to be this nation's most isolated, unemployed, impoverished and welfare dependent minority. President Bush has estimated the annual economic cost to the nation of excluding citizens with disabilities from the mainstream to be almost \$200 billion in direct public and private payments - \$300 billion when lost taxes and productivity are included. The devastating human cost would be impossible to express in numbers or words.

The Task Force sent eleven interim reports to Congress consistently recommending the passage of ADA in a form that would provide equal civil rights protection to people with disabilities. The Chairperson and the members participated in hundreds of meetings with members and staff of the Congress and of the executive branch, including the President, the Vice President, the Attorney General and the Secretaries of Housing and Urban Development, Labor and Transportation. They also met many times with significant representatives of groups opposed to ADA. Over 5,000 specific examples of discrimination were presented to the House Committee on Education and Labor and the Senate Subcommittee on Disability Policy.

## RECOMMENDATIONS FOR IMMEDIATE ACTION

- The President and the executive branch should provide strong leadership to implement ADA through the creation of effective regulations which are completed on the dates required by the Act. This process should involve the full participation of representatives of the disability community and all other affected entities.
- The President, the executive branch, the Congress, the disability community and all citizens should take decisive, ongoing action to ensure the vigorous enforcement of ADA and all other disability rights and services established by judicial action, legislation and regulations.
- Disability constituency and allied organizations should make an aggressive, unified effort to



advocate for appropriate ADA regulations, to celebrate and communicate the message of ADA, and to monitor the implementation of ADA and all disability rights and services on the national, state and local levels on an ongoing basis.

- Congress should strengthen legal, advocacy and information and referral services for people with disabilities, their families, service providers and advocates. There should be outreach instruction in regard to available rights and services, and how to advocate for and obtain them. Special attention should be given to providing informational and other assistance to all individuals and organizations impacted by ADA.

- The Congress should pass and the President should sign a civil rights law that eliminates the negative effect on minority rights of recent Supreme Court decisions, and that provides to people with disabilities effective remedies that are equal to those provided to other protected classes.

- The President and leaders of all significant government entities should designate appropriately qualified executives to coordinate the administration of disability policy and to maintain positive, productive relationships with the disability and other affected communities.

- The executive branch and the Congress should provide vigorous leadership to create and implement a national policy on disability designed to keep the President's eloquent pledge "to do whatever it takes to make sure the disabled are included in the mainstream."

## EQUALITY AND EMPOWERMENT FOR 43 MILLION AMERICANS WITH DISABILITIES, A MORAL AND ECONOMIC IMPERATIVE

The Report of the Task Force on the Rights and Empowerment of Americans with Disabilities

### THE TASK FORCE

The Task Force on the Rights and Empowerment of Americans with Disabilities was established on May 2, 1988, by Congressman Major R. Owens, Chairman of the House Subcommittee on Select Education. Composed of 36 distinguished representatives of every major segment of the disability community, the Task Force was mandated to collect information and to make recommendations which would assist Congress as it considered the historic Americans with Disabilities Act (ADA), and other legislation designed to implement the rights of America's 43 million citizens with disabilities.

### ACTIVITIES

The Task Force held fourteen meetings in Washington, D.C., with telephone participation from across the nation. With the cooperation of Congressional staff, Task Force members and literally hundreds of local and national volunteers with and without disabilities, the Chairperson Dart conducted 63 public forums in 50 states, the District of Columbia, Guam and Puerto Rico. These forums were attended by more than 7,000 persons with disabilities, their families, advocates and service providers. He also made Task Force presentations to a large number of other meetings attended by more than 25,000 persons. Task Force members participated in the organization and conduct of numerous Congressional hearings on disability-based discrimination attended by several thousand persons. The Chairperson and the members participated in hundreds of meetings with members and staff of the Congress and of the executive branch, including the President, the Vice President, the Attorney General and the Secretaries of Housing and Urban Development, Labor and Transportation. They also met many times with significant representatives of groups opposed to ADA.

The Task Force collected several thousand documents and tapes submitted by citizens and organizations outlining discrimination and other barriers which limit people with disabilities, proposals to eliminate those barriers and communications calling for civil rights legislation. Over 5,000 specific examples of discrimination were presented to the House Committee on Education and Labor and the Senate Subcommittee on Disability Policy.

The Task Force sent eleven interim reports and recommendations to the members of Congress, and 37 reports and other communications to disability community leaders throughout the nation. Mailings have totaled about 20,000 pieces.

The Task Force wishes to acknowledge the magnificent support it has received from the Congress, particularly Task Force founder Chairman Major Owens, Representative Bartlett and the other members of the House Subcommittee on Select Education, and Maria Cuprill, Bob Tate, Pat Morrissey and Pat Laird of the Subcommittee staff; Chairman Tom Harkin, Senators Hatch,



Simon, Durenberger and the other members of the Senate Subcommittee on Disability Policy, and Bob Silverstein and Katy Boh of the Subcommittee staff; Representatives Hoyer, Michel, Mineta, Anderson, Brooks, Dingell, Fish, Edwards and Gunderson, and former Representative Coelho and their staffs; Senators Kennedy, Dole, Jeffords, and McCain and former Senator Weicker, and their staffs. The Task Force also recognizes the outstanding contributions of all the Congressional sponsors of the Civil Rights Restoration Act, the Fair Housing Act Amendments of 1988, the Technology-related Assistance for Individuals with Disabilities Act, the Americans with Disabilities Act and the Civil Rights Act of 1990.

The Task Force also acknowledges the support and cooperation of the executive branch: President George Bush; Vice President Dan Quayle; Attorney General Richard Thornburgh; Secretary of Housing and Urban Development Jack Kemp; Secretary of Labor Elizabeth Dole; Secretary of Health and Human Services Louis Sullivan; Secretary of Transportation Sam Skinner; Governor John Sununu; Counsel to the President Boyden Gray, EEOC Chairman Evan Kemp, Assistant Attorney General for Civil Rights John Dunne; Center for Disease Control Director William Roper; Assistant Secretary of Housing and Urban Development Gordon Mansfield; Assistant Secretary of Education for Special Education and Rehabilitative Services Robert Davila; Rehabilitation Services Administration Commissioner Nell Carney; John Wodatch of the Department of Justice; and White House staffers Roger Porter, Charles Kolb, Hank Kutner, Ken Yale, David Sloane, Marianne McGettigan, Lee Liberman, Bobbie Kilberg, Shiree Sanchez, David Beckwith, George Covington and others.

The Task Force received no public funding or private grants. Particular recognition is due Task Force members, subcommittee liaisons, volunteer staff and the literally thousands of patriotic citizens and organizations in every state and territory who have contributed their services, resources and money to make the democratic system work.

