

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 Kuttner, David Sloane, Boyd Hollingsworth and Bob Funk have contributed significantly to the legislation that is before us today.


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. 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 ^{stereotypes} ~~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, ^{qualified} persons ~~with~~ with disabilities.




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 unsuspecting parties once this bill becomes law.

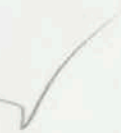
That is not an accurate judgement. The remedies allowed under this legislation in the case of employment are the familiar remedies of Title VII of the Civil Rights Act of 1964 -- enforcement through the Equal Employment Opportunity Commission with recourse to the courts. Punitive damages or immediate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

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. I believe that 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

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

I am fully aware that inexpensive is accessible is the key employment for many disabled persons

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} ~~agencies and organizations~~ 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 PCEH, NARF and DREDEF just to name 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.

*Placed on the record
4/28/88*

FLOOR STATEMENT OF
SENATOR ROBERT DOLE
ON
AMERICANS WITH DISABILITIES ACT

MR. DOLE MR. PRESIDENT. IN 1974 THE CONGRESS PASSED AND THE PRESIDENT OF THE UNITED STATES SIGNED INTO LAW THE REHABILITATION ACT. THROUGH TITLE V OF THAT ACT THIS NATION DECLARED THAT INDIVIDUALS WITH DISABILITIES HAD AN EQUAL RIGHT TO BENEFIT FROM THE FORTUNES OF THIS SOCIETY AND TO CONTRIBUTE TO IT IN THE SAME WAY THAT NON-DISABLED PERSONS HAVE. WE, AS A NATION, SHIFTED FROM A POSITION OF EXCLUSION TO INCLUSION, AND WE HEARD LANGUAGE THAT SPOKE OF MAINSTREAM INSTEAD OF SEPARATE.

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EARLIER THIS YEAR CONGRESS RENEWED ITS
COMMITMENT TO AMERICANS WITH DISABILITIES AND
PASSED AFTER CONSIDERABLE DEBATE THE CIVIL RIGHTS
RESTORATION ACT. YET DESPITE TITLE V OF THE
REHABILITATION ACT AND THE CLARIFICATIONS OF THOSE
PROVISIONS PROVIDED IN THE CIVIL RIGHTS
RESTORATION ACT, THERE ARE MANY SEGMENTS OF THIS
SOCIETY WHERE IT IS NOT UNLAWFUL TO DENY A HIGHLY
QUALIFIED PERSON A JOB MERELY BECAUSE HE OR SHE
HAS A PHYSICAL OR MENTAL IMPAIRMENT. IN MANY
PLACES A SELF-SUFFICIENT, INDEPENDENT,
PROFESSIONAL

-3-

INDIVIDUAL WHO IS DISABLED MAY FIND IT IMPOSSIBLE TO FIND APPROPRIATE AND AFFORDABLE, ACCESSIBLE HOUSING. AND IN SOME AREAS OF THE COUNTRY A PERSON WHO RELIES ON A WHEELCHAIR CANNOT DEPEND ON PUBLIC TRANSPORTATION TO GET TO WORK.

BEFORE WE CAN SUGGEST THAT AMERICANS WITH DISABILITIES HAVE AN EQUAL OPPORTUNITY TO FULLY PARTICIPATE IN THIS SOCIETY THERE IS MUCH THAT MUST BE DONE.

THIS BILL WHICH SENS. WEICKER AND HARKIN ARE

-4-

INTRODUCED BEGINS TO ADDRESS SOME OF THE REMAINING CONCERNS. THIS BILL PROPOSES TO OFFER PEOPLE WITH DISABILITIES THE SAME PROTECTION IN PRIVATE EMPLOYMENT THAT IS NOW ENJOYED BY WOMEN AND MINORITIES. IT WOULD PROHIBIT DISCRIMINATION AGAINST A PERSON ON THE BASIS OF HANDICAP IN PUBLIC ACCOMMODATIONS, THE SALE AND RENTAL OF MULTI-FAMILY HOUSING, TRANSPORTATION SERVICES, BROADCASTING, COMMUNICATIONS AND TELECOMMUNICATIONS AND FINALLY THE ACTIONS, PRACTICES AND OPERATIONS OF A STATE.

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I HAVE RESERVATIONS ABOUT MANY ASPECTS OF THIS BILL INCLUDING THE ELIMINATION OF THE "UNDUE HARDSHIP" CRITERIA FOR REASONABLE ACCOMMODATION, CLARIFICATION ON WHAT CONSTITUTES A PUBLIC ACCOMMODATION AND WHAT SUCH PUBLIC ACCOMMODATIONS WOULD BE REQUIRED TO DO UNDER THE RETROFITTING PROVISIONS OF THIS BILL, WHAT DO WE MEAN BY TRANSPORTATION SERVICES AND WHAT IS THE SCOPE OF THE PROVISIONS OF THIS BILL TO INTRASTATE TRANSPORTATION SYSTEMS.

DESPITE MY CONCERNS FOR THESE SPECIFIC AREAS AND

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OTHERS THAT I HAVE NOT MENTIONED IT IS AND ALWAYS
HAS BEEN MY BELIEF AND MY COMMITMENT TO ELIMINATE
BARRIERS TO THE FULL PARTICIPATION OF AMERICANS
WITH DISABILITIES IN THIS SOCIETY AND IN THIS VEIN I
WANT TO EXTEND MY SUPPORT FOR A BILL WHICH BEGINS
TO ADDRESS SOME OF THE REMAINING AREAS.

SENATOR BOB DOLE
NATIONAL REHABILITATION ASSOCIATION SPEECH
345 CANNON HOUSE OFFICE BUILDING
MARCH 13, 1989

THE INAUGURATION OF GEORGE BUSH ON JANUARY 20

REPRESENTED A NEW BEGINNING, AND A NEW ERA IN

LEADERSHIP FOR THIS COUNTRY. PRESIDENT BUSH HAS

PLEDGED TO FULFILL HIS CAMPAIGN PROMISES TO SET

SOME NEW PRIORITIES FOR A "KINDER, GENTLER"

AMERICA. THE STRIDES MADE THUS FAR, FOR PEOPLE

WITH DISABILITIES, WILL CONTINUE WITH COOPERATIVE

WORK BETWEEN THIS ADMINISTRATION, CONGRESS AND,

MOST IMPORTANT, YOU, TO ESTABLISH THE LEADERSHIP

AND EXCHANGE NECESSARY TO PROMOTE FULL INTEGRATION

OF PEOPLE WITH DISABILITIES IN SOCIETY.

AS PRESIDENT BUSH HAS STATED, "I PLEDGE THAT
MY ADMINISTRATION WILL DO AWAY WITH "HIRE THE
HANDICAPPED WEEK" AND REPLACE IT WITH FEDERAL
LEGISLATION THAT GIVES PEOPLE WITH DISABILITIES
THE SAME PROTECTION IN PRIVATE EMPLOYMENT THAT IS
NOW ENJOYED BY WOMEN AND MINORITIES.

AMERICA'S DISABLED CITIZENS ARE PERHAPS OUR
GREATEST RESOURCE OF UNTAPPED HUMAN POTENTIAL.
WORKING TO OPEN SOCIETY TO GREATER PARTICIPATION
BY THE DISABLED WILL IMPROVE THE QUALITY OF LIFE
NOT ONLY, FOR THE DISABLED, BUT FOR ALL AMERICANS.

IN THE WEEKS AHEAD, THE ADMINISTRATION WILL BE
MORE SPECIFIC ABOUT HOW IT INTENDS TO STRENGTHEN
THE FEDERAL GOVERNMENT'S COMMITMENT TO DISABILITY
PROGRAMS. THE PRESIDENT HAS STATED HIS INTENT TO
EXPAND THE NUMBER OF DISABLED PERSONS AND PARENTS
OF DISABLED PERSONS APPOINTED TO KEY POSITIONS IN
HIS ADMINISTRATION.

A STRONG FEDERAL LEADERSHIP ROLE INVOLVES MORE
THAN INCREASED FUNDING. IN HIS WRITTEN BUDGET
DOCUMENT, THE PRESIDENT GIVES SIGNIFICANT EMPHASIS
TO PROGRAMS FOR PERSONS WITH DISABILITIES,
INCLUDING REHABILITATION PROGRAMS.

GREATER EFFORT IS NEEDED TO COORDINATE THESE
PROGRAMS TO ASSURE THAT ALL PEOPLE WITH
DISABILITIES ARE PROPERLY SERVED. SELF SUFFICIENCY
AND REDUCED BARRIERS TO EMPLOYMENT ARE KEY IN
REMOVING DEPENDENCY.

IT WAS LEADERSHIP AT THE FEDERAL LEVEL THAT
GENERATED THE GREATEST VOCATIONAL AND EDUCATION
REFORM IN THIS COUNTRY. A FEDERAL-STATE
PARTNERSHIP HAS PRODUCED GREAT STRIDES IN
IMPROVING THE REHABILITATION OF ALL PEOPLE WITH
MENTAL AND PHYSICAL DISABILITIES. THE 69 YEAR-OLD
STATE FEDERAL REHABILITATION PROGRAM WHICH YOU ALL
SO PROFESSIONALLY IMPLEMENT, IS THE CORNERSTONE OF
OUR NATION'S EFFORTS TO ASSIST AMERICANS WITH

DISABILITIES TO BECOME GAINFULLY EMPLOYED, AND
SELF RELIANT. AS A RESULT, OVER 80 PER CENT OF
THOSE REHABILITATED THUS FAR, HAVE ENTERED
COMPETITIVE EMPLOYMENT. THAT IS A RECORD TO BE
PROUD OF, AND ONE TO BUILD UPON THROUGH INCREASED
INCENTIVES.

THE PROBLEMS THAT CONTINUE TO FACE CITIZENS
WITH DISABILITIES ARE COMPLEX -- THEIR SOLUTIONS
REQUIRE A CONTINUED COMMITMENT TO QUALITY SERVICES
AND IMPROVED COORDINATION AND IDENTIFICATION OF
PROGRAMS THAT WORK.

THE 1986 HARRIS POLL, INDICATED THAT
TWO-THIRDS OF ALL DISABLED PEOPLE BETWEEN THE AGES
OF 16 AND 64 ARE UNEMPLOYED, -- BUT THAT 66% OF
THOSE PEOPLE WANT TO WORK.

THE FEDERAL GOVERNMENT CAN PROVIDE
OPPORTUNITIES THAT ALLOW AN INCREASE OF AMERICANS,
(WHO JUST HAPPEN TO BE DISABLED), INTO THE
WORKFORCE. CERTAINLY, INITIATIVES DURING THE 101ST
CONGRESS WILL FOCUS ON THIS. CONGRESS MUST AGAIN,
JOIN IN A BIPARTISAN EFFORT TO ASSURE LEGISLATION
WHICH WILL REMOVE ANOTHER WORK DISINCENTIVE FOR
PEOPLE WITH DISABILITIES PARTICIPATING IN THE
SOCIAL SECURITY DISABILITY INSURANCE (SSDI)

PROGRAM. IN ADDITION, CONGRESS MUST WORK TO
IMPLEMENT THE RECOMMENDATION OF THE DISABILITY
ADVISORY COUNCIL'S REPORT TO INCREASE THE
SUBSTANTIAL GAINFUL ACTIVITY (SGA) LEVEL TO
REFLECT THE AVERAGE WAGE GROWTH SINCE IT WAS LAST
ADJUSTED. FOR MANY DISABLED INDIVIDUALS, THE RISK
THAT THEIR OWN EARNED INCOME CANNOT COVER
NECESSARY MEDICAL EXPENSES, IS TOO GREAT A RISK,

AND THUS, DISCOURAGES INCENTIVES FOR FULL
PARTICIPATION AND INTEGRATION IN THE WORKFORCE OF
PERSONS WITH DISABILITIES.

THE FEDERAL GOVERNMENT CAN PROVIDE GREATER
OPPORTUNITIES AND INCENTIVES TO ASSURE THAT
PROGRAMS WHICH SERVE PEOPLE WITH DISABILITIES
PROMOTE INDEPENDENCE, WITH THE FREEDOM TO CHOSE
AND ACTIVELY PARTICIPATE IN THE SOCIAL AND
ECONOMIC MAINSTREAM. THIS GOAL CANNOT BE MET,

HOWEVER, WITHOUT THE INTIMATE INCLUSION OF PEOPLE
WITH DISABILITIES AND THEIR PARENTS IN THE PROCESS
-- IF WE ARE TO ENSURE THAT THEIR REAL NEEDS ARE
ADDRESSED.

WHILE THE HARRIS POLL SIGNIFIES THAT PEOPLE
WITH DISABILITIES HAVE NOT BEEN INTEGRATED IN THE
WORKFORCE, THE VAST MAJORITY OF THE 36 MILLION
DISABLED AMERICANS BELIEVE THAT THEIR LIVES HAVE
IMPROVED IN THE PAST DECADE. ATTITUDES TOWARD

DISABLED PEOPLE ARE CHANGING AND IN A POSITIVE
DIRECTION WITH MORE DISABLED PEOPLE THAN EVER
BEING EDUCATED AND REHABILITATED. LET US USE THE
PROGRESS MADE THUS FAR, TO ENCOURAGE GREATER
OPPORTUNITIES IN THE DISABILITY RIGHTS MOVEMENT.

BUDGET PRIORITIES

AS THE INCOMING PRESIDENT, GEORGE BUSH
RECOMMENDED SIGNIFICANT EMPHASIS BE GIVEN TO
PROGRAMS SERVING PERSONS WITH DISABILITIES,
INCLUDING REHABILITATION PROGRAMS.

MAKING MORE EFFECTIVE USE OF TAXPAYER DOLLARS
IS A SKILL THAT WE WILL HAVE TO REFINE IN THE
UPCOMING YEARS. HOWEVER, THE PRESIDENT, HAS
INDICATED HIS DESIRE TO HAVE PEOPLE WITH

DISABILITIES A PART OF MAINSTREAMED LIFE IN
AMERICA, INCLUDING EMPLOYMENT. I AM CONFIDENT
CONGRESS WILL REMAIN CONSISTENT WITH THE
ADMINISTRATION AND WILL LOOK AT THE COST
EFFECTIVENESS OF INCREASING EMPLOYMENT
OPPORTUNITIES FOR PEOPLE WITH DISABILITIES.

