

April 17, 1989

TO: Senator Dole
FROM: Maureen West
SUBJECT: Americans with Disabilities Act

The Americans with Disabilities Act originated with a proposal from the National Council on Disabilities to establish a comprehensive nationwide prohibition against discrimination on the basis of a handicap. Although federal legislation, section 504 of the Rehabilitation Act of 1973 already exists concerning discrimination against individuals with handicaps, the existing law is limited to programs or activities receiving federal financial assistance, executive agencies, or the U.S. Postal Service. The Americans with Disabilities Act seeks to parallel in scope the civil rights protections provided racial and ethnic minorities, women and older persons, but frames to combat the forms of discrimination people with disabilities face on a daily basis: inaccessible housing, transportation, and communication; denial of reasonable accommodation; and rampant prejudice. If enacted this legislation would go far to remove unfair and discriminatory barriers against people with disabilities. This, in turn, should result in significant Federal budget savings as limited transportation access is an impediment to the large numbers of people with disabilities who want to work but cannot due to inaccessible transportation to employment. The bill would provide broader coverage than section 504 since it would cover the private sector as well. Last year's bill (which Senator Weicker introduced) has changed substantially in the current draft proposals both Senators Harkin and Hatch together or individually may introduce.

OVERVIEW OF THE LEGISLATION

Findings and Purposes:

The purpose of the Act is to provide a clear and comprehensive national mandate to end discrimination against people with disabilities; provide protection against discrimination comparable to that afforded to minorities and others; and provide enforceable standards addressing discrimination against people with disabilities.

Definitions:

The "term" definition is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities of such an individual, a record of such an impairment, or being regarded as having such an impairment. This definition is the same definition used for purposes of section 504 of the Rehabilitation Act of 1973.

Title I: General Prohibitions Against Discrimination:

Title I sets out the general forms of discrimination prohibited by the Act. It is considered discriminatory to subject an individual, directly or indirectly, on the basis of a disability, to any of the following:

- (1) denying the opportunity to participate in or benefit from an opportunity;
- (2) affording an opportunity that is not equal to that afforded others;
- (3) providing an opportunity that is less effective than that provided to others;
- (4) providing an individual or class of individuals with an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others;
- (5) aiding or perpetuating discrimination by providing significant assistance to others that discriminate;
- (6) denying an opportunity to participate as a member of boards or commissions; and
- (7) otherwise limiting an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

For the purposes of this Act, for an aid, benefit, or service to be equally effective, an entity must afford an individual with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's need.

Further an entity may not directly or indirectly use criteria or methods of administration that have the effect of subjecting an individual to discrimination on the basis of disability or perpetuate discrimination by others who are subject to common administrative control or are agencies of the same State. Nor can an entity discriminate against an individual or entity because of the association of that individual with another individual with a disability.

Title I also sets out several defenses to allegations of discrimination. It is not considered discrimination to exclude or deny opportunities to an individual with a disability for reasons entirely unrelated to his or her disability. Further, it is not discrimination to exclude or deny opportunities to an individual based on the application of qualification standards or other criteria that are shown by a covered entity to be both necessary and substantially related to the ability of the individual to perform or participate or take advantage of an opportunity and such participation cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

Qualifications standards may include requiring that the current use of alcohol or drugs by an alcohol or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health and safety of other individuals in the workplace or program. These defenses are comparable to the defenses currently available under section 504 of the Rehabilitation Act of 1973.

Title II Employment:

The provisions in title II of the Act use or incorporate by reference many of the definitions in title VII of the Civil Rights Act of 1964 (employee, employer, Commission, person, labor organization, employment agency, joint labor management committee, commerce, industry affecting commerce). The scope of the bill is identical i.e., only employers who have 15 or more employees are covered.

A "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. This definition is comparable to the definition used for purposes of section 504.

Using the section 504 legal framework as the model, the bill specifies that no entity covered by the Act shall discriminate against any qualified individual with a disability in regard to application procedures, the hiring or discharge of employees and all terms, conditions and privileges of employment.

Thus, discrimination includes, for example, the failure by a covered entity to make reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Discrimination also includes the denial of employment opportunities because a qualified individual with a disability needs a reasonable accommodation.

The definition of the term "reasonable accommodation" included in the bill is comparable to the definition in the section 504 framework. The term includes: making existing facilities accessible, job restructuring, part-time and modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers and interpreters, and other similar accommodations.

Discrimination also includes the imposition or application of qualification standards and other criteria that identify or limit a qualified individual with a disability unless such standards or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

Consistent with title VII of the Civil Rights Act of 1964, every covered entity must post notices in an accessible format describing the applicable provisions of this Act. The Commission is also directed to promulgate regulations within 180 days in an accessible format.

The bill incorporates by reference the remedies and procedures set out in section 706, 709, and 710 of title VII of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964 for acts of intentional discrimination.

Title III: Public Services

Section 504 only applies to entities receiving Federal financial assistance. Title III of the bill makes all activities of State and local governments subject to the types of prohibitions against discrimination against a qualified individual with a disability included in section 504 (nondiscrimination) and section 505 (the enforcement procedures).

A "qualified individual with a disability " means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, or the removal of architectural, communication, and transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, or other instrumentality of a State and political subdivision.

Title III also specifies the actions applicable to public transportation (not including air travel) provided by public entities that are considered discriminatory. The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis).

1. New fixed route buses of any size and rail vehicles for which a solicitation is made later than 30 days after the date of enactment of this Act must be readily accessible to and usable by individuals with disabilities. No retrofitting of existing buses is required.

2. Used vehicles purchased or leased after the date of enactment need not be accessible but a demonstrated good faith effort to locate a used accessible vehicle must be made.

3. Vehicles that are re-manufactured so as to extend their usable life for five years or more must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

4. In those communities with fixed route transportation, there must also be a paratransit system to serve those individuals with disabilities who cannot use the fixed route public transportation and to other individuals associated with such individuals in accordance with service criteria established by the Secretary of Transportation.

5. Communities that operate a demand responsive system that is used to provide public transportation for the general public (nondisabled and disabled) must purchase new buses for which a solicitation is made in 30 days after the date of enactment of the Act that are accessible unless the system can demonstrate that the system, when viewed in its entirety, provides a level of service equivalent to that provided to the general public; in which case all newly purchased vehicles need not be accessible.

6. All new facilities used to provide public transportation services must be readily accessible to and usable by individuals with disabilities.

7. When alterations are made to existing facilities one year after the date of enactment that affect or could affect the usability of the facility, the alterations, the path of travel to the altered area, the bathrooms, telephones, and drinking fountains serving the remodeled area must be, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities.

8. A mass transportation program or activity, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities. All stations in intercity rail systems and key stations in rapid rail, commuter rail systems must be readily accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinary expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

9. Intercity, light rail, rapid, and commuter rail systems must have at least one car per train that is accessible as soon as practicable to recipients of Federal financial assistance. The Secretary of the Department of Transportation is also directed to issue regulations in an accessible format that includes standards which are consistent with minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Title IV: Public Accommodations and Services Operated by Private Entities

Title IV specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

The term "public accommodation" means privately operated establishments that are used by the general public as customers, clients, or visitors or that are potential places of employment and whose operations affect commerce. Examples of public accommodations include: auditoriums, theaters, restaurants, shopping centers, hotels, terminals used for public transportation, office buildings and recreation facilities.

Examples of discrimination include the following:

The imposition or application of eligibility criteria that identify or limit an individual with a disability.

A failure to make reasonable modifications in rules and policies and procedures when necessary to afford meaningful opportunity unless the entity can demonstrate that the modifications would fundamentally alter the nature of the program.

A failure to provide auxiliary aids and services unless the entity can demonstrate that such services would result in undue burden. Auxiliary aids and services include: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts or other effective methods of making visual materials available to individuals with visual impairments; acquisitions or modification of equipment or devices; and other similar services and actions.

A failure to remove architectural and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles where such removal is readily achievable; and, where the entity can demonstrate that such removal is not readily achievable, a failure to provide alternative methods.

With respect to a facility that is altered one year after the effective date of the Act, the failure to make the alterations in a manner that, to the maximum extent feasible, the altered portion, the path of travel, to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area where readily accessible to and usable by individuals with disabilities.

A failure to make facilities designed and constructed later than 30 months after the date of enactment readily accessible to and accessible by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so in accordance with standards set forth or incorporated by reference in regulations.

A failure by a public accommodation to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and a refusal to purchase or lease vehicles that carry in excess of 12 passengers for which solicitations are made later than 30 days after the date of enactment which are readily accessible to and usable by individuals with disabilities.

The bill also includes a specific section prohibiting discrimination in public transportation services (other than air travel) provided by private entities. In general, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people (but not in the principal business of providing air transportation) and whose operations affect commerce.

Examples of discrimination include:

the imposition or application of eligibility criteria, that identify or limit an individual with a disability.

a failure to make reasonable modifications to criteria, provide auxiliary aids and services, and remove barriers consistent with the standards set out above;

new vehicles (other than automobiles) purchased 30 days after the date of enactment must be made accessible, new taxicabs are not required to be made Taxicab companies are liable, however, if their drivers refuse to pick up an individual with a disability.

The bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the Attorney General (section 814 (a)). Regulations must be issued in

an accessible format by the Attorney General and by the Secretary of Transportation, consistent with the provisions applicable to public agencies under title .

Title V: Communications

Title V specifies that it is considered discrimination for a common carrier that offers telephone services to the general public to fail to provide, within one year after the date of enactment of this Act, interstate and intrastate telecommunication relay services so that such services provide individuals who use non-voice terminals devices because of their disabilities opportunities for communications that are equal to those provided to persons able to use voice telephone services. Nothing in this title is to be constructed to discourage or impair the developed of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

The Federal Communications Commission is directed to issue regulations establishing minimum standards and guidelines for telecommunications relay services. With respect to enforcement, the bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the General Attorney General (section 814 (a)). Further, the Federal Communications Commission is authorized to use enforcement provisions generally applicable to it for remedying violations of the Communications Act of 1934.

Title VI: Miscellaneous Provisions

Title VI explains the relationship between section 504 and this Act; this Act and State laws that provide greater protections; and the relationship among the various titles of the Act. Title VI also includes an anti-retaliation provision; directs the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines; and makes it clear that States are immune under the 11th Amendment for violations of the Act.

With respect to attorney's fees, the bill specifies that any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including expert witness fees, and costs.

May 25, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Update

Introduction: The ADA was introduced in the Senate (S.933) and the House (H.R. 2273) on May 9, 1989. The Senate sponsor is Senator Harkin with 36 cosponsors. The House sponsor is Rep. Coehlo with 106 cosponsors.

History: In April, 1988, the ADA was originally introduced. It was developed by the National Council on Disability, an independent agency with 15 members appointed by President Reagan. The legislation had many cosponsors (including you). A hearing was held in September, 1988, but no action was taken in the 100th Congress.

Justin Dart, with the endorsement of Chairman Major Owens of the Subcommittee on Select Education, created the Task Force on the Rights and Empowerment of Individuals with Disabilities in May, 1988. Throughout the remaining months of 1988, he conducted forums in every State, some territories, and Puerto Rico, to collect testimony with examples of how individuals with disabilities have been discriminated against in the areas covered by the legislation. Testimony was received from 9,000 individuals and grassroots support for the legislation was mobilized.

1988 Republican Platform -- This platform contains language that reflects and endorses the intent of the ADA.

President Bush: President Bush endorsed the concept of the ADA during the fall campaign. Currently, Executive Branch agencies are now analyzing the bill. The White House anticipates a final position by September, 1988.

The Senate: Senator Harkin anticipates speedy passage. Three hearings were held this month. Senator Hatch urged that the White House be given until June 19, 1989, to react to the ADA. If it does not, he indicated that the Committee on Labor and Human Resources would go forward without its formal input. Senators Harkin and Kennedy agreed to Senator Hatch's suggestion.

The House: The ADA has been referred to four Committees -- Education and Labor, Energy and Commerce, Judiciary and Transportation and Public Works. Mr. Michel asked Mr. Coehlo to work with him to develop a bipartisan bill. Mr. Coehlo has agreed. The first meeting between Republicans and Democrats is scheduled for May 31, 1989. Mr. Michel plans to meet with representatives of the disability community and to arrange meetings with the business community.

The Business Community: The Chamber of Commerce sponsored a briefing for business organizations on May 5, 1989. It is anticipated that small working groups on different issues will be established to work with Congressional staff. The Chamber and various other business groups are meeting with me today to discuss specific concerns with the ADA -- I will relay the concerns after our meeting.

The Disability Community: This community has become very organized since the Justin Dart forums. It is aggressively seeking rapid passage of the bill. It appears, however, that there is need for greater understanding, among the members of the groups both inside and outside of Washington, D.C. as to the specific provisions in the ADA and their implications for the private sector.

May 23, 1989

TO: Senator Dole
FROM: Maureen West
SUBJECT: ADA Bill

The Americans with Disabilities Act (S.933) was introduced with 35 cosponsors -- the 10 Republican cosponsors are (Durenberger, Jeffords, McCain, Chaffee, Stevens, Cohen, Packwood, Boschwitz, Graham & Heinz).

The Americans With Disabilities Act is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; telecommunications; and State and Local governments.

The ADA extends civil rights protections to people with disabilities beyond section 504 of the Rehabilitation Act of 1973 (the anti-discrimination statute for disabled persons) by requiring the private sector and state and local governments to comply with current civil rights statutes afforded women and minorities.

The Act covers employers engaged in commerce who have 15 or more employees; transportation companies; those engaged in communications and state and local governments.

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualification standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1866 for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1964 and Section 505 of the Rehabilitation Act of 1973.

May 23, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Narrative Summary of ADA

OVERVIEW OF THE CURRENT PROPOSAL:

You were given two drafts of the bill and a final version prior to introduction of the Americans with Disabilities Act (ADA). As you know, the ADA introduced this year by Senator Harkin has been substantively changed from Senator Weicker's bill which was broader in scope.

To follow is a narrative description of the bill incorporating what changes were made. I am preparing a memo delineating concerns and proposed recommendations which I will have for you tomorrow.

THE PURPOSE OF THE ACT IS TO PROVIDE:

- a clear and comprehensive mandate to end discrimination against people with disabilities.
- protection comparable to that afforded to other minorities with enforceable standards addressing discrimination against individuals with disabilities.

KEY DEFINITION:

The term disability is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or being regarded as having such an impairment.

This is the same definition contained in section 504 of the Rehabilitation Act and the Fair Housing Amendments of 1988. The inclusion of "substantially limits" in the bill circulated this year eliminates concerns about frivolous claims by tightening up a broad definition.

The definition section also includes definitions for "reasonable accommodation" and "auxiliary aids and services."

Reasonable accommodations include - making facilities accessible and usable, job-restructuring, modified work schedules, reassignments, modification of equipment or devices, appropriate adjustments or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers or interpreters, and other similar modifications.

Auxiliary aids and services shall include qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices, and other similar services and actions.

TITLE I GENERAL PROHIBITION AGAINST DISCRIMINATION:

This title identifies broad forms of discrimination on the basis of disability with regard to services, programs, activities, jobs, or other opportunities -- subject to the standards and procedures established in other titles -- it would be discriminatory to:

- deny an opportunity to participate;
- afford a person with a disability an opportunity to participate that is not equal to that afforded to others;
- afford an opportunity that is less effective,
- afford an opportunity to an individual or class of individuals with disabilities that is different or separate than that afforded to others, -- unless it is as effective,
- aiding an entity to perpetuate discrimination;
- denying participation on a board or commission,
- otherwise limiting an individual in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.

This title further clarifies these conditions by addressing the concepts of "equal opportunity" as an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs. This title also clarifies prohibitions in the use of administrative methods that have the effect of discrimination; that substantially impair the intended objectives of the opportunity for the person with the disability; or that perpetuate discrimination by others. The title addresses discrimination pertaining to relationships and associations of individuals with persons who are disabled.

The title outlines the conditions which do not constitute discrimination. First, it would not be considered discrimination to exclude an individual with a disability, if the exclusion is unrelated to the disability.

Second, in the area of standards and criteria, exclusion of an individual with a disability would be allowed if such standards or criteria were shown to be both necessary and substantially related to an individual's ability to perform or participate.

Third, qualification standards may include requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program.

Fourth, qualification standards may include requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others in the workplace or program.

TITLE II EMPLOYMENT:

This title defines a "qualified individual with a disability" as an individual who, with or without reasonable accommodation, can perform the essential functions of a job -- either held or desired by that individual.

Discrimination under this title includes situations when a covered entity fails to make reasonable accommodations to the known limitations of an individual unless the entity can demonstrate that such an accommodation would constitute an undue hardship (This addresses/alleviates the concern about the bankruptcy standard in the original bill introduced last Congress).

As in title I the entity would have to show that standards and criteria for a job be necessary and substantially related to perform the essential functions of the job.

Exempted entities include those who are -- covered by section 501(c) of the Internal Revenue Code (This includes corporations organized and operated for religious or charitable purposes.), elected officials, Indian tribes, or entities who have less than 15 employees.

This title incorporates by reference the remedies and procedures set out in sections 706, 709, and 710 of title VII of the Civil Right Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such remedies and procedures would be available to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability. Note that under section 1981, an individual has a private cause of action and may recover for compensatory damages such as pain and suffering. The individual may also pursue a cause of action through EEOC.

The authors of the current draft indicate that all remedies and procedures under these laws may only be used in cases of intentional discrimination (which is more difficult to prove) as distinguished from practices which are unintentional but have a disparate adverse impact on individuals with disabilities. This intended limitation is not directly apparent in the current draft of the ADA.

TITLE III PUBLIC SERVICES:

In this title, a "qualified individual with a disability" means one who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for services from or participation in a program of a public agency.