## FINDINGS

Disability has become a major factor in the lives of all the members of our society. Presently there are an estimated 43 million Americans with disabilities. This figure is increasing rapidly as modern medical science enables more and more people to survive previously fatal birth defects, injuries and illnesses and to live many potentially productive and happy years with significant disabilities. These disabilities result from numerous physical, sensory and mental conditions, including the normal process of aging and impairments of vision, speech, hearing, learning, intellectual function and mobility. Although not all chronic illness is disabling, much disability is a consequence of diseases of the circulatory, respiratory, urinary, neurological, skeletal, muscular, glandular, dermatological, and digestive systems. Arthritis, cerebral palsy, epilepsy, diabetes, mental illness, cancer, traumatic brain injury, multiple sclerosis, muscular dystrophy, AIDS, autism, allergies, and many other disorders cause disability in varying degrees. Some researchers estimate that the proportion of our population with disabilities, now more than 15%, will double within the next 30-50 years. It is highly probable that any person born in 1990 will experience at least temporary disability during his or her lifetime. Disability has become a predictable part of the normal life cycle for a large and increasing proportion of human beings.

This dramatic increase in life span represents an historic enlargement of the human potential.

(report by Justin Dart)

## EQUALITY AND EMPOWERMENT FOR 43 MILLION AMERICANS WITH DISABILITIES, A MORAL AND ECONOMIC IMPERATIVE

The Report of the Task Force on the Rights and Empowerment of Americans with Disabilities.  
Appointed by Congressman Major R. Owens, Chairman of the House Subcommittee on Select  
Education. Operated by citizen volunteers with no public funding or private grants

Task Force Members: Justin Dart, Chairperson, Elizabeth M. Boggs, Ph.D., Cochairperson, Lex Frieden, Coordinator, Elmer Bartels, The Rev. Wade Blank, David Bodenstein, Frank Bowe, Ph.D., Marca Bristo, Dale Brown, Philip B. Calkins, David Capozzi, Julie Clay, MPH, Susan Daniels, Ph.D., James DeJong, Eliot Dober, Charles Estes, Don Galloway, Keith Gann, James Havel, I. King Jordan, Ph.D., Gordon Mansfield, Paul Marchand, Connie Martinez, Celane McWhorter, Oral Miller, Gary Olsen, Mary Jane Owen, Sandra S. Parrino, Ed Roberts, Joseph Rogers, Liz Savage, William A. Spencer, M.D., Marilyn Price Spivack, Ann Vinup, Sylvia Walker, Ed.D., Michael Winter, Patrisha Wright, Tony Young. Task Force Staff: Douglas Burligh, Ph.D., Yoshiko Dart, Tsuneko Gozu, Marcia Lee Nelson, Eileen Raab, Gwyneth Rochlin, Marnie Sweet, Hisako Takei. Subcommittee Liaisons: Maria Cuprill, Robert Tate, Pat Laird.

October 12, 1990

"Let the shameful wall of exclusion finally come tumbling down." President George Bush



**Statement of Robert J. Dole  
Regarding the Task Force on the Rights and Empowerment  
of Americans with Disabilities**

Since 1988, the Task Force on the Rights and Empowerment of Americans with Disabilities has been busy collecting volumes of information and sponsoring numerous public forums to assist Congress with the consideration of disability legislation. The 36 member task force, which was appointed by Congressman Major R. Owens, Chairman of the House Subcommittee on Select Education, was composed of representatives from every major segment of the disability community. These distinguished committee members and the hundreds of citizen volunteers, who have donated their time and performed their duties without financial assistance or official fanfare, played a critical role in the enactment of the Americans With Disabilities Act (ADA).

The ADA, which is intended to prevent discrimination in every sector of American society, provides the disability community with a critical mandate to pursue a broad and comprehensive framework of civil rights for all Americans. For years, people with disabilities have been denied the opportunity to become productive, contributing members of society. Discrimination is not only morally wrong, but also denies our nation of an eligible pool of human resources. As a vigorous voice during the ADA debate, the Task Force helped provide the leadership necessary to overcome the antiquated attitudinal barriers that prevent entry into the mainstream for millions of American citizens.

Unfortunately, discrimination against people with disabilities will not be completely eradicated. Passage of ADA does not mean that our job is complete. For this reason, the disability community must continue to work together. The Task Force on the Rights and Empowerment of Americans with Disabilities provides the disability community with an administrative structure to share ideas and formulate legislative recommendations. 1990 was a historic year, and I am confident that this report will contribute to a successful decade for national disability policy.



**Statement of Senator Robert J. Dole  
Regarding the Americans With Disabilities Act of 1990**

1990 is a historic year and the beginning of a promising decade in completing a broad and comprehensive civil rights mandate for all Americans. For too long Americans with disabilities have had to face subtle and pervasive discrimination. As a nation, discrimination deprives us of our dignity and suppresses our strength. The disability community recognized this striking fact and the President and Congress responded with the enactment of the Americans With Disabilities Act (ADA).

To reinforce the goals of the ADA and to move disability policy forward into the next century, it is critical to maintain a united and solid partnership between the disability and business communities as well as the public and private sectors. Working together, we can ensure that every American citizen will be provided the access and opportunity to be a part of all that society offers. More importantly, by increasing public awareness through education, we can break down the attitudinal barriers that prevent full participation in the American mainstream.

Like everyone involved with the ADA, I feel privileged to have played a role in its passage. However, passage does not guarantee that our job is complete. As we look ahead to the next century, I hope that there will be little need for government intervention to assure the rights of any segment of American society. But, if it is still necessary to redress discrimination, all of us in the disability community can continue to make a difference by working together.





## The President's Committee on Employment of People With Disabilities

Suite 636  
1111 20th Street, N.W.  
Washington, D.C. 20036-3470  
202-653-5044 VOICE  
202-653-5050 TDD  
202-653-7386 FAX

*Dignity, Equality, Independence Through Employment*

July 23, 1990

The Honorable Robert Dole  
Senator  
SH-141 Hart Senate Office Building  
Washington, DC 20510-1601

Dear Senator Dole,

Passage of the Americans with Disabilities Act is completed and we await the signature of the President of the United States and, in essence, the clock will be running toward complete justice for people with disabilities. With it comes the opportunity for the President's Committee on Employment of People with Disabilities to laying out a more definitive picture of what has happened and what is still to come.

We have chosen to do this with a Special Issue of Worklife magazine, centered around the theme, "Equal Opportunity to be Productive."

Because of the timing involved, from passage of the ADA bill to the September production date of the Fall Issue of Worklife we are looking at a short period of time to produce a substantive issue.

I would deem it an honor if you, as one of the key players in passage of this bill, would write in 100-150 words your reactions to the ADA bill and what it portends for the future. This statement will be used in a portion of the magazine entitled, "ADA: The Struggle in Congress."

We will also need a short biographical sketch of you and any particular role you filled in forming this bill so that we might include that with your statement. Please enclose a black and white photo head and shoulder shot we may use with your article.

Deadline for all materials will be September 1, 1990 in double-spaced type written copy.

### ADVISORY COUNCIL

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The Administrator of General Services  
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of Personnel Management  
The Director of the United States  
Information Agency  
The Postmaster General

We, together, are looking at a golden opportunity to reach the people of this nation at the very beginning of the process of making ADA a working bill of substance.

The Senior Editor of Worklife, Dick Dietl, will be in contact with your office the week of July 30 to verify your acceptance of this assignment. Mr. Dietl would appreciate confirmation of your acceptance at your earliest possible convenience. He can be reached at (202) 653-5044 or by FAX at (202) 653-7386. Final copy of your article should be mailed to PCEPD, at the above address. Include the name and phone number someone in your office that Mr. Dietl can contact.