DISABILITY PRIORITIES

THE MAJOR DISABILITY THEMES UNDER PRESIDENT
BUSH WILL BE ACCESS, OPPORTUNITY, INDEPENDENCE AND
INTEGRATION -- ALL FACTORS IN THE SUCCESS OF THE
INDIVIDUAL.

IN ORDER TO ACCOMPLISH THESE GOALS THE FOLLOWING
MUST VIGOROUSLY BE PURSUED:

- o ENCOURAGE THE PRIVATE SECTOR TO WORK

MORE AGGRESSIVELY IN HIRING DISABLED

PEOPLE INCLUDING EDUCATING THE

EMPLOYERS, THAT STATISTICS CLEARLY SHOW

THAT, OTHER THINGS BEING EQUAL, DISABLED

EMPLOYEES PERFORM EQUALLY AS WELL OR

BETTER THAN NON DISABLED PEOPLE IN

COMPARBLE JOB SITUATIONS.
- o TRAIN PEOPLE WITH DISABILITIES FOR

JOBS THAT EXIST WHERE THEY LIVE.

- o ELIMINATE DISINCENTIVES, THAT

DISCOURAGE DISABLED PERSONS WHO WISH TO

WORK, BUT CANNOT, FOR FEAR THAT THEY

RISK LOSING THEIR BASIS OF SUPPORT AND

HEALTH BENEFITS.
- o IMPROVE TRANSPORTATION AND WORK PLACE

ACCESSIBILITY FOR EXISITNG FACILITIES

AND INSIST ON ACCESSIBILITY FOR ALL NEW

CONSTRUCTION.

- o SUPPORT INDEPENDENT LIVING CENTERS TO

ASSIST DISABLED PERSONS WITH THE

TRANSITION TO INDEPENDENCE.

- o URGE PRIVATE INSURERS TO FIND WAYS TO

INCLUDE, NOT EXCLUDE, DISABLED WORKERS

IN THEIR PROGRAMS.

DISABLED INDIVIDUALS ARE NOT A SMALL, UNIFORM

MINORITY WITH NARROW INTERESTS. THE DISABILITY

COMMUNITY INCLUDES EVERY RACE, CULTURE, AGE, SEX

AND ECONOMIC CLASS. IN OTHER WORDS -- DISABILITIES
HAVE NO BOUNDARIES -- WITH MEMBERSHIP OPEN TO
ALL. MOST OF US WHO LIVE OUR FULL LIFESPAN WILL
JOIN THIS COMMUNITY SOONER OR LATER.

THE 101ST CONGRESS OUTLOOK

THE 101ST CONGRESS WILL ADDRESS A RANGE OF
ISSUES OF INTEREST TO INDIVIDUALS WITH
DISABILITIES. I AM HOPEFUL THAT THIS CONGRESS WILL

ENACT LEGISLATION WHICH WILL CAPTURE THE GOAL OF
INTEGRATING DISABLED AMERICANS FULLY AND EQUALLY
INTO THE MAINSTREAM OF AMERICAN LIFE. THIS CAN
ONLY BE ACCOMPLISHED BY INCREASING THE
INDEPENDENCE OF DISABLED AMERICANS.

LEGISLATION ENCOMPASSING GREATER PARTICIPATION
BY THE DISABLED INCLUDE:

o A COMPREHENSIVE CIVIL RIGHTS BILL

FOR PEOPLE WITH DISABILITIES WHICH

PROHIBITS DISCRIMINATION ON THE BASIS OF

A DISABILITY -- IN THE AREAS OF

EMPLOYMENT, PUBLIC ACCOMODATIONS,

COMMUNICATIONS, TRANSPORTATION, AND

ACTIVITIES OF STATE AND LOCAL

329-96-401 Box 52

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 the product of a bipartisan effort at each and every stage of its development. 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.

*The Report
Tow Ins,*

In 1986, the Council issued a report ~~which~~ 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 the leadership taken by these Senators in moving the Americans with Disabilities Act forward during the 101st Congress.

President Bush deserves commendation for his participation in the negotiations which have occurred over the past several weeks. Let's face it. We would not be here today without the support of President Bush. 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 and 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.

OPPORTUNITIES

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 believe that the bill before us today addresses many of the concerns -- concerns that I raised during my testimony before the Labor & Human Resources Committee last May.

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 stereotypes, 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 ^{private sector} ~~business community~~ is committed to the goal of accessibility for, and employability of, ^{disabled persons} ~~qualified persons with disabilities~~. Technical assistance will be needed in this regard to assure both the integrity of the private sector as well as appropriate employment opportunities for persons with disabilities.

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 version.

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.

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

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.

One of my primary concerns is the affect of the ADA on our nation's private bus industry. The private bus industry is the 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 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 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 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 to lift equip over- the-road-buses 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. 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 . 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.

While costs alone should not generally 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 of complying with ADA.

This amendment will allow small businesses to deduct their expenditures on "auxiliary aids and services" and reasonable accommodations."

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 concerns that remain and will arise as this legislation is implemented. Mere passage of the bill will not be the end -- but the beginning.

TECHNICAL ASSISTANCE

Persons with disabilities, employers and others effected by the passage

of 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.

other
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 as well as the Dole Foundation which I have initiated to provide an expertise in employment, *such examples include,*

as well as the DF which I have,

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.

STATEMENT OF SENATOR ROBERT J. DOLE
ON COSPONSORSHIP OF S.933
THE AMERICANS WITH DISABILITIES

Mr. President: I rise today to lend my support to S.933, the Americans with Disabilities Act. 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 is one of the greatest milestones in America's long journey towards civil rights justice. I am pleased to join with the President in endorsing the Americans With Disabilities Act -- expanding civil rights protections to people with disabilities.

President Bush today announced his full endorsement of this landmark civil rights legislation for people with disabilities. His genuine commitment and leadership to assure a fully integrated society free from discrimination and bigotry of any kind represents a new beginning for a more inclusive America.

Passage of a substitute bill by members of the Senate Labor & Human Resources Committee this morning reflects the consensus reached on this legislation after a series of good faith negotiations and compromise meetings between the Administration and Members of the Senate Labor & Human Resources Committee Staff has worked many long hours and several mark ups have been delayed in coming to a workable compromise. The cooperation exhibited by the negotiating team on this very complex and comprehensive piece of legislation is to be commended.

I look forward to floor consideration of the ADA which will ensure access, opportunity, independence, and integration of all Americans with disabilities. The Americans with Disabilities Act will strengthen the workforce by requiring that reasonable accommodations be made to incorporate people with disabilities into the workplace. The requirement for a small business exemption of 25 employees applicable for the first three years after enactment of this bill is wise and will assist the private sector in reaching it's mandate.

Opening society to all Americans with disabilities will be guaranteed with the broader definition of public accommodations. This expansion will require that readily achievable alterations be made to ensure that entrance and full participation of services be available to people with disabilities to carry out activities of daily living and simply enjoy all else that many of us take for granted.

I support the concept of extending federal civil rights protections to the disabled -- protections that will ensure that people with disabilities are brought into the mainstream of American life -- with equal opportunity to become full participating members of the community that we call America.

I am pleased that this legislation has successfully addressed many of the concerns that I previously held which now enables me to support the ADA. The compromises reached thus far strike a fair balance -- a balance that fully embraces the vision of a barrier-free America for all Americans.

I understand there are a few issues that will need to be further clarified and negotiated -- with regard to private transportation and telecommunications but the commitment is there to continue working together to enact a bill the entire Senate can defend. I am also pleased that a technical assistance amendment was agreed to in Committee today and will work with other Senate staff and interested parties to further strengthen this provision.

This bipartisan effort will further the goal of providing a barrier free society which integrates people with disabilities into the social and economic fabric of America -- will contribute to a vision of America where persons are judged by their abilities NOT their disabilities.

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1 STATEMENT OF THE HONORABLE ROBERT DOLE, UNITED
2 STATES SENATOR, STATE OF KANSAS, AND MINORITY
3 LEADER, UNITED STATES SENATE.

4 Senator Dole. Well, first let me thank you, Mr.
5 Chairman, and commend you for your continuing interest, not
6 just this year but over the years, and Senator Kennedy, and
7 Jim Jeffords on the House side.

8 Let me also thank other members of the panel. I won't
9 take but a few moments, but I did want to be here, and I did
10 want to make a brief statement. I want to thank Mo West on
11 my staff and others who have been working on this legislation.

12 I don't think there is any question about what we want
13 to do. There is no question that we need to end discrimina-
14 tion and need to protect persons with disabilities and
15 protect them from discrimination in employment, education,
16 transportation, and any other area where we have outright
17 discrimination.

18 I guess my concern is the same as everybody here--how do
19 we do it; how do we achieve these results and protect those
20 we wish to protect in the disabled community.

21 I think the ADA bill puts the correct emphasis on
22 employment--that is what it is all about if we are going to
23 get people--I talk with the Secretary of Labor from time to
24 time--not as much as Senator Kennedy does, because she is
25 before the committee most of the time--but there is a lot of

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1 emphasis on Workforce 2000 and whether or not we are going to
2 have people be able to meet the challenges, and certainly,
3 the disabled man or woman is in that group. So employment is
4 the right place to put the emphasis.

5 In my view, this is the strength of this year's version
6 of ADA as compared to last year's, and I think we are going
7 to be able to arrive at some agreement on this bill, maybe
8 with modifications. Certainly, this is one area that is
9 totally nonpartisan or bipartisan or call it what you will.

10 Now, we need to look at how can we achieve that and how
11 can we achieve that with the Administration. I think if you
12 ask most people in the disability community--and I don't know
13 their political leaning, but that is not significant--I think
14 most would say let's try to get a bipartisan bill. And I
15 would say to this group it is a bit different than it was a
16 year ago.

17 I think this Administration is more sensitive to the
18 needs of this kind of legislation, and George Bush has said--
19 I don't think he has endorsed this particular bill--but he
20 has said the concept, he agrees with.

21 We had a meeting in my office on Friday with Boyden
22 Gray, the President's Counsel, who has had a long-time
23 interest in this area--it is genuine; it is not something he
24 thought about here just recently--he has a long-time interest.

25 We met with Chief of Staff John Sununu and others in the

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1 White House, Mr. Porter and others, to see what we could do
2 to cooperate with the subcommittee chairman and with Senator
3 Kennedy, Senator Durenberger, Senator Jeffords, Senator
4 Hatch, members of the House, most of whom are supporting this
5 bill. I know the Administration wants--in fact, I raised it
6 with the President last night in a phone call; we talked some
7 about this legislation--he wants to try to work with the
8 Congress.

9 Now, let's face it--we've got a new Administration; some
10 people aren't in place yet. We were told it would take 90
11 days--and they later said maybe 60 days--to go through all
12 these different agencies and analyze this bill--which I think
13 it should be analyzed; nobody objects to that. We want to do
14 it as quickly as we can. And then, I believe the Administra-
15 tion--and I think Mr. Sununu passed on to Senator Kennedy--I
16 hope he did, in any event--and others, that they are going to
17 be in a position to offer some suggestions or modifications or
18 whatever in order to get this bill completed. So it is the
19 hope of the Administration--and as Republican Leader, I have
20 certainly some responsibility to the Administration--that
21 this is the opening round of hearings--and I have read some
22 of the testimony, I have read some of the concerns that have
23 been raised about vagueness and cost and other areas of the
24 bill that probably should be addressed--but I think there is
25 no question about it, when all is said and done, that

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1 hopefully this year there will be a bipartisan piece of
2 legislation passed by Congress, signed by the President, and
3 embraced by, hopefully, the business community and certainly
4 by the disability community.

5 Now, I have been implored by some of my friends in the
6 disability community that I should just sign onto this bill,
7 and particularly since I am disabled, that I shouldn't
8 question it. But I don't really believe that would be
9 appropriate or that it would be wise. I certainly want to be
10 helpful, and I do want to help this committee--and I do know
11 who has been leading the efforts in this committee--and I am
12 not trying to promote a Dole bill or anything of that kind.
13 I am just trying to make certain that when we have one, it is
14 one that we can stand up and defend.

15 So I favor the concept but I am somewhat cautious
16 because I think there is some question about what some of the
17 language does. I have talked with my staff, and we have a
18 couple of people with me today if somebody has questions on
19 some of the vagueness in some of the language. I read what
20 the Chamber of Commerce had to say about some of the language.
21 And what we are trying to create are jobs for the unemployed,
22 not lawyers. They have got plenty of work to do around this
23 town, in any event.

24 I do support the employment goals, and I would hope that
25 we can resolve some of these areas that might otherwise lead

1 to litigation and long delay for some receiving the benefits.

2 I strongly support the elimination of barriers for
3 people with disabilities. In fact, years ago in the Finance
4 Committee with then Senator Mondale, the two of us offered
5 the first tax credit for removal of architectural barriers,
6 and that has been extended since that time.

7 But I also care whether we go about achieving these
8 goals in a constructive way, one that will not create an
9 unreasonable burden on the private sector which will be
10 required to implement the provisions of the legislation.

11 I firmly believe that our society will only be changed
12 when people focus on the contributions that people with
13 disabilities can make, on what they are capable of doing.

14 I have a little foundation for the disabled, and we had
15 a meeting last week--in fact, we raised a little money last
16 week, and we gave an award to Marriott Corporation. I am
17 sure everybody here knows that they employ 6,000 employees
18 with disabilities. Now, that is a record to be proud of. So
19 I am very proud of the Marriott Corporation and others in the
20 private sector, reaching out. As Bill Marriott will tell
21 you, these are in many cases their best employees. They are
22 there on time, they do their work, and they are good, solid
23 employees. And if there is discrimination, he would be one
24 person to stand up and say that somebody is making a big
25 mistake in the private sector because they are discriminating

1 against the people who will produce. I think that is very
2 helpful.

3 Well, certainly, this bill before the committee is the
4 beginning of the process, and I think it is a very significant
5 contribution. This is a very complex issue, and I believe
6 that the legislative process will work. I believe I can say
7 for President Bush that he is committed to the concept and
8 that he plans to work with us until we get a bill this year
9 that we can all support. I think we can use this process to
10 review the issues raised and to make sure we are responsive
11 to the concerns of all those who will be affected.

12 What I hope to avoid is some of the problems we faced
13 when Section 504 was first enacted, and there was such a long
14 delay in implementation of the legislation; in fact, it took
15 years.