Although broadly construed as the above suggests, most of this title addresses public transportation. Such language does not limit coverage to public entities.

This title covers a wide range of actions related to public transportation and reasonable accommodation/accessibility, including:

purchasing or lease of new buses and rail vehicles (those purchased after 30 days of enactment must be accessible to and usable by individuals with disabilities);

purchase or lease of used vehicles (language includes the standard of -- "demonstrated good faith to acquire accessible vehicles")

purchase or lease of remanufactured vehicles (new provision standard includes -- "to the maximum extent feasible vehicles with five-years of life should be made accessible");

operation of paratransit systems (standard includes -- "it shall be considered discrimination for an entity which provides public transportation to fail to provide ("refusal" was eliminated) such a system as a supplement and comparable to that of the fixed route public transportation system");

operation of a community demand responsive system for the public (standard -- comparable to that available to the general public");

This title also deals with new facilities, alterations to existing facilities, rail systems, and key stations. The standards include

for new facilities -- readily accessible and useable by individuals with disabilities;

for alterations -- after one year of enactment, to the maximum extent feasible, the path to the altered area, bathrooms, telephones, and drinking fountains serving the remodeled area must be accessible;

existing facilities -- when viewed in their entirety are readily accessible and usable;

intercity, rapid, light, and commuter rail systems -- within five years at least one car per train must be accessible;

key stations -- any system shall be accessible within three years, but the Secretary of Transportation may extend the period of compliance for up to 20 years for extraordinary expensive modifications.

Enforcement, include remedies and procedures (limited to injunctive relief and attorney's fees) of section 505 of the Rehabilitation Act. An individual who believes he or she is being or about to be subjected to discrimination on the basis of disability, may access the protections in section 505.

Three key points --

These requirements apply to newly covered entities under ADA and those covered under section 504 of the Rehabilitation Act;

Elimination of "refusal" with "fail to " would appear to make it easier to prove discrimination since this would appear to eliminate the requirement for proving intent.

The "or about to be subjected to discrimination" language under this title of the act could be proved by way of blueprints and other methods in justifying intentional discrimination. This language was appropriately taken from the Fair Housing Act of 1988.

TITLE IV PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES:

This title defines several terms broadly --

Commerce -- means travel, trade, traffic, commerce, or communication among the States...

Public accommodation -- means privately operated establishments that are used by the general public... and are potential places of employment, including auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns hotels, motels -- (except for those covered by section 201(b)(1) of the Civil Rights Act of 1964; e.g., those with less than five rooms), terminals, gas stations, sales establishments, professional offices of health care providers, office buildings, personal and public service buildings, private schools, parks and recreational facilities.

Public transportation -- defined as in title III --The title states that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, on the basis of disability.

Discrimination includes --

the imposition of eligibility criteria that identify or limit or tend to identify or limit, an individual with a disability or a class of such individuals from full and equal enjoyment.

the failure to make reasonable accommodations unless it would fundamentally alter the nature of privileges, advantages...

the failure to ensure no exclusion, segregation, or different treatment, unless such would result in an undue burden,

the failure to remove architectural, communication, and transportation barriers, where such removal is readily achievable (if such a standard cannot be achieved, an alternative must be offered to avoid discrimination);

with respect to a facility -- to the maximum extent feasible, the failure to make it or its altered part accessible and useable within one year of enactment (New facilities built 30 months after enactment shall be accessible, unless the covered entity can demonstrate that it is structurally impracticable to do so.);

with respect to transportation -- the failure to provide transportation equivalent to the general public; -- and in the case of vehicles that carry 12 or more individuals -- purchased after 30 months of enactment, that are accessible and usable by individuals with disabilities.

This title also includes a separate section on prohibition of discrimination in public transportation provided by private entities.

This title, like title III, replaces "refuse to" in the first draft with "fail to," in the second draft, and would appear to allow discrimination charges on effects of, as well as intent to, discriminate. Selected enforcement provisions in the Fair Housing Act would apply to this title. They represent a very broad and permissive basis for discrimination charges.

TITLE V TELECOMMUNICATION RELAY SERVICES:

This title defines -- Telecommunications Relay Services -- as services that enable simultaneous communication to take place between individuals who use nonvoice terminal devices (like a telecommunication device for the deaf --TDD) and individuals who do not use such devices.

The title states that it shall be considered discrimination for any common carrier (as defined in section 3(h) of the Communications Act of 1934), that offers telephone service to the general public, to refuse to provide, not later than one year after enactment, interstate and intrastate telecommunication relay services.

Enforcement provisions reference provisions in the Fair Housing Act (in the case of charges brought by an individual), and for purposes of administrative enforcement, various provisions in the Communications Act of 1934, access to cease and desist orders, and the requirement that each violation of this title shall be construed as a separate offense.

TITLE VI MISC. PROVISIONS:

This title includes provisions to stipulate the intent of current civil rights statutes in assuring that their scope not be reduced -- this pertains specifically to section 504 of the Rehabilitation Act of 1973.

It also requires minimum guidelines on accessibility be issued by the Architectural Transportation Barriers Compliance Board not later than 6 months after enactment.

May 23, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Differences in Harkin and Weicker bill

Substantial changes were made to the Harkin/Kennedy bill from Senator Weicker version of ADA introduced last Congress. Senator Weicker's bill was much broader in its interpretation.

For purposes of clarifying the changes between the American with Disabilities Act (ADA) from last year and the bill Senators Harkin and Kennedy have just introduced, I have termed last years ADA as the original ADA and the Harkin/Kennedy bill as the revised ADA. I have delineated changes according to the titles within the Act.

DEFINITION OF PROTECTED CLASS AND PROVING DISCRIMINATION:

Under sections 503 and 504 of the Rehabilitation Act of 1973 there is a two step process for proving discrimination. First, an individual must prove that he or she is disabled -- having a physical or mental impairment that substantially limits a major life activity. Second there must be evidence that he or she is otherwise qualified.

Section 503 and 504 also include provisions which states that if someone with a contagious disease or someone who is a alcoholic or drug addict poses a direct threat to the health and safety of others, then he or she is not a "qualified disabled person".

The original ADA had a much broader definition of disability than sections 503 and 504 -- whereby there had to be no proof that one had a disability that substantially limits a major life activity. The original ADA did not incorporate provisions regarding persons with contagious diseases and alcoholics and drug abusers. The definition did not include the term "otherwise qualified".

The revised ADA incorporates the section 503 and 504 definition which requires an individual must prove that his/her disability substantially limits a major life activity.

EMPLOYMENT:

Sections 503 and 504 generally require covered entities to make reasonable accommodations for disabled applicants and employees unless it would pose an "undue hardship."

The original ADA had a "bankruptcy" provision under which a recipient would have to provide the accommodations unless it would "threaten the existence of the company."

The revised ADA incorporates section 503 and 504 standards of undue hardship.

Both versions have a small provider of 15 employees or less consistent with title VII of the Civil Rights Act of 1964.

PUBLIC ACCOMMODATIONS:

The original ADA used the definition of "public accommodation" set out in title II of the Civil Rights Act of 1964 (e.g. restaurants, hotels, theaters, etc.) and required that all existing facilities be retrofitted within 2 to 5 years to assure full accessibility unless the retrofitting would "threaten the existence of" the business (the so called bankruptcy provisions).

The original ADA also required that all new facilities be fully accessible and required public entities provide reasonable accommodations -- unless it would "threaten the existence of" the entity.

The revised ADA reaches beyond the title II provision to include all entities that are open to the public as customers, clients, visitors, or which are potentially places of employment.

With respect to existing facilities, the revised ADA only requires structural changes that are "readily achievable." and providing alternative methods for those which are not.

The revised ADA requires reasonable accommodations (termed "auxiliary aids and services) be made unless it would result in "undue burden" which is the current standard in section 504.

Both versions require that new facilities be made accessible.

PUBLIC SERVICES:

The original bill requires that all new facilities be accessible within 2 to 5 years, regardless whether an entity receives federal aid.

The revised ADA extends section 504 to cover all state and local governments their programs and activities.

COMMUNICATIONS:

The original ADA required all those engaged in the business of broadcasting to progressively close caption shows. It also establishes an interstate and intrastate relay system for deaf persons. (a deaf person using a TDD can speak to an operator who can relay a message to an individual who has no TDD).

The revised ADA requires only a TDD relay system and deletes the captioning provisions.

TRANSPORTATION:

The original ADA required 50% of all a public authority's fleet be accessible within 7 years (which includes retrofitting) in addition to all making all new buses accessible

The revised ADA requires that all buses on a fixed route be accessible with no retrofitting required. It also permits a transit authority to purchase used buses that are not accessible if the transit authority has demonstrated a good faith effort to purchase a used bus that is accessible.

Both versions require a paratransit system be made available for those disabled individuals who cannot use the mainline system and that all new facilities be accessible.

The revised ADA has a separate standard for communities that have a demand responsive system (advanced reservation transportation) for the general public. Under this standard, all new buses need not be accessible if the transit authority can demonstrate that it can meet the needs of disabled people with current accessible buses.

The original ADA required that 50% of existing rail cars be made accessible within 7 years (requiring extensive retrofitting).

The revised ADA requires that at least one rail car be made accessible within 5 years and that only key stations be made accessible within 20 years.

The original ADA required all stations be made accessible within 10 years.

The original ADA covered air travel and required accessible taxis.

The revised ADA does not cover air travel and does not require accessible taxicabs but prohibits a driver from refusing to pick up a disabled person.

ENFORCEMENT:

The original ADA included an enforcement provision (injunctive and monetary damages) that applied to the entire Act.

The revised ADA has a separate enforcement section for each title. Under employment, the revised ADA incorporates by reference the enforcement provisions in title VII of the Civil Rights Act of 1964. For acts of intentional discrimination, it applies section 1981 of the Civil Rights Act of 1968.

The revised ADA incorporates by reference the provisions of section 505 of the Rehabilitation Act (attorney's fees) to public entities. Under public accommodations and communications, the revised ADA incorporates the enforcement provisions in the Fair Housing Act of 1988.

Both versions incorporate attorneys' fees provisions.

May 25, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Overview of ADA Problems

OVERVIEW OF THE AMERICANS WITH DISABILITIES ACT

PURPOSES:

The purpose of the Americans with Disabilities Act of 1989 (ADA) is to "establish a clear and comprehensive prohibition against discrimination on the basis of disability". Currently, such a prohibition applies to the Executive Branch. Federal contractors and recipients of Federal financial assistance through Title V of the Rehabilitation Act of 1973 and to matters related to the sale and rental of housing through the Fair Housing Amendments of 1988. The ADA (S. 933 and H.R. 2273) would extend the prohibition of discrimination on the basis of disability to the private sector and to State and local governments, public accommodations and services provided by private entities, and telecommunications relay systems. It is viewed as an extension of civil rights similar to those now available on the basis of race, national origin and religion through the Civil Rights Act of 1964.

DEFINITIONS:

The definition for disability is the same as that contained in section 504 of the Rehabilitation Act and in the Fair Housing Act Amendments of 1988. With respect to an individual, the term disability means -- a physical or mental impairment that substantially limits one or more of the major life activities; a record of such impairment; or being regarded as having such an impairment.

The term "qualified individual with a disability" is defined further in title II pertaining to employment to mean "an individual with a disability who, without reasonable modifications can perform the essential functions of the employment position the individual holds or desires." A similar clarification for "qualified individual with a disability" is contained in title III pertaining to public services provided by State and local governments and is defined to mean -- an individual with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for services.

May 15, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Update

The National Council on Independent Living (NCIL) is a grass roots organization (with members who are predominantly physically disabled) which represents the independent living movement and disability issues in general. Approximately 1500 disabled individuals attending the conference will make their way to the Hill today and tomorrow in mass to generate support for the ADA bill and attend the last day of scheduled hearings on the ADA.

After the NCIL congressional reception this evening, participants of the conference will march to the White House for a candle light vigil to elicit support from the Administration, which has yet to comment on the legislation.

The groups that have stopped by have not been militant but rather have stated their support for the bill. There were approximately 15 delegates from Kansas that stopped by to convey their support for the ADA. I continue to reiterate your intent to hear out all parties impacted by this legislation and your consideration of White House recommendations on this issue.

I believe it would be wise to talk with key players in the disability community to hear out their concerns and to convey your intent to work in a bipartisan manner.

Marca Bristow, President of NCIL, will be in town until Tuesday evening and would like to talk to you about the bill. Marca was rehabilitated at the National Rehabilitation Institute in Chicago and has spearheaded the independent living movement. She is well respected and not militant however representative of the NCIL population. A meeting to hear out her concerns would be helpful given the intensity of the ADA this week.

Will you meet with Marca to hear her concerns?

Yes _____ No

June 5, 1989

The Honorable John Sununu
Chief of Staff
The White House
Washington, D.C. 20500

Dear Governor Sununu:

I am writing concerning S. 933, the Americans with Disabilities Act, which was introduced last April by Senators Harkin and Kennedy.

Although I am not yet a co-sponsor of S. 933, I remain strongly committed to protecting and enhancing the civil rights of ~~the disabled~~ ^{people with disabilities}. As a result, I fully endorse the concept of an Americans with Disabilities Act and I intend to do all that I can to bring ~~the disabled into the mainstream of American society~~ ^{about the full inclusion of the disabled}. I also intend to work with Senators Harkin and Kennedy on a bipartisan basis to ensure that the final legislative product strikes a fair balance -- a balance that removes obstacles and promotes opportunities for ~~the disabled~~ ^{the disabled}, but one that is also responsive to the concerns of all groups who will be affected by the bill's provisions.

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Jun 9*

At this stage in the legislative process, I am concerned about the hidden and unhidden ~~financial~~ costs of S. 933, particularly as these costs may affect our nation's many small businesses. I also have a number of specific concerns about some of the language contained in the bill. These concerns include a definition of actionable discrimination that is far broader than the definition contained in Title VII of the Civil Rights Act of 1964, a definition of "qualification standards" that may conflict with the goal of a "drug-free workplace," and the absence of an extended phase-in period for employers with less than 50 employees.

With some effort and cooperation, I believe that these concerns can be resolved in a way that will be acceptable to all interested parties.

As you may know, the Senate Labor and Human Resources Committee held three days of hearings on S. 933 during the month of May. The Labor Committee will continue these hearings during the week of June 19. Prior to June 19, it would be very helpful, at least for me, if the Administration would develop and

circulate its own comprehensive analysis of the bill. I also believe that it is important for a representative of the Administration to appear personally before the Labor Committee to present the Administration's views.

Thank you for your attention to this matter.

Sincerely,

BOB DOLE

BD/ds

cc: Fred McClure
Boyden Gray



NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

John H. Moore, Jr.
President

John A. Doyle
Executive Director

July 11, 1989

The Honorable
Attn: Maureen West
141 Hart Senate Office Building
Washington, D.C. 20510

Dear Maureen:

Thank you for agreeing to arrange a meeting with Secretary Elizabeth H. Dole on behalf of the National Association of Rehabilitation Facilities and the other six Title IV-D national grantees under the Job Training Partnership Act.

The seven national projects under the Pilots and Demonstrations Account were established to provide training and job placement for people with disabilities. These projects have been in the forefront of the design and delivery of employment and training services, which assist the hardest-to-serve clients, those with the most severe disabilities. The seven projects operate nationwide in sixty-five sites, and in program year 1987 placed over 9,000 individuals into employment with an appropriation of only \$3.7 million.

We intend the meeting with Secretary Dole to be short and sweet--no more than ten minutes. During that time, we would like to highlight three major concerns that:

- o The seven national projects under Title IV-D be made permanent, and receive yearly cost-of-living increases;
- o The Department of Labor hire a person with a disability who is sensitive to the concerns of other Americans with disabilities. That person would be the point person for the Department serving the disabled community through the use of the JTPA program or other programs administered by the Department of Labor; and
- o JTPA funds be better used to serve the truly "hard-to-serve" population, in particular, people with disabilities.



NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

John H. Moore, Jr.
President

John A. Doyle
Executive Director

July 11, 1989

The Honorable Bob Dole
Attn: Maureen West
141 Hart Senate Office Building
Washington, D.C. 20510

Dear Maureen:

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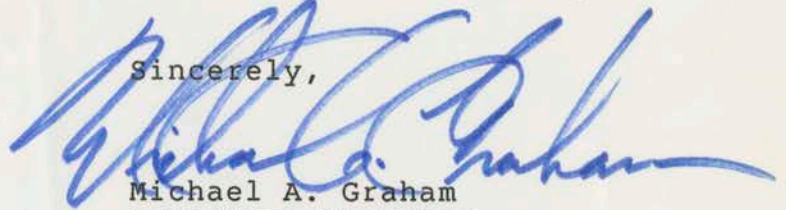
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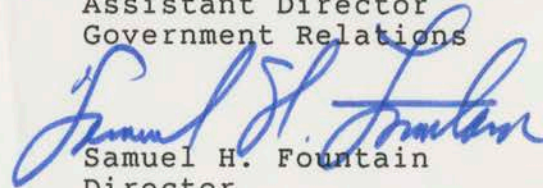
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- o The Department of Labor hire a person with a disability who is sensitive to the concerns of other Americans with disabilities. That person would be the point person for the Department serving the disabled community through the use of the JTPA program or other programs administered by the Department of Labor; and
- o JTPA funds be better used to serve the truly "hard-to-serve" population, in particular, people with disabilities.

I appreciate anything that you can do to assist us in obtaining a meeting with Secretary Dole.

Sincerely,



Michael A. Graham
Assistant Director
Government Relations



Samuel H. Fountain
Director
National JTPA Project

cc: The Association for Retarded Citizens
Goodwill Industries of America, Inc.
Epilepsy Foundation of America
Electronic Industries Foundation
Mainstream, Inc.
The National Federation of the Blind

July 11, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Postponed ADA Mark up

The mark up scheduled for Wednesday, July 12 on the Americans with Disabilities Act has been **postponed indefinitely** in light of the positive negotiations between the Administration and members of the Labor & Human Resources Committee.