I appreciate your willingness to invest both your time and effort in this important special issue of Worklife, and in your commitment to working within such a short deadline schedule. You have made a tremendous contribution to the forming and passing of this historic legislation. We desire to preserve that and the efforts of so many others with this issue of our magazine. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Justin Dart", written over the word "Sincerely,".

Justin Dart, Jr.  
Chairman



— Mo West —

Senator Bob Dole  
Americans with Disabilities Act

July 26th, 1990 was a very proud day for me as I joined thousands of fellow Americans with disabilities to participate in the White House ceremony at which President Bush signed into law the landmark Americans with Disabilities Act.

I supported ADA from the beginning because 43 million disabled Americans deserve to be brought into the mainstream of American life -- to enjoy a meal at a restaurant, to see their favorite movie, to travel to a job on public transportation, to communicate by telephone, or to cheer at a ballgame. The ADA's unmistakable message to America is that inequality and prejudice are unacceptable. The ADA's important message to people with disabilities is that your time has come to live independently with dignity, to exercise your rights to participate in all aspects of American life.

The benefits to people with disabilities are great, and long overdue. But we must also recognize that under ADA, all Americans are winners. Our nation has paid dearly for its policies of the past. Discrimination carries a costly burden --

in both human and financial terms -- and keeping people with disabilities out of the workforce and dependent on government subsidies is a misguided policy of days gone by. And there is no doubt that as a nation, we can't afford to ignore the talents of any American. The ADA will enrich America by supporting the talents, skills and abilities of a group which until now has been on the sidelines.

When we drafted ADA, we knew there would be a lot of questions, both from people with disabilities and employers seeking to comply with the law. That's why we included important technical assistance provisions to support two efforts critical to the mission of ADA -- to inform persons with disabilities of their rights under the law, and to provide the necessary support to business and industry to fulfill the important job of implementing the law.

The bottom line for business is that ADA does not require employment of a person in a job for which he or she is not qualified, can not do, or which poses a danger to the health or safety of other people. What we have said in this legislation is that employment decisions must be made about individuals -- based on their abilities, not their disabilities. The tough but fair enforcement remedies in this law, which parallel the Civil Rights Act of 1964, combine time-tested incentives for compliance and disincentives for discrimination.

Providing civil rights protections for the 43 million Americans with disabilities builds on our nation's civil rights foundation, and sets an important tone as we head towards the 21st century. I am proud of the ADA, and I look forward to working with employers and people with disabilities as we implement this historic initiative.

###



STATEMENT OF SENATOR BOB DOLE ON THE AMERICANS  
WITH DISABILITIES ACT

8/14/90

I have supported the Americans with Disabilities Act (ADA) from the beginning, because I believe that this legislation is necessary to bring 43 million disabled Americans into the mainstream of American life. No doubt about it, this is landmark legislation. We need this legislation not only because it is just and fair for people with disabilities, but because all of us can benefit from the talents and abilities of all Americans. It will bring quality to the lives of millions of Americans who have not had quality in the past. The message to America by passing this bill is that inequality and prejudice will no longer be tolerated. ADA's message to people with disabilities is that your time has come with empowerment to exercise your rights to participate in the mainstream of America.

In 1964, Congress declared discrimination illegal and laid a solid civil rights foundation for our Nation. We are building upon that foundation with the ADA bill, providing civil rights protection for millions of Americans with disabilities. I am proud that we have reached this juncture in history and I look forward to working with employers and disabled citizen to enforce this legislation. ~~I would like to express my sincere gratitude to the many who made this legislation possible through their hard work and through their dedication, specifically President Bush, Members of Congress, others having worked for years like those with disabilities, and all Americans concerned about those with disabilities.~~

The number of Americans with disabilities are increasing as



the population is growing older and medical technology advancements are successful in keeping the youngest of newborns alive. Individuals with disabilities continue to face outright discrimination which is pervasive throughout our society. Time and time again these individuals have experienced discrimination in various critical areas such as employment, education, housing, public accommodations, transportation, communication, recreation, institutions providing health services, voting and other public services.

Let us consider what yield we will experience in terms of opportunities for persons with disabilities. In terms of employment - it will offer accessible environments and reasonable accommodations in the work environment. Transportation being a critical link to the work site will result in accessible public transportation to and from the work sites. Living independently and with dignity means opportunity to participate fully in every activity of daily life, be it going to the movies, dinning in a restaurant, cheering at a baseball game, communicating by telephone or going to the doctor. The technical assistance efforts mandated in ADA will support two efforts critical to the mission of ADA: First, they will inform persons with disabilities about their rights under the law; and second, provide the necessary support to business and industry as they undertake the important job of implementing the law.

In the ADA bill, we have not made exceptions for any particular form of disability. While this bill offers a legal recourse to redress discrimination for persons with disabilities, we have included the mentally retarded and those with cerebral palsy, even though many people fear and misunderstand those disabilities. We have included the deaf and the blind, even though many people misunderstand those disabilities, and the capabilities of those

persons. We have also included people with AIDS and other diseases, even though there are is a lot of fear and misunderstanding around a variety of diseases. We have included all people with disabilities because that's what this bill is all about -- replacing misunderstanding with understanding. We have not said that you have to employ a person in a job if they are not qualified, they really cannot do or in a setting where they will pose a danger to the health or safety of other people. What we have said in this legislation is that employment decisions must be made about individuals, not groups and must be based on facts, not fears.

We have paid dearly for our policies of the past-- discrimination costs, both in human terms and financial terms. Keeping people with disabilities out of the work force and dependent on Government subsidies is a policy of the past. Under the ADA bill, we all are winners, because it will allow additional persons to utilize their full potential in strengthening the work force. The American with Disabilities Act will enrich our Nation by supporting the talents, skills and abilities of a disadvantaged group which has up until now been on the sidelines. I can envision that this legislation is important enough that we could be back revisiting it again in a year or two, making changes for the better I would hope. I am optimistic that a new tone has been set by this Act as we enter a new decade.



July 13, 1990

CONGRESSIONAL RECORD — SENATE

S 9695

World War—the greatest inspiration of a dogged determinist to do what was right and to make his life worthwhile of anybody I know in my life.

That is just one important reason why I feel very, very deeply about this bill and all those who have worked on it and all of those will benefit from it. And, I personally, from my heart, just want to dedicate all of the efforts that all of us have made to my brother-in-law, Raymond Hansen, for the type of life he lived, for the type of person he was, and similar to Senator HARKIN's brother, for the inspiration he gave us. I am sure we both feel very, very deeply about our brothers and brothers-in-law.

Having made this dedication, let me conclude by saying that this is a banner day for disabled Americans. This is a major achievement and, I believe, a very, very important day in the lives of all Americans who have to be proud that in this great country of freedom, that we will go to the farthest lengths to make sure that everyone has equality and that everyone has a chance in this society.

Again, I thank all my colleagues and all the staffs who contributed to this effort.

The PRESIDING OFFICER. All time has expired.

Is there a request for a rollcall vote?