16 So I would just ask that my entire statement be made a
17 part of the record. I raise some concerns about cost. I know
18 this is going to apply to a lot of communities and a lot of
19 employers with 15 or more employees. I don't suggest that
20 cost should always determine whether or not we are going to
21 benefit someone with a disability, but I think it is fair to
22 say there are going to be some cases we are not going to be
23 able to reach, and some people with disabilities are probably
24 not going to have the benefits of this provision or any other
provision. It is hard to reach everyone, and sometimes I

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1 guess personal interest has to give way to the larger public
2 interest and the national interest as to whether or not we
3 can implement a bill at all in the first place.

4 So there is the question of the value of cost benefits,
5 and they are being evaluated; I am certain staff and others
6 have done that. You are aware of the AT&T testimony about
7 what it would cost, and we are aware of others who say that
8 both lift-equipped buses and paratransit could cost public
9 transit authorities \$270 million per year. I guess we need
10 to ask who is going to pay for the costs, and what can be
11 done to mitigate the costs.

12 Certainly, this bill as it finally will pass, will be a
13 big step toward the future. So I would just suggest that the
14 employment provisions--I think we have questions on some of
15 the provisions--it does provide strong prohibitions against
16 discrimination; it does emphasize a critical area of employ-
17 ment, and to balance this, the bill utilizes the Section 504
18 concepts of "undue burden" and "otherwise qualified".
19 However, the enactment of legislation should include careful
20 consideration of the fact that it would cover not just
21 recipients of Federal funds like Section 504, but also many
22 small businesses.

23 When we start talking about this group and civil rights
24 protection, there is going to be a cost incurred that may not
25 have been true in other areas of civil rights and nondis-

1 crimination, because we are going to be having an impact on
2 business, and someone is going to have to pay the cost.

3 The ADA may often require that an employer or other
4 covered entity take some action, eliminating architectural
5 and communication barriers, for example; this is costly, and
6 I assume there is some provision--I know there is some
7 provision that if it is a very high cost, it can be postponed
8 over a period of 20 years.

9 I believe consideration should be given to a more
10 gradual phase-in of some of these requirements. Perhaps
11 coverage could be extended to employers employing 50 or more
12 employees for the first three years of the Act, and lowering
13 coverage as the private sector becomes more accustomed to the
14 intricacies of "reasonable accommodation".

15 Transportation issues are another area where the balance
16 among competing interests is critical. And although the bill
17 would require no retrofitting, it does require that all
18 stations in an inner-city rail system be made readily
19 accessible not later than three years, and there could be an
20 extension, as I said, of up to 20 years for very high cost.

21 One of the most critical aspects of any nondiscrimination
22 legislation is the remedies it provides to enforce the
23 rights. If you don't have a remedy, it is not going to work.

24 The Americans with Disabilities Act needs strong enforcement
25 provisions. However, it also needs provisions that are

1 unambiguous and take into consideration both the rights of
2 the individuals with disabilities and the rights of the other
3 parties who would be impacted. And there are some differing
4 enforcement mechanisms for various types of discrimination in
5 the bill. With regard to employment, it references Title VII
6 of the Civil Rights Act of 1964 and Section 1981. In the
7 telecommunications section, the remedies in the Fair Housing
8 Act and the Communication Act of 1934 are incorporated. With
9 regard to public entities, the Act references the remedies
10 that apply under Section 505, and this does create some
11 confusion and not enough clarity; and more importantly, the
12 remedies provide for actions by an individual who believes he
13 or she is about to be discriminated against. Now, I am not
14 certain how you would ever come to grips with that. It is
15 unprecedented language, and it could open the door to a lot
16 of frivolous lawsuits which would not do much to advance the
17 goals of those with disabilities.

18 So I would just conclude by applauding the work done on
19 this Act and applauding the groups who have been working in
20 the trenches for years. I know that each year, they think
21 this year is the year it will happen. I think this is the
22 year it will happen. With the leadership we have on this
23 committee, I think we can reach the goals. And certainly, I
24 want to be a positive force for moving ahead. I am not going
to be an obstructionist, but I would say, as I said very

1 candidly to Senator Harkin, that I do believe that with
2 President Bush on record, that he deserves an opportunity to
3 produce. And if I found anybody in the White House who I
4 thought might be dragging their feet, I would say so. I have
5 not found that. I think it is just a question of sort of
6 getting their act together and making a determination as to
7 what they can support. We may not agree with their final
8 product; they may have to compromise more.

9 So I will just say I hope that I can be helpful to the
10 committee in working with the Administration and making
11 certain that we end up with legislation that will do precisely
12 what Senator Harkin, Senator Kennedy, and Senator Jeffords
13 have in mind, and that is to help those with disabilities
14 gain employment.

15 I thank you very much.

16 [Prepared statement of Senator Dole follows:]

17 / SUBCOMMITTEE INSERT

1 Senator Harkin. Thank you very much, Senator Dole, for
2 those remarks and for your careful analysis of the bill. We
3 will look at all the things that you have suggested, and
4 we'll take those into consideration.

5 I know, as I have said to you personally, and I have
6 said openly in this subcommittee, that I don't think anyone
7 can doubt your commitment to mainstreaming the disabled in
8 our society. I am well aware of the work of the Dole
9 Foundation and the fine work it does in terms of promoting
10 employment, and that is really what we are talking about
11 here, as you said. Mainstreaming means being able to work,
12 being able to have access to all the things that any other
13 person has access to in our society.

14 We will have discussions about cost, and I may want to
15 bring up--I don't know what your time is, but there are a lot
16 of things that we could discuss on the cost element of it. I
17 think there are a lot of red herrings out there in terms of
18 cost, and we know that. In many cases, the cost is minimal
19 to make accommodations. And as was stated so many times in
20 our hearing yesterday, a lot of times, with just a little
21 ingenuity, they can come up with devices or with things that
22 just really don't cost anything.

23 I have a whole chart, which I don't have with me here
24 today, but we had a receptionist who was legally blind and
25 was about to lose her job because she was running a switch-

1 board, and she couldn't tell which lines were on. They got
2 her a little light probe which allowed her to determine which
3 lines were used and which were not. It cost \$45, just so she
4 could keep her job.

5 A salesperson with cerebral palsy was provided a headset
6 for a phone that allowed him to write while talking--\$49.94.
7 I have just got reams of examples like that.

8 So I think people think we are going to have to make all
9 these big changes, and that is just not so.

10 Your comments about the Marriott Corporation and what
11 they found with their workers really strikes home to me. My
12 brother, who is deaf, I remember once when he was hired sort
13 of on a "well, we'll see how you work out" basis, worked at
14 this business for ten years--and you know what winters are
15 like in Iowa--he worked there for ten years, and he was not
16 late once and did not miss work one day in ten years.

17 So when you say that these people are indeed some of the
18 best employees who can be hired, you are absolutely right. I
19 have seen it first-hand.

20 Again, we do want to make a bipartisan bill out of it.
21 There are a lot of things that we will wrangle on on a
22 partisan basis, as it should be--that is the business we are
23 in here is to get the country running, to have open and free
24 debate. But this is one area in which there should not be
25 partisan wrangling; there just shouldn't be any partisan

1 wrangling. We can fine-tune it, we can make some corrections
2 in the bill as we go along to address certain problems that
3 are out there. That is well and good. But I am hopeful that
4 with your support and with the support of the Administration,
5 it will be bipartisan.

6 Let me just quote what President-elect Bush said at a
7 pre-inaugural event on January 18th. This is a direct quote
8 from the President of the United States: "I said during the
9 campaign that disabled people have been excluded for far too
10 long from the mainstream of American life, and I still
11 believe that this is an accurate statement. And I want to do
12 what I can, working with those of you in this room who care,
13 too, I want to do what I can to correct all of that. One
14 step that I have discussed will be action on the Americans
15 with Disabilities Act in order, in simple fairness, to
16 provide the disabled with the same rights afforded other
17 minorities."

18 Senator Dole. I think I attended that meeting; was that
19 HHS?

20 Senator Harkin. Yes, January 18th. And again, that was
21 before we had really worked over the ADA bill; it was the
22 bill we had last year that Senator Weicker sponsored and that
23 I was a cosponsor of, which had a lot of provisions in it
24 that, again, we worked on starting in December, meeting with
25 Senator Hatch, going into January, February, March, to make

1 meaningful changes.

2 The original ADA bill specified that reasonable accom-
3 modations had to be provided unless it would threaten the
4 existence of the business--the so-called "bankruptcy provis-
5 ion". Well, that has been changed. We changed it to the
6 "undue hardship" of Section 504.

7 The original ADA required that architectural barriers be
8 removed in two to five years unless it would threaten the
9 existence of the business. We just changed it to the more
10 modest requirement of requiring changes that are "readily
11 achievable" rather than whether or not it would bankrupt the
12 business.

13 We provided that buses had to be retrofitted. That has
14 been taken out--just new buses. And we provided other
15 alternatives in there aside from the new buses; no retrofit-
16 ting is required at all.

17 So again, if you look at this bill that we have now, it
18 is a much, much more modest bill than we had last year, and I
19 think goes a long way toward addressing concerns that you had
20 expressed even last year on the original bill. And we really
21 do want to make all these accommodations. There may be some
22 fine points in the bill that we may have to look at--and we
23 will--but it was my concern--as I said, as I told you
24 personally, we had worked on this, and as far as I know,
25 everybody was invited to the meetings, had full access, we

1 coordinated with them, with Senator Hatch's office, with
2 yours, and with the Administration. And I felt it necessary
3 that we started moving, otherwise, I know what the calendar
4 is like around this place, and with August gone and with the
5 other appropriations bills and things coming down, I felt it
6 necessary to start moving on the bill--

7 Senator Dole. I think it is wise to move. I think
8 somehow, there was apparently a misunderstanding--and I don't
9 know where it originated--that the President was going to
10 maybe endorse the bill. And like everything else, in not
11 quite four months, they don't have all these--whether it is
12 child care or parental leave, or whatever the bill might be--
13 they are functioning, but they don't have every Administration
14 proposal put together. And I must say, I don't think they
15 have focused a great deal on this particular area.

16 Roger Porter is trying to put together a crime package,
17 child care, and several other things, and it is a very
18 difficult thing to do. But I think by starting the hearings,
19 you have certainly gotten their attention, and they are
20 focusing on it. And they were told last Friday to go back to
21 the agencies, Transportation, whatever department, and speed
22 up the process, that they weren't going to wait 90 days.

23 So I don't know what the timetable is of the committee,
24 but I would hope--I know 60 days is a long time, but I think
25 maybe in this case, patience might be very beneficial. I

1 think George Bush said what he said, and he is going to keep
2 his commitment. And I hope that it means we are going to
3 have a good bill.

4 Senator Harkin. And I talked to him last week on
5 Thursday personally, and again--and in fact, I have always
6 said that he did not specifically endorse the bill, but he
7 has always support the concept of the bill, and what we are
8 trying to do--obviously, I know he is busy and does not know
9 every little thing in it; he is not involved in it like we
10 are, in the drafting of it and so on, and I know that they
11 have to review it. I am just hopeful that, with your help,
12 we can keep them focused on it so we don't end up spilling
13 over into next year, with all the things that may come up
14 next year.

15 Senator Kennedy.

16 The Chairman. Thank you, Mr. Chairman.

17 I, too want to join in welcoming the Minority Leader to
18 the committee this morning and express strong appreciation
19 for his statements and for his support. I, too, join with
20 the chairman in recognizing his longstanding and continuing
21 activities in support of advancing the interests of the
22 disabled.

23 I had the good opportunity to attend the 1985 Dole
24 Foundation meetings, where they awarded one of those to my
25 son. So I have followed both his longstanding commitment and

1 career in this area and recognize that with his good support
2 and help, we can advance the movement of this measure very
3 dramatically.

4 And clearly, as one who has also over a period of time
5 had a chance to talk with President Bush on this, I don't
6 question or doubt his strong commitment.

7 We want to work with the Administration. It is the
8 right way to go. It makes sense for the common cause which
9 brings us all together. I know that Senator Harkin, who is
10 the real leader in this area, wants to work very closely with
11 the Administration. We feel that it is important to go ahead
12 with these hearings now, in May. We want to indicate that as
13 they do their review, we welcome at any time--any time--
14 during this process, during the 60-day process, any sugges-
15 tions or recommendations, all of us do. We want to have,
16 certainly, the Administration's input.

17 As the chairman has pointed out, we can help advance
18 this, and because we have ideas here in this committee on
19 parental leave and day care and other items, if the Presi-
20 dent's wants to raise some of those as we spend time on this
21 one here, we will move it forward.

22 But in a serious way, we are grateful for your support.
23 I certainly believe the President is committed. I think it
24 is reasonable to permit review, but what we want to do as we
25 go through is ventilate what are the major areas. And I

1 would hope, Senator Dole, as we come to grips with some of
2 these major areas--scope, for example--as someone who has
3 been very involved in the civil rights movement--in Title II,
4 we dealt with public accommodations; we opened up theaters,
5 and we opened up restaurants. But we now recognize the
6 importance of opening to the general public. We have made
7 progress, but it is one thing if you open up theaters and
8 restaurants, but it if it closed for dry cleaners and
9 supermarkets, you are not really opening it up. So we just
10 take that concept of public accommodation and say we have
11 grown from the time that those civil rights were passed, and
12 now we know that "open to the public" extends to these other
13 common areas--and the enforcement provisions as well. We
14 have heard our good friend, Senator Hatch, who has spent time
15 in both of these areas, in civil rights as well as employment,
16 talk about scope.

17 If we just take a narrow concept of what scope or
18 enforcement provisions are, you may find some differences.
19 But the general educational and historical progress that we
20 made has, I think, been embraced in this, and has been done
21 in a way under Senator Harking to really address what I
22 consider to be the areas of greatest concern in terms of the
23 costs and other matters, that are frequently used in exag-
24 gerated ways to try and slow down the possibilities of this
25 legislation.

1 So, as someone who has spent time and recognizes the
2 progress that has been made in the civil rights area and also
3 has a keen understanding, I would hope that we don't get
4 caught in old labels, because we wrestle around with those
5 matters, and that we can really have the kind of breadth
6 which you have in terms of understanding this whole historic
7 progress. I am sure we will get a bill that is worthy of the
8 common efforts that so many have made.