Bill Roper (the Administration's key negotiator on the ADA) spoke with Senator Kennedy last evening about holding off on the mark up because of the need for further negotiations and the demonstrated good faith effort on all sides in reaching common ground. The Administration would like two weeks before a mark up given the President is overseas and no major decisions or changes can be made until he returns.

There have been three meetings thus far and we will meet today at 2:00 to continue discussions. Those in attendance have been:

Bill Roper - Office of Domestic Policy
Ken Yale
David Sloane

John Mackey - Department of Justice
John Wodatch

Lindy Knapp - Department of Transportation
Don Trilling

Bob Damus - OMB

Senate Staff from the offices of Hatch, Durenberger,
Kennedy, Harkin and Dole.

The meetings have been very positive and there has been alternative language put forth on a few issues. Under separate cover I have delineated the major issues and concessions made thus far.

The areas of conflict which still remain divisive are:

scope of coverage
remedies
transportation issues

July 12, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: House Hearings on ADA

On Tuesday, July, 18 at *9:30 a.m. there will be a Joint Subcommittee hearing on the Americans with Disabilities Act. The Subcommittee on Select Education and the Subcommittee on Employment Opportunities will sponsor the hearing.

The hearings are to focus on all areas of this legislation with a bent towards civil rights. While not all of the witnesses have been finalized the first panel has been confirmed.

The Honorable Rep. Ronald Dellums (D) Calif.

Jesse Jackson - Civil Rights Advocate

Sandy Parrino - National Council on Disability

Justin Dart - Task Force on the Rights and
Empowerment of People with Disabilities.

I will keep you apprised of the witness list.

July 10, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Walking Tour of Capitol Accessibility

I work very closely as you know with staff in the Special Services office of the Capitol. Staff there provide an array of support services for people with disabilities, families and the aged to assure a smooth visit of the Capitol.

Debbie Jans, manager of the office brought to my attention as well as staff of Senators Mitchell, and others the lack of accessibility that remains in the Capitol and Senate buildings. A representative from each Senate office toured the Capitol. We found the facts Debbie had presented to be true.

You have in the past sent letters to the Architect's office asking for their plans to make the Capitol more accessible. Will you send the attached letter with Senator Mitchell to George White (Architect of the Capitol) for his plans to carry out the recommendations of the Noakes Report to assure a more accessible Capitol.

Given that we are considering the ADA this year and the fact that there needs to be more disabled employees in the Congress this would be a prime time to pursue this issue.

Would you like to be involved with this effort and send the attached letter?

Yes ☒ No ☐

I am also looking into finding out how many employees with disabilities currently work in Congress and will keep you updated on this effort.

BOB DOLE
KANSAS

United States Senate

OFFICE OF THE REPUBLICAN LEADER
WASHINGTON, DC 20510

July 10, 1989

George M. White, FAIA
Architect of the Capitol
Washington, D.C. 20515

Dear Mr. White:

The Congress this session intends to consider major civil rights legislation directed to people with disabilities. In the course of developing that legislation, members of the disability community seeking to meet with us and other Senators experienced substantial difficulties in maneuvering around the Capitol building.

We are concerned that Congress not enact standards for other government agencies, state governments and private enterprise which it fails to implement in its own buildings.

In the last decade, your office commissioned a study of accessibility by the former Chairman of the President's Commission on the Handicapped, Edward E. Noakes. In an effort to ascertain the degree to which the Noakes Report's recommendations have been implemented, we are requesting that your office provide a detailed written analysis of the Noakes proposals and recommendations together with the steps taken and not taken with respect to each one. It would be helpful to have this material within 30 days, if possible.

As you undoubtedly know, the increase in public visitors to the Capitol and other buildings of the Congress, as well as the special events such as the Close Up Foundations' programs and the recent Very Special Arts program, have meant a substantial rise in public traffic.


The Office of Special Services has documented no fewer than 1400 visitors in three months needing special assistance, as well as 400 or so seeking wheelchairs on a temporary basis. Older persons, in particular, are anxious to make the most of their visit to the Congress, but health and mobility problems can make that difficult. We should ensure that physical impediments not bar any visitor's enjoyment of our Capitol.

George White
Page 2

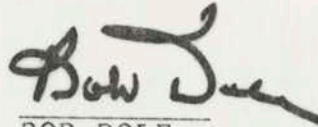
It is our hope that we can work with your office to define the areas that remain to be finalized so as to determine the necessary costs of doing so in an architecturally sound and aesthetically appropriate fashion.

We are all in a sense custodians of the historic buildings in which the Congress works, and we are concerned that the historic value of the structure be maintained in a way that continues the important American tradition of keeping the halls of Congress open to every American citizen.

Sincerely,



GEORGE MITCHELL
United States Senate



BOB DOLE
United States Senate

BOB DOLE
KANSAS
141 SENATE HART BUILDING
(202) 224-6521

Manner
COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
FINANCE
RULES

United States Senate

WASHINGTON, DC 20510

June 28, 1989

Honorable Wendell H. Ford
Chairman
Committee on Rules and Administration
SR-305
Washington, D.C. 20510

Attn: Kimberly

Dear Wendell:

This letter will confirm reservation of SDG-59
on Friday, July 7, 1989, for a meeting from 2:00 to
3:30 p.m. for 15 representatives from the Business
and Disability Communities.

If you have any questions, please contact Kay
Luther of my staff on 4-8936.

Thank you for your assistance.

Sincerely yours,



BOB DOLE
United States Senate

BD:k

June 12, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Private Transportation Assoc. on ADA

Representatives from the American Bus Association and Greyhound Lines were in to see me today about their concerns with the Americans With Disabilities Act.

Under the ADA the intercity bus industry would have to install wheelchair lifts on all newly purchased buses and if possible install accessible restrooms. The industry feels that this would be financially hard on them and perhaps a phase in may be in order.

They too would like to work with the disability community and are not opposed to the bill -- however, they feel that the private transportation system will undergo serious financial problems unless options at providing accessible private intercity bus transportation can accompany already existent federally funded lift equipped vehicles. Private sector bus companies are increasingly coordinating and integrating their services with local transit operations in order to enhance mobility. That same coordination could be expanded to meet the intercity mobility needs of people with disabilities.

They are ready to discuss their concerns and would like to meet with you on the ramifications this legislation will have on private transportation providers and the need to tie into already existent resources.

Again, you are seen as the leader of compromise with the ADA. The names of the individuals are:

Susan Perry - American Bus Assoc.

Theodore Knappen - Greyhound Lines

They are working with the business community in educating Hill staff of their concerns and would like to meet with you. Again, there are ways to strike a balance between the concerns being presented -- but the polarization of the groups make finding a common ground difficult at this time.

Will you meet with them?

Yes _____ No _____

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FACT SHEET

THE AMERICANS WITH DISABILITIES ACT

AND THE INTERCITY BUS INDUSTRY

Intercity bus service is provided, virtually without subsidy, by several thousand private companies which play a unique and vital role in the nation's transportation system. The typical company is a small, often family owned, business with a narrow profit margin.

COST

- The Americans with Disabilities Act would require these companies to install wheelchair lifts and accessible restrooms on all new intercity buses. The industry's total lowest estimated annual cost for this requirement, which includes lift and accessible restroom installation, loss of revenue seats for lift and restroom accessibility, maintenance costs, and training costs would be at least \$200 million or roughly four times the net annual profit for the industry. This is based on a cost of \$10,100 per bus, per year, and assumes a 10-year life span for the industry's 20,000 bus fleet. (The highest annual estimate of \$33,300 per bus, which includes these same factors at a higher estimated annual cost plus the known loss of package express capacity for this higher cost lift system, would be \$666 million! This is more than 13 times the net annual profit for the industry.)

SERVICE

- These requirements would spell the end of private sector intercity bus service in the United States. The intercity bus industry provides public transportation service to 10,000 communities, 9,500 of which have no other form of intercity public transportation. Intercity buses provide transportation for those who truly need a low cost transportation alternative. A 1988 survey indicates that nearly half of the intercity bus industry's passengers are from families with incomes under \$15,000--below the 1988 poverty level for a family of five. The transportation disadvantaged would no longer have access to this vital public service.

-2-

NEED

- No need has been shown for the requirements of the Americans with Disabilities Act. In the one known test of lift equipped buses providing intercity services, the state of Massachusetts provided lift equipped buses to an intercity bus operator who operated them in scheduled service throughout New England. In the first three years of this heavily publicized service, three people per year requested use of the lift equipped buses.

SOLUTION

- The intercity bus industry believes that it has been meeting the needs of travelers with disabilities but to the extent that there is a further need, it can be met with more cost effective utilization of existing resources. There are thousands of federally funded lift equipped vehicles providing local transit service in both rural and metropolitan areas. Private sector bus companies increasingly are coordinating and integrating their services with these local transit operations in order to enhance mobility. That same coordination can be expanded to meet the intercity mobility needs of the handicapped. The specific need for and extent of this coordinated system can be decided through a Department of Transportation rulemaking process.

June, 1989

BOB DOLE
KANSAS
141 SENATE HART BUILDING
(202) 224-6521

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
FINANCE
RULES

United States Senate

WASHINGTON, DC 20510

June 14, 1989

Honorable Robert C. Byrd
Chairman
Appropriations Committee
SD118
Washington, D.C. 20510

Attn: Rheda

Dear Bob:

This letter will confirm reservation of SD-116
on Thursday, June 15, 1989 from 10:30 to 12:00 Noon
for a meeting for 10 representatives from the Business
and Disability Communities.

If you have any questions, please contact Kay
Luther of my staff on 4-8936.

Thank you for your assistance.

Sincerely yours,



BOB DOLE
United States Senate

BD:k

June 14, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Administration Testimony on ADA

June 22 has been set as the date for the Administration to present testimony on the Americans with Disabilities Act. Attorney General, Dick Thornburg will present the testimony.

A tentative mark up date has been set for July 12.

Tomorrow morning the disability and business communities will meet without Senate staff present to discuss concerns with the legislation and attempt to compromise on language. I will share with you the outcome of the meeting when information is available.

June 15, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Administration Testimony on ADA

June 22 at 9:00 A.M. Attorney General Dick Thornburg will present testimony on the Americans with Disabilities Act followed by former Senator Lowell Weicker who has been asked to represent the disability community.

A tentative mark up date is still planned for July 12.

Today the disability and business communities met and I heard from both groups that the meeting went well and they are planning to meet again to continue negotiations.

I also wanted to mention that I attended an interagency disability task force meeting this morning at the Department of the Interior. The purpose of today's meeting was to honor Jim Brady for his work with disabilities. He has asked me to send his very best wishes along with those of Allen Reich with the National Organization on Disability.

FYI - Ginny Thornburg has also joined the National Organization on Disability as a consultant to bring about awareness and write a working paper for N.O.D. on "Religion and Disability."

BOB DOLE
KANSAS
141 SENATE HART BUILDING
(202) 224-6521

COMMITTEES
AGRICULTURE, NUTRITION, AND FORESTRY
FINANCE
RULES

United States Senate

WASHINGTON, DC 20510

June 20, 1989

Honorable Wendell H. Ford
Chairman
Committee on Rules and Administration
SR-305
Washington, D.C. 20510

Attn: Kimberly

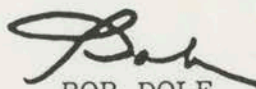
Dear Wendell:

This letter will confirm reservation of SR-189 on
Wednesday, June 21, 1989 for a meeting from 3:00 to
4:30 p.m. for 12 representatives from the Business
and Disability Communities.

If you have any questions, please contact Kay
Luther of my staff on 4-8936.

Thank you for your assistance.

Sincerely yours,



BOB DOLE
United States Senate

BD:k

June 20, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Administration Testimony on ADA

Should you have any interest in stopping by this week's hearing on the Americans with Disabilities Act to hear testimony presented by Attorney General Thornburg and former Senator Lowell Weicker the hearing will be held in Room 216 in the Hart Bldg. at 9:00. A.M.

Do you want to stop by the hearing?

Yes _____ No

May 23, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Sen. Hatch's ADA bill

I have examined Senator Hatch's alternative bill to the Americans with Disabilities Act and consulted with legal staff of the American Law Division at Congressional Research.

Senator Hatch's bill differs from the ADA in three areas:

First, the small business provider exemption has been raised to 25 in his bill from 15 in the ADA bill. It is likely that this exemption will be an issue given the accommodations that small businesses must make to comply with mandated standards of non discrimination. -- A probable negotiation tactic might be a phase in of this exemption number given the accommodations that must be made in assuring compliance under this Act.

Second, his bill will tighten the remedies available under each title to parallel current civil rights statutes by deleting section 1981 remedies currently in Title II of the ADA. Under Title II (the Employment Section) of the ADA remedies would extend section 1981 of the Civil Rights Act of 1866 to include punitive damages and attorney's fees.

Third, he tightens up the public accommodation definition consistent with title II of the Civil Rights Act to include entities covered under this title which include restaurants, entertainment and lodging entities. The ADA will go beyond title II entities to those aforementioned. However, if we are going to assure a barrier free society -- entities must go beyond restaurants, theaters and hotels -- this is another area for negotiation.

Fourth, the Hatch bill does not include language for a telecommunications relay system for the deaf and instead requires that networks progressively close caption their broadcasts. The relay services are key to full integration of deaf people -- the deaf community would prefer a relay system given networks are currently working at close captioning programs.

Fifth, the Hatch bill does not cover private transportation and the ADA stipulates that private transportation (which is a necessity given that all mainline transportation is not accessible) must comply with anti-discrimination statutes in making accessible transportation. This would include making buses such as Greyhound accessible and local transportation services accessible which are not federally funded.

I believe Senator Hatch has some valid concerns, however, his bill is limiting in the areas of public accommodations and transportation. Your past accomplishments and views on accessible transportation to assure employability for people with disabilities is inconsistent with the language of Senator Hatch's bill.

You are suited well for a compromise between the two bills. I would not recommend cosponsoring Senator Hatch's bill at this time. Senator Hatch would like to work at a compromise instead of introducing his own version.

Do you want to cosponsor Senator Hatch's bill?

Yes _____ No _____

May 25, 1989

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

To follow, are the concerns voiced thus far with regard to the Americans with Disabilities Act (ADA). I also believe there are ways to strengthen the Act that will benefit all parties impacted by this legislation.

Definition of disability -- The ADA includes a provision which would allow an individual, "regarded as having an impairment" to be considered an individual with a disability. Although such a provision is contained in other legislation that prohibits discrimination on the basis of disability, it would appear to allow very expansive coverage of individuals and classes of individuals, such as those suspected as having AIDS.

Equal Treatment Standard -- The ADA requires that equal and as effective means be offered to an individual with a disability so that such an individual may achieve the same result or outcome as other individuals. This appears to be a very rigorous standard that may not allow for a covered entity to offer a comparable treatment/service/opportunity for an individual to achieve a comparable, rather than the same, outcome. It is unclear how this standard would affect, and possibly restrict, efforts to provide reasonable accommodation.

Coverage of individuals who are alcohol and drug abusers and those with contagious diseases or infections -- The ADA would prohibit discrimination against such individuals unless they posed a direct threat to the property and safety or health and safety, respectively, of others in the workplace. (This provision is contained only in title I which addresses general prohibitions.) The alcohol and drug provision would seem to potentially conflict with legislation requiring a drug free workplace. The provision pertaining to contagious diseases or infection would extend coverage to individuals with AIDS or individuals regarded as having AIDS.

Anticipated discrimination -- The ADA would allow an individual to sue if he/she was discriminated against on the basis of disability or believes he/she is about to be discriminated against on such a basis. It is unclear how a case of anticipated discrimination would be proved or disproved.

Clarification of language in the bill has been a concern of the small business community. Such terms as "reasonable accommodation, undue hardship, readily achievable, and good faith effort" are in need of further clarification and definition.

Access to varied and multiple penalties -- The ADA would allow an individual who successfully sues because of discrimination on the basis of a disability, to obtain injunctive relief and attorney's fees and and/or compensatory and punitive damages in employment cases and those involving public accommodations and services operated by private entities. An individual could obtain injunctive relief and attorney's fees in cases involving public services (likely to be transportation cases). In cases involving telecommunications relay services an individual could seek a private cause of action (injunctive relief and attorney's fees, and/or compensatory and punitive damages) or administration action (which would cease and desist orders and fines). Clarification of remedies across titles is needed and perhaps a more uniform manner of enforcement mechanisms.

Allowance of suits in cases of both intentional and unintentional discrimination -- Because of the phrase "fail to" in the provisions which define discrimination (for example, fail to provide opportunity, access, reasonable accommodation etc.), it is likely that covered entities would be subject to suits involving either kind of discrimination. "fail to" does not require conscious intent, it just requires that an action or the failure to act has the effect of discrimination. Other language in the ADA appears to prohibit practices with an adverse impact, regardless of intent, on individuals with disabilities. It would seem appropriate to limit the right to sue in cases of unintentional discrimination to specific circumstances where covered entities have experience, knowledge, and resources that would allow them to avoid such discrimination.

Inclusion of section 504 references in ADA -- Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability by recipients of Federal financial assistance. The ADA includes references in section 504 in its provisions pertaining to transportation that now apply to recipients of Federal financial assistance covered by section 504.

Burden of proof -- The ADA appears unclear on where the burden of proof lies in most titles. Such lack of clarity needs to be resolved, especially in cases of unanticipated discrimination.