Mr. MITCHELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from West Virginia [Mr. ROCKEFELLER] is necessarily absent.

Mr. DOLE. I announce that the Senator from Idaho [Mr. MCCLURE] and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 6, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—91

Adams	Cochran	Gorton
Akaka	Cohen	Graham
Armstrong	Conrad	Gramm
Baucus	Cranston	Grassley
Bentsen	D'Amato	Harkin
Biden	Danforth	Hatch
Elngaman	Daschle	Hatfield
Boren	DeConcini	Hefflin
Boschwitz	Dixon	Heinz
Bradley	Dodd	Hollings
Breaux	Dole	Inouye
Bryan	Domenici	Jeffords
Bumpers	Durenberger	Johnston
Burdick	Exon	Kassebaum
Burns	Ford	Kasten
Byrd	Fowler	Kennedy
Chafee	Glenn	Kerry
Costa	Gore	

Kohl	Moynihan	Sanford
Lautenberg	Murkowski	Sarbanes
Leahy	Nickles	Sasser
Levin	Nunn	Shelby
Lieberman	Packwood	Simon
Lott	Pell	Specter
Lugar	Pressler	Stevens
Mack	Pryor	Thurmond
McCain	Reid	Warner
McConnell	Riegle	Wilson
Metzenbaum	Robb	Wirth
Mikulski	Roth	
Mitchell	Rudman	

NAYS—6

Bond	Helms	Symms
Garn	Humphrey	Wallop

NOT VOTING—3

McClure	Rockefeller	Simpson
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So the conference report was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, is my leader time reserved?

The PRESIDING OFFICER (Mr. REID). The Senator has 10 minutes of his leader time.

Mr. DOLE. Mr. President, this is landmark legislation, no doubt about it. I think it is a just and a fair bill. I think it will bring quality to the lives of millions of Americans who have not had quality in the past. Perhaps this bill may not be perfect, and we may be back revisiting it again in a year or two, making changes for the better, I hope. But it is important legislation.

So I want to thank, particularly, the President of the United States and others who made this possible through their hard work and through their dedication, not only Members of Congress, but many, as the Senator from Iowa just indicated, who have been working for years on the outside, those with disabilities, and other Americans concerned about those with disabilities.

Mr. President, I support final passage of the conference report on the Americans With Disabilities Act.

I have supported the ADA because I believe it is a just and fair bill which will bring equality to the lives of all Americans with disabilities. Our message to America today is that inequality and prejudice will not longer be tolerated. Our message to people with disabilities is that your time has come.

The Americans With Disabilities Act will empower 43 million Americans with disabilities to exercise their rights and participate in the mainstream of American life. The Americans With Disabilities Act will enrich our Nation by supporting the talents, skills and abilities of a minority group which has up until now been on the sidelines. Under the ADA, we are all winners.

I am optimistic that this legislation will set an important tone as we enter a new decade. Just as we have seen the walls go down in Eastern Europe, we are now witnessing some of our own walls crumbling—the wall of prejudice,

isolation, discrimination, and segregation. We have paid dearly for our policies of the past—discrimination costs, both in human terms and financial terms. Keeping people with disabilities out of the work force and dependent on Government subsidies is a policy of the past.

Let us consider what this legislation will yield in terms of opportunities for persons with disabilities. In terms of employment—it will offer accessible environments and reasonable accommodations to empower persons with disabilities to utilize their full potential in strengthening the work force.

Transportation is the critical link to employment. This bill will result in accessible public transportation to and from the work site.

Living independently and with dignity means opportunity to participate fully in every activity of daily life, be it going to the movies, dining in a restaurant, cheering at a baseball game, communicating by phone or going to the doctor. The ADA offers such opportunity to persons with disabilities.

The tough but fair enforcement remedies of ADA, which parallel the Civil Rights Act of 1964, are time-tested incentives for compliance and disincentives for discrimination. The technical assistance efforts mandated in ADA will support two efforts critical to the mission of ADA: First, they will inform persons with disabilities about their rights under the law; and second, provide the necessary support to business and industry as they undertake the important job of implementing the law.

We have included in this legislation all people with all disabilities, no matter how misunderstood because that is what this bill is about—replacing misunderstanding with understanding. We have not said that you have to employ a person in a job they really cannot do, or in a setting where they will pose a danger to the health or safety of other people. What we have said is that these decisions must be made about individuals, not groups and must be based on facts, not fears.

We have had a patch work quilt up until now—an inconsistent and piecemeal approach to disability policy. Today we move to embrace the most comprehensive civil rights legislation our Nation has ever seen. Today we move to put old stereotypes and attitudes behind us—where they belong.

No individual in America is more committed to equal opportunity than President Bush. His unflinching support of the ADA and his continued eagerness to sign this legislation into law are evidence of unparalleled leadership in the White House on behalf of persons with disabilities. We are proud that we have reached this juncture, and confidently send this legislation to the President's desk.

In 1964 this body declared discrimination illegal and laid a solid civil rights foundation for our Nation.



S 9696

CONGRESSIONAL RECORD — SENATE

July 13, 1990

Today we build upon that foundation with this landmark legislation providing civil rights protections for the 43 million Americans with disabilities. I am proud of this bill, and I look forward to it becoming the law of the land.

Mr. President, many people have worked long and hard to see passage of this historic piece of landmark civil rights legislation. I just want to take a minute to note these individuals.

Senators HATCH, KENNEDY, HARKIN, DURENBERGER, MCCAIN, DOMENICI, GRASSLEY, JEFFORDS, KASTEN, and other Members have been instrumental in final passage of the ADA in less than 2 years—a record we can all be proud of.

We all know that staff has put endless hours into the details of this legislation and I would like to take a moment to thank them for their tireless efforts.

Bobby Silverstein, Katy Beh, Janet Dorsey, Kathleen Perriera, Mark Disler, Chris Lord, Nancy Taylor, Carolyn Osolinik, Michael Iskowitz, Carolyn Boos, Judy Wagner, Mark Buse, and many more. A very special thanks goes to Nancy Jones of the Congressional Research Service for her legal expertise on the ADA.

We owe a great deal of gratitude to our President as I mentioned before, and within the Bush administration I want to thank John Sununu, Attorney General Thornburgh, Secretary Sam Skinner of Transportation, Boyd Hollingsworth, John Wodatch, Mary Ann McGettigan, Bill Roper, Grace Mastelli, Hans Kuttner, David Sloan, Evan Kemp, Chris Bell, and Bob Funk to name a few.

We would not have the ADA if it were not for the disability and business communities. There are many who I know will go unmentioned, however, they know that their contributions were many. I want to especially thank Sandy Parrino, Kathy Roy, Ethel Briggs, Jane West, Lani Florian, Justin Dart, Paul Hearne, James Brady, Jay and Gwen Rochlin, Harold Russell, Pat Wright, Chai Feldblum, Paul Marchand, Liz Savage, Lex Frieden, Bob Bergdorf, Judy Brotman, Phil Caulkins, Tom Sheridan, Stephen Smith, Curt Decker, and many others.