9 I would finally just say that we are going to move ahead
10 with these hearings, but I do hope we will be able to get the
11 suggestions of the Administration and certainly have those
12 considered and have early action on this legislation.

13 Senator Dole. If I could, I might say to the chairman,
14 I have indicated to the Administration that as they--say they
15 get a report back from one of the agencies--they ought to
16 bring that up to the committee right away, and not wait for
17 everything to come in. They may have some very reasonable,
18 relevant objections, and they should be called to the
19 committee's attention. And I was advised that that would be
20 done.

21 Senator Jeffords. I certainly also want to thank
22 Senator Dole for being with us today, and I know I speak for
23 Senator Hatch and Senator Durenberger when I say we are
24 anxious to work with the Administration and yourself to
25 ensure that we can remove some of these difficult problems

1 that are now facing us with respect to remedies and scope and
2 transition, costs, and all of these things. And I would hope
3 we could do it reasonably quickly, especially those that seem
4 to emphasize negative rather than the positive aspects of the
5 bill.

6 I would just dedicate myself to working with you and the
7 others to see that we do that as quickly as possible.

8 Senator Jeffords. I told the White House I would be
9 happy to raise some of their concerns today, but they were
10 not in a position from Friday until today to come up with
11 anything that I thought would merit raising this morning.

12 So I appreciate what the chairman has said, Senator
13 Kennedy. I hope they can speed it up even more, but when it
14 is all done, they ought to be onboard.

15 Senator Harkin. Just in closing, I jotted down one
16 thing you said on "about to be discriminated against". We
17 went all through that aspect, and in the bill what we tried
18 to do, Senator Dole, was to try to take language that has
19 been time-tested, been through the courts, and people
20 understand what those words and phrases mean. That language
21 is directly from the Fair Housing Act that we passed here
22 last year--you were a leader in that--so we are just adopting
23 language that we have already acted upon here, so that
24 everyone knows what it is.

25 We tried very hard to avoid any kind of new language

1 that would open this up, as you said, about all the lawyers
2 out there. And I must admit to you that I am a little
3 concerned about some of the things I heard yesterday, that we
4 are finding a lot of things coming in that raise these issues
5 up that aren't really real issues, because we have settled
6 those issues before here in other legislation.

7 So I think the burden is on those who say that we ought
8 to have a different standard than what we had under the Fair
9 Housing Act or under Section 504 or under 1981--the burden is
10 on them to show why the disabled community should be different
11 than everybody else in terms of that language.

12 So again, I hope we can have an open-door policy, and we
13 will talk to one another about these things as they come up,
14 because I am a little concerned, just from a few things I have
15 heard--these little things keep popping up which we have
16 settled here before, going back 20-some years, that have been
17 settled language. And I am concerned that if we change it
18 now, then what it does is it makes the disabled different
19 than minorities and other people under our civil rights bills.

20 Senator Dole. Right. We have all been around long
21 enough to know that some people are just opposed to anything,
22 and they are going to raise every possible objection. And
23 the objections that are raised in this case, as in other
24 cases, ought to be constructive. I mean, there may be areas
25 where we can find a solution, but I think I can assure you

1 that the White House let us know what they have in mind. The
2 President is pretty much on record, and you just read a
3 pretty good quote--a little stronger than I thought, but it
4 is a quote, and I was there, so I guess I wasn't listening--
5 so I think anything they do will be constructive.

6 Senator Harkin. I think so, and I appreciate it.

7 Thank you very much, Senator Dole.

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NEW
VERSION

STATEMENT OF SENATOR BOB DOLE
TESTIMONY ON AMERICANS WITH DISABILITIES ACT
LABOR AND HUMAN RESOURCES COMMITTEE

MAY 9, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MEMBERS OF THE
DISABILITY COMMUNITY, I WOULD LIKE TO THANK MY COLLEAGUES FOR
THIS OPPORTUNITY TO PRESENT MY VIEWS ON EXPANDING THE CIVIL
RIGHTS OF OUR DISABLED CITIZENS. LIKE MY COLLEAGUES, I BELIEVE
WE NEED TO PROTECT PERSONS WITH DISABILITIES FROM DISCRIMINATION
IN EMPLOYMENT, EDUCATION, TRANSPORTATION AND IN ANY OTHER AREA
WHERE OUTRIGHT DISCRIMINATION EXISTS. MY CONCERN LIES IN HOW WE
GO ABOUT ACHIEVING THESE PROTECTIONS, BECAUSE THEIR
IMPLEMENTATION WILL AFFECT MORE THAN JUST THE DISABILITY
COMMUNITY. ~~ALTHOUGH SOME HERE IN THIS ROOM MAY NOT AGREE, WE
NEED TO REALIZE THAT THERE IS MORE THAN ONE SOLUTION TO THIS
PROBLEM AND THERE MAY BE MANY INCREMENTAL STAGES OF IMPROVEMENT
IN THE EXISTING SITUATION.~~

I DO BELIEVE THE AMERICANS WITH DISABILITIES ACT (ADA)
CORRECTLY PLACES ITS EMPHASIS ON THE EMPLOYMENT AREA. IN MY
VIEW, THIS STRENGTHENS THE CURRENT VERSION OF ADA OVER LAST
YEAR'S. WE MAY BE ABLE TO ARRIVE AT SOME SATISFACTORY AGREEMENT

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ON THIS PART OF THE BILL. BY THE YEAR 2000, ACCORDING TO THE LABOR DEPARTMENT (WHERE, INCIDENTALLY, I HAVE SOME CLOSE CONTACTS), WE WILL BE FACING A SERIOUS LABOR SHORTAGE. WE NEED TO MAKE CERTAIN THAT WE ARE FULLY UTILIZING THE POTENTIAL OF EVERY INDIVIDUAL WITHIN OUR SOCIETY.

THERE ARE FEW SITUATIONS WHICH ARE MORE DEVASTATING BOTH FOR INDIVIDUALS AND FOR OUR COUNTRY THAN UNWARRANTED DISCRIMINATION. DISCRIMINATION AGAINST PERSONS WITH DISABILITIES IS NOT ONLY A BLOW TO AN INDIVIDUAL'S BASIC DIGNITY, BUT ALSO NEGATIVELY IMPACTS ON SOCIETY BY LIMITING SUCH INDIVIDUAL'S UNIQUE CONTRIBUTIONS. FOR EXAMPLE, AS WAS SO ELOQUENTLY EXPRESSED AT THE HEARINGS YESTERDAY, PEOPLE WITH DISABILITIES WANT TO WORK THEY WANT TO PAY THEIR OWN WAY, TO CONTRIBUTE TO OUR SOCIETY. UNWARRANTED DISCRIMINATION DENIES THEM AND OUR COUNTRY THE BENEFITS OF THIS LABOR.

AS A MEMBER OF CONGRESS WHO HAS HAD PERSONAL EXPERIENCE WITH A DISABILITY, AND AS ONE WHO HAS CONSISTENTLY DEDICATED HIS PUBLIC CAREER TO ASSISTING PEOPLE WITH DISABILITIES, I STAND ON MY COMMITMENT TO BUILDING THE BEST AMERICA POSSIBLE FOR PERSONS WITH DISABILITIES. I AM STRONGLY IN FAVOR OF ENHANCING THE CIVIL RIGHTS OF PEOPLE WITH DISABILITIES -- I SUPPORT THE CONCEPT OF THE AMERICANS WITH DISABILITIES ACT, BUT I DO NOT SUPPORT ALL OF THE SPECIFIC LANGUAGE THAT I AM FAMILIAR WITH IN THE DRAFT ^{THAT I HAVE} ~~AMERICANS~~ ^{HAD A CHANCE TO REVIEW.} ~~WITH DISABILITIES ACT.~~ THE PRIMARY REASON FOR MY CAUTION IS THAT I'M REALLY NOT CERTAIN WHAT A LOT OF THE LANGUAGE IN THE CURRENT

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DRAFT DOES. SOME OF IT IS SO VAGUE THAT IT IS LIKELY TO CAUSE A FLOOD OF UNNECESSARY LITIGATION. WHILE I SUPPORT THE EMPLOYMENT GOALS OF THE AMERICANS WITH DISABILITIES ACT, I DO NOT THINK WE NEED TO CREATE ADDITIONAL EMPLOYMENT OPPORTUNITIES FOR LAWYERS. LATER IN MY TESTIMONY, I WILL CITE EXAMPLES ~~OF WHAT I AM~~ REFERRING TO HERE.

of some of these areas of ambiguity.

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LAST YEAR, I WAS A COSPONSOR OF THE AMERICANS WITH DISABILITIES ACT, INTRODUCED BY MY FORMER COLLEAGUE FROM CONNECTICUT, SENATOR WEICKER. HOWEVER, I HAD SOME SERIOUS RESERVATIONS ABOUT THE LEGISLATION AT THAT TIME AND EXPRESSED THESE CONCERNS. ALTHOUGH SOME OF MY CONCERNS HAVE SINCE BEEN ADDRESSED, NEW ISSUES HAVE ARISEN. I CONTINUE TO HAVE CONCERNS ABOUT THE IMPLICATIONS OF THE AMERICANS WITH DISABILITIES ACT IN TERMS OF HOW IT WOULD AFFECT THOSE IT SEEKS TO HELP AND THOSE WHO MUST IMPLEMENT THE CHANGES IT WOULD REQUIRE. IN OTHER WORDS, WE ARE DEALING WITH A SITUATION IN WHICH GREAT DEMANDS WILL BE MADE ON THE PRIVATE SECTOR -- COSTLY ACCOMMODATIONS THAT, IN MANY INSTANCES, WILL EXCEED THE PROTECTIONS UNDER CURRENT CIVIL RIGHTS LAWS WHICH ADDRESS DISCRIMINATION BASED ON RACE, GENDER, AND RELIGION.

I STRONGLY SUPPORT THE ELIMINATION OF BARRIERS FOR PEOPLE WITH DISABILITIES, BUT I ALSO CARE WHETHER WE GO ABOUT ACHIEVING THESE GOALS IN A CONSTRUCTIVE WAY -- ONE THAT WILL NOT CREATE AN UNREASONABLE BURDEN ON THE PRIVATE SECTOR, WHICH WILL BE REQUIRED TO IMPLEMENT THE PROVISIONS OF THE LEGISLATION. I FIRMLY BELIEVE

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THAT OUR SOCIETY WILL ONLY BE CHANGED WHEN PEOPLE FOCUS ON THE CONTRIBUTIONS PEOPLE WITH DISABILITIES CAN MAKE -- ON WHAT THEY ARE CAPABLE OF DOING -- NOT ON THEIR LIMITATIONS. MY RECORD IN THIS AREA IS CLEAR, AND IT IS ONE THAT HAS BEEN ESTABLISHED OVER DECADES. LET THERE BE NO QUESTION ABOUT MY SOLIDARITY WITH THE DISABILITY COMMUNITY. I KNOW THAT MANY OF MY FELLOW AMERICANS WITH DISABILITIES HAVE FOUGHT THEIR OWN BATTLES, FACED THEIR OWN CHALLENGES AND COME TO THEIR OWN PERSONAL UNDERSTANDING OF COURAGE.

YES, THE WORLD CAN BE IMPROVED, AND SO CAN THIS LEGISLATION. THE DRAFT AMERICANS WITH DISABILITIES ACT HAS SOME SERIOUS FLAWS. *But ones I believe can be addressed.* IN PURSUING A COURSE THAT WILL LEAD TO A BARRIER-FREE WORLD FOR PEOPLE WITH DISABILITIES, WE NEED TO ADDRESS THE CONCERNS OF ALL THOSE WHO WILL BE AFFECTED.

BEGINNING OF PROCESS

THE INTRODUCTION OF THIS BILL AND THESE HEARINGS MARK THE BEGINNING OF THE EXAMINATION OF A VERY SIGNIFICANT AND HIGHLY COMPLEX ISSUE: CIVIL RIGHTS PROTECTIONS FOR PERSONS WITH DISABILITIES. I BELIEVE THAT OUR EXTENSIVE, AND OFTEN UNWIELDY, LEGISLATIVE PROCESS WAS DESIGNED TO PERMIT THE FULL EXAMINATION OF ISSUES AS FAR-REACHING AND SIGNIFICANT AS THIS ONE IS, AND I AM PLEASED THAT THIS PROCESS IS FINALLY BEGINNING. I INTEND TO USE THIS PROCESS TO REVIEW THE ISSUES RAISED SO THAT WE ARE ASSURED THAT THE LEGISLATION WE ENACT IS LEGISLATION WHICH CAN BE

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IMPLEMENTED, WHICH IS RESPONSIBLE, AND RESPONSIVE TO THE CONCERNS OF ALL THOSE WHO WILL BE AFFECTED. IF THE PROCESS IS SUCCESSFUL, WE WILL HAVE LEGISLATION THAT WILL WORK TO REMOVE OBSTACLES AND PROMOTE OPPORTUNITIES.

What I hope to avoid is some of the problems we faced when Pub. 504 was first enacted and there was such a long delay in the implementation of the legislation - years in fact.

CONCERNS - COST

LET ME TALK NOW ABOUT SOME OF THE AREAS OF CONCERN ON WHICH I HOPE THE COMMITTEE WILL FOCUS. FIRST, THERE IS THE ISSUE OF COST. WE ARE ASKING FOR TROUBLE IF WE STICK OUR HEADS IN THE SAND AND PRETEND THAT THE COST OF IMPLEMENTING THIS LEGISLATION IS NOT AN AREA WHICH NEEDS CONSIDERABLE EXAMINATION. HOW CAN WE POSSIBLY EXPECT A SMALL BUSINESSMAN TO BE PREPARED TO ENDORSE THIS LEGISLATION AND SUCCESSFULLY COMPLY WITH IT, IF WE CAN'T TELL HIM HOW MUCH THIS LEGISLATION WILL COST HIM?

RAISING THE QUESTION OF COST DOES NOT MEAN I SUPPORT DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES. COST IS ^{ALONE} NOT A REASON FOR FAILING TO GO FORTH WITH COMPREHENSIVE CIVIL RIGHTS LEGISLATION FOR PEOPLE WITH DISABILITIES -- BUT IT IS A REASON TO SUBJECT IT TO STUDY AND REFINEMENT.

