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ADA: What It Says

by John L. Wodatch
U.S. Department of Justice

The Declaration of Independence recognizes that all persons are endowed with basic human rights. Our nation's history has witnessed the gradual, yet steady, march towards fulfillment of this guarantee. In the past generation this march has accelerated. The American people have wisely acted to eliminate irrational and artificial barriers based on race, color, religion, sex, and national origin. Now, the Americans with Disabilities Act has set this country's sights on removing the barriers that deny individuals with disabilities an equal opportunity to share in the American dream.

The Americans with Disabilities Act, or ADA, is thus truly a landmark civil rights bill. It will open up all aspects of American life to individuals with disabilities—employment opportunities, State and local government services, public accommodations, transportation, and the telephone system.

History

The first version of the ADA was developed by the National Council on Disability under the leadership of Chairperson Sandra Parrino, and Director Lex Frieden, who coordinated the writing of the Act. In February 1986, the Council issued a report, "Toward Independence," that recommended enactment of a comprehensive law requiring equal opportunity for individuals with disabilities, and outlined the ADA. The bill, sponsored jointly by Senator Lowell Weicker and Representative Tony Coelho, was introduced in 1988 during the 100th Congress. Justin Dart, Jr., in his role as chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities, raised public awareness of the devastating effects of discrimination on the basis of disability and built support for the goals of the ADA by holding 63 hearings on the ADA in every State in this country. During the 1988 Presidential election campaign, then-Vice President George Bush endorsed the ADA and became its chief advocate.

The ADA was reintroduced, in a modified form, in May 1989 by Senators Tom Harkin, Edward Kennedy, and Dave Durenberger and by Representatives Tony Coelho, Hamilton Fish, and Steny Hoyer. In June, 1989, Attorney General Dick Thornburgh, in testimony before the United States Senate, reiterated

the support of the Bush Administration for the ADA. After extensive negotiations between the Senate and the Administration, the Senate passed an amended version of the ADA on September 7, 1989, by a vote of 76-8.

The House of Representatives then began its consideration of the bill. Five separate House committees held hearings on the ADA, and an amended version of the bill passed the House of Representatives on May 22, 1990, by a vote of 403-20.

Because the House and Senate had passed differing versions of the Americans with Disabilities Act, further congressional action was necessary. The House and Senate held two different conferences on the ADA. The House completed its action on the ADA on July 12, 1990, passing the ADA by a vote of 377-28. The next day the Senate completed its action on the ADA, passing the ADA by a vote of 91-6.

The ADA legislative process was exceptionally complex, and there was powerful opposition on a very large number of issues. Pat Wright, of the Disability Rights Education and Defense Fund, led a strong disability community negotiating team that was successful in protecting the principle of full equality.

The ADA became law on July 26, 1990, when it was signed by President Bush on the South Lawn of the White House in front of almost 3,000 persons, including many who had worked for its passage during the past five years. In signing the bill, President Bush pledged that we, as a nation, "will not accept, we will not excuse, we will not tolerate discrimination in America."

The Americans with Disabilities Act provides civil rights protections for persons with disabilities that are parallel to those that have been established by the Federal government for women and minorities. The ADA is thus an amalgam of two great civil rights statutes: the Civil Rights Act of 1964 and the title V of the Rehabilitation Act of 1973. The ADA generally uses the framework of titles II and VII of the Civil Rights Act of 1964 for coverage and enforcement and the terms and concepts of section 504 of the Rehabilitation Act of 1973 for what constitutes discrimination. The ADA can best be understood by reviewing its chief provisions.

Employment

Title VII
A central provision of the ADA is the prohibition of discrimination against individuals with disabilities in public and private sector employment. Passage of title VII of the Civil Rights Act of 1964 opened the doors of American business to minorities and women. Title I of the ADA holds the same promise to individuals with disabilities.

The ADA requires employers to make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee, unless such accommodation would impose an undue hardship on the employer. The concept of reasonable accommodation is one of the true success stories of the Rehabilitation Act of 1973. It has provided employment opportunities for persons with disabilities and new workers for the American economy at little or no additional cost. Accommodations include a wide variety of actions—making worksites accessible, modifying existing equipment, providing new devices, modifying work schedules, restructuring jobs, reassigning an employee to a vacant position, and providing readers or interpreters. The proliferation of the computer and the technological advances has been instrumental in providing efficient and inexpensive job accommodations.