The Kansas Delegation on Disability has been instrumental and supportive in the passage of the ADA. A special thanks goes to Michael Lechtner, Martha Gabehart, Kevin Siek, Mike Oxford, Ray Petty, Sister Carlene Richards, Tim Steininger, Glen White, Pat Terrick, Jack Jonas, Brian Atwood, Yo Bestgen, Shannon Jones, Debra Herr, Jim Blume, Connie Steinert, Michael Donnelly, Rud and Ann Turnbull, Frankie Hoover Gibson, Judith Hearne, Michael Byington, and many more.

I would be remiss if I did not thank the staff of Senate Special Services and today's interpreters for accommodating this Chamber and bringing cov-

erage of the floor debate on this legislation to all Americans.

Mr. KENNEDY. Mr. President, I believe we have worked out a good resolution of the food handler amendment. The original amendment responded to public fear and misperception regarding people with HIV disease by legitimizing those fears and by allowing those fears to govern who could serve in certain jobs. By contrast, the approach offered by my colleague from Utah, and the approach ultimately accepted by the conferees, responds to that fear by focusing on educating the American public with valid, scientific information.

This provision appropriately reinforces the original approach of the ADA. Under section 103 of the act, an individual who poses a significant risk to the health or safety of others in a particular job, which risk cannot be eliminated by reasonable accommodation, is not considered a qualified individual with a disability for purposes of that particular job. This provision, of course, still applies to individuals with all types of disabilities, including individuals with contagious diseases. The new provision, section 103(d), simply explicates this requirement specifically with regard to food handlers, in order to allay any possible concerns on the part of the general public.

The new section, section 103(d), provides that the Secretary of Health and Human Services must determine which infectious or communicable diseases pose a real, not theoretical, risk of being transmitted through the handling of food. The Secretary should use the various scientific and medical expertise available through the Public Health Service. In turn, the determination of the Public Health Service should reflect a consensus of medical and public health opinion of true risk to the public, as opposed to perceived or theoretical risks of diseases that have not been found to be transmitted through the handling of food. The Public Health Service currently uses accepted public health methodologies and statistical practices regarding risks of transmission to make such determinations in its guidelines. These same methodologies and approaches should be used in implementing this subsection.

The provision further provides that if an individual has a communicable disease which the Secretary has determined is transmitted through the handling of food, and if the risk of that individual transmitting the disease cannot be eliminated by reasonable accommodation—for example, by having the employee use certain hygienic procedures or by allowing the employee time off to recover from the disease, then the employer may reassign that individual to another job. This is consistent with the basic approach of the ADA that an individual must be qualified for his or her particular job.

Accepting the original Chapman amendment would have undermined

the very heart and soul of the ADA. The underlying premise of the ADA is employment decisions must be made on the basis of merit and ability, and not on the basis of myths and perceptions. The Chapman amendment would have substituted fear for facts.

In contrast to the original Chapman amendment, this amendment moves the effort of educating the American public regarding AIDS a significant step forward, instead of moving the effort backward by sending the wrong message to the American public.

Since the beginning of the HIV epidemic, public health officials have talked about the importance of anti-discrimination protection for people with HIV disease. I am extremely pleased that in passing the ADA, the Congress has taken such action. I would like to discuss briefly the important protections that the ADA will offer to people with HIV disease in a range of areas. People with HIV disease are individuals who have any condition along the full spectrum of HIV infection—asymptomatic HIV infection, symptomatic HIV infection or full-blown AIDS. These individuals are covered under the first prong of the definition of disability in the ADA, as individuals who have a physical impairment that substantially limits a major life activity. Although the major life activity that is affected at any point in the spectrum by the HIV infection may be different, there is a substantial limitation of some major life activity from the onset of HIV infection.

Discrimination against people with HIV disease has, unfortunately, been one of the tragic hallmarks of this epidemic. A recent study by the AIDS project of the American Civil Liberties Union, "Epidemic of Fear," documents in detail a range of discrimination cases that have occurred over the past decade across the country.

The ADA's employment title provides important protection for people with HIV disease. Such individuals are protected in the range of employment decisions—hiring, firing, promotions, and all terms and conditions of employment. Thus, basic types of discrimination will be prohibited—the unjustified decision of an employer to fire a person because the person has HIV disease, the decision to deny a promotion to an employee because the person is perceived to have HIV disease, or the decision not to hire an applicant because the person associates with someone who has HIV disease.

The specific requirements of the employment title will also be of significant import for people with HIV disease. For example, the reasonable accommodation provision of the bill will be particularly important in ensuring that people with HIV disease have the right to flexible work schedules and to time off to accommodate their treatment needs or their various disease-related conditions.



ADA 216

FLOOR STATEMENT OF SENATOR ROBERT J. DOLE  
ON S.933  
THE AMERICANS WITH DISABILITIES ACT  
SEPTEMBER 7, 1989

*of 1989*  
*that*  
Mr. President: I rise today to urge Senate passage of S.933, The Americans with Disabilities Act. I am proud this bill is before the Senate. It was a long time in coming and many people -- on both sides of the aisle -- have worked long and hard to get us where we are today.

*organization*  
*It began as*  
S. 933 truly is the product of bipartisan effort at each and every stage of its inception, the origin of the Americans with Disabilities Act is rooted in an initiative of the National Council on Disability, an independent federal entity comprised of 15 members appointed by the President and charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities, and making recommendations as appropriate to the President and Congress. In 1986, the Council issued a report which found that the major obstacles facing people with disabilities were not the disability characteristic of the person but rather those which arose from barriers imposed externally. The Report recommended that Congress "enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

*my opinion*  
*did not have the opportunity to consider the bill*  
During the last Congress, my Republican colleague, Senator Lowell Weicker introduced a bill developed by the National Council, titled "The Americans with Disabilities Act." Although this bill was not considered before the full Senate, its introduction initiated a dialogue and became the basis for the current bill introduced by Senators Tom Harkin, Ted Kennedy and David Durenberger earlier this year. I would like to take this opportunity to acknowledge the leadership taken by those Republican and Democratic Senators in promoting the Americans with Disabilities Act during the 101st Congress.

*Full Senate consideration of the*  
*of them*  
I would also like to commend President Bush for his willingness to participate in the negotiations which have occurred over the past months. ADA could not have happened so quickly without the backing George Bush has given to supporting this bill. His willingness to take this kind of step, which he expressed during last year's campaign, demonstrated to all who sought this legislation that his Administration would support expanding civil rights protections to include people with disabilities. That we have moved forward with legislation demonstrates the resolve George Bush presented in his Inaugural Address: that this "is the age of the offered hand."

*to support legislation expanding civil rights protections for people with disabilities -- a willingness*

*highlights*

*consistent of*

*demonstrated*



*Then last, and*

The efforts of numerous members of the Bush Administration, notably those of Attorney General Dick Thornburgh, Secretary of Transportation Sam Skinner, National Council on Disability Chairwoman Sandra Swift Parrino, and Justin Dart, Chairman of the President's Committee on Employment of People with Disabilities, have contributed significantly to the finely crafted legislation that is before us today.

*Simply put,*

Many have correctly termed people with disabilities the last minority. Enactment of the Americans with Disabilities Act will, ~~at last~~ bring the largest minority group in our nation into a position of enjoying equal opportunity, access and full participation in the American dream. That is what this ~~meaningful~~ legislation is about.