WE NEED TO TAKE A BALANCED APPROACH. THE RELATIVE COSTS AND BENEFITS ASSOCIATED WITH THE ADA NEED TO BE EVALUATED. MANY PROVISIONS HAVE COSTS, BUT THERE DOES NOT NOW EXIST AN ANALYTIC BASE FOR DETERMINING THE SIGNIFICANCE OF THOSE COSTS AND HOW THE COSTS COULD BE MOST EFFICIENTLY ALLOCATED. THEREFORE, I RECOMMEND THAT WE PROCEED WITH CAUTION.

IT IS AN APPROPRIATE ROLE FOR THE REGULATORY AGENCIES TO DEVELOP AN ANALYTICAL BASE THAT WILL HELP US EVALUATE THE IMPACT OF THIS LEGISLATION. THESE AGENCIES SHOULD WORK WITH THE PRIVATE SECTOR TO IMPLEMENT THE VARIOUS PROVISIONS. ^{could also be of help to us in this effort.}

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NEED TO HAVE THEM DEVELOP AN ANALYTICAL BASE.

APPROPRIATE ROLE FOR DEVELOPING THE ANALYTICAL BASE.

AND WORK WITH THE PRIVATE SECTOR TO

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FOR EXAMPLE, AT&T HAS ESTIMATED THAT ITS COSTS FOR COMPLYING WITH THE TELECOMMUNICATIONS PROVISIONS OF ADA WOULD BE \$200 MILLION PER YEAR. OPERATING BOTH LIFT-EQUIPPED BUSES AND PARATRANSIT COULD COST PUBLIC TRANSIT AUTHORITIES \$270 MILLION PER YEAR. ONE OF THE BIG QUESTIONS IS WHO SHOULD ULTIMATELY PAY THESE COSTS? AND, WHAT CAN BE DONE TO MITIGATE THE MOST EXTREME COSTS?

STEP TOWARD THE FUTURE

THE AMERICANS WITH DISABILITIES ACT IS AN IMPORTANT STEP TOWARD OUR VISION OF A FUTURE WHERE WHAT MATTERS IS NOT A PERSON'S DISABILITY, BUT HIS OR HER ABILITY TO PERFORM THE JOB, TO HAVE ACCESS TO PROGRAMS, TO PARTICIPATE FULLY IN OUR SOCIETY. THESE PROTECTIONS SHOULD NOT APPLY ONLY TO ENTITIES THAT RECEIVE FEDERAL FINANCIAL ASSISTANCE. HOWEVER, AS WITH ALL MAJOR INITIATIVES CAREFUL CONSIDERATION MUST BE GIVEN TO THE PRECISION WITH WHICH POLICY IS MADE AND STATUTORY LANGUAGE IS DRAFTED. WITH REGARD TO SECTION 504, THE SUPREME COURT OBSERVED THAT THERE IS A BALANCE BETWEEN STATUTORY RIGHTS OF THE HANDICAPPED TO BE INTEGRATED INTO SOCIETY AND THE LEGITIMATE INTERESTS OF FEDERAL GRANTEEES TO PRESERVE THE INTEGRITY OF THEIR PROGRAMS. (ALEXANDER V. CHOATE, 469 U.S. 287 (1985)). THIS SAME KIND OF BALANCING APPROACH IS WHAT IS NEEDED WHEN ADDRESSING THE DISCRIMINATION ISSUE FOR THE PRIVATE SECTOR.

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we
saying

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EMPLOYMENT PROVISIONS

THE AMERICANS WITH DISABILITIES ACT DOES ADDRESS SOME OF THESE CONCERNS. IT PROVIDES STRONG PROHIBITIONS AGAINST DISCRIMINATION AND EMPHASIZES THE CRITICAL AREA OF EMPLOYMENT. TO BALANCE THIS, THE BILL UTILIZES THE SECTION 504 CONCEPTS OF "UNDUE BURDEN" AND "OTHERWISE QUALIFIED." HOWEVER, THE ENACTMENT OF LEGISLATION SHOULD INCLUDE CAREFUL CONSIDERATION OF THE FACT THAT IT WOULD COVER NOT JUST RECIPIENTS OF FEDERAL FUNDS LIKE SECTION 504, BUT ALSO MANY SMALL BUSINESSES. THE ADA, LIKE TITLE VII, WOULD LIMIT ITS COVERAGE TO EMPLOYERS EMPLOYING 15 OR MORE PERSONS. HOWEVER, UNLIKE TITLE VII, THE ADA CONTAINS MORE COMPLICATED CONCEPTS, LIKE THAT OF REASONABLE ACCOMMODATION. THE ADA MAY OFTEN REQUIRE THAT AN EMPLOYER OR OTHER COVERED ENTITY TAKE SOME ACTION -- ELIMINATING ARCHITECTURAL AND COMMUNICATION BARRIERS FOR EXAMPLE. THIS TYPE OF COSTLY ACTION MAY BE NECESSARY TO ELIMINATE DISCRIMINATION, BUT IT IS MORE COMPLEX THAN THE SITUATION POSED BY DISCRIMINATION AGAINST OTHER GROUPS, BASED ON RACE, GENDER OR RELIGION.

I BELIEVE CONSIDERATION SHOULD BE GIVEN TO A MORE GRADUAL PHASE-IN OF THIS REQUIREMENT. PERHAPS COVERAGE COULD BE EXTENDED TO EMPLOYERS EMPLOYING 50 OR MORE EMPLOYEES FOR THE FIRST THREE YEARS OF THE ACT, LOWERING COVERAGE AS THE PRIVATE SECTOR BECOMES MORE ACCUSTOMED TO THE INTRICACIES OF REASONABLE ACCOMMODATION.

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TRANSPORTATION ISSUES

TRANSPORTATION ISSUES ARE ANOTHER AREA WHERE BALANCE BETWEEN
COMPETING INTERESTS IS CRITICAL. ALTHOUGH THE BILL WOULD REQUIRE
NO RETROFITTING, IT DOES REQUIRE THAT ALL STATIONS IN INTERCITY
RAIL SYSTEMS BE MADE READILY ACCESSIBLE NOT LATER THAN 3 YEARS
AFTER ENACTMENT, WITH A POSSIBLE EXTENSION OF UP TO 20 YEARS.
THIS MAY PROVIDE SOME FLEXIBILITY BUT ALSO RAISES THE QUESTION OF
WHETHER THIS IS SUFFICIENT FOR WHAT MAY BE A MAMMOTH AND
EXTREMELY EXPENSIVE ENDEAVOR.

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REMEDIES

ONE OF THE MOST CRITICAL ASPECTS OF ANY NONDISCRIMINATION
LEGISLATION IS THE REMEDIES IT PROVIDES TO ENFORCE RIGHTS. THE
AMERICANS WITH DISABILITIES ACT NEEDS STRONG ENFORCEMENT
PROVISIONS. HOWEVER, IT ALSO NEEDS PROVISIONS THAT ARE
UNAMBIGUOUS AND TAKE INTO CONSIDERATION BOTH THE RIGHTS OF THE
INDIVIDUALS WITH DISABILITIES AND THE RIGHTS OF THE OTHER PARTY
WHO WOULD BE IMPACTED. THE BILL BEFORE US TODAY CONTAINS
DIFFERING ENFORCEMENT MECHANISMS FOR VARIOUS TYPES OF
DISCRIMINATION.

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WITH REGARD TO EMPLOYMENT, IT REFERENCES TITLE VII OF THE
CIVIL RIGHTS ACT OF 1964 AND SECTION 101. IN THE
TELECOMMUNICATIONS SECTION, THE REMEDIES IN THE FAIR HOUSING ACT

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AND THE COMMUNICATION ACT OF 1934 ARE INCORPORATED. WITH REGARD TO PUBLIC ENTITIES, THE ACT REFERENCES THE REMEDIES APPLICABLE TO SECTION 505. THIS CREATES CONFUSION -- NOT CLARITY.

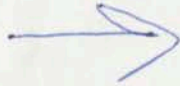
MORE IMPORTANTLY, THE REMEDIES PROVIDE FOR ACTIONS BY AN INDIVIDUAL WHO BELIEVES HE OR SHE IS ABOUT TO BE DISCRIMINATED AGAINST. THIS UNPRECEDENTED LANGUAGE COULD OPEN THE DOOR TO FRIVOLOUS SUITS WHICH DO LITTLE TO ADVANCE OUR GOALS OF PROHIBITING DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES.

ACHIEVING THE GOAL OF PROTECTING AGAINST DISCRIMINATION WILL REQUIRE CAREFUL ANALYSIS AND COMPARISON OF THIS PROPOSAL WITH EXISTING CIVIL RIGHTS LAWS. THESE STATUTES HAVE DIFFERENT COMPLIANCE STANDARDS AND DIFFERENT REMEDIES. PERHAPS A LEAD ENFORCEMENT AGENCY COULD BE DESIGNATED TO ENSURE ALL ANTI-DISCRIMINATION LAWS ARE ENFORCED IN A UNIFORM MANNER.

CONCLUDING REMARKS

I APPLAUD THE WORK DONE ON THE AMERICANS WITH DISABILITIES ACT, BUT WE ALSO HAVE A LOT OF WORK AHEAD. ITS GOALS OF NONDISCRIMINATION AND INTEGRATION CAN ONLY HELP STRENGTHEN OUR NATION. HOWEVER, THE IMPLEMENTATION OF THESE GOALS MUST BE CAREFULLY CRAFTED. AS THE SUPREME COURT HAS STATED WITH REGARD TO SECTION 504, THERE MUST BE A BALANCING OF THE RIGHTS OF THE INDIVIDUAL WITHE DISABILITIES AND THE RIGHTS OF THE COVERED ENTITIES.

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REPUBLICANS AND DEMOCRATS ALIKE SUPPORT THE CONCEPT OF
EXPANDING CIVIL RIGHTS FOR PEOPLE WITH DISABILITIES -- THIS IS A
BIPARTISAN ISSUE. WE MAY DIFFER IN HOW WE SET ABOUT TRYING TO
ACHIEVE THE GOAL OF ELIMINATING DISCRIMINATION AGAINST PEOPLE
WITH DISABILITIES, BUT THERE IS PLENTY OF ROOM FOR ~~IMPROVEMENT AND~~
COMPROMISE.

*I am convinced that we can reach
a bipartisan consensus on
how to achieve this goal.*

1 STATEMENT OF THE HONORABLE ROBERT DOLE, UNITED
2 STATES SENATOR, STATE OF KANSAS, AND MINORITY
3 LEADER, UNITED STATES SENATE. May 10, 1989

4 **Senator Dole.** Well, first let me thank you, Mr.

5 Chairman, and commend you for your continuing interest, not

6 just this year but over the years, ^{I also want to thank} and Senator Kennedy, and

7 Jim Jeffords on the House side. ^{and other members of the panel}

8 Let me also thank other members of the panel. I won't

9 take ^{more than} but a few moments, but I did want to be here, and I did

10 want to make a brief statement. I want to thank Mo West on

11 my staff and others who have been working on this legislation.

12 I don't think there is any question about what we want

13 to do. There is no question that we need to end discrimina-

14 tion ^{against people} and need to protect persons with disabilities and

15 protect them from discrimination in employment, education,

16 transportation, and any other area where ^{they experienced} we have outright

17 discrimination.

18 I guess my concern is the same as everybody here--how do

19 we do it; how do we achieve these results and protect those

20 we wish to protect in the ^{disability} disabled community.

21 I think the ADA bill puts the correct emphasis on

22 employment--that is what it is all about if we are going to

23 get people--^{employed} I talk with the Secretary of Labor from time to

24 time--not as much as Senator Kennedy does, because she is

25 before the committee most of the time--but there is a lot of

1 emphasis on Workforce 2000 and whether or not we are going to
2 have ^{the} people ^{in order to} be able to meet the challenges, and certainly,
3 the disabled man or woman ^{People with disabilities are (fall into)} is in that group. So employment is
4 the right place to put the emphasis.

5 In my view, this is the strength of this year's version
6 of ADA as compared to last year's, and I think we are going
7 to be able to arrive at some agreement on this bill, maybe
8 with modifications. Certainly, this is one area that is
9 totally nonpartisan or bipartisan, or call it what you will.

10 Now, we need to look at how can we achieve that and how
11 can we achieve that ^{it} with the Administration. I think if you
12 ask most people in the disability community--and I don't know
13 their political leaning, but that is not significant--I think
14 most would say let's try to get a bipartisan bill. And I
15 would say to this group it is a bit different than it was a
16 year ago. ^{? take out}

17 I think this Administration is more sensitive to the
18 needs of this kind of legislation, and George Bush has said--
19 I don't think he has endorsed this particular bill--but he
20 has said the concept, he agrees with. ^{that he supports the concept of the bill}

21 We had a meeting in my office on Friday with Boyden
22 Gray, the President's Counsel, who has had a long-time
23 interest in this area--^{eliminate} it is genuine; it is not something he
24 thought about here just recently--he has a long-time interest.

^{Mr. Portier}
25 We met with Chief of Staff John Sununu, and others in the

1 White House, Mr. Porter and others, to see what we could do
2 to cooperate with the subcommittee chairman and with Senator
3 Kennedy, Senator Durenberger, Senator Jeffords, Senator
4 Hatch, ^{and} members of the House, most of whom are supporting this
5 bill. I know the Administration wants--^{to work with us.} in fact, I raised it
6 with the President last night in a phone call; we talked some
7 about this legislation--he wants to try to work with the
8 Congress.

9 Now, let's face it--we've got a new Administration; some
10 people aren't in place yet. We were told it would take 90
11 days--^{then later revised it to} and they later said maybe 60 days--to go through all
12 these ^{the} different agencies and analyze ^{the} this bill--which I think
13 ~~it~~ should be analyzed; nobody objects to that. We ^{do} want to do
14 it as quickly as we can. ~~And then,~~ I believe the Administra-
15 tion--and I think Mr. Sununu passed on to Senator Kennedy--I
16 hope he did, ^{in any event} in any event--and others, that ^{the Administration} they are going to
17 be in a position to offer some suggestions or modifications or
18 whatever in order to get this bill completed. So it is the
19 hope of the Administration--and ^{the} as Republican Leader, I have ^{that we}
20 ~~certainly some responsibility to the Administration--that~~
21 ^{I welcome} this is the opening round of hearings--and I have read some
22 of the testimony, I have read some of the concerns that have
23 been raised about vagueness and cost and other areas of the
24 bill that probably should be addressed--but I think there is
no question about it, when all is said and done, that

1 hopefully this year there will be a bipartisan piece of
2 legislation passed by Congress, signed by the President, and
3 embraced by, hopefully, the business community and certainly
4 by the disability community.