Cost: While it is obvious that there will be tremendous costs associated with the enactment of this landmark legislation -- the costs to society will only increase by not dealing with issues of inaccessibility and discrimination against individuals with disabilities. It has been researched that disabled people want to work but cannot get hired and that inaccessible transportation is an impediment to employability and full integration in society. Currently 67% of people with disabilities are unemployed. The private sector will play a fundamental role in hiring people with disabilities, however a major education mission must coincide with this legislation in understanding its intent and compliance.

A technical assistance section is needed to benefit all parties, (especially the employer or any entity) in understanding the intent of the ADA and effective implementation. Under section 504 and the Fair Housing Amendments of 1988 there is technical assistance available to carry out its mandate of non discrimination practices. Incorporating a technical assistance section to educate and assist parties impacted by this legislation would not only assist in its implementation but reduce costs and litigation by clarifying the intent and mandated requirements. Employers and entities required to carry out the mandates of this legislation will need to be educated on meeting reasonable accommodation and accessibility standards. Examples might include the following:

Currently, there exists a Job Accommodation Network (JAN) in Virginia which is an international information network and consulting resource to enable qualified workers with disabilities to be hired and retained. It brings together information from many sources about practical ways of making accommodations for employees and applicants and can supply information on required standards in meeting Federal mandates and assuring compliance.

Also available as a resource for counsel and education under a technical assistance section is the President's Committee on Employment of Persons with Disabilities, the Architectural Transportation Barrier Compliance Board and The National Council on Disability -- all of whom can offer assistance and education to anyone impacted by this legislation. Employers and entities will have concerns and questions which must be addressed after enactment.

You authored a \$35,000 tax exemption section in the tax code for the expenditure in making any facility or public transportation vehicle owned or leased by the taxpayer accessible. This section could be amended to include expenditures towards reasonable accommodation and/or technological adaptation & devices and communication aids. I am certain all impacted parties of this legislation would welcome such an exemption.

Small Businesses and the private sector has shared concerns that this legislation appears punitive with no incentives to assist them in fullfilling compliance. They have asked that a **tax credit** be considered given the expenses that may occur in making reasonable accommodations. If the goal is to prohibit discrimination against individuals with disabilities and provide opportunities for full integration for persons with disabilities -- it appears fair to provide incentives for those who will assist in assuring a barrier free society where opportunities provide greater employability and remove individuals from the dependency rolls and onto the taxpaying rolls.

May 25, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Fair Housing Act Amendments Summary

FAIR HOUSING ACT AMENDMENTS: DISABILITY PROVISIONS:

Last September, President Reagan signed the Fair Housing Act Amendments of 1988, which includes major new protections for persons with disabilities. You were a cosponsor.

Background:

The original 1968 Fair Housing Act prohibited discrimination on the basis of race, color, sex, or national origin and described what actions would be considered discriminatory in the sale, rental, or financing of a residence. Persons with disabilities were not a "protected class".

The 1988 Amendments add the disabled, and families with children, to the protected classes. The Amendments also set, for the first time, standards of accessibility for the new construction of multifamily housing.

Discrimination against disabled persons would include:

- * a refusal to permit, at the expense of the disabled person, reasonable modification of existing premises occupied or to be occupied by such person "if such modification may be necessary to afford such person full enjoyment of the premises";
- * a refusal to sell or rent a dwelling to a person because he or she is disabled; and
- * a failure to design and construct a multifamily dwelling of four or more units in such a way that the public and common use portions of the dwellings are readily accessible and usable by disabled persons, all doors into and within the premises are wide enough for wheelchairs, and include general adaptive features (light fixtures, etc., in accessible locations, reinforcements in walls that allow installation of grab bars, among others).

These new requirements for multifamily housing will be effective 30 months after enactment, and HUD is authorized to provide state and local governments with technical assistance to ensure that design and construction of new multifamily housing will be consistent with these standards.

While there is no statutory language regarding group homes for the mentally retarded and mentally ill, the House Committee report states its intent that the prohibition against discrimination based on disability apply to zoning decisions and practices. Specifically, it is intended to prohibit application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of disabled individuals to choose where to live,

Disabled persons who believe that they have been discriminated against can file a complaint with HUD who will investigate. If the complaint has merit, HUD will attempt to mediate. Investigations must be completed within 100 days. The individual can also go to Federal court.

Current Status:

HUD has recently proposed regulations, which are open for public comment. These regs include further specificity as to what constitutes discriminatory actions. I will monitor the regs and report back to you.

May 25, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: AIDS and the ADA

Under the ADA persons with AIDS will be covered. This as you know, will be a highly controversial component of the bill with the very conservative groups. Recent court cases and the President's Committee on AIDS support the incorporation of individuals with AIDS in the definition of disability under Section 504 of the Rehabilitation Act -- in addition to assured anti discrimination statutes to these individuals.

I have prepared the following facts pertaining to AIDS and its relation to the Americans with Disabilities Act.

AIDS is not explicitly mentioned in the bill. Persons are protected under the bill if they are subjected to discrimination because of a physical or mental impairment, perceived impairment, or record of impairment.

In defining these terms, the bill relies upon definitions currently in effect in regulations issued under Section 504 of the Rehabilitation Act of 1973.

The definition of "physical or mental impairment" under the Rehabilitation Act does not delineate AIDS specifically, but recent interpretations and court decisions have concluded that, in particular circumstances, AIDS, AIDS Related Complex, and seropositivity may constitute an impairment.

Coverage of people infected by the AIDS virus does not mean that such individuals can never be excluded under any circumstance.

The inclusion of someone having a condition that meets the definition of a physical or mental impairment is not the end of the inquiry under the ADA.

Inquiries regarding unequal treatment of persons with disabilities, including AIDS, can be viewed as a two step test.

First, is the individual being treated unequally because of a physical or mental impairment, perceived impairment or record of impairment? This determination is based upon the definition of physical or mental impairment drawn upon from Section 504 regulations and upon the facts of the case.

Second, is the unequal treatment permitted under the Act? This will depend upon whether there are legitimate standards or criteria justifying the unequal treatment, whether such standards are necessary and can be shown to be sufficiently connected to the essential components of the job or activity, and whether such criteria or standards have been properly applied to the particular individual with a disability.

With regard to AIDS specifically, if an employer or service provider could show, in particular circumstances, that a person with AIDS poses a substantial risk to the health or safety of co-workers or other participants, it would be permissible to establish qualification standards or selection criteria that screen out such individuals.

However, the employer or service provider would have to have adequate evidence to establish that such standards or criteria were necessary and that they were substantially related to the essential components of the job or activity.

They would also have to demonstrate that the individual in question failed to meet the standards or criteria, e.g., that the individual really did endanger the health and safety of others.

Mere irrational prejudice or unfounded fears could not justify such an exclusion or unequal treatment.

The Justice Department Office of Legal Counsel issued a ruling that Section 504 covers not only those who have AIDS -- but also those who test positive for the HIV virus.

Although the Supreme Court ruling in Arline said 504 covers people with contagious diseases, they left open the question of whether those who are simply infected are also covered. All lower courts considering the issue have held that it does.

The opinion gives strength to guidelines instituted by OPM last year that Federal agencies should not discriminate individuals with AIDS or those who test positive.

While not legally binding, the Justice Department opinion does give plaintiffs a new tool in private discrimination suits.

The President's Committee on AIDS in their findings recommended a strong anti discrimination statute to protect persons with AIDS.

May 25, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Transportation Issues and the ADA

Issue:

Accessible transportation is essential for people with disabilities to take part in community life and employment. The biggest issue for the disability community is lack of accessible mainline transportation and difficulty with the para-transit system.

Para-transit systems are a supplement to mass transit and provides door to door transportation to people who are unable to use public transportation. However, para-transit is not a substitute for accessible mass transportation, and both should be available. Unfortunately, problems with the existing para-transit systems include: (1) the service doesn't run the same hours as public transportation, and usually only between 9-5 or 8-4; (2) you must call 24 hours in advance, which makes unplanned virtually impossible; and (3) the para-transit systems cannot cross town lines, so that people may be left stranded if the system from another town doesn't arrive at the pick-up point.

Regulations issued by the Department of Transportation implementing the Urban Mass Transit Act have been challenged by numerous groups. Problems include (1) the regs exclude people with mental disabilities from eligibility for para-transit services; (2) the regs place an arbitrary 3% cap on the funds systems can use to make their systems accessible; and (3) there is no private rights action when discriminatory action occurs. A third circuit court decision, *Adapt v. Burnley* ruled in favor of people with disabilities which challenged the 3% limitation on funds and requires accessible mainline transportation and accommodable para-transit systems.

Dole Transportation Record:

You have a strong record in making transportation fully accessible -- consistent with your view on full employability of persons with disabilities.

You authored the Air Carriers Access Act during the 99th Congress to prohibit discrimination against persons with disabilities in air travel. Because of this law air travel was not included in the ADA. Regulations for this Act have been recently released -- problems include safety concerns regarding blind persons requesting to sit near exit row seats -- you have remained supportive of this -- leaving this concern to the regulatory negotiations between blind groups and the DOT.

You wrote President Bush indicating your support for -- and asking that he not appeal -- the Adapt v. Burnley decision to the Supreme Court. The ruling required that buses newly purchased with federal assistance are to be accessible; that transit systems provide both accessible mainline transportation for those who can use buses and adequate para-transit to serve those who cannot; in addition, to challenging the 3% limitation on funds.

You cosponsored last year's ADA which included much broader transportation modifications and requirements. This year's ADA will do the following:

- * requires all new buses and rail vehicles purchased after 30 days of enactment be accessible and usable to people with disabilities

- * requires a demonstrated good faith effort to purchase or lease accessible used vehicles.

- * purchase or lease of remanufactured vehicles must to the maximum extent feasible and within five years of life be made accessible.

operation of para-transit -- it shall be discriminatory for an entity which provides public transportation to fail to provide (refusal was eliminated) such a system as a supplement and comparable to that of the fixed route public transportation system.

operation of a community demand responsive system for the public must be comparable to that available to the public

intercity, rapid, light and commuter rail systems within five years must have at least one car per train accessible.

ket stations shall be accessible within three years, but the Secretary of Transportation may extend the period of compliance for up to 20 years for extraordinary expensive modifications.

March 10, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Americans with Disabilities Act

Senator Harkin will soon introduce a revised version of the Americans with Disabilities Act (ADA). You were an original cosponsor of last year's bill introduced by Senators Weicker and Harkin, which emanated from the National Council on Disability after several years of constructing the legislation. The disability community will look for your support again this year.

Senator Harkin shared a copy of the draft bill with Senator Hatch and it is my understanding that Senator Harkin approached Senator Hatch last November to ascertain whether he would like to be the chief Republican sponsor. To date, their staff are discussing the draft version. A final draft of the bill is not yet available, however, I have been in contact with many of the disability groups and was assured a copy of the draft legislation from staff of the Subcommittee on the Handicapped next week.

President Bush and Vice-President Quayle on numerous occasions expressed support for "Federal legislation that gives people with disabilities the same protections that is now enjoyed by women and minorities." President Bush has pledged a commitment that his Administration will oppose discrimination of the past that has kept too many people with disabilities out of the American mainstream. He has been on record in support of accessibility of new facilities and vehicles for people with disabilities. Statements to this effect were included in the President's first debate, his acceptance speech, as well as his address to the joint Members of Congress.

Justin Dart, a longtime disability rights advocate and a favored of this Administration to serve as the President's liaison with the disability community, is currently Chairperson of the Task Force on Rights and Empowerment of Americans with Disabilities. He is strongly opposed to the proliferation of bills similar to ADA and has to date, generated nationwide support for a bipartisan ADA bill.

You should be very wary of committing yourself to introducing your own version, as no one knows what Senators Harkin and Hatch will agree upon at this point. Should Senator Hatch refrain from joining Senator Harkin, because of differences which prevent him from sponsoring the bill at this time, you may want to consider joining Senator Harkin as an original sponsor?

It is my experience, that Senator Hatch hasn't always wanted to join in on disability legislation from its inception but rather will render his support at a later time. For example, Senator Hatch may not believe that retrofitting a number of new buses is legally required for mainstreaming to be a reality, whereas, Justin Dart and the disability community often think accessible buses are bottom line standards. Key disability advocates have approached me as to whether you would join Senator Harkin as an original cosponsor, given the principles the disability community has agreed to in this bill, as well as President Bush's vocal support of an ADA bill.

The momentum from the perspective of the disability community will be behind the Harkin bill and President Bush has made a point of embracing the concerns of the disabled and barring discrimination against persons with disabilities as previously explained.

My initial reaction at this point is to hold off on introducing your own bill and wait out the reaction to the draft bill. I would like to discuss perceptions of the draft legislation with the disability groups not yet privy to the bill as well as the National Council on Disability. In addition, the Administration will by then officially have commented on the bill.

I have reiterated your support for a civil rights bill for people with disabilities and shared with concerned groups your interest in seeing a draft bill before making a decision on supporting the ADA. I suggest you wait to see what compromise Senators Harkin and Hatch can agree upon and remain committed to a comprehensive civil rights bill for persons with disabilities.

I have attached a summary of the Americans with Disabilities Act and delineated draft revisions made to the original ADA bill from last Congress. I was informed today by key disability groups of the revisions made.

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Summary of the Americans with Disabilities Act

The Americans with Disabilities Act was introduced in the 100th Congress by Senators Weicker and Harkin and was cosponsored by 26 members, including you, and 7 other Republicans. On the House side the ADA was introduced by Rep. Coehlo with 124 cosponsors.

Senator Harkin has shared a draft bill with Senator Hatch which other Senate staff are to receive soon. Senator Hatch had concerns with the original version of ADA and has philosophical differences with the disability community on fundamental components of the bill that the disability community cannot accept.

The Americans with Disabilities Act of 1988 originated with a proposal from the National Council on Disability for legislation to establish a comprehensive nationwide prohibition against discrimination on the basis of a handicap.

Although federal legislation, (Section 504 of the Rehabilitation Act of 1973) already exists concerning discrimination against individuals with disabilities, the existing law is limited to programs or activities receiving federal financial assistance, executive agencies, and the U.S. Postal Service.

The ADA would provide broader coverage since it would apply to the private sector as well. The ADA uses basically the same conceptual framework as section 504 but is much more specific in its statutory requirements.

The Act prohibits discrimination on the basis of handicap in employment, public accommodations, transportation, communications; and State and local governments.

The Act covers employers engaged in commerce who have 15 or more employees; transportation companies; those engaged in broadcasting and communications; and State and local governments.

The Act specifically defines discrimination, including various types of intentional and unintentional exclusion; segregation; inferior or less effective services; benefits or activities; architectural, transportation, and communications barriers; failing to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualifications and performance standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The Architectural and Transportation Barriers Compliance Board will issue minimum accessibility guidelines. Other regulations will be issued by the Attorney General, the U.S. Equal Employment Opportunity Commission, the Secretary of Transportation, the Federal Communications Commission, and the Secretary of Commerce.

The Act builds upon section 504 of the Rehabilitation Act, which requires nondiscrimination on the basis of a handicap only in programs receiving federal financial assistance. Regulations under this section, which have been hard fought in their development, will remain in full force and effect.

Enforcement procedures include administration remedies, a private right of action in Federal Court, monetary damages, and attorney's fees and cut offs of Federal funds.

Major Bill Revisions

Areas which have been revised and that are included in the draft version (according to my meeting with key disability groups today) are as follows:

Definitions:

The definitions used are primarily from existing legislation. The term "handicap" will be as broad as it is under Section 504. (That is, it should cover individuals with a physical or mental impairment that substantially limits a major life activity, individuals with a record of such an impairment and individuals who are simply regarded as having such an impairment.)

There has been a change in the definition of "reasonable accomodation." The "undue hardship" language currently in statute will remain.

Employment:

The prohibition against discrimination on the basis of a handicap should apply to all employers who employ 15 or more employees.

An employer must have the affirmative obligation of providing "reasonable accomodations", as required by Section 504, that will enable the person to participate in the job.

If an employer uses qualification standards or tests that identify or disadvantage persons with handicaps, the employer must show that the standards or tests are substantially related to the individual's ability to perform essential components of the job and that such performance cannot be accomplished through a reasonable accomodation.

Public Services:

It shall be guaranteed that any handicapped person have full access to all services provided by cities, counties and States.

All cities, counties and States should have to meet the same legal obligation required under Section 504 regardless of whether they receive federal financial assistance or not.

Transportation:

All new vehicles and rolling stock that are purchased, leased, or otherwise required after the date of enactment shall be readily accessible to and usable by persons with physical or mental disabilities, including wheelchair users. This would also include new construction of transit and related facilities, including bus stops, platforms, rail stations and intermodal transfer points.

Paratransit or other specialized transportation services must meet DOT service criteria and shall be provided in addition to other forms of transportation for those persons with physical or mental impairments who cannot use accessible fixed route transit. Paratransit or other specialized transportation services should allow for the integration of nondisabled persons who are associated with physical or mental impairments who cannot use accessible fixed route transit.

Certain commuter rail vehicles, facilities and related equipment have extended life spans and, therefore, key stations should be made accessible within (x years) and all other existing stations should be made accessible within (xx years). Within (x years) one car per train shall be accessible.

Within xx days after enactment, the Department of Transportation shall develop and implement standards for the design, manufacture, use and maintenance of public transit vehicles, equipment and facilities to ensure that they are accessible to and usable by persons with disabilities.

General Prohibitions:

A requirement that all buildings or facilities, except for private housing, constructed more than xx days after the date of enactment shall be accessible and readily usable to persons with physical or mental impairments, -- with the exception only for manifestly exceptional cases in which particular accessibility features would be impossible.