*Finally!*

*Call*

Assuring equal opportunity for persons with disabilities is a more complex endeavor than simply extending the anti-discrimination protections available to other minority groups. Overcoming discrimination against a person with a disability, in some cases, will require more than a social commitment and the protection of anti-discrimination legislation. It will require structural adaptations that will effect ~~every~~ aspect of our infrastructure. INSERT MORE INFO!

*More X  
top.  
3*

Senate consideration of such legislation is an endeavor with which I am proud to be associated. The Americans with Disabilities Act reaffirms our commitment to support the individual. Our being here today on this legislation demonstrates as well, that these are not dark days for civil rights in this country. The scope of our civil rights can be expanded and will stand for opportunity. That is the long term tradition of civil rights laws, it is the tradition in which future civil rights laws should prevail.

*Conclude*

In so doing, however, we must go beyond the ease of rhetoric. It is not enough to say that passage of the Americans with Disabilities Act is the right thing to do. There is no argument there. Our responsibility is to craft legislation that can be implemented to achieve its intended effect. There will be costs incurred by all industries and businesses, large as well as small in meeting the anti-discrimination requirements of this bill. Justly assuring the civil rights of persons with disabilities requires us to attend to the economic and actual reality associated with such an assurance.

*The ADA will unleash*

Unfortunately, because of the pace at which we have been moving forward, not all the news that is getting out about this legislation is accurate. One point I want to dispell is the suggestion that ~~there is~~ a lot of litigation that will be ~~unleashed~~ on unsuspecting parties by the ADA.

*unnecessary and frivolous*

not just  
the Fortune  
500, not  
just our  
large cities,  
but just about  
every private  
business  
every state and  
local government  
and every  
community  
in America.



I am not willing to wager on whether the provisions in this legislation requiring lifts on buses will be implemented in five years because I am not certain they will. But I am also sure that if we don't have a requirement in this legislation, this issue won't get the attention it will if there is a requirement.

The report required by the statute, the research effort to develop better lifts, the Secretary of Transportation's rulemaking and our responsibility to provide relief through the tax code will only get the attention they deserve if we all have the feeling that a sword is about to fall. The lift requirement here provides just that.

While cost alone is no reason to deny people with disabilities their civil rights, there must be incentives and assistance for small businesses to enable them to meet their responsibilities. To this end, I will soon ~~introduce~~ <sup>certainly</sup> an amendment to the tax code for the express purpose of ameliorating the financial burden to small businesses of complying with ADA. <sup>offer</sup>

During the negotiations on the provisions of the bill several strategies for dealing with the scope of public accommodations were examined. Specifically, there has been some discussion of the desirability to raising the exemption from compliance for small businesses employing 15 persons or less, to, 25 or less employees. During negotiations such a provision was considered and rejected for two important reasons. The fundamental problem with such an approach is that the small business exemption is not an employment right but rather an issue of access. SAY WHAT ACCESS IS-- Thus, the problem of access would not be solved by raising the ceiling of an exemption. The second reason is that such a change may be detrimental to the independent living movement. Current language in the bill was established with the input and support of the Administration. It is reasonable and workable.

Should we  
take on  
Hatch in  
the original  
floor  
statement?

The complexity of the endeavor before us must be faced head on. Everyone who has worked on this bill or will be affected by it has had to and will continue to tackle complex issues. The private sector and the disability community will have to find new ways of working together to answer the many questions that remain and will arise as we focus our attention on the implementation of this landmark civil rights legislation. Although many of the questions and concerns I raised in my testimony before the Labor & Human Resources Committee have been addressed to my satisfaction, let's not delude ourselves by thinking that once this bill is passed our work is completed. It is not. That's when the critical work of changing attitudes and eradicating stereotypes for full and fair enforcement of the law begins.



*help small businesses understand and fulfill their response obligations under*

Shortly, I will introduce a technical assistance amendment designed to operationalize implementation of this landmark legislation. I believe that we have an obligation to provide assistance to those we will require to comply with the law. The assurance of civil rights to persons with disabilities requires no less.

As I noted at the beginning of these remarks, I am proud to be associated with this legislation. Its enactment will substantially benefit our Nation. The eradication of employment discrimination against persons with disabilities will result in a stronger workforce and greatly lessen dependency on the welfare system. By the year 2000, we will be facing a serious labor shortage. Passage of this bill is a step towards ensuring that we are fully utilizing the potential and inherent talents of every individual within our society. In closing, I would like to insert into the record the eloquent editorial written by my good friend James Brady, former President Reagan's Press Secretary in the New York Times on August 29th. His poignant remarks serve as a harbinger for the civil rights movement as we prepare for the 21st century.



Insert X from p. 3

THE AMERICANS WITH DISABILITIES ACT (S.933)

SEPTEMBER 7, 1989

BI-PARTISANSHIP IN ACTION

Mr. President: I ~~spea~~<sup>rise</sup> today to urge Senate passage of S. 933, The Americans with Disabilities Act. It was a long time in coming and many -- on both sides of the aisle -- have worked long and hard to get us here today.

*development*  
S. 933 is the product of bipartisan effort at each and every stage of its ~~inception~~. The origin of the Americans with Disabilities Act is rooted in *The bill originated with* an initiative of the National Council on Disability, an independent federal ~~entity~~ comprised of 15 members appointed by President Reagan and charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities *agency* and making recommendations as appropriate to the President and Congress. In 1986, the Council issued a report *The report concluded* which ~~found~~ that the major obstacles facing people with disabilities *are* ~~were not the~~ disability *their specific individual* characteristic of the person, but rather those which arose from *The artificial barriers imposed by others* barriers imposed externally. The Report recommended that Congress "enact a comprehensive law requiring equal opportunity for *also*

individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

During the last Congress, my Republican colleague, Senator Lowell Weicker, introduced a bill developed by the National Council, titled "The Americans with Disabilities Act." Although this bill was not considered by the <sup>full</sup> Senate, it initiated a dialogue and became the basis for the current revised bill introduced by Senators Harkin, Kennedy and Durenberger earlier this year. I acknowledge the leadership taken by these Senators in moving the Americans with Disabilities Act forward during the 101st Congress.

I also commend President Bush for his participation in the negotiations which have occurred over the past several weeks. <sup>ADA</sup> could not have happened so quickly without the support of President Bush ~~has given~~. His willingness demonstrated ~~that his~~ <sup>the</sup> Administration ~~would support expanding~~ <sup>has</sup> civil rights protections ~~to include~~ <sup>for</sup> people with disabilities. <sup>and the fact</sup> That we have moved forward with ~~legislation~~ <sup>the ADA</sup> demonstrates ~~the resolve~~ in his Inaugural Address: that this "is the age of the offered hand."