5 Now, I have been implored by some of my friends in the
6 disability community that I should just sign onto this bill,
7 and particularly since I am disabled, that I shouldn't
8 question it. But I don't really believe that would be
9 appropriate or that ^{even wise} it would be wise. I certainly want to be
10 helpful, and ^{to} I do want to help this committee--and I do know
11 who has been leading the efforts in this committee--and I am
12 not trying to promote a Dole bill, or anything of that kind.
13 I am just trying to make certain that ^{the final product} when we have one, it is
14 one that we can stand up and defend.

15 So I favor the concept but I am somewhat cautious
16 because I think there is some question about what some of the
17 language does ^{about this} and I have talked with my staff, and we have a
18 couple of people with me today if somebody has questions on
19 some of the vagueness in some of the language. I read what
20 the Chamber of Commerce had to say about some of the language.
21 And ^{a W} what we are trying to create ^{here} are jobs for the unemployed,
22 not ^{for} lawyers. They have got plenty of work to do around this
23 town, in any event.

24 I do support the employment goals, and I would hope that
25 we can resolve some of these areas that might otherwise lead

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1 to litigation and long delay for some ⁱⁿ receiving the benefits.

2 I strongly support the elimination of barriers for
3 people with disabilities. In fact, years ago in the Finance
4 Committee with then Senator Mondale, the two of us offered
5 the first tax credit for removal of architectural barriers,
6 and that has been extended since that time.

7 But I also care whether we go about achieving these
8 goals in a constructive way, one that will not create an
9 unreasonable burden on the private sector which will be
10 required to implement the provisions of ^{this} the legislation.

11 I firmly believe that our society will only be changed
12 when people focus on the contributions that people with
13 disabilities can make, on what they are capable of doing.

14 I have ^{started a} ~~a~~ little foundation for the ^{employment of people with} disabled, and we had
15 ^{a fundraiser} ~~a~~ meeting last week--in fact, we raised a little money last
16 ^{and} ~~week~~, and we gave an award to Marriott Corporation. I am
17 sure everybody here knows that they employ 6,000 ^{people} employees
18 with disabilities, ^{and that's} ~~Now, that is~~ a record to be proud of. So
19 I am very proud of the Marriott Corporation and others in the
20 private sector, ^{for} reaching out. As Bill Marriott will tell
21 you, these are in many cases their best employees. They are
22 there on time, they do their work, and they are good, solid
23 employees. And if there is discrimination, he would be one
24 person to stand up and say that somebody is making a big

25 mistake in the private sector because they are discriminating

1 against the people who will produce. I think that is very
2 helpful.

3 Well, certainly, this bill before the committee is the
4 beginning of the process, and I think it is a very significant
5 contribution. This is a very complex issue, and I believe
6 *will be hashed out during* that the legislative process will work. I believe I *the complexities* can say
7 for President Bush *in saying* that he is committed to the concept and
8 that he plans to work with us until we get a bill this year
9 that we can all support. I think we can use this process to
10 review the issues raised and to make sure we are responsive
11 to the concerns of all those who will be affected.

12 What I hope to avoid is some of the problems we faced
13 when Section 504 was first enacted, and there was such a long
14 delay in implementation of the legislation; in fact, it took
15 years.

16 So I would just ask that my entire statement be made a
17 part of the record. I raise some concerns about cost. I know
18 this is going to apply to a lot of communities and a lot of
19 employers with 15 or more employees. I don't suggest that
20 cost should always determine whether or not we are going to
21 benefit someone with a disability, but I think it is fair to
22 say there are going to be some cases *in which* we are not going to be
23 able to reach, and some people with disabilities are probably
24 not going to have the benefits of this provision or any other
25 provision. It is hard to reach everyone, and sometimes I

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1 guess personal interest has to give way to the larger public
2 interest and the national interest as to whether or not we
3 can implement a bill at all in the first place.

4 So there is the question of the value of cost benefits,
5 and they are being evaluated; I am certain staff and others
6 have done that. You are aware of the AT&T testimony about
7 what it would cost, and we are aware of others who say that
8 both lift-equipped buses and paratransit could cost public
9 transit authorities \$270 million per year. I guess we need
10 to ask who is going to pay for the costs, and what can be
11 done to mitigate the costs.

12 Certainly, this bill as it ^{will finally} pass, will be a
13 big step toward the future. So I would just suggest that the
14 employment provisions--I think we have questions on some of
15 the provisions--it ^{while} does provide ^{ing} strong prohibitions against
16 discrimination; ^{for people with disabilities in order to balance} it does emphasize ^{the} a critical area of employ-
17 ment, and to balance this, the bill utilizes the Section 504
18 concepts of "undue burden" and "otherwise qualified".
19 However, the enactment of legislation should include careful
20 consideration of the fact that it would cover not just
21 recipients of Federal funds like Section 504, but also many
22 small businesses.

23 When we start talking about this group and civil rights
24 protection, there is going to be a cost incurred that may not
25 have been true in other areas of civil rights and nondis-

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1 crimination, because we are going to be having an impact on
2 business, and someone is going to have to pay the cost.

3 The ADA may often require that an employer or other
4 covered entity take some action, eliminating architectural
5 and communication barriers, for example; this is costly, and
6 I assume there is some provision--I know there is some
7 provision that if it is a very high cost, it can be postponed
8 over a period of 20 years.

9 I believe consideration should be given to a more
10 gradual phase-in of some of these requirements. Perhaps
11 coverage could be extended to employers employing 50 or more
12 employees for the first three years of the Act, and lowering
13 coverage as the private sector becomes more accustomed to the
14 intricacies of "reasonable accommodation".

15 Transportation issues are another area where the balance
16 among competing interests is critical. And although the bill
17 would require no retrofitting, it does require that all
18 stations in an inner-city rail system be made readily
19 accessible not later than three years, and there could be an
20 extension, as I said, of up to 20 years for very high cost.

21 One of the most critical aspects of any nondiscrimination
22 legislation is the remedies it provides to enforce the
23 rights. If you don't have a remedy, it is not going to work.
24 The Americans with Disabilities Act needs strong enforcement
provisions. However, it also needs provisions that are

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1 unambiguous and take into consideration both the rights of
2 the individuals with disabilities and the rights of the other
3 parties who would be impacted. And there are some differing
4 enforcement mechanisms for various types of discrimination in
5 the bill. With regard to employment, it references Title VII
6 of the Civil Rights Act of 1964 and Section 1981. In the
7 telecommunications section, the remedies in the Fair Housing
8 Act and the Communication Act of 1934 are incorporated. With
9 regard to public entities, the Act references the remedies
10 that apply under Section 505, and this does create some
11 confusion and not enough clarity; and more importantly, the
12 remedies provide for actions by an individual who believes he
13 or she is about to be discriminated against. Now, I am not
14 certain how you would ever come to grips with that. It is
15 unprecedented language, and it could open the door to a lot
16 of frivolous lawsuits which would not do much to advance the
17 goals of those with disabilities.

18 So I would just conclude by applauding the work done on
19 this Act and applauding the groups who have been working in
20 the trenches for years. I know that each year, they think
21 this year is the year it will happen. I think this is the
22 year it will happen. With the leadership we have on this
23 committee, I think we can reach the goals. And certainly, I
24 want to be a positive force for moving ahead. I am not going
25 to be an obstructionist, but I would say, as I said very

1 candidly to Senator Harkin, that I do believe that with
2 President Bush on record, that he deserves an opportunity to
3 produce. And if I found anybody in the White House who I
4 thought might be dragging their feet, I would say so. I have
5 not found that. I think it is just a question of sort of ^{them} of
6 getting their act together and making a determination as to
7 what they can support. We may not agree with their final
8 product; they may have to compromise more.

9 So I will just say I hope that I can be helpful to the
10 committee in working with the Administration and making
11 certain that we end up with legislation that will do precisely
12 what Senator Harkin, Senator Kennedy, and Senator Jeffords
13 have in mind, and that is to help those with disabilities
14 gain employment.

15 I thank you very much.

16 [Prepared statement of Senator Dole follows:]

17 / SUBCOMMITTEE INSERT

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1 Senator Harkin. Thank you very much, Senator Dole, for
2 those remarks and for your careful analysis of the bill. We
3 will look at all the things that you have suggested, and
4 we'll take those into consideration.

5 I know, as I have said to you personally, and I have
6 said openly in this subcommittee, that I don't think anyone
7 can doubt your commitment to mainstreaming the disabled in
8 our society. I am well aware of the work of the Dole
9 Foundation and the fine work it does in terms of promoting
10 employment, and that is really what we are talking about
11 here, as you said. Mainstreaming means being able to work,
12 being able to have access to all the things that any other
13 person has access to in our society.

14 We will have discussions about cost, and I may want to
15 bring up--I don't know what your time is, but there are a lot
16 of things that we could discuss on the cost element of it. I
17 think there are a lot of red herrings out there in terms of
18 cost, and we know that. In many cases, the cost is minimal
19 to make accommodations. And as was stated so many times in
20 our hearing yesterday, a lot of times, with just a little
21 ingenuity, they can come up with devices or with things that
22 just really don't cost anything.

23 I have a whole chart, which I don't have with me here
24 today, but we had a receptionist who was legally blind and
was about to lose her job because she was running a switch-

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1 board, and she couldn't tell which lines were on. They got
2 her a little light probe which allowed her to determine which
3 lines were used and which were not. It cost \$45, just so she
4 could keep her job.

5 A salesperson with cerebral palsy was provided a headset
6 for a phone that allowed him to write while talking--\$49.94.
7 I have just got reams of examples like that.

8 So I think people think we are going to have to make all
9 these big changes, and that is just not so.

10 Your comments about the Marriott Corporation and what
11 they found with their workers really strikes home to me. My
12 brother, who is deaf, I remember once when he was hired sort
13 of on a "well, we'll see how you work out" basis, worked at
14 this business for ten years--and you know what winters are
15 like in Iowa--he worked there for ten years, and he was not
16 late once and did not miss work one day in ten years.

17 So when you say that these people are indeed some of the
18 best employees who can be hired, you are absolutely right. I
19 have seen it first-hand.

20 Again, we do want to make a bipartisan bill out of it.
21 There are a lot of things that we will wrangle on on a
22 partisan basis, as it should be--that is the business we are
23 in here is to get the country running, to have open and free
24 debate. But this is one area in which there should not be
25 partisan wrangling; there just shouldn't be any partisan

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1 wrangling. We can fine-tune it, we can make some corrections
2 in the bill as we go along to address certain problems that
3 are out there. That is well and good. But I am hopeful that
4 with your support and with the support of the Administration,
5 it will be bipartisan.

6 Let me just quote what President-elect Bush said at a
7 pre-inaugural event on January 18th. This is a direct quote
8 from the President of the United States: "I said during the
9 campaign that disabled people have been excluded for far too
10 long from the mainstream of American life, and I still
11 believe that this is an accurate statement. And I want to do
12 what I can, working with those of you in this room who care,
13 too, I want to do what I can to correct all of that. One
14 step that I have discussed will be action on the Americans
15 with Disabilities Act in order, in simple fairness, to
16 provide the disabled with the same rights afforded other
17 minorities."

18 Senator Dole. I think I attended that meeting; was that
19 HHS?

20 Senator Harkin. Yes, January 18th. And again, that was
21 before we had really worked over the ADA bill; it was the
22 bill we had last year that Senator Weicker sponsored and that
23 I was a cosponsor of, which had a lot of provisions in it
24 that, again, we worked on starting in December, meeting with
25 Senator Hatch, going into January, February, March, to make

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1 meaningful changes.

2 The original ADA bill specified that reasonable accom-
3 modations had to be provided unless it would threaten the
4 existence of the business--the so-called "bankruptcy provis-
5 ion". Well, that has been changed. We changed it to the
6 "undue hardship" of Section 504.

7 The original ADA required that architectural barriers be
8 removed in two to five years unless it would threaten the
9 existence of the business. We just changed it to the more
10 modest requirement of requiring changes that are "readily
11 achievable" rather than whether or not it would bankrupt the
12 business.

13 We provided that buses had to be retrofitted. That has
14 been taken out--just new buses. And we provided other
15 alternatives in there aside from the new buses; no retrofit-
16 ting is required at all.

17 So again, if you look at this bill that we have now, it
18 is a much, much more modest bill than we had last year, and I
19 think goes a long way toward addressing concerns that you had
20 expressed even last year on the original bill. And we really
21 do want to make all these accommodations. There may be some
22 fine points in the bill that we may have to look at--and we
23 will--but it was my concern--as I said, as I told you
24 personally, we had worked on this, and as far as I know,
25 everybody was invited to the meetings, had full access, we

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1 coordinated with them, with Senator Hatch's office, with
2 yours, and with the Administration. And I felt it necessary
3 that we started moving, otherwise, I know what the calendar
4 is like around this place, and with August gone and with the
5 other appropriations bills and things coming down, I felt it
6 necessary to start moving on the bill--

7 Senator Dole. I think it is wise to move. I think
8 somehow, there was apparently a misunderstanding--and I don't
9 know where it originated--that the President was going to
10 maybe endorse the bill. (And like everything else, in not
11 quite four months, they don't have all these--whether it is
12 child care or parental leave, or whatever the bill might be--
13 they are functioning, but they don't have every Administration
14 proposal put together. ^{needs work} And I must say, I don't think they
15 have focused a great deal on this particular area.

16 Roger Porter is trying to put together a crime package,
17 child care, and several other things, and it is a very
18 difficult thing to do. But I think by starting the hearings,
19 you have certainly gotten their attention, and they are
20 focusing on it. And they were told last Friday to go back to
21 the agencies, Transportation, whatever department, and speed
22 up the process, that they weren't going to wait 90 days.

23 So I don't know what the timetable is of the committee,
24 but I would hope--I know 60 days is a long time, but I think
25 maybe in this case, patience might be very beneficial. I

— 1 think George Bush ^{meant} said what he said, and he is going to keep
2 his commitment. And I hope that it means we are going to
3 have a good bill.