A requirement that when buildings or facilities are remodeled, restored or altered, it shall be discrimination to establish, impose, and fail or refuse to remove any barriers that prevent or limit the access or participation of persons with physical or mental impairments in the remodeled, restored, or altered area

Communications:

It shall be considered discrimination for a communication carrier to fail to provide relay systems which will enable an individual using a Telecommunication Device for the Deaf (TDD), to communicate with an operator to an individual who does not have a TDD.

Senator Dole the aforementioned revisions as I stated were shared with me today. I have no draft copy yet. In addition, you may want to know that there has been no cost estimate done on the ADA bill -- which will be of concern to many as the bill proceeds through the legislative process.

The Subcommittee on the Handicapped will hold a series of hearings on this legislation and as you are aware, much work is ahead for those involved with the bill. I will share more with you once I have the opportunity to study the draft legislation. It will become equally as important to hear from the private sector and all those who have concerns with the bill once it is made available.

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A requirement that when buildings or facilities are remodeled, restored or altered, it shall be discrimination to establish, impose, and fail or refuse to remove any barriers that prevent or limit the access or participation of persons with physical or mental impairments in the remodeled, restored, or altered area

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DRAFT TRANSPORTATION LEGISLATIVE LANGUAGE

1. All new vehicles or rolling stock that are purchased, leased, or otherwise acquired after the date of enactment shall be readily accessible to and useable by persons with physical or mental impairments, including wheelchair users.
2. Paratransit or other specialized transportation services must meet DOT service criteria and shall be provided in addition to other forms of transportation for those persons with physical or mental impairments who cannot use accessible fixed route transit. Paratransit or other specialized transportation services should allow for the integration of nondisabled persons who are associated with physical or mental impairments who cannot use accessible fixed route transit.
3. All new construction of transit and related facilities including bus stops, platforms, rail stations and intermodal transfer points should be readily accessible to and useable by persons with physical or mental impairments, including wheelchair users.
4. All substantial future modifications of transit and related facilities including bus stops, platforms, rail stations and intermodal transfer points should be readily accessible to and useable by persons with physical or mental impairments, including wheelchair users. (SHOULD BE MADE CONSISTENT WITH PUBLIC ACCOMODATION STANDARDS).
5. Certain commuter rail vehicles, facilities, and related equipment have extended life spans and, therefore, key stations should be made accessible within (x years) and all other existing stations should be made accessible in (x+++). (within x years one car per train shall be accessible to and useable by persons with physical or mental impairments, including wheelchair users). (MAY HAVE TO BE MADE CONSISTENT WITH PUBLIC ACCOMMODATION STANDARDS).
6. Within xx days after enactment, the Department of Transportation shall develop and implement standards for the design, manufacture, use and maintenance of public transit vehicles, equipment and facilities to ensure that they are accessible to and useable by persons with physical or mental impairments, including wheelchair users.
7. Entities engaged in the business of providing taxi service for hire shall not discriminate on the basis of handicap in the delivery of that service.
8. For taxi service, a comparable level of accessible service shall be provided for those that can't use the nonaccessible taxis. To the extent that a taxi service is the only method of public transit in an area, then the system must have program accessibility.

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GENERAL PROHIBITIONS

The bill should include a section of General Prohibitions describing the types of actions or omissions that constitute discrimination on the basis of handicap.

It should include:

- o A prohibition of discrimination on the basis of handicap directly or through a contractual, licensing, or other arrangements.

- o A delineation of types of discrimination drawn from Section 504 regulations, including exclusion, segregation, less effective benefits and services, etc. (See 1988 ADA, Sec. 5(a)(1)(A) - (D)).

- o A subsection on Accessibility that includes:

[New Construction]

- 1) a requirement that all buildings or facilities, except for private housing, constructed more than xx days after the date of enactment shall be accessible to and readily usable by persons with physical or mental impairments,
 - with an exception only for manifestly exceptional cases in which particular accessibility features would be impossible.

[Existing Buildings and Facilities]

- 2) a requirement that when buildings or facilities are remodeled, restored, or altered, it shall be discrimination to establish or impose, or fail or refuse to remove any barriers that prevent or limit the access or participation of persons with physical or mental impairments in the remodeled, restored, or altered areas,

- this includes a requirement that the path of travel to the remodeled, restored, or altered areas and the key facilities serving these areas must be barrier free.

- 3 a requirement that access to existing buildings and facilities is to be achieved by several methods:

- a) - by making minor physical alterations not amounting to a substantial modification of a building or facility
 - by using other methods such as delivery or moving of services, goods, benefits.
 - by referral to a similar business or facility under certain limited circumstances (only small providers?) (See HEW regs. Sec. 84.22(c))

- b) if a modification would result in a substantial modification of a building or facility, program access should be provided unless reasonable to do so.

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- o A prohibition such as that in the Fair Housing Amendments Act of discrimination against people because they associate with or have a relationship with a person with a physical or mental impairment (See 1988 ADA, Sec.5(a)(5)).

- o A prohibition of discriminatory qualifications standards, selection criteria, or eligibility requirements (See 1988 ADA Sec. 5(a)(4)).

- o A statutory requirement of reasonable accommodation (See 1988 ADA, Sec. 5(a)(3)).

- o A statement of what is not discriminatory (1988 ADA, Sec. 5(b)), including

- differential treatment wholly unrelated to physical or mental impairment

- legitimate application of necessary criteria substantially related to the essential components of the programs, activity, or opportunity.

- o Requirements regarding the elimination of communication barriers.

- o A statement of limitations on duties of barrier removal and reasonable accommodation based on a standard that such removals or accommodations do not have to be made if they would fundamentally alter the nature of the program, activity, facility, or business at issue, or in manifestly exceptional cases in which they would be impossible or prohibitively expensive.

- in such cases there is still a duty to make lesser changes or accommodations to enable participation by a person with a physical or mental impairment (See 1988 ADA, Sec. 7(a)(2)).

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EMPLOYMENT PRINCIPLES

1. The prohibition against discrimination on the basis of handicap should apply to all employers in the United States who employ 15 or more employees.
2. Discrimination should be prohibited against an individual because of his or her handicap. The term "handicap" should be as broad as it is under Section 504. (That is, it should cover individuals with a physical or mental impairment that substantially limits a major life activity, individuals with a record of such an impairment and individuals who are simply regarded as having such an impairment.)
3. The prohibited employment discrimination must include both direct and indirect actions (e.g., actions taken through contracting or actions that have the ultimate effect of discrimination on the basis of handicap.)
4. An employer must have the affirmative obligation of providing "reasonable accommodations", as required by Section 504, that will enable the person with handicaps to participate in the job.
5. If an employer uses qualification standards or tests that identify or disadvantage persons with handicaps, the employer must show that the standards or tests are substantially related to the individual's ability to perform essential components of the job and that such performance cannot be accomplished through a reasonable accommodation.
6. Prohibited employment discrimination must include adverse actions taken because of an individual's relationship to or association with a person with handicaps.

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PUBLIC SERVICES

1. It shall be guaranteed that any handicapped person have full access to all services provided by cities and counties.
2. All cities and counties should have to meet the same legal obligation required under Section 504.

April 19, 1989

TO: Senator Dole
FROM: Maureen West
SUBJECT: ADA Strategy

As you requested I spoke with Senator Grassley regarding the Americans with Disabilities Act (ADA). He seemed to indicate that he would consider cosponsoring a Hatch bill but preferred a Dole bill as he informed Iowans of his interest in your legislation.

OVERVIEW OF THE LEGISLATION:

The Americans with Disabilities Act is comprehensive landmark civil rights legislation that establishes a national mandate to end discrimination against people with disabilities. The Act will parallel in scope the civil rights statutes provided racial and ethnic minorities, women and older persons -- extending anti-discrimination statutes and creating enforceable standards to deal with discrimination against people with disabilities in employment, transportation, public accommodations, communications, and State and local governments.

Federal legislation barring discrimination against individuals with handicaps exists under Section 504 of the Rehabilitation Act of 1973 but is limited to those entities receiving federal financial assistance. The ADA would provide broader coverage since it would apply to the private sector. It is also more specific in its statutory requirements.

POLITICAL PROBLEMS:

President Bush repeatedly expressed his support for the ADA during the campaign. However, now the White House wants more time to study the bill, because affected agencies (Department of Labor, Department of Transportation, Federal Communications Commission and the Department of Commerce) are very concerned about its cost, regulatory impact, and the effect on the economy and small business. Extension of anti-discrimination statutes with enforceable remedies may result in increased litigation against those not in compliance with mandated standards.

The disability community is prepared to stage protests and react militantly should the Administration not support this legislation. If you introduce a bill before the Administration acts, the disability community will perceive you as actively undermining their efforts to secure Administration support, as well as backing from other Congressional Republicans.

PREVIOUS DOLE POSITION:

You cosponsored the original version of the ADA in the last Congress (which was much broader than the current Harkin version). However, at that time, the bill was introduced as a symbolic gesture and was not pushed by its sponsors. In addition, you did a floor statement indicating that while you supported the broad objectives of the bill, you had a number of concerns about the impact of specific provisions.

RECOMMENDATIONS:

The legislation Senator Harkin intends to introduce could be highly controversial with the business sector and many conservative advocacy groups. Too much is still unknown about this legislation, and I am certain the major land mines that are hidden in the bill will surface in the course of hearings. Three days of balanced hearings are scheduled in May.

Should the Committee report a bill, you would still be well positioned to introduce your own version of the legislation, since, given the Committee's liberal composition, it is virtually certain that there will be insufficient support to pass the bill on the floor.

OPTIONS:

- ☒ Introduce a Bill now and take political risks.
- ☐ Introduce a refined bill after input from hearings.
- ☐ Wait until a compromise may be necessary on the Senate floor.

MEMORANDUM

April 15, 1989

TO: Senator Dole
FR: Judy Brotman



I attended several disability-related functions recently where a great deal of concern was expressed that you would soon be introducing another version of the American's With ~~Dis~~ Disabilities Act.

While I strongly concur with your belief that ADA as written is not passable, the disability community has not as yet come to this reality. They view your desire to introduce your own legislation as partisan and also as undercutting their efforts.

My suggestion would be to wait for the hearings to be held and let others take the heat for gutting the bill of some of its' more controversial provisions. In fact, I'd further suggest that you go on record by writing Senator Harkin requesting hearings at the earliest possible date.

ADA has some similar involvements on an emotional level as the Civil Rights Restoration Act. ~~You were~~ strongly criticized for your actions on the restoration act; I believe that could happen again.

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May 4, 1989

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

The following legal questions need to be raised:

1. How have the Court's interpreted the phrase "... regarded as having an impairment" in the definition of an individual with disability in section 504 of the Rehabilitation Act?

If the Court's are split on this, we may have a basis for excluding or limiting this phrase in the ADA.

2. How have the Court's interpreted the the phrase "... believe one is about to be discriminated against?"

Legal staff at CRS has indicated it is a new concept; therefore, if that is the case, it should be deleted, because can one measure or ascertain "about to be" it is just plain too vague.

3. How many civil rights statutes allow for a private cause of action in cases of both intentional and unintentional discrimination, and how many limit cases to those involving only intentional discrimination?

If most laws allow for a cause of action only in cases of intentional discrimination, the argument can be made for limiting the private cause of action to similar cases in the ADA or at least selected titles in ADA.

4. Most civil rights statutes place the burden of proof on the plaintiff, why should ADA place this burden on the defendant?

If most laws place the burden of proof on the plaintiff, the argument for similar provision in the ADA could be made. This is not the case.

More research will need to be done on the remedies and procedures under each title of the ADA and the implications of such remedies.

May 5, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Summary of Harkin ADA

The Americans with Disabilities Act of 1989 (ADA) is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; and telecommunications.

Several key terms such as "disability", "auxiliary aids and services", and "reasonable accommodations" are specifically defined. These definitions are comparable to the definitions used for the purposes of section 503 of the Rehabilitation Act of 1973 (which requires government contractors to take affirmative action to hire individuals with disabilities) and section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination against persons with disabilities by recipients of Federal financial assistance).

Title I sets out the general forms of discrimination prohibited by the Act. These general prohibitions are comparable to the prohibitions included in section 504.

Title II specifies that an employer, employer agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any item, condition or privilege of employment. The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964. The ADA also incorporates by reference section 1981 of the Civil Rights Act for acts of intentional discrimination.

Title III specifies that no individual shall be discriminated against by a State agency or political subdivision of a State or board, commission, or other instrumentality of a State and political subdivision. Title III also includes specific actions applicable to public transportation provided by public transit authorities considered discriminatory. The enforcement provisions in section 505 of the Rehabilitation Act of 1973 are also incorporated under this title.

Title IV specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity on the basis of a disability. Also included are specific prohibitions of discrimination in public transportation services provided by private entities. Finally title IV incorporates the applicable enforcement provisions in title VIII of the Civil Rights Act of 1968.

Title V specifies that telephone services offered to the general public must include interstate and intrastate telecommunications relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to individuals able to use voice telephone services. Title V incorporates by reference applicable enforcement provisions in title VIII of the Civil Rights Act of 1968 and the Communications Act of 1934.

Title VI includes miscellaneous provisions, such as a construction clause explaining the relationship between the provisions in the ADA and the provisions on other Federal and State laws; a prohibition against retaliation; a statement that States are not immune from actions in Federal court for a violation of the ADA; a directive to the Architectural and Transportation Barriers Compliance Board to issue guidelines; and authority to award attorney's fees.

April 28, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Hearings

Senators Hatch and Kennedy have scheduled the mornings of May 9, 10, and the 16th for hearings on the Americans with Disabilities Act. The hearings are to be balanced with representation from the disability community, small business and the Administration. I will share with you a copy of the witness list when it becomes available.

The Administration will not have an official stance on a bill (for approx. 3 months) until affected Agencies concerned with the legislation have time to study its impact and OMB has done a cost analysis. I was informed that there is to be a Rose Garden Ceremony in a few weeks with the President and interested Congressional leaders, encouraging bi-partisan efforts on civil rights for the disabled. President Bush will also recommend that an appropriate analysis be completed in developing sound policy recommendations for this legislation.

I recommend that you stop by the hearings and make a statement indicating your intent to be a major player with this legislation and your support for the basic concept of enhanced civil rights; you may also use this opportunity to clarify your own position.

Do you want to stop by the ADA hearings?

Yes ☒ No ☐

May 9, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Differences in Harkin and Weicker bill

Substantial changes were made to the Harkin/Kennedy bill from Senator Weicker version of ADA introduced last Congress. Senator Weicker's bill was much broader in its interpretation.

For purposes of clarifying the changes between the American with Disabilities Act (ADA) from last year and the bill Senators Harkin and Kennedy have just introduced, I have termed last years ADA as the original ADA and the Harkin/Kennedy bill as the revised ADA. I have delineated changes according to the titles within the Act.

DEFINITION OF PROTECTED CLASS AND PROVING DISCRIMINATION:

Under sections 504 and 504 of the Rehabilitation Act of 1973 there is a two step process for proving discrimination. First, an individual must prove that he or she is disabled -- having a physical or mental impairment that substantially limits a major life activity. Second there must be evidence that he or she is otherwise qualified.

Section 503 and 504 also include provisions which states that if someone with a contagious disease or someone who is a alcoholic or drug addict poses a direct threat to the health and safety of others, then he or she is not a "qualified disabled person".

The original ADA had a much broader definition of disability than sections 503 and 504 -- whereby there had to be no proof that one had a disability that substantially limits a major life activity. The original ADA did not incorporate provisions regarding persons with contagious diseases and alcoholics and drug abusers. The definition did not include the term "otherwise qualified".

The revised ADA incorporates the section 503 and 504 definition which requires an individual must prove that his/her disability substantially limits a major life activity.

EMPLOYMENT:

Sections 503 and 504 generally require covered entities to make reasonable accommodations for disabled applicants and employees unless it would pose an "undue hardship."

The original ADA had a "bankruptcy" provision under which a recipient would have to provide the accommodations unless it would "threaten the existence of the company."

The revised ADA incorporates section 503 and 504 standards of undue hardship.

Both versions have a small provider of 15 employees or less consistent with title VII of the Civil Rights Act of 1964.

PUBLIC ACCOMMODATIONS:

The original ADA used the definition of "public accommodation" set out in title II of the Civil Rights Act of 1964 (e.g. restaurants, hotels, theaters, etc.) and required that all existing facilities be retrofitted within 2 to 5 years to assure full accessibility unless the retrofitting would "threaten the existence of" the business (the so called bankruptcy provisions).

The original ADA also required that all new facilities be fully accessible and required public entities provide reasonable accommodations -- unless it would "threaten the existence of" the entity.

The revised ADA reaches beyond the title II provision to include all entities that are open to the public as customers, clients, visitors, or which are potentially places of employment.

With respect to existing facilities, the revised ADA only requires structural changes that are "readily achievable." and providing alternative methods for those which are not.

The revised ADA requires reasonable accommodations (termed "auxiliary aids and services) be made unless it would result in "undue burden" which is the current standard in section 504.

Both versions require that new facilities be made accessible.

PUBLIC SERVICES:

The original bill requires that all new facilities be accessible within 2 to 5 years, regardless whether an entity receives federal aid.

The revised ADA extends section 504 to cover all state and local governments their programs and activities.

COMMUNICATIONS:

The original ADA required all those engaged in the business of broadcasting to progressively close caption shows. It also establishes an interstate and intrastate relay system for deaf persons. (a deaf person using a TDD can speak to an operator who can relay a message to an individual who has no TDD).

The revised ADA requires only a TDD relay system and deletes the captioning provisions.

TRANSPORTATION:

The original ADA required 50% of all a public authority's fleet be accessible within 7 years (which includes retrofitting) in addition to all making all new buses accessible

The revised ADA requires that all buses on a fixed route be accessible with no retrofitting required. It also permits a transit authority to purchase used buses that are not accessible if the transit authority has demonstrated a good faith effort to purchase a used bus that is accessible.