*genuine commitment as effort*

*Let's face it  
We would  
not be  
here today*

*Do sit down  
at the  
negotiating table*

*The President  
that wasn't  
kidding*



*I would also like to take the opportunity to thank the other*  
The efforts of numerous members of the Administration,  
notably those of Attorney General Dick Thornburgh, Secretary of  
Transportation, Sam Skinner, National Council on Disability  
Chairwoman Sandra Swift Parrino, and Justin Dart, Chairman of the  
President's Committee on Employment of People with Disabilities,  
*The ADA has also benefited from the*  
and White House input from Bill Roper, John Wodasch, Hans  
Kutchner, David Sloane, Boyd Hollingsworth and Bob Funk, all these  
*of certain members of the White House staff, including*  
individuals have contributed significantly to the legislation  
that is before us today. *made significant contribution*

*You know, called*  
Many have termed people with disabilities the last minority.  
Enactment of the Americans with Disabilities Act will bring the  
largest minority group into a position of achieving equal  
opportunity, access and full participation in the American dream.

*what the ADA is all about.*

#### OPPORTUNITIES AND PROBLEMS

*Move to p. 1*  
The Americans with Disabilities Act reaffirms our commitment  
to support the

*I like President Bush, I believe that the  
ADA will help to create a more inclusive  
America, an America that is more fully  
integrated, an America that does not  
place needless and harmful barriers in the way  
of her citizens with disabilities. I also be-  
lieve that the bill before us today addresses  
many of my previous concerns -- concerns that  
I shared during my testimony before the Labor  
Committee last May. (over)*

# I am particularly pleased with the bill. Tough -- but fair -- remedies provisions. The remedies available in the event of employment discrimination for example are those familiar and well-vested remedies of Title VII of the Civil Rights Act of 1964 -- enforcement through the Equal Employment Opportunity Commission with recourse to the courts.

Punitive damages and immediate access to jury trials are simply not available under the ADA in its current form.

Revised

# So those who would suggest that the ADA will unleash a mountain of litigation, I believe, are making point.



## COSTS

individual. In so doing, however, we must go beyond rhetoric. Our responsibility is to craft legislation that can be implemented to achieve its intended effect. <sup>But</sup> ~~However~~ let's not try and deceive anyone, there will be costs incurred by businesses, large as well as small in meeting the requirements of this bill. In attempting to assure the civil rights of persons with disabilities we must attend to the realistic concerns associated with such an assurance.

*Let there be no mistake about it. The vision of a barrier-free society for all Americans can be expensive. It did not cost free -- particularly for our nation's small business.*

~~One problem with this legislation according to some is the suggestion that a mountain of litigation will be unleashed on suspecting parties once this bill becomes law.~~

~~That is not an accurate judgement. The remedies allowed under this legislation in the case of employment are the familiar remedies of Title VII of the Civil Rights Act of 1964 -- enforcement~~

*Int'l  
from  
P.S.*

~~through the Equal Employment Opportunity Commission with  
recourse to the courts. Punitive damages or immediate access to  
jury trials are not part of ADA's remedies.~~

*read where to put?*

Another question deals with the public accommodations title. The only person who can bring suit under this title is the Attorney General. Lawyers cannot build careers on bringing suits against public accommodations on a contingency fee basis. That was formerly under S.933 as introduced, but not now.

The idea that the unsuspecting could be subject to suit is inconsistent with the intent of the legislation. Section 308 grants the Attorney General the authority to bring suit where there is "a pattern or practice of resistance to the full enjoyment of any of the rights" of people with disabilities.

#### TRANSPORTATION

*One of my primary concerns is the effect of the ADA on*  
The financial consequences of ADA language is my *private* interest. For example, our nation's *for example* intercity bus industry is the *a primary concern* primary form of affordable mass transportation for the poor, the elderly, and rural Americans. It is not a subsidized mass transit system. Greyhound *for example* has estimated that the annual cost of ADA to the company will range from \$40 to \$100 million dollars. Advocates in the disability community

*The private industry*



believe the estimate is too high, but in any event it will be <sup>Carley</sup>high. Obviously, we cannot allow the important and much needed protections of this legislation to financially bankrupt an entire industry that provides critical service.

INSERT DOLE PLANS ON PRIVATE BUS AND HATCH AMENDMENT!

I am not willing to wager on whether the provisions in this legislation requiring lifts on buses will be implemented in five years because I am not certain they will. But I am certain that if we don't have a requirement in this legislation, this issue won't get the proper attention.

The report required by the statute to research efforts to develop better lifts, the Secretary of Transportation's rulemaking and our responsibility to provide relief through the tax code will only get the attention they deserve if we all have the feeling that a sword is about to fall. The lift requirement here provides just that.

*should not generally be reason enough*  
While cost alone ~~is no reason~~ to deny people with ~~LE~~ *under* disabilities their civil rights, there ~~must~~ *should* be incentives and assistance for small businesses to ~~enable them to meet their~~ *accompanying* responsibilities. To this end, I will soon introduce an amendment to the tax code for the express purpose of ameliorating the financial burden to small businesses of complying with ADA.

*This amendment will allow*  
~~PUBLIC ACCOMMODATIONS~~  
*small businesses to deduct the*  
*on for "auxiliary aids and services" and "reasonable accommodations"*  
During the negotiations on the provisions of the bill several

strategies for dealing with the scope of public accommodations were examined. Specifically, there was discussion of the desirability of raising the exemption from 15 persons or less, to, 25 or less employees. During negotiations such a provision was considered and rejected for two important reasons. The fundamental problem with such an approach is that the small business exemption is not an employment right but rather an issue of access. SAY WHAT ACCESS IS-- Thus, the problem of access would not be solved by raising the ceiling of an exemption. The second reason is that such a change may be detrimental to the independent living movement. Current language in the bill was established with the input and support of the Administration. *It* *is reasonable and workable.*



7. Page  
private sector and those with disabilities must continue to work  
together to respond to ~~questions~~ <sup>concerns</sup> that remain and will arise as we  
implement ~~this but~~ <sup>the</sup> passage of the bill will not be the end  
~~but the beginning.~~ <sup>this legislation</sup>

Later today, I will offer a technical assistance amendment  
designed to ~~operationalize~~ <sup>and</sup> implementation of this legislation. We  
have an obligation to provide assistance to those we require to  
comply with the law. <sup>more</sup>  
<sup>examples</sup>

#### CONCLUSION

The enactment of this huge bill will substantially benefit  
our Nation. The eradication of discrimination in employment  
against persons with disabilities will result in a stronger  
workforce and lessen dependency on the welfare system. Passage of  
this bill is a step towards ensuring that we are fully utilizing  
the potential and inherent talents of every individual within our  
society. In closing, I ask consent

to insert into the record the "Op-Ed" piece written by my friend James Brady, President Reagan's Press Secretary. His poignant remarks are certainly worth noting as we consider this legislation.



THE NEW YORK TIMES, TUESDAY, AUGUST 29, 1989

# Save Money: Help the Disabled

By James S. Brady

**A**stonishingly, it is legal under Federal law for a restaurant to refuse to serve a mentally retarded person, for a theater to deny admission to someone with cerebral palsy, for a dry cleaner to refuse service to someone who is deaf or blind. People with disabilities — the largest minority in the U.S. — were left out of the historic Civil Rights Act of 1964. Twenty-five years later, discrimination against disabled people is still pervasive.

Congress has a chance to correct this injustice. The Americans with Disabilities Act is now before the full Senate, and President Bush and more than 200 national organizations have endorsed the bill.