4 Senator Harkin. And I talked to him last week on
5 Thursday personally, and again--and in fact, I have always
6 said that he did not specifically endorse the bill, but he
7 has always support the concept of the bill, and what we are
8 trying to do--obviously, I know he is busy and does not know
9 every little thing in it; he is not involved in it like we
10 are, in the drafting of it and so on, and I know that they
11 have to review it. I am just hopeful that, with your help,
12 we can keep them focused on it so we don't end up spilling
13 over into next year, with all the things that may come up
14 next year.

15 Senator Kennedy.

16 The Chairman. Thank you, Mr. Chairman.

17 I, too want to join in welcoming the Minority Leader to
18 the committee this morning and express strong appreciation
19 for his statements and for his support. I, too, join with
20 the chairman in recognizing his longstanding and continuing
21 activities in support of advancing the interests of the
22 disabled.

23 I had the good opportunity to attend the 1985 Dole
— 24 Foundation meetings, where they awarded one of those to my
25 son. So I have followed both his longstanding commitment and

1 career in this area and recognize that with his good support
2 and help, we can advance the movement of this measure very
3 dramatically.

4 And clearly, as one who has also over a period of time
5 had a chance to talk with President Bush on this, I don't
6 question or doubt his strong commitment.

7 We want to work with the Administration. It is the
8 right way to go. It makes sense for the common cause which
9 brings us all together. I know that Senator Harkin, who is
10 the real leader in this area, wants to work very closely with
11 the Administration. We feel that it is important to go ahead
12 with these hearings now, in May. We want to indicate that as
13 they do their review, we welcome at any time--any time--
14 during this process, during the 60-day process, any sugges-
15 tions or recommendations, all of us do. We want to have,
16 certainly, the Administration's input.

17 As the chairman has pointed out, we can help advance
18 this, and because we have ideas here in this committee on
19 parental leave and day care and other items, if the Presi-
20 dent's wants to raise some of those as we spend time on this
21 one here, we will move it forward.

22 But in a serious way, we are grateful for your support.
23 I certainly believe the President is committed. I think it
24 is reasonable to permit review, but what we want to do as we
25 go through is ventilate what are the major areas. And I

1 would hope, Senator Dole, as we come to grips with some of
2 these major areas--scope, for example--as someone who has
3 been very involved in the civil rights movement--in Title II,
4 we dealt with public accommodations; we opened up theaters,
5 and we opened up restaurants. But we now recognize the
6 importance of opening to the general public. We have made
7 progress, but it is one thing if you open up theaters and
8 restaurants, but it if it closed for dry cleaners and
9 supermarkets, you are not really opening it up. So we just
10 take that concept of public accommodation and say we have
11 grown from the time that those civil rights were passed, and
12 now we know that "open to the public" extends to these other
13 common areas--and the enforcement provisions as well. We
14 have heard our good friend, Senator Hatch, who has spent time
15 in both of these areas, in civil rights as well as employment,
16 talk about scope.

17 If we just take a narrow concept of what scope or
18 enforcement provisions are, you may find some differences.
19 But the general educational and historical progress that we
20 made has, I think, been embraced in this, and has been done
21 in a way under Senator Harkin to really address what I
22 consider to be the areas of greatest concern in terms of the
23 costs and other matters, that are frequently used in exag-
24 gerated ways to try and slow down the possibilities of this
25 legislation.

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1 So, as someone who has spent time and recognizes the
2 progress that has been made in the civil rights area and also
3 has a keen understanding, I would hope that we don't get
4 caught in old labels, because we wrestle around with those
5 matters, and that we can really have the kind of breadth
6 which you have in terms of understanding this whole historic
7 progress. I am sure we will get a bill that is worthy of the
8 common efforts that so many have made.

9 I would finally just say that we are going to move ahead
10 with these hearings, but I do hope we will be able to get the
11 suggestions of the Administration and certainly have those
12 considered and have early action on this legislation.

13 Senator Dole. If I could, I might say to the chairman,
14 I have indicated to the Administration that ^{as soon as they} as they--say they
15 get a report back from one of the agencies--they ought to
16 bring that up to the committee right away, and not wait for
17 everything to come in. They may have some very reasonable,
18 relevant objections, ^{which} and they should be called to the
19 committee's attention. And I was advised that that would be
20 done.

21 Senator Jeffords. I certainly also want to thank
22 Senator Dole for being with us today, and I know I speak for
23 Senator Hatch and Senator Durenberger when I say we are
24 anxious to work with the Administration and yourself to
25 ensure that we can remove some of these difficult problems

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— 1 that are now facing us with respect to remedies and scope and
2 transition, costs, and all of these things. And I would hope
3 we could do it reasonably quickly, especially those that seem
4 to emphasize negative rather than the positive aspects of the
5 bill.

6 I would just dedicate myself to working with you and the
7 others to see that we do that as quickly as possible.

8 Senator Jeffords. I told the White House I would be
9 happy to raise some of their concerns today, but they were
10 not in a position from Friday until today to come up with
11 anything that I thought would merit raising this morning.

12 So I appreciate what the chairman has said, Senator
13 Kennedy. I hope they can speed it up even more, but when it
14 is all done, they ought to be onboard.

15 Senator Harkin. Just in closing, I jotted down one
16 thing you said on "about to be discriminated against". We
17 went all through that aspect, and in the bill what we tried
18 to do, Senator Dole, was to try to take language that has
19 been time-tested, been through the courts, and people
20 understand what those words and phrases mean. That language
21 is directly from the Fair Housing Act that we passed here
22 last year--you were a leader in that--so we are just adopting
23 language that we have already acted upon here, so that
— 24 everyone knows what it is.

We tried very hard to avoid any kind of new language

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1 that would open this up, as you said, about all the lawyers
2 out there. And I must admit to you that I am a little
3 concerned about some of the things I heard yesterday, that we
4 are finding a lot of things coming in that raise these issues
5 up that aren't really real issues, because we have settled
6 those issues before here in other legislation.

7 So I think the burden is on those who say that we ought
8 to have a different standard than what we had under the Fair
9 Housing Act or under Section 504 or under 1981--the burden is
10 on them to show why the disabled community should be different
11 than everybody else in terms of that language.

12 So again, I hope we can have an open-door policy, and we
13 will talk to one another about these things as they come up,
14 because I am a little concerned, just from a few things I have
15 heard--these little things keep popping up which we have
16 settled here before, going back 20-some years, that have been
17 settled language. And I am concerned that if we change it
18 now, then what it does is it makes the disabled different
19 than minorities and other people under our civil rights bills.

20 Senator Dole. Right. We have all been around long
21 enough to know that some people are just opposed to anything,
22 and they are going to raise every possible objection. And
23 the objections that are raised in this case, as in other
24 cases, ought to be constructive. I mean, there may be areas
25 where we can find a solution, but I think I can assure you

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1 that the White House ^{will} let us know what they have in mind. The
2 President is pretty much on record, and you just read a
3 pretty good quote--a little stronger than I thought, but it
4 is a quote, and I was there, so I guess I wasn't listening--

5 ^{and} so I think anything they do will be constructive.

6 Senator Harkin. I think so, and I appreciate it.

7 Thank you very much, Senator Dole.



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Senate

Mr. DOLE. Mr. President, somewhat surprisingly, I find myself in agreement with an editorial point in today's Washington Post. It is indeed unfortunate, as the Post says, that S. 7, the Vocational Rehabilitation Act, has been made the focus of the conflict between Congress and the President over the Federal Government's budget and spending priorities.

CRUCIAL UNDERTAKING

Restoration of handicapped Americans to meaningful, productive lives is one of the most crucial, important, and noble undertakings of our society. Our Nation's human potential is its most valuable national resource, and any suppression of this potential or the erection of barriers to its fullest expression inflict great damage on the individuals concerned and on our entire society. It makes no difference whether these impediments to full human development can be traced to racial prejudice, religious persecution, economic oppression or handicaps of the mind and body. The effects are the same regardless of the cause: personal anguish, frustration and despair and a generally diminished social and economic structure. And, likewise, elimination of any of these impediments produces enormous benefits: personal pride, self-respect, and independence—as well as a vast enrichment of the overall quality of American life.

UNFORTUNATE CONVERSION

It is clear that programs providing assistance for the handicapped have one of the broadest bases of support of any subject considered in Congress and Government. Over the years legislative and

administrative initiatives have established a commendable record of progress and accomplishment on behalf of handicapped Americans.

Thus, I agree with the Post's assessment of the unfortunate conversion of the Vocational Rehabilitation Act—with its broad, general support, but legitimate differences of opinion as to specific approaches—into the centerpiece of a major controversy on a fundamentally different issue.

REAL ISSUE

That is not to say that this other issue is unimportant. On the contrary, it is one of the most important and basic questions of the day. And let the issue be clearly understood. We are not talking about aiding the handicapped today. We are not debating the strength of depth of commitment to the handicapped by any Senator or by the President or the Congress. We are talking about prudent Government spending and about the types of actions which will lead to or avoid increasing the tax burdens of the American people.

CYNICAL MANEUVER

And I believe the action of transforming the Vocational Rehabilitation Act into the battleground upon which the first round of the budget issue dispute will be fought is a cynical maneuver. Let us be candid and recognize that the Vocational Rehabilitation Act did not just "happen" to be the first test of the President's determination to hold the line on spending and the Congress' standard procedure of willy-nilly spending with no overall idea of the total picture. Today with this vote on overriding the veto, we are seeing the end result of a well-orchestrated plan.

The actual bill, however, is really a Trojan horse containing the seeds of a runaway congressional spending spree to the tune of a \$10 billion increase in the fiscal year 1974 budget and a \$50 billion total increase over the next 3 years. This is only the first of more than a dozen bills which will determine ability of Government to manage spending, avoid increasing taxes and hold the lid on inflation. So let the real issue be recognized, and let us acknowledge that the President, who neither set the timing for this bill's consideration or its impact on his budgetary policies, did not set this shell game in motion.

RECORD OF SUPPORT FOR REHABILITATION

Of course, the issue of vocational rehabilitation would be an entirely different matter if today were facing a question of Congress attempting to overcome an administration's indifference or hostility to the needs of handicapped Americans. But a look at the record of the last 4 years reveals, not only a firm commitment to the longstanding basic goals of vocational rehabilitation, but generous and increasing support for a wide variety of programs operated under the Vocational Rehabilitation Act, and other authorities. In fact, as the President pointed out in his veto message, with his proposals for the coming year, the number of individuals served by vocational rehabilitation will have increased more than 50 percent over the past 4 years to a total of 1.2 million people. This is hardly the mark of indifference or hostility to these citizens.

The following additional points are also persuasive:

Funding for title I of the Vocational Rehabilitation Act, the basic VR programs, has increased 75 percent from fiscal year 1969 to the \$650 budget request for fiscal year 1974.

The President's budget includes \$40 million under the supplemental security income program enacted in last year's H.R. 1 (Public Law 92-603) for the cost of vocational rehabilitation services for needy blind and disabled persons.

For fiscal year 1974 payments from the disability insurance trust fund will provide \$66 million for vocational rehabilitation services, a fourfold increase over fiscal year 1969.

OTHER PROGRAMS

When one looks beyond vocational rehabilitation, the current support for the disabled is even more substantial:

\$18.6 billion is the overall fiscal year 1974 estimate for income security benefits for disabled persons. This is more than a one-third increase over the fiscal year 1974 figure of \$13.1 billion.

Specifically, the new Federal floor for the needy aged, blind, and disabled which was written into the law by Public Law 92-603 will go into effect January 1, 1974. The President's fiscal year 1974 budget request includes \$1.7 billion for these needy persons.

Medicare coverage was also extended to the disabled by Public Law 92-603, and is included in the \$18.6 billion for income security for the disabled. The new coverage will go into effect on July 1 of this year, will add \$1.7 million disabled persons to the medicare program and will increase benefit outlays by \$1.5 billion in fiscal year 1974 alone.

DEFECTS OF S. 7

So it is against this record that the faults of S. 7 must be considered—not against some artificial and unrealistic controversy over commitment to the handicapped. And it would emphasize that S. 7 is marred by several serious faults aside from spending considerations.

The first point I want to make is my dissatisfaction with the fact that S. 7 dilutes the traditional and highly successful orientation of the program toward employability for disabled persons. This vocational emphasis is one of the most significant reasons why the VR program has been so successful and so cost-effective. But title II of S. 7 would change the act's focus—especially in the case of the severely disabled—to provide medical and social services, not vocationally oriented services. The severely disabled can and are being given increased attention under existing authority in the Vocational Rehabilitation Act. Increased medical services and other income security for the disabled will soon be available. In view of these facts, I believe it would be a grave mistake to set up new authority which would blur the clear vocational focus of the existing program and possibly dilute the impact of the entire VR effort.

UNREALISTIC PROMISES

I am also greatly concerned at the vast overpromise implied by the authorization levels in S. 7. They total \$2.1 billion for fiscal year 1973 and fiscal year 1974, \$700 million over the President's budget requests. S. 7's authorization levels are higher than any President could in good conscience request and higher than any Congress could responsibly appropriate. They are nothing more than a hollow symbol to the Nation's handicapped. I would have hoped we might have learned something from the disappointing and discouraging experience of bigger and better Government promises, followed by shortcomings, defaulted commitments and disillusion which we saw with the so-called war on poverty and model cities efforts to aid the victims of economic and racial barriers. I would count it a sad and sorrowful day that such an empty and deceptive policy was initiated with respect to the physically and mentally handicapped in America.

Another implied promise is represented by the special categorical programs which S. 7 would establish. All have worthy sounding titles. Yet each special program will call into existence its own bureaucracy, its own guidelines and regulations, its own redtape, its own inefficiencies. Each will add another element of complexity to the already virtually impenetrable jungle of Federal programs.

Is this the way truly to serve the special groups for whom these programs are designed? I think not. Each of the problems for which S. 7 would establish a special, categorical program can be addressed under existing statutory authority through existing programs. And I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a table showing these overlapping provisions.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

ORGANIZATIONAL DIFFICULTIES

Mr. DOLE. Still another example of the bill's inefficiency, as well as its lack of accountability, is the range of special organizational units which it would erect—with all the added bureaucratic confusion that more boxes in the organizational chart can create. They include

an Office of the Handicapped in the Office of the Secretary of Health, Education, and Welfare; a National Commission on Transportation and Housing for Handicapped Individuals, also in HEW; an Architectural Barriers Compliance Board, apparently independent of HEW; and a Federal Interagency Committee on Handicapped Employees. All these new entities would further complicate the already confusing administrative maze of Federal activities I mentioned earlier.