Both versions require a paratransit system be made available for those disabled individuals who cannot use the mainline system and that all new facilities be accessible.

The revised ADA has a separate standard for communities that have a demand responsive system (advanced reservation transportation) for the general public. Under this standard, all new buses need not be accessible if the transit authority can demonstrate that it can meet the needs of disabled people with current accessible buses.

The original ADA required that 50% of existing rail cars be made accessible within 7 years (requiring extensive retrofitting).

The revised ADA requires that at least one rail car be made accessible within 5 years and that only key stations be made accessible within 20 years.

The original ADA required all stations be made accessible within 10 years.

The original ADA covered air travel and required accessible taxis.

The revised ADA does not cover air travel and does not require accessible taxicabs but prohibits a driver from refusing to pick up a disabled person.

ENFORCEMENT:

The original ADA included an enforcement provision (injunctive and monetary damages) that applied to the entire Act.

The revised ADA has a separate enforcement section for each title. Under employment, the revised ADA incorporates by reference the enforcement provisions in title VII of the Civil Rights Act of 1964. For acts of intentional discrimination, it applies section 1981 of the Civil Rights Act of 1968.

The revised ADA incorporates by reference the provisions of section 505 of the Rehabilitation Act (attorney's fees) to public entities. Under public accommodations and communications, the revised ADA incorporates the enforcement provisions in the Fair Housing Act of 1988.

Both versions incorporate attorneys' fees provisions.

OVERVIEW OF THE LEGISLATION

Findings and Purposes:

The purpose of the Act is to provide a clear and comprehensive national mandate to end discrimination against people with disabilities; provide protection against discrimination comparable to that afforded to minorities and others; and provide enforceable standards addressing discrimination against people with disabilities.

Definitions:

The "term" definition is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities of such an individual, a record of such an impairment, or being regarded as having such an impairment. This definition is the same definition used for purposes of section 504 of the Rehabilitation Act of 1973.

Title I: General Prohibitions Against Discrimination:

Title I sets out the general forms of discrimination prohibited by the Act. It is considered discriminatory to subject an individual, directly or indirectly, on the basis of a disability, to any of the following:

- (1) denying the opportunity to participate in or benefit from an opportunity;
- (2) affording an opportunity that is not equal to that afforded others;
- (3) providing an opportunity that is less effective than that provided to others;
- (4) providing an individual or class of individuals with an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others;
- (5) aiding or perpetuating discrimination by providing significant assistance to others that discriminate;
- (6) denying an opportunity to participate as a member of boards or commissions; and
- (7) otherwise limiting an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

For the purposes of this Act, for an aid, benefit, or service to be equally effective, an entity must afford an individual with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's need.

Further an entity may not directly or indirectly use criteria or methods of administration that have the effect of subjecting an individual to discrimination on the basis of disability or perpetuate discrimination by others who are subject to common administrative control or are agencies of the same State. Nor can an entity discriminate against an individual or entity because of the association of that individual with another individual with a disability.

Title I also sets out several defenses to allegations of discrimination. It is not considered discrimination to exclude or deny opportunities to an individual with a disability for reasons entirely unrelated to his or her disability. Further, it is not discrimination to exclude or deny opportunities to an individual based on the application of qualification standards or other criteria that are shown by a covered entity to be both necessary and substantially related to the ability of the individual to perform or participate or take advantage of an opportunity and such participation cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

Qualifications standards may include requiring that the current use of alcohol or drugs by an alcohol or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health and safety of other individuals in the workplace or program. These defenses are comparable to the defenses currently available under section 504 of the Rehabilitation Act of 1973.

Title II Employment:

The provisions in title II of the Act use or incorporate by reference many of the definitions in title VII of the Civil Rights Act of 1964 (employee, employer, Commission, person, labor organization, employment agency, joint labor management committee, commerce, industry affecting commerce). The scope of the bill is identical i.e., only employers who have 15 or more employees are covered.

A "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. This definition is comparable to the definition used for purposes of section 504.

Using the section 504 legal framework as the model, the bill specifies that no entity covered by the Act shall discriminate against any qualified individual with a disability in regard to application procedures, the hiring or discharge of employees and all terms, conditions and privileges of employment.

Thus, discrimination includes, for example, the failure by a covered entity to make reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Discrimination also includes the denial of employment opportunities because a qualified individual with a disability needs a reasonable accommodation.

The definition of the term "reasonable accommodation" included in the bill is comparable to the definition in the section 504 framework. The term includes: making existing facilities accessible, job restructuring, part-time and modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers and interpreters, and other similar accommodations.

Discrimination also includes the imposition or application of qualification standards and other criteria that identify or limit a qualified individual with a disability unless such standards or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

Consistent with title VII of the Civil Rights Act of 1964, every covered entity must post notices in an accessible format describing the applicable provisions of this Act. The Commission is also directed to promulgate regulations within 180 days in an accessible format.

The bill incorporates by reference the remedies and procedures set out in section 706, 709, and 710 of title VII of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964 for acts of intentional discrimination.

Title III: Public Services

Section 504 only applies to entities receiving Federal financial assistance. Title III of the bill makes all activities of State and local governments subject to the types of prohibitions against discrimination against a qualified individual with a disability included in section 504 (nondiscrimination) and section 505 (the enforcement procedures).

A "qualified individual with a disability " means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, or the removal of architectural, communication, and transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, or other instrumentality of a State and political subdivision.

Title III also specifies the actions applicable to public transportation (not including air travel) provided by public entities that are considered discriminatory. The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis).

1. New fixed route buses of any size and rail vehicles for which a solicitation is made later than 30 days after the date of enactment of this Act must be readily accessible to and usable by individuals with disabilities. No retrofitting of existing buses is required.

2. Used vehicles purchased or leased after the date of enactment need not be accessible but a demonstrated good faith effort to locate a used accessible vehicle must be made.

3. Vehicles that are re-manufactured so as to extend their usable life for five years or more must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

4. In those communities with fixed route transportation, there must also be a paratransit system to serve those individuals with disabilities who cannot use the fixed route public transportation and to other individuals associated with such individuals in accordance with service criteria established by the Secretary of Transportation.

5. Communities that operate a demand responsive system that is used to provide public transportation for the general public (nondisabled and disabled) must purchase new buses for which a solicitation is made in 30 days after the date of enactment of the Act that are accessible unless the system can demonstrate that the system, when viewed in its entirety, provides a level of service equivalent to that provided to the general public; in which case all newly purchased vehicles need not be accessible.

6. All new facilities used to provide public transportation services must be readily accessible to and usable by individuals with disabilities.

7. When alterations are made to existing facilities one year after the date of enactment that affect or could affect the usability of the facility, the alterations, the path of travel to the altered area, the bathrooms, telephones, and drinking fountains serving the remodeled area must be, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities.

8. A mass transportation program or activity, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities. All stations in intercity rail systems and key stations in rapid rail, commuter rail systems must be readily accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinary expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

9. Intercity, light rail, rapid, and commuter rail systems must have at least one car per train that is accessible as soon as practicable to recipients of Federal financial assistance. The Secretary of the Department of Transportation is also directed to issue regulations in an accessible format that includes standards which are consistent with minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Title IV: Public Accommodations and Services Operated by Private Entities

Title IV specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

The term "public accommodation" means privately operated establishments that are used by the general public as customers, clients, or visitors or that are potential places of employment and whose operations affect commerce. Examples of public accommodations include: auditoriums, theaters, restaurants, shopping centers, hotels, terminals used for public transportation, office buildings and recreation facilities.

Examples of discrimination include the following:

The imposition or application of eligibility criteria that identify or limit an individual with a disability.

A failure to make reasonable modifications in rules and policies and procedures when necessary to afford meaningful opportunity unless the entity can demonstrate that the modifications would fundamentally alter the nature of the program.

A failure to provide auxiliary aids and services unless the entity can demonstrate that such services would result in undue burden. Auxiliary aids and services include: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts or other effective methods of making visual materials available to individuals with visual impairments; acquisitions or modification of equipment or devices; and other similar services and actions.

A failure to remove architectural and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles where such removal is readily achievable; and, where the entity can demonstrate that such removal is not readily achievable, a failure to provide alternative methods.

With respect to a facility that is altered one year after the effective date of the Act, the failure to make the alterations in a manner that, to the maximum extent feasible, the altered portion, the path of travel, to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area where readily accessible to and usable by individuals with disabilities.

A failure to make facilities designed and constructed later than 30 months after the date of enactment readily accessible to and accessible by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so in accordance with standards set forth or incorporated by reference in regulations.

A failure by a public accomodation to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and a refusal to purchase or lease vehicles that carry in excess of 12 passengers for which solicitations are made later than 30 days after the date of enactment which are readily accessible to and usable by individuals with disabilities.

The bill also includes a specific section prohibiting discrimination in public transportation services (other than air travel) provided by private entities. In general, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people (but not in the principal business of providing air transportation) and whose operations affect commerce.

Examples of discrimination include:

the imposition or application of eligibility criteria, that identify or limit an individual with a disability.

a failure to make reasonable modifications to criteria, provide auxiliary aids and services, and remove barriers consistent with the standards set out above;

new vehicles (other than automobiles) purchased 30 days after the date of enactment must be made accessible, new taxicabs are not required to be made Taxicab companies are liable, however, if their drivers refuse to pick up an individual with a disability.

The bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the Attorney General (section 814)a)). Regulations must be issued in

an accessible format by the Attorney General and by the Secretary of Transportation, consistent with the provisions applicable to public agencies under title .

Title V: Communications

Title V specifies that it is considered discrimination for a common carrier that offers telephone services to the general public to fail to provide, within one year after the date of enactment of this Act, interstate and intrastate telecommunication relay services so that such services provide individuals who use non-voice terminals devices because of their disabilities opportunities for communications that are equal to those provided to persons able to use voice telephone services. Nothing in this title is to be constructed to discourage or impair the developed of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

The Federal Communications Commission is directed to issue regulations establishing minimum standards and guidelines for telecommunications relay services. With respect to enforcement, the bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the General Attorney General (section 814 (a)). Further, the Federal Communications Commission is authorized to use enforcement provisions generally applicable to it for remedying violations of the Communications Act of 1934.

Title VI: Miscellaneous Provisions

Title VI explains the relationship between section 504 and this Act; this Act and State laws that provide greater protections; and the relationship among the various titles of the Act. Title VI also includes an anti-retaliation provision; directs the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines; and makes it clear that States are immune under the 11th Amendment for violations of the Act.

With respect to attorney's fees, the bill specifies that any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including expert witness fees, and costs.

May 10, 1989

TO: Senator Dole

FROM: Mo West

SUBJECT: The Americans with Disabilities Act

DATE OF INTRODUCTION:

The Americans with Disabilities Act (ADA) was introduced Tuesday, May 9, 1989 in conjunction with the first day of ADA hearings.

PURPOSE OF THE ADA:

The purpose of the legislation is to prohibit discrimination on the "basis of disability", in the areas of -- employment, public accommodation, transportation, communication, State and local governments.

Title V of the Rehabilitation Act of 1973 contains section 504 which prohibits discrimination on the basis of a disability to any entity that is a recipient of Federal aid. It also covers Federal contractors specifically in the area of employment provided directly by Federal agencies (section 501). These sections provide that a covered entity may not discriminate against an individual with a disability unless the disability renders the individual unqualified for the position or program in question.

In the evaluation of the individual's qualifications, the entity must evaluate whether the disability can be reasonably accommodated without undue hardship.


The ADA would not amend Title V of the Rehabilitation Act, but extend prohibitions against discrimination on the basis of disability to the private sector. The rights and remedies in the ADA would exist independently of Title V of the Rehabilitation Act and there would be no preemption.

ACTION AND ACTIVITIES IN THE LAST CONGRESS:

In May, 1987, Chairman Major Owens of the Subcommittee on Select Education, appointed Justin Dart to chair a Task Force on the Rights and Empowerment of People with Disabilities. This task force had as its central purpose, the identification of the full range and magnitude of discrimination faced by people with disabilities and to develop grassroots support for legislation to overcome such discrimination.

May 10, 1989

TO: Senator Dole
FROM: Maureen West
SUBJECT: Harkin ADA Bill



The Americans with Disabilities Act was introduced yesterday with 8 Republican cosponsors (Durenberger, Jeffords, McCain, Chaffee, Stevens, Cohen, Packwood, Boschwitz).

The Americans With Disabilities Act is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; telecommunications; and State and Local governments.

The ADA extends civil rights protections to people with disabilities beyond section 504 of the Rehabilitation Act of 1973 (the anti-discrimination statute for disabled persons) by requiring the private sector and state and local governments to comply with current civil rights statutes afforded women and minorities.

The Act covers employers engaged in commerce who have 15 or more employees; transportation companies; those engaged in communications and state and local governments.

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualification standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1981 for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1964 and Section 505 of the Rehabilitation Act of 1973.

May 5, 1989

TO: Senator Dole

FROM: Mo West

SUBJECT: Major Statutory Language Problems with ADA

There are many unknown concerns yet to be voiced and potential land mines yet to be uncovered regarding this legislation. However, there are a few areas which we can identify already that need to be addressed. The disability community, as you are aware, is extremely emotional about this legislation. They have worked to refine this bill from last year's version. Too much is still unclear as to what impact this legislation will have on the regulatory process and the economy in general. Cost estimates are still to be determined.

Concerns raised thus far with the Harkin bill include the ramifications this legislation will have on the private sector, specifically the small business community who must come into compliance with mandated civil rights statutes to assure full accessibility and accommodations for people with disabilities.

The major concern is the exemption clause of 15 or less employers. The fact that reasonable accommodations will need to be made to assure a discrimination free-workplace or public accommodation has many small businesses very apprehensive, because it will cost to make the environment barrier free. While there is language in the bill that would eliminate a business or entity from going bankrupt in meeting mandated standards -- the 15 or less clause will need to be phased in to assure adequate time to comply and prepare for the restructuring this legislation will force on businesses.

Some of the language throughout the bill is too broad and must be further defined and clarified. For example:

(1) Anticipated discrimination -- Under Title II pertaining to employment, an individual, based on disability, could pursue a private cause of action if he/she believed that he/she is "about to be discriminated against" on the basis of a disability. This is a hard point to prove; how does one know that he/she is about to be discriminated against in employment? The business community fears that forced litigation and frivolous lawsuits will result from this language, which includes compensatory damages for pain and suffering, always difficult to measure.

(2) Use of failure standard in employment -- An individual with a disability, can pursue a private cause of action in several titles (II and III primarily which are employment and transportation related) if a covered entity fails to provide or accommodate a discrimination-free environment. Language in the bill incorporates "failure" and thus, would encourage increased litigation for those who unintentionally discriminated. Inserting language such as "refusal" will give a party the option of correcting unintentional discrimination.

(3) Transit Authorities will have problems with the timelines and costs in bringing into compliance accessible transportation, however, no retrofitting will be required and accessible transportation is necessary for people with disabilities who want to live and work in their community.

(4) Use of different remedies in different titles -- Each title uses differing combinations of remedies and procedures in cases of private causes of action. Consistency among remedies may be necessary because of the accommodations that are to be made.

(5) Burden of proof -- Under this bill burden of proof is placed on the defendant, while most laws place burden of proof on the plaintiff. The approach should be consistent.

May 5, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Disability Community Support

The Americans with Disabilities Act is comprehensive landmark civil rights legislation that establishes a national mandate to end discrimination against people with disabilities. The Act will parallel in scope the civil rights statutes provided racial and ethnic minorities, women and older persons -- extending anti-discrimination statutes and creating enforceable standards to deal with discrimination against people with disabilities in employment, transportation, public accommodations, communications, and State and local governments.

Federal legislation barring discrimination against individuals with handicaps exists under Section 504 of the Rehabilitation Act of 1973 but is limited to those entities receiving federal financial assistance. The ADA would provide broader coverage since it would apply to the private sector. It is also more specific in its statutory requirements.

Senator Harkin plans to introduce the Americans with Disabilities Act next Monday prior to next week's hearings. Approximately, 70 disability groups and the Leadership Conference on Civil Rights support the Americans with Disabilities Act.

The ADA extends civil rights protections to people with disabilities by requiring the private sector to come into compliance with current civil rights statutes afforded women and minorities. The problems are that in some instances, the required compliance would exceed those afforded other minorities.

The Act covers employers engaged in commerce who have 15 or more employees.

The Act specifically defines what constitutes discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure to make reasonable accommodations; and discriminatory qualifications and performance standards.

The Act also specifies those actions that do not constitute discrimination. These include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application or qualification standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The ADA incorporates by reference the enforcement provisions under Title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1968 and Section 505 of the Rehabilitation Act of 1973.

For further information contact:

Consortium for Citizens with Disabilities

Liz Savage, EFA 459-3700
Dave Capozzi, PVA 872-1300
Tom Sheridan, AAC 293-2886

May 1, 1989

The Honorable Robert Dole
U.S. Senate
Washington, D.C. 20510

Dear Senator Dole:

Discrimination is a daily experience for individuals who have disabilities. Last year you recognized the importance of this problem by co-sponsoring the Americans with Disabilities Act. The Consortium for Citizens with Disabilities and other national organizations that advocate for the rights of America's 43 million citizens with disabilities would like you to become an original co-sponsor of the Americans with Disabilities Act of 1989.

This bill will afford civil rights protections to all individuals in this country who have disabilities. It is intended to provide people with disabilities, America's largest minority, the same federal civil rights protections that are enjoyed by other minorities.

As President Bush has stated, "Disabled people do not have the same civil rights protections as women and minorities . . . I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore." The Americans with Disabilities Act is a significant step toward achieving this goal.