As a Republican and a fiscal conservative, I am proud that this bill was developed by 15 Republicans appointed to the National Council on Disability by President Reagan. Many years ago, a Republican President, Dwight D. Eisenhower, urged that people with disabilities become taxpayers and consumers instead of being dependent upon costly Federal benefits. The Disabilities Act grows out of that conservative philosophy.

*James S. Brady, White House press secretary under Ronald Reagan, is vice chairman of the National Organization on Disability.*

---

A social program that conservatives can support.

---

Today 66 percent of working-age adults with disabilities are unemployed and dependent on Federal subsidies. The Disabilities Act could save taxpayers billions of dollars by outlawing discrimination, putting disabled people on the job rolls and thereby reducing Government disability payments.

Experience has shown that no civil right has ever been secured without legislation. A law such as the Disabilities Act would insure that facilities and employers — public and private — maintain minimum standards of accessibility. The act would require installation of ramps, elevators, lifts and other aids in new private businesses and public buildings, and on newly purchased buses and trains. And it would prohibit discrimination in private employment, public accommodations, transportation and telecommunications.

By breaking down barriers in stores and offices, it would enable more disabled people to purchase

goods and services — and thereby strengthen our national economy. By breaking down barriers in public transportation, the act would allow more people with disabilities to be employed and participate in community activities. The act would free hundreds of thousands of citizens who are virtually prisoners in their homes because of inaccessible transportation and public accommodations.

There are 37 million people in America who live with some form of disability. I never thought I would be one of them. Most people don't like to think about disability at all. But disability can happen to anyone. In fact, as our population ages and medical technology prolongs life, many more eventually will be disabled.

Since I took a bullet in the head eight years ago during the assassination attempt on Ronald Reagan, I have come to know the daily problems, frustrations and needs of those who live with disability. I have had to learn to talk again, to read again and to walk again. I have succeeded, and I know that everyone can learn to overcome the final obstacle to our equal inclusion in American life: prejudice toward people with disabilities.

Passage of the Americans with Disabilities Act will increase the acceptance, dignity and full participation of citizens with disabilities. We do not want pity or sympathy. All we want is the same civil rights and opportunities that all citizens have. We want fairness, acceptance and the chance to contribute fully to our nation — just like everyone else. □

Op-ed Page

111011.339

S.L.C.

AMENDMENT NO. ----

Calendar No. ----

Purpose: To allow certain capital expenditures of small businesses for auxiliary aids and services and reasonable accommodations to be treated as expense items, and for other purposes.

IN THE SENATE OF THE UNITED STATES--101st Cong., 1st Sess.

S. 933

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Referred to the Committee on ----- and  
ordered to be printed

Ordered to lie on the table and to be printed

Amendment intended to be proposed by Mr. Dole

Viz:

1 At the appropriate place, insert the following new  
2 section:  
3 SEC. \_\_\_\_ EXPENSING OF CERTAIN CAPITAL EXPENDITURES TO ASSIST  
4 DISABLED.

5 (a) Additional Items Eligible For Expensing.--Section  
6 190(b) of the Internal Revenue Code of 1986 (relating to  
7 definitions) is amended by adding at the end thereof the  
8 following new paragraph:

9 `` (4) Certain items included.--The term 'qualified



111011.339

S.L.C.

2

1 architectural and transportation barrier removal expense'  
2 shall include any of the following expenses in connection  
3 with a trade or business which are chargeable to capital  
4 account:

5       ''(A) Expenses for auxiliary aids and services  
6       (as defined in section 3(1) of the Americans With  
7       Disabilities Act of 1989).

8       ''(B) Expenses in connection with providing  
9       reasonable accommodations (as defined in section 3(8)  
10      of such Act) to individuals with disabilities.''

11      (b) Decrease in Maximum Amount Which May Be Expended.--  
12      Section 190(c) of the Internal Revenue Code of 1986 is  
13      amended by striking ''\$35,000'' and inserting ''\$25,000''.

14      (c) Effective Date.--The amendments made by this section  
15      shall apply to taxable years beginning after December 31,  
16      1989.

The implementation,  
① practice of this  
important piece  
of legislation.

add pg 23.



Entities in the pri Sect  
need to be aware of what  
accommodations are both  
necessary, cost effective,  
as well as <sup>what</sup> the best  
suited for particular  
disabled individuals.

Since many of these  
accom will not be made  
in areas which we  
have traditionally <sup>been</sup> covered  
under the Rehab Act (ie, unit,  
federal contractors in  
excess of \$2500); a longstanding  
practice & expertise can be  
applied in implementing the  
ADA in these new areas.

There is much expertise  
~~which~~ ~~uses~~ the same  
principles which can  
provide T.A. to covered  
entities under the ADA.  
~~Principle~~

The same standards  
exist in the ADA that  
have existed for <sup>over a</sup> long



Decade  
The in The Rehab Act

Reasonable Acc which  
Does not provide an  
"undue burden" and  
is limited by ~~the~~  
business necessity and  
safety are principles  
which can be defined  
by "Decade of experience."

D.A. is instrument  
in providing these  
def to the priv. sector.  
A thorough understanding  
of these principles  
will greatly hasten



Outline  
Last month created

## Disability as historical context

Many have called people with disabilities the last minority - ADA is culminating legislation that will bring last of largest minority group into position of enjoying full equal opportunity & full participation.

Rehab  
EHA - 71-1432

ADA not only represents, reaffirms conviction of American that every person is entitled to  $\Rightarrow$  opportunity. We believe in promoting supporting individual. Eg opp for p.c.d can be more complex. A person on race a gender has eg opp to work into body. That opportunity is more complex. This ADA reaffirms our commitment to support individual. Their unique.

to overcome  
discrimination  
no. 1 of attitudinal  
and physical  
adaptations.

Now for we have come.  
We have 15 yrs of experience  
EHA.

For example

It is reasonable to assume  
that if

we must be mindful of  
economic sense to study  
the feasibility of lift equipping  
bus.



This is a Republican bill

13 I am proud this bill  
before Senate

chronology  
NCD

long time in coming

in partisan effort

critical role the President  
has played

negotiations

commendation

Sandy Parrino  
Justin

on-going work of NCD  
behind the scene

Attorney General Thornburgh  
Governor Juman

Negotiating Team

~~#198 Commission~~

great day for civil rights  
race or gender you & attitudes  
disability right more complex  
endeavour.

if one work on bill has had  
to tackle complex issues:

sm bus. - costs -- we're  
likely to get amdt on this.

this is the agreement  
we came to c Admin. It's  
reasonable. workable.

B/c so complex to p & dis  
- private sector.

plan to work c groups  
PCEH · NCD. for technical assistance.



Admin  
but over  
points you want  
us to make.

Sat

many? ab vice

ruined @ test - have  
been addressed to my satisfaction

I don't want to delete  
~~anyone~~ ourselves by thinking  
once this bill is passed its  
not - that's when it begins

that's when it begins

A attitudes: stereotypes  
may be other and  
to make this operational

Shortly I will introduce  
a T.A. ~~Act~~ amendment  
designed to begin operation,  
implementing