One final defect of S. 7 deserves mention. Under the guise of giving increased importance to rehabilitation activities, S. 7 would give an existing administrative unit of HEW, the Rehabilitative Services Administration, statutory status, and assign it, not the HEW Secretary, statutory authority for the VR program. In my opinion, by reducing the effectiveness with which the Secretary could manage all HEW programs benefiting the disabled, this change would impede the provision of services and benefits to disabled people.

BETTER APPROACH

In contrast, Mr. President, a bill supported by the administration has been introduced by the Senator from North Carolina (Mr. HELMS). It builds on the strengths of the existing program and its proved record of success in rehabilitating individuals for employment. Had it been introduced early in the session, it would have readily received by support in preference to S. 7.

This bill would extend the VR program for 3 years. It would increase the training allowances for VR clients being trained for employment through special projects in rehabilitation facilities. It would extend the basic State formula grant program to American Samoa and the Trust Territories. It would provide authority to reallocate unmatched section 2 funds. It would authorize joint funding and administration with other public agencies. It would provide for in-

creased evaluation funds and for consultation with consumers in program development at the State level.

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Many of these and other, more technical improvements in the VR program have been twice proposed by the administration and adopted by the Congress. They represent a solid, workmanlike improvement of that program. They represent changes that will work to the real benefit of the Nation's disabled persons. I believe this measure deserves support as a sound extension of the program that has meant so much to the vocational betterment of the disabled.

DIFFICULT DECISION

As one who has maintained an active and detailed interest in the problems of the handicapped, it is not a casual matter to cast a vote in opposition to passage of legislation in this field. If the history of this bill could be rewritten, I would prefer having had the alternative proposal of the Senator from North Carolina to support at an earlier date. However, that bill was not prepared at that time, so S. 7 was the only alternative to those of us who wished to see vocational rehabilitation continued and supported.

MOST IMPORTANT CONSIDERATION

But now we have this alternative, and we also have the question of controlling spending. And over the long run, I believe a vote for a sound budgetary policy to avoid increasing taxes and fueling inflation is more important to the handicapped than any vote on a specific program. For the handicapped—along with the elderly, the poor, and the chronically ill—who live on fixed or very low incomes and have only the most meager resources are the earliest and most vulnerable victims of Federal economic irresponsibility. Inflation, rising costs, increased taxes all strike hard on them. They are the first to feel the cost-price squeeze, and they can do the least to fight it.

UNQUESTIONED COMMITMENT TO HANDICAPPED

There is no doubt about America's commitment to supporting programs for the handicapped. If this veto stands, another bill—hopefully the proposal introduced yesterday—will receive full approval by Congress and the President.

DOUBT ON SPENDING

There is, however, real doubt about this Nation's commitment to sound spending policies. And today's vote is the first clear watershed on that question. And, I for one, do not wish to allow my deep concern for enhancing the expression of the abilities and talents of the handicapped to inadvertently add even more formidable economic barriers to the physical and mental obstacles which now impede their course toward human fulfillment.

Mr. President, I cast my vote to sustain the President's veto in the hope that his decision will be upheld and in the expectation that Congress will soon pass a sound, generous, and responsible vocational rehabilitation bill.

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EXHIBIT 1—CATEGORICAL PROGRAMS IN S. 7— AND PRESENT AUTHORITIES WHICH ARE SIMILAR

S. 7 AND H.R. 17

Title II

A formula grant program to provide "comprehensive rehabilitation services" to individuals for whom a vocational goal is not indicated, or for whom a vocational goal is unrealistic.

"Comprehensive rehabilitation services" are defined as services that will make a substantial contribution in helping a handicapped individual to improve his ability to live independently or function normally with his family and community.

Section 307

Rehabilitation Centers for Deaf Individuals.

Section 308

National Centers for Spinal Cord Injuries.

Section 309

Grants for End-Stage Renal Disease-----

Section 310

Rehabilitation services for older blind individuals.

SIMILAR AUTHORITIES

Service programs for families and children and for aged, blind, or disabled individuals are authorized under Titles I, IV (Parts A and B), X, XIV, and XVI of the Social Security Act. Under proposed rule making issued February 16, 1973, eligibility for these services would be limited to individuals who are current applicants for or recipients of public assistance, or individuals who are likely to become recipients within six months unless services are given.

Medicaid eligibles (Title XIX of the Social Security Act) may receive specified services of a purely medical nature, depending on the extent of coverage under Medicaid in each State.

An individual who has been receiving monthly benefits on the basis of being under a disability under Title II of the Social Security Act for 24 consecutive months has been made eligible for Medicare under Title XVIII of the Social Security Act. Medicare coverage will continue through the month following the month in which notice of the termination of his monthly disability benefits is mailed to him, or if earlier, through the month in which he attains age 65.

A prototype of such centers has been developed partially with Federal funding under Section 4(a) (1) of the Vocational Rehabilitation Act.

The Administration has proposed that emphasis on these centers be achieved by including reference to centers for low achieving deaf in Section 4(a) (1) of the Act (Special Projects) rather than by providing a separate section with a special authorization.¹

Prototypes of these centers have been developed with partial Federal funding under Section 4(a) (1) of the Vocational Rehabilitation Act.

The Administration has proposed that emphasis on these type centers be achieved by including reference to spinal cord injury centers in Section 4(a) (1) of the Act (Special Projects) rather than a separate section, with its own authorizations.¹

Also, the National Institutes on Neurological Diseases and Stroke has funded five planning projects for research into acute spinal cord injury, under its general authority to conduct research into neurological problems.

The Social Security Amendments of 1972 (P.L. 92-603) extend Medicare coverage to individuals under age 65 who are currently or fully insured or entitled to monthly social security benefits and to spouses and dependent children of such individuals, who require hemodialysis or renal transplanation for chronic renal disease. Entitlement begins with the third month following the month in which a course of dialysis is initiated and extends through the 12th month after the month in which an individual had a transplant or dialysis terminates. Benefits are parts A and B of Medicare with the usual deductibles and coinsurance.

Renal services are provided to eligible persons in some States under Medicaid (Title XIX of the Social Security Act). (A survey conducted in May, 1972 by Smirnow Associates indicated that 45 States provided dialysis to "categorically needy" and 24 States provided services to the "medically needy.")

A survey conducted in 1971 indicated that 40 State vocational rehabilitation agencies had some experience in providing services to handicapped individuals with end stage renal disease, principally through transplants. Eligibility is the same as for other disabilities. There is wide variation in services covered and in limitations on these services.

Title XVI of the Social Security Act contains authority to provide social services for the blind.

Proposed rule making issued February 18, 1972, would define these services as services which would alleviate the handicapping effects of blindness through training in mobility, personal care, home management, and communication skills; special aids and appliances; special counseling for caretakers of blind children and adults; and help in securing talking book machines.

The above proposed rules would also limit such services to individuals who were applicants for or recipients of assistance payments or medical assistance, or individuals who would be probable recipients of assistance within six months in the absence of such services.

¹ Administration amendments were introduced into the House of Representatives on February 21, 1973, by Representative Earl Landgrebe.



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10TH ANNIVERSARY OF PUBLIC LAW 94-142, THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Mr. WEICKER. Mr. President, I send a resolution to the desk at this time for myself, Mr. KERRY, Mr. STAFFORD, Mr. NICKLES, Mr. THURMOND, Mr. SIMON, Mr. KENNEDY, and Mr. HATCH.

The resolution commemorates the accomplishments of Public Law 94-142 on the 10th anniversary of its enactment. Cosponsored by all of the members of the Subcommittee on the Handicapped, this resolution reaffirms Congress' support for this landmark legislation that has opened the doors of public education to some 4 million handicapped children across the country.

In 1954, when the U.S. Supreme Court decided *Brown versus Board of Education of Topeka*, the Court held that education "is a right which must be made available to all on equal terms." It was 20 years after that decision that Congress extended equal educational access to the handicapped children of our Nation. With the passage of 94-142 all handicapped children were assured a free appropriate public education, no matter what their disability, no matter how severe their disability. The significance of this mandate cannot be understated. With its passage, access to public education in this Nation became truly universal.

Just 10 years ago, many of the Nation's handicapped children had the doors of the schoolhouse closed to them. Thousands were shut away in institutions with no schooling. Those who did manage to enter the schoolhouse doors often found inadequate programs waiting for them. Public Law 94-142 opened those doors and today all handicapped children are entitled to a free appropriate public education. Today it is illegal for a school district to say "no" to a handicapped child. Today, parents are fully enfranchised partners with educational professionals in determining their child's program. As a parent of a handicapped child in special education, I can personally testify to the effectiveness of

this partnership.

The impact of this legislation is impressive; 4,128,009 handicapped children were served under 94-142 last year; 465,763 education professionals were trained to work with handicapped students; and over 7.5 billion Federal dollars were appropriated in the last 10 years.

But these numbers do not tell the whole story. These numbers do not measure the true impact of this legislation. We must look at the change this legislation has fostered in all of us to see its most significant impact. Public Law 94-142 asks us to look at handicapped children in the same light that we see nonhandicapped children—as human beings with individual differences, unique needs and unique potentials. We do not have to look hard to see the payoffs of equal opportunity for handicapped students. The mentally retarded adolescent working in a cleaners after school; the wheelchair-bound athlete competing in a race; the deaf student attending college alongside his hearing peers; we are all richer for the accomplishments of disabled citizens.

While it is my purpose today to note the progress made over the last 10 years, we cannot forget that the accomplishments of this act are only possible because of a vigorous defense of this act. Congress and the American people have challenged to affirm support for Public Law 94-142 many times. When the Reagan administration proposed block granting 94-142, Congress said "no." When the Reagan administration proposed cutting funding for 94-142, Congress said "no." When the Reagan administration proposed gutting the 94-142 regulations, the American people said "no" with a voice that Congress heard loud and clear. Last July, after the Supreme Court's *Smith versus Robinson* decision, which undermined parents' full protection for the educational rights of their handicapped children, the Senate unanimously said "no" by passing the Handicapped Children's Protection Act, which reverses that decision.

We have also been able to make significant improvements in the programs authorized by the Education of the Handicapped Act. Both the Transitional Service Program, which assists handicapped youngsters leaving school in moving into the adult world, and the Parent Training Program, which advises parents of their rights under 94-142, are new programs added to the law in 1983. The \$90 million increase in funding for special education programs, which we secured for the fiscal year 1986 budget, is a step forward as well.

We can all be proud of the improved programs and increased funding we have secured. But we must also affirm our commitment to continue the battles before us. What will the accomplishments be in the next 10 years of Public Law 94-142? Will we be celebrating defeats of block granting and flat funding, or will we be celebrating true movement forward? Let us hope we can report that all handicapped children are being served beginning at birth, rather than beginning at age 3. Let us be able to report that all handicapped youngsters who turn 21 and move into the adult world are working and living in their communities along with their nonhandicapped peers. Let us be able to report that the Federal Government has fulfilled its promise and is funding 40 percent—rather than the current 7½ percent—of the cost of special education.

I urge my colleagues to join me in cosponsoring this important resolution, and to reaffirm your support for this critical Federal program. I ask unanimous consent that the text of this resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

S. CON. RES. 71

Whereas part B of the Education of the Handicapped Act, commonly known as Public Law 94-142 (The Education for All Handicapped Children Act), was signed into law ten years ago on November 29, 1975;

Whereas Public Law 94-142 established as policy for the United States of America the principle that all children, regardless of disabling condition, have the right to a free, appropriate public education in the least restrictive setting;

Whereas Public Law 94-142 currently serves over 4,000,000 handicapped children;

Whereas Public Law 94-142 ensures the full partnership between parents of children with disabilities and education professionals in design and implementation of the educational services to be provided handicapped children;

Whereas Public Law 94-142 has greatly enriched the classrooms of the Nation by allowing the potential of children with disabilities to be developed, together with the potential of nondisabled youngsters;

Whereas Public Law 94-142 has greatly enriched America's society as a whole by providing the means for disabled youngsters to contribute to the social and economic progress of the United States; and

Whereas Public Law 94-142 has succeeded even beyond the expectations of congressional supporters in marshalling the resources of the Nation to fulfill the promise of full participation in society of disabled youngsters: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) recognizes the 10th anniversary of the enactment of Public Law 94-142 and the successful implementation of that law;

(2) acknowledges the many and varied contributions by disabled youngsters, parents, teachers, and administrators; and

(3) reaffirms its support for Public Law 94-142 and the primary goal of Public Law 94-142 that all children, regardless of disabling condition, have the right to a free, appropriate public education in the least restrictive setting.

Mr. WEICKER. Mr. President, I can report firsthand what has been achieved by virtue of this law, report firsthand in the sense of seeing the faces of the children who attend the classes authorized by this legislation, funded by the appropriations attendant thereto. This is an investment of the American people that would bring joy to everyone's heart, but it is also true that in the disposition of funds at the local and State level this portion of our population still has to fight hard to get what they deserve.

One small story—and then I will wrap up—best illustrates the benefit that we all derive as American people whenever we try to do something special for that individual who needs our special care. One aspect of 94-142 has been the early intervention program. In effect what this does is send youngsters to school in their first 6 months, it being found that education at that age takes hold and clearly influences the future life path of these individuals. That has been a small program with only a few million dollars, but it has been amazingly successful. Youngsters who in the past have been uneducatable or have suffered from the lack of education are taking their place in the mainstream of our society because of early intervention.

Now, for whatever pride one takes in having afforded this opportunity to the handicapped, we now know that early education for all of our children is better. So that which was discovered on behalf of the handicapped will soon probably become the norm, maybe not as early as 6 months but certainly much earlier than children now go to school. So that the nonhandicapped child in the United States will benefit from this particular outreach to the handicapped children.

It is also true that in the United States of America when we move together we move well and when we try to move ahead at the expense of each other, we falter. Public Law 94-142 is a very bright chapter in the history of the U.S. Senate, the House of Representatives, and the executive branch. It was a great legislation but even greater is what it has produced for our children. So I hope that we no longer doubt its success or seek to hobble it in pursuit of success but, rather, conceptually and monetarily, continue to keep this one of the brightest stars in our galaxy of achievements as a nation. I thank the Chair, and I yield the floor.