We appreciated your leadership in the 100th Congress. We urge you to once again affirm your commitment to our nation's citizens with disabilities by co-sponsoring the Americans with Disabilities Act of 1989. Please contact Bob Silverstein at the Subcommittee on the Handicapped (4-6265) if you wish to co-sponsor this legislation. Thank you.

Sincerely,

ACLD, An Association for Children and Adults with
Learning Disabilities
AIDS Action Council
Alexander Graham Bell Association for the Deaf
American Academy of Child and Adolescent Psychiatry
American Academy of Otolaryngology Head and Neck Surgery
American Association for Counseling and Development
American Association of the Deaf-Blind
American Association on Mental Retardation
American Association of University Affiliated Programs
American Civil Liberties Union
American Deafness and Rehabilitation Association
American Diabetes Association
American Foundation for the Blind
American Psychological Association
American Speech-Language-Hearing Association
Association for Education and Rehabilitation of the Blind
and Visually Impaired
Association for the Education of Rehabilitation
Facility Personnel
Association for Retarded Citizens of the United States
Autism Society of America
Child Welfare League of America
Conference of Educational Administrators Serving the Deaf
Convention of American Instructors of the Deaf
Council for Exceptional Children
Deafness Research Foundation
Disabled But Able to Vote
Disability Rights Education and Defense Fund
Epilepsy Foundation of America
Episcopal Awareness Center on Handicapped
Gallaudet University Alumni Association
Gazette International Networking Institute
International Association of Parents of the Deaf
International Polio Network
International Ventilator Users Network
Lambda Legal Defense and Education Fund
Leadership Conference on Civil Rights
Mental Health Law Project
National Alliance for the Mentally Ill
National Association for Music Therapy
National Association of the Deaf
National Association of Developmental Disabilities Councils
National Association of Private Residential Resources
National Association of Protection and Advocacy Systems
National Association of Rehabilitation Facilities
National Association of Rehabilitation Professionals in the
Private Sector
National Association of State Mental Retardation
Program Directors
National Coalition for Cancer Survivorship
National Council of Community Mental Health Centers

National Council on Independent Living
National Council on Rehabilitation Education
National Down Syndrome Congress
National Easter Seal Society
National Fraternal Society of the Deaf
National Handicapped Sports and Recreation Association
National Head Injury Foundation
National Mental Health Association
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Organization on Disability
National Recreation and Park Association
National Rehabilitation Association
National Spinal Cord Injury Association
Paralyzed Veterans of America
People First International
Self Help for Hard of Hearing People, Inc.
Spina Bifida Association of America
Telecommunications for the Deaf, Inc.
The Association for Persons with Severe Handicaps
Tourette Syndrome Association
United Cerebral Palsy Associations, Inc.
World Institute on Disability

TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

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

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

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Gwyneth Rochlin

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Maria Cuprill
Robert Tate
Patricia Laird

May 3, 1989

The Honorable Robert Dole
United States Senator
United States Senate
Washington, DC 20510

Dear Senator Dole:

I continue to be deeply respectful of your support for Americans with disabilities over the years, especially your sponsorship of the Americans with Disabilities Act of 1988. I am proud to have supported you.

Now we need your leadership more than ever, as a sponsor of the ADA as reintroduced in the current Congress.

This historic statement of equality is absolutely essential to the emancipation of millions of potentially productive citizens from devastating poverty and dependency, which results directly from traditional discrimination and segregation, and which costs unaffordable and rapidly escalating billions to government, business and private citizens. The Dole Foundation will never be able to achieve its magnificent goals until this discrimination is eliminated.

The disability community stands united in its demand for the passage of ADA in a form that does not compromise the principle of equality. During my recent meetings to discuss ADA held in each of the fifty states, of more than 23,000 participants, not a single individual, Republican, Democrat, or independent expressed any opposition to the Act.

I look forward to working with you and your staff for the passage and implementation of the Americans with Disabilities Act, and then on that firm base, for the full employment goals of the Dole Foundation.

Yours for equal access to the American dream,



Justin Dart, Jr.

EQUAL ACCESS TO THE AMERICAN DREAM

JUSTIN DART, JR.

907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202-488-7684 (H)

April 14, 1989

Honorable George Bush
President
The White House
Washington, DC 20500

Dear President Bush:

I congratulate you on your endorsement of the Americans with Disabilities Act. You are the first President of the United States to take a public stand for our civil rights. But we still face opposition which, although often well meaning, is based on traditional assumptions and misinformation. We need your continued leadership for justice now.

As an example of problem attitudes, the Justice Department has just filed an appeal brief in which they seem to oppose a keystone provision of ADA that requires all new components of federally supported public transportation systems to be accessible to people with disabilities. Their brief seems to assert that special transit systems for people with disabilities will be more efficient to accomplish mainstreaming.

Although there was a time when I have made similar arguments, I have come to see that approach as reminiscent of assertions that separate schools could result in equality.

Special transit for people with very severe disabilities is a necessary supplement to accessible public transit. However, sole reliance on special, segregated transit to provide door-to-door service for millions of people, will be more "efficient" than accessible public transit only if most of those people remain unemployed recipients of social welfare who don't go anywhere except to hospitals.

It is estimated that the proportion of our population with disabilities, presently about 15%, will double within the next 20-30 years. To perpetuate status quo attitudes and practices of segregation will guarantee ever increasing millions of unproductive, dependent, second class citizens, and lead us inevitably toward the economic and moral disasters of massive, paternalistic, welfare bureaucracies.

ACCESS TO A LIFE OF QUALITY

America must begin now to create communities in which all systems of productivity and social intercourse are equally accessible to all people. But this can never be accomplished until we overcome the insidious assumption that people with disabilities are less than fully human. This nation must make a firm, enforceable statement of law that our 43 million citizens with disabilities will have equal opportunities to fulfill their potential, everywhere, every day, in every way. The Americans with Disabilities Act is that historic statement of equality.

Mr. President, we need your vigorous public support for ADA as reintroduced in the current session of Congress. It has been revised to accommodate the legitimate concerns of public and private sector leaders. It has virtually unanimous support by every major segment of the disability community. It is a landmark statement of human rights, which will, at long last, keep the promise of "liberty and justice for all" to the nation's last large oppressed minority.

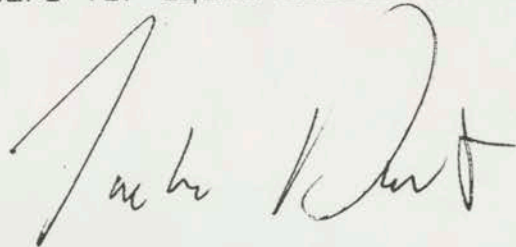
I enclose a picture taken on June 22, 1987, the evening before my father was awarded the Freedom Medal by President Reagan. Standing beside you is my younger brother, Peter, a graduate engineer, a top Air Force jet pilot, an outstanding family man, respected in his community. He contracted the most serious form of polio many years ago while in the Air Force, and some years later suffered a severe head injury. He fought back from these disabilities to walk, as you see him, with canes. He struggled valiantly to overcome traditional attitudes and barriers and to become active in his profession. Shortly after this picture was taken he began to experience normal post-polio and head injury effects for his age - modest deterioration of strength, breathing, vision and memory. It became apparent that he needed to use a wheel chair - as I have done for 40 years - and perhaps give up driving. His family pushed him to do these things, and to have necessary medical advice, but he resisted. On January 24th last year, faced with the presence of the wheel chair and the imminence of a medical consultation that might lead to other lifestyle adjustments, he told his son, "I would rather be dead than dependent." On the morning of January 29, he was found dead in his bed. The coroner found no evidence of dramatic illness that would cause death - "He simply stopped breathing." It is my impression that certain obvious hypotheses were discretely unmentioned.

I know in my heart that my brother is dead years before his time because of his unwillingness to face the massive discrimination that society visits on persons, like wheel chair users, who call to mind certain stereotyped perceptions of disability. He is the

third member of my family to meet this fate in recent years, and thousands of other families have experienced similar tragedies. My beloved daughter Betsy, who has three lovely children, was deserted late in 1987 by her husband, a few days after she was diagnosed as having MS. I have met personally hundreds of individuals with impairments who are forced to live in situations of segregation, poverty and physical and psychological deprivation to which we would not knowingly subject animals.

Mr. President, these things must not happen to our grandchildren. We must not allow this great nation to become terminally stricken with the cancer of welfare dependency. All of us who are associated with the Americans with Disabilities Act have a profound responsibility to millions in future generations. I pray every day that I, and that each one of us, can reach into the depths of our souls, and somehow find the courage to act with such responsibility for the sacred values of democracy and of human life that our grandchildren, and their children after them, will be proud to speak our names.

Yours for equal access to the American dream,

A handwritten signature in dark ink, appearing to read "Justin Dart". The signature is fluid and cursive, with a large initial "J" and a stylized "D".

Justin Dart



D. H. H.

May 5, 1989

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

PANEL 1

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

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

PANEL 2

Administration

PANEL 3

Mary Disapio
Wall Street Financial Analyst
New York, New York

Joe Danowsky
Attorney
New York, New York

Two other witnesses

PANEL 4

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

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

Zack Fasman
Attorney
Paul, Hastings, Janofsky and Walker
(representing Chamber of Commerce)
Washington, D.C.

Lawrence Lorber
Attorney
Kelley, Drye, and Warren
(representing American Society of Personnel Administrators)
Washington, D.C.

Arlene Mayerson
Disability Rights Education and Defense Fund
Berkeley, California

May 7, 1989

NOTE TO: SHEILA BURKE
SUBJECT: AMERICANS WITH DISABILITIES ACT (ADA)
HARKIN
FROM: JOE FAHA *Joe*

As you know Maureen West has kept me informed on the content and politics surrounding the ADA. As to the content, there are still problems with the legislation which I have discussed with Moe. But it seems to me that the politics of the situation is driving the discussion and not the content.

Harkin wants the bill as a trophy that he can display in his upcoming campaign against Mr. Tauke. I am not sure that it is a trophy that will make a difference in the election but I understand that Mr. Tauke does and so it is an issue.

On the other side it seems that the disability groups have mounted a campaign for this bill that exceeds what they did for the Civil Rights Restoration Act. The number of phone calls and letters/telegrams that the Senator has received far exceed what he received on the Restoration Act. I also understand that the Kansas Office has been taken over and that there is a possibility of that happening again. That did not happen with the Restoration Act.

I also understand from Moe that the White House has significantly been involved in the bill spending time communicating with Harkin's staff and Pat Wright who is a major player in the lobbying efforts to pass the bill. As I understand it, Pat knows about the Iowa race issue from Gray. I also understand that the White House has yet to indicate to Pat or to Harkin's staff that they have some problems with the bill and that they are pulling back on a promise to testify on the bill.

I have not been immediately involved but I am concerned for the Senator. The push for the legislation among the disabled is such that if the Senator is perceived as objecting to the measure purely for the Iowa race that Harkin will get his trophy anyway and will be able to pin on Senator Dole that he is willing to compromise principle for politics.

I am also concerned that the White House may be leaving the Senator out there to work this on his own and they will come in later to mediate or compromise the situation.

Needless to say the potential loss of a previously supportive strong constituency who saw the Senator waiver on the Civil

Rights Restoration Act and now being perceived as an abstacle to the ADA is very real. The last piece of legislation that the Senator marshalled through the Senate of importance to disability groups was several years ago.

If the Senator cannot support the legislation because of some of the provisions which he has problems with and can show through substantive testimony which demonstrates a strong committment to disability issues then I think he can make it through this experience with respect to the disability groups. If, however, the sole perceived reason is the Iowa race, his credibility will not be worth very much among a group that has traditionally been very important to him.

DISCRIMINATION:

Discrimination is construed differently in titles I through V to accommodate the different foci in each. For example, in title I which addresses general prohibitions against discrimination, discrimination is viewed as denying opportunities, providing an opportunity that is not equal to or as effective as that provided to others, or helping others to perpetuate the same forms of discrimination.

Under title II which relates to employment, discrimination includes the failure to provide reasonable accommodation; to hire someone because he/she needs such accommodation; or the application of qualification standards, tests or eligibility criteria that identify or limit individuals on the basis of disability.

Title III, Public Services, addresses principally transportation systems and facilities associated with such systems, and thus contrues discrimination as the failure to make such systems and facilities accessible to individuals with disabilities, including those in wheelchairs.

Title IV, Public Accommodations and Services operated by Private Entities covers privately operated establishments -- auditoriums, convention centers, stadiums, theaters, restaurants, shopping centers, inns, hotels and motels. Discrimination is construed in terms similar to those found in title II and III.

Title V applies to telecommunication relay services offered by private companies, and includes services regulated by states. Discrimination is viewed as the failure to provide access to nonvoice terminal devices to those who cannot use the conventional telephone system.

STANDARDS OF COMPLIANCE:

The ADA provides exemptions and conditions for compliance that vary across titles. For example title I allows for qualification standards that require the current use of alcohol or drugs, by an abuser of such substances, not pose a direct threat to the property and safety of others; or that an individual with a contagious disease or infection, not pose a direct threat to the health and safety of others.

Elected officials and their staff, nonprofit entities that employ less than 15 individuals are exempt from coverage under title II. In addition, an employer is not required to make a reasonable accommodation for an individual on the basis of a disability, if such an employer can demonstrate that it would constitute an undue hardship on the operation of the business. Finally, special standards and criteria that discriminate against an individual on the basis of a disability may be used if an employer can demonstrate that they are necessary and substantially related to the ability of an individual to perform the essential functions of the position.

Under title III no retrofitting is required but all new vehicles and remanufactured vehicles with a life of more than five years must be accessible. In the purchase of used vehicles only a good faith effort must be demonstrated. All new facilities and those subject to alterations must be made accessible. Intercity, rapid, light, and commuter rail systems must be accessible within five years. Key stations must be made accessible within three years, but the Secretary of Transportation may give waivers for up to 20 years for extraordinarily expensive structural alterations.

Under title IV, private entities may be exempted if they can demonstrate that making reasonable accommodations would fundamentally alter the nature of privileges, advantages and accommodations; that providing auxiliary aids constitutes an undue burden; or that removing a barrier and providing an alternative method are not readily achievable. Facilities that are altered, to the maximum extent feasible, must be accessible and new facilities that would be occupied 30 months after enactment must be accessible. New vehicles that carry more than 12 individuals must be accessible.

Under title V dealing with telecommunications relay, compliance by covered entities is required within one year of enactment of the ADA.

REMEDIES AND PROCEDURES:

Remedies and procedures vary both within and across titles, encompassing the full range from injunctive relief and attorney's fees to compensatory and punitive damages. In addition, title V alone allows for administrative actions as well as individual suits. Finally, the ADA calls for the development of regulations by varying Federal agencies, including the EEOC, the Departments of Transportation and Justice, and the Federal Communications Commission. The variety in remedies and procedures throughout the ADA may cause multiple interpretations in the area of enforcement.

Further, the ADA would not preempt other disability laws that may be applicable to the same extent as the ADA. Thus, an employer could possibly be subject to different suits in different forums under different standards of compliance although the underlying facts giving rise to the disability discrimination claim were the same.

May 12, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Appointment re ADA

Sandy Parrino, Chairperson of the National Council on Disabilities would like to see you this afternoon to briefly discuss the Americans with Disabilities Act. She has met with White House officials of the Economic Advisory Council this morning and would like a follow up meeting with you.

The National Council on Disability is an independent Federal agency comprised of members appointed by the President. The Council is charged with making disability policy recommendations to the President and Congress. The original ADA bill emanated from the National Council on Disabilities under her tenure. I believe it would be wise to hear her concerns and your intent to work with the White House on this legislation.

Will you meet with her this afternoon?

Yes _____ No ☒ _____

Yes to 4

*Called Maureen 3:00 pm
Joey*

SUBCOMMITTEE ON THE HANDICAPPED
HEARING ON THE AMERICANS WITH DISABILITIES ACT OF 1989
MAY 10, 1989

PANEL I-CONSUMERS
FRANK BOWE
Hofstra University
111 Mason Hall
Hempsted, NY 11550

Perry Tillman III
4616 LaFon Drive
New Orleans, LA 70126

Ken Tice
Advocating Change Together
2025 Nicollet Avenue South
Suite 104
Minneapolis, MN 55404

Lisa Carl
4022 No. 19th St.
Tacoma, Washington 98406

INDUSTRY

The Honorable Neil F. Hartigan
Attorney General of the State of Illinois
100 West Randolph St
12th Floor
Chicago, Illinois 60601

RON MACE
Barrier Free Environments
Water Garden
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William B. Ball
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Harrisburg, PA 17101
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(AT&T)

Robert Yaeger
Direct Connect
MN Relay Service
419 N. Robert St
Suite 300
St. Paul, MN 55101

May 10, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Hearing

AT 10:00 you are scheduled to testify at the second day of hearings on the Americans with Disabilities Act. The hearings are being held at the Subcommittee level and Senator Harkin will chair.

The Americans with Disabilities Act was introduced yesterday by Senators Harkin, Kennedy and Durenberger. Seven additional Republicans have joined as original cosponsors (McCain, Jeffords, Chaffee, Stevens, Cohen, Packwood, & Boschwitz). An identical bill was introduced by Rep. Coehlo in the House yesterday.

Testimony at today's hearing will focus on employment and communications. Witnesses include self-advocates, the disability agencies, NFIB, private schools and AT&T. (see attached witness list).

I have also asked that Nancy Jones, chief counsel with the American Law Division join us for counsel should any technical question be asked and there need to be clarification on an issue.

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S.L.C.

DRAFT100TH CONGRESS
1ST SESSION

S. _____

OCT 15 1987

IN THE SENATE OF THE UNITED STATESintroduced the following bill; which was read twice and referred
to the Committee on _____
_____**A BILL**To establish a clear and comprehensive prohibition of
discrimination on the basis of handicap.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assem-*
3 *bled,*

4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the "Americans with Dis-
6 abilities Act of 1987".

7 SEC. 2. FINDINGS AND PURPOSES.

8 (a) FINDINGS.—Congress finds that—

9 (1) some 36,000,000 Americans have one or
10 more physical or mental disabilities, and this number

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1 is increasing as the population as a whole is growing
2 older;

3 (2) historically, society has tended to isolate and
4 segregate persons with disabilities, and, despite some
5 improvements, discrimination against persons with
6 disabilities continues to be a serious and pervasive
7 social problem;

8 (3) discrimination against persons with disabil-
9 ities persists in such critical areas as employment,
10 housing, public accommodations, education, trans-
11 portation, recreation, institutionalization, health serv-
12 ices, insurance, voting, and access to public services;

13 (4) every day, people with disabilities encounter
14 various forms of discrimination, including outright,
15 intentional exclusion, architectural, transportation,
16 and communication barriers, overprotective rules and
17 policies, refusal to make modifications to existing fa-
18 cilities and practices, exclusionary qualification
19 standards and criteria, segregation, and relegation to
20 lesser services, benefits, and opportunities;

21 (5) census data, national polls, and other studies
22 have documented that people with disabilities, as a
23 group, occupy an inferior status in our society, and
24 are severely disadvantaged socially, vocationally,

and educationally.

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1 (6) the Nation's proper goals regarding persons
2 with disabilities are to assure equality of opportunity,
3 full participation, independent living, and, wherever
4 possible, economic self-sufficiency for such citizens;
5 and

6 (7) the continuing existence of unfair and un-
7 necessary barriers, discrimination, and prejudice
8 denies people with disabilities the opportunity to
9 compete on an equal basis and to pursue those op-
10 portunities for which our free society is justifiably
11 famous, and costs the United State billions of dollars
12 in unnecessary expenses resulting from dependency
13 and nonproductivity.

14 (b) PURPOSE.—It is the purpose of this Act—

15 (1) to provide a clear and comprehensive Na-
16 tional mandate for the elimination of discrimination
17 against persons with disabilities;

18 (2) to provide a prohibition of discrimination
19 against persons with disabilities parallel in scope of
20 coverage with that afforded in statutes prohibiting
21 discrimination on the basis of race, sex, national
22 origin, and religion;

23 (3) to provide clear, strong, consistent, enforcea-
24 ble standards addressing discrimination against per-
25 sons with disabilities; and

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1 (4) to invoke the sweep of congressional author-
2 ity, including its power to enforce the fourteenth
3 amendment, to regulate commerce, and to regulate
4 interstate transportation, in order to address the
5 major areas of discrimination faced day-to-day by
6 people with disabilities.

7 SEC. 3. DEFINITIONS

8 For purposes of this Act:

9 (1) PHYSICAL OR MENTAL IMPAIRMENT.—The
10 term “physical or mental impairment” means—

11 (A) any physiological disorder or condi-
12 tion, cosmetic disfigurement, or anatomical loss
13 affecting one or more of the following body
14 systems:

15 (i) the neurological system;

16 (ii) the musculoskeletal system;

17 (iii) the special sense organs, and res-
18 piratory organs, including speech organs;

19 (iv) the cardiovascular system;

20 (v) the reproductive system;

21 (vi) the digestive and genitourinary
22 systems;

23 (vii) the hemic and lymphatic systems;

24 (viii) the skin; and

25 (ix) the endocrine system; or

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1 (B) any mental or psychological disorder,
2 such as mental retardation, organic brain syn-
3 drome, emotional or mental illness, and specific
4 learning disabilities; and

5 (C) includes such diseases and conditions
6 as orthopedic, visual, speech, and hearing im-
7 pairments, cerebral palsy, epilepsy, muscular
8 dystrophy, multiple sclerosis, cancer, heart dis-
9 ease, diabetes, mental retardation, emotional ill-
10 ness, drug addiction and alcoholism.

11 (2) PERCEIVED IMPAIRMENT.—The term “per-
12 ceived impairment” means the mistaken belief, and
13 the regarding of a person as having, or treating a
14 person as if the person has, a physical or mental im-
15 pairment.

16 (3) RECORD OF IMPAIRMENT.—The term “record
17 of impairment” means having a history of, or having
18 been misclassified as having, a mental or physical
19 impairment.

20 (4) REASONABLE ^MACCOMODATION.—The term
21 “reasonable accommodation” means providing or
22 modifying devices, services, or facilities, or changing
23 practices or procedures for the purpose of responding
24 to the specific functional abilities of a particular
25 person with a physical or mental impairment in order

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1 to provide an equal opportunity to participate in a
2 particular program, activity, job, or other opportuni-
3 ty.

4 SEC. 4. SCOPE OF DISCRIMINATION PROHIBITED.

5 No person shall be subjected to discrimination on the
6 basis of handicap in any of the programs, activities, or op-
7 erations of—

8 (1) the Federal Government, any of the agencies
9 and departments of the Federal government, or the
10 United States Postal Service;

11 (2) a recipient of Federal financial assistance;

12 (3) a Federal contractor, subcontractor, or li-
13 censee;

14 (4) an employer engaged in an industry affect-
15 ing commerce and having 15 or more employees,
16 any employment agency, or labor union;

17 (5) any seller, landlord, or other provider of
18 housing covered by title VIII of the Civil Rights Act
19 of 1968;

20 (6) any public accommodation covered by title
21 II of the Civil Rights Act of 1964;

22 (7) a person, company, or agency that engages
23 in the business of interstate transportation of persons,
24 goods, documents, or data;

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- 1 (8) a person, company, or agency that makes
2 use of the mails or interstate communications and
3 telecommunications services for the business of sell-
4 ing, arranging, or providing insurance; or
5 (9) a State, or agency or political subdivision of
6 a State.

7 SEC. 5. FORMS OF DISCRIMINATION PROHIBITED.

8 (a) IN GENERAL.—Subject to the standards and proce-
9 dures established in section 6, the actions or omissions de-
10 scribed in this subsection constitute discrimination on the
11 basis of handicap.

12 (1) EXCLUSION, SEGREGATION, OR UNEQUAL
13 TREATMENT.—It shall be discriminatory to subject a
14 person, because of the mental or physical impair-
15 ment, perceived impairment, or record of impairment
16 of that person, to any form of—

- 17 (A) intentional exclusion;
18 (B) unintentional exclusion;
19 (C) segregation;
20 (D) unequal or inferior services, benefits,
21 or activities; or
22 (E) less effective services, benefits, or ac-
23 tivities.

24 (2) BARRIERS.—It shall be discriminatory—

- 25 (A) to establish or impose; or

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1 (B) to fail or refusing to remove;
2 any architectural, transportive, or communicative
3 barriers that prevent or limit the access or participa-
4 tion of persons with physical or mental impairments.

5 (3) ACCESS.—It shall be discriminatory to fail or
6 refuse to make a reasonable accommodation to
7 permit an individual with a mental or physical im-
8 pairment to apply, have access to, or participate in a
9 program, activity, job, or other opportunity.

10 (4) IT SHALL BE DISCRIMINATORY TO IMPOSE OR
11 APPLY ANY QUALIFICATIONS STANDARDS, SELECTION
12 CRITERIA, OR ELIGIBILITY CRITERIA THAT—

13 (A) screen out or disadvantage an individ-
14 ual because of a physical or mental impairment,
15 perceived impairment, or record of impairment;
16 or

17 (B) disproportionately screens out or disad-
18 vantages persons with particular types of physi-
19 cal or mental impairments, perceived impair-
20 ments, or record of impairments;

21 unless such criteria or standards can be shown to be
22 related to ability to perform or participate in essen-
23 tial components of the particular job, program, activ-
24 ity, or opportunity.

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1 (b) ^SNONDISCRIMINATION.—It shall not be considered to
2 be discrimination on the basis of handicap to exclude or
3 otherwise deny equal services, benefits, activities, or op-
4 portunities to a person—

5 (1) for reasons wholly unrelated to the existence
6 of or consequences of a physical or mental impair-
7 ment, perceived impairment, or record of impair-
8 ment; or

9 (2) based on a legitimate application of qualifi-
10 cations standards, selection criteria, performance
11 standards, or eligibility criteria that are both reason-
12 ably necessary and related to the ability to perform
13 or participate in the essential components of the par-
14 ticular job, program, activity, or opportunity.

15 SEC. 6. LIMITATIONS ON THE DUTIES OF ACCOMMODATION AND

16 BARRIER REMOVAL.

17 (a) ^EEXISTENCE THREATENING ALTERATIONS.—The fail-
18 ure or refusal to remove architectural, transportation, and
19 communication barriers, and to make reasonable accom-
20 modations, required under section 5(a) shall not constitute
21 an unlawful act of discrimination on the basis of handicap
22 if such modifications or barrier removal would fundamen-
23 tally alter the essential nature, or threaten the existence of
24 the program, activity, business, or facility in question.

25 (b) TIME FOR ALTERATIONS.—

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1 (1) IN GENERAL.—If substantial modifications to
2 existing buildings and facilities are necessary in
3 order to remove architectural, transportation, and
4 communication barriers, as required under section
5 5(a), such modifications shall, unless required earlier
6 by other law or regulation, be made within a reason-
7 able period of time, not to exceed 2 years from the
8 date of enactment of this Act.

9 (2) EXCEPTION.—Regulations promulgated pur-
10 suant to section 7 of this Act may allow up to 5
11 years from the date of enactment of this Act where
12 reasonably necessary for the completion of such
13 modifications to particular classes of buildings and
14 facilities.

15 (c) MASS TRANSPORTATION.—If substantial modifica-
16 tions to existing platforms and stations of mass transporta-
17 tion systems are necessary in order to remove architectural,
18 transportation, and communication barriers, as required
19 under section 5(a), regulations promulgated pursuant to
20 section 7 of this Act may, unless required earlier by other
21 law or regulation, allow a reasonable period of time, in no
22 event to exceed 15 years from the date of enactment of this
23 Act, for such modifications to be made.

24 SEC. 7. REGULATIONS.

25 (a) IN GENERAL.—

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1 (1) ARCHITECTURAL AND TRANSPORTATION BAR-
2 RIERS COMPLIANCE BOARD.—Within 6 months of the
3 date of enactment of this Act, the Architectural and
4 Transportation Barriers Compliance Board shall issue
5 minimum guidelines, to supplement the existing
6 Minimum Guidelines and Requirements for Accessi-
7 ble Design, to establish standards for the architectur-
8 al, transportation, and communication accessibility of
9 buildings, facilities, vehicles, and rolling stock sub-
10 ject to the requirements of this Act.

11 (2) EQUAL EMPLOYMENT OPPORTUNITY COMMIS-
12 SION.—

13 (A) EMPLOYMENT PRACTICES.—Within 1
14 year of the date of enactment of this Act, the
15 Equal Employment Opportunity Commission
16 shall promulgate regulations for the implemen-
17 tation and enforcement of the requirements of
18 this Act as it applies to employment practices.*

19 (B) REQUIREMENTS.—The regulations pro-
20 mulgated under subparagraph (A) shall include,
21 for all covered employers having 15 or more
22 employees, a requirement of outreach and re-
23 cruitment efforts to increase the work force rep-
24 resentation of individuals with physical or
25 mental impairments, and shall establish a proc-

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1 ess and timelines for the development, imple-
2 mentation, and periodic revision of such out-
3 reach and recruitment efforts.

4 (3) SECRETARY OF HOUSING AND URBAN DEVEL-
5 OPMENT.—Within 1 year of the date of enactment of
6 this Act, the Secretary of Housing and Urban Devel-
7 opment shall promulgate regulations for the imple-
8 mentation and enforcement of the requirements of
9 this Act as it applies to sellers, landlords, and other
10 providers of housing.

11 (4) SECRETARY OF TRANSPORTATION.—Within 1
12 year of the date of enactment of this Act, the Secre-
13 tary of Transportation shall promulgate regulations
14 for the implementation and enforcement of the re-
15 quirements of this Act as it applies to State and local
16 transit systems and to those engaged in the business
17 of interstate transportation.

18 (5) SECRETARY OF COMMERCE.—Within 1 year
19 of the date of enactment of this Act, the Secretary of
20 Commerce shall promulgate regulations for the im-
21 plementation and enforcement of the requirements of
22 this Act as it applies to places of public accommoda-
23 tion.

24 (6) SECRETARY OF LABOR.—Within 1 year of the
25 date of enactment of this Act, the Secretary of Labor

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1 shall promulgate regulations for the implementation
2 and enforcement of the requirements of this Act as it
3 applies to recipients of Federal contracts and subcon-
4 tracts.

5 (7) ATTORNEY GENERAL.—Within 1 year of the
6 date of enactment of this Act, the Attorney General
7 shall promulgate regulations for the implementation
8 and enforcement of the requirements of this Act as it
9 applies to States and agencies and political subdivi-
10 sions of States, and to those in the business of sell-
11 ing, arranging, or providing insurance.

12 (8) FEDERAL AGENCIES.—In addition to the regu-
13 lations required pursuant to paragraphs (1) through
14 (7), Federal executive agencies shall issue, within 1
15 year of the date of enactment of this Act, such addi-
16 tional regulations as shall be necessary to implement
17 and enforce the requirements of this Act as such re-
18 quirements apply to programs and activities that such
19 agencies conduct, and in regard to agencies and per-
20 sons which such agencies license or provide Federal
21 financial assistance to.

22 (b) REHABILITATION ACT OF 1973.—Regulations of Fed-
23 eral agencies issued under section 504 of the Rehabilita-
24 tion Act of 1973 (29 U.S.C. 794) shall remain in effect

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1 unless and until such regulations are superseded by regula-
2 tions promulgated under this Act.

3 (c) LEVEL OF PROTECTION.—In no event shall regula-
4 tions promulgated under this Act provide less protection
5 against discrimination to persons with a physical or mental
6 impairment, perceived impairment, or record of impair-
7 ment than under existing regulations for the implementa-
8 tion of section 504 of the Rehabilitation Act of 1973 (29
9 U.S.C. 794).

10 SEC. 8. ENFORCEMENT.

11 (a) ADMINISTRATIVE ACTIONS.—

12 (1) IN GENERAL.—Any person who has been, or
13 is about to be, subjected to discrimination on the
14 basis of handicap in violation of this Act shall have
15 the right to pursue such administrative enforcement
16 procedures and remedies as are available in connec-
17 tion with the regulations issued pursuant to section 7
18 of this Act.

19 (2) REMEDY.—Agencies enforcing such regula-
20 tions shall have the authority to order all appropriate
21 remedial relief, including compliance orders, cutoff
22 of Federal funds, rescission of Federal licenses, mon-
23 etary damages, and back pay.

24 (b) CIVIL ACTIONS.—A person who has been, or is
25 about to be, subjected to discrimination on the basis of

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1 handicap in violation of this Act shall have the right to file
2 a civil action for injunctive relief, monetary damages, or
3 both in a district court of the United States, if—

4 (1) administrative enforcement procedures as
5 contemplated in section 8(a) are not available;

6 (2) such enforcement procedures are not con-
7 cluded within 180 days after the filing of a com-
8 plaint of discrimination prohibited under this Act; or

9 (3) the complainant is not satisfied with the res-
10 olution reached at the conclusion of such enforce-
11 ment procedures.

12 (c) JURISDICTION.—The district courts of the United
13 States shall have jurisdiction of actions brought under this
14 Act without regard to the amount in controversy.

15 (d) IMMUNITY.—A State shall not be immune under
16 the eleventh amendment to the Constitution of the United
17 States from suit in Federal court for a violation of this Act.

18 (e) ATTORNEY'S FEES.—In any action commenced
19 pursuant to this section, the court, in its discretion, may
20 allow the prevailing party, other than the United States, a
21 reasonable attorney's fee as part of the costs, and the
22 United States shall be liable for costs the same as a private
23 person.

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1 SEC. 9. EFFECTIVE DATE.

2 This Act shall become effective on the date of enact-

3 ment.

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Maureen West

Dear Senator Harkin,

On behalf of the National Council on Disability, I want to convey and reemphasize our long-standing and profound support for your efforts and those of other distinguished Members of Congress, who have sincerely committed themselves, as you have, to insuring, through forthright legislative action, that people with disabilities in the United States will be protected from discrimination on the basis of disability by the full force and measure of the law.

As the Council stated in Toward Independence, its February 1986 report to the Congress and the President, "Congress should 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." The Council continues to believe that this is absolutely and without question the highest priority for action by Congress and the President which exists in the area of disability policy today.

The Council understands that introduction of this important legislation is only the first step in the process of achieving our goal of insuring equal opportunity and protection against discrimination for 43 million people with disabilities in the United States.

Ultimate passage and successful implementation of this legislation depend on broad-based agreement and support from many sectors. Disability policy is not, nor should it be, a partisan issue or concern. It must be a principal concern of public officials at all levels and of all ideologies.

While we are most anxious to see early passage of legislation like that recommended by the Council and introduced by you and Senator Weicker last year, our own experience in developing complex policy recommendations indicates that process plays an important and necessary role in educating interested parties and in building consensus-oriented support.

We know that consensus-building and educating can be a relatively pain-taking process. However, we believe that the likelihood of adoption and successful implementation of this measure will be enhanced by such a process. Thus, we urge you to take whatever steps are necessary to insure consideration of the legitimate concerns of all parties as you move toward passage of this vital legislation.

As you know, the President has expressed his support in principle for comprehensive protection against discrimination of people with disabilities. We join the President in pledging our support for this principle. We look forward to working with the Congress and the Administration to establish, unequivocally, comprehensive equal rights for persons with disabilities in our great nation.

Sincerely,

Sandra S. Parrino
Chairperson, National Council on Disability