**USA TODAY, July 27-29,
1990—President Bush took
a “sledgehammer” to bias
Thursday when he signed a
bill banning discrimination
against the USA’s
43 million disabled.**

—Author Jessica Lee’s lead paragraph of story,
“New rights for disabled.”

The ADA prohibits the use of employment tests and other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless such tests or criteria are shown to be job-related and consistent with business necessity. The ADA also bans the use of pre-employment medical examinations or inquiries to determine if an applicant has a disability. It does, however, permit the use of medical examinations after a job offer has been made—if the results of the medical exam are kept confidential, if all persons offered employment are required to take the exam, and if the results are not used to discriminate. Employers are permitted, at any time, to inquire about

the ability of a job applicant or employee to perform job-related functions.

Transportation

The ADA seeks to ensure that individuals with disabilities have access to transportation. The promise of nondiscrimination in employment and accessible public accommodations would be an illusory one if accessible transportation were unavailable. The ADA provides access by requiring that all new public buses be accessible to persons with disabilities. No retrofitting of existing buses is required by the ADA.

The ADA further requires transit authorities to provide supplementary paratransit services or other special transportation services to those individuals with disabilities who cannot use fixed route bus services. Thus those persons whose physical or mental disabilities are so severe that they are unable to use the accessible mainline bus system will be eligible to gain access to their community through paratransit services. The ADA tempers this requirement by recognizing the existence of an undue burden limitation. The ADA strikes a responsible balance between providing accessible transportation and protecting the economic viability of local transit providers.

Accessibility requirements in over-the-road buses will be the subject of an in-depth study required by the ADA. Allowing sufficient time to complete the needed study, the ADA requires that new over-the-road buses ordered on or after six years from enactment (seven years for small companies) must be accessible. It permits the extension of the deadlines by one year, if appropriate.

In the area of rail transportation, the ADA requires that all new rail vehicles and all new rail stations must be accessible. In addition, existing rail systems must have one accessible car per train within five years from enactment. Addressing existing rail stations, the ADA gives Amtrak 20 years to achieve accessibility in all of its stations. In addition, the ADA requires that existing “key stations” for rapid rail (subways), commuter rail, and light rail (trolleys) be made accessible within three years, unless an extension of up to 20 years is granted (30 years, in some cases, for rapid and light rail).

Public Accommodations

The inclusion of public accommodations in the ADA provides access to the mainstream of everyday life. In order to address the widespread exclusion of individuals with disabilities from the routine activities of daily living, the ADA defines the term “public accommodation” in a very expansive manner. Coverage is extended to the entire range of private entities that affect commerce. From aquariums to zoos, the ADA sweeps within its reach the broad spectrum of sales, rental, and service establishments, as well as educational institutions, recreational facilities, and social service centers.

The ADA outlaws the use of eligibility criteria that screen out or tend to screen out individuals with disabilities, unless necessary for the operation of the public accommodation. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering its premises, or for a movie theater to exclude an individual with cerebral palsy.

The ADA also requires public accommodations to make reasonable modifications in policies, practices, and procedures, unless those modifications would fundamentally alter the nature of the services provided by the public accommodation. For example, it would be discriminatory for a restaurant to refuse to modify a "no pets" rule for persons who use guide dogs.

The ADA does not, however, impose unlimited requirements on public accommodations. The requirements for retrofitting existing facilities are minimal. A physical barrier need only be removed when its removal is "readily achievable"—that is, when it can be accomplished easily, without much difficulty or expense. Modifications that would be readily achievable in most cases included the simple ramping of a few steps, installation of grab bars in a toilet stall (if only routine reinforcement of the wall is required), lowering of telephones, and similar modest adjustments.

The bill requires provision of auxiliary aids, those devices necessary to enable persons who have visual, hearing, or sensory impairments to participate in the program, but only if their provision will not result in an undue burden on the business. Thus, under the ADA, a restaurant would not be required to provide menus in Braille for blind patrons, if the waiters in the restaurant were willing to read the menu. A clothing boutique would not be required to have

Brailled price tags; the sales personnel can provide access to price information orally when requested to do so by patrons with visual impairments. This auxiliary aid requirement is a flexible one. A public accommodation can choose among various alternatives as long as the result is effective communication.

The ADA's most rigorous accessibility requirements apply to new construction and alterations. All new construction and alterations in public accommodation, as well as in commercial facilities such as office buildings, must be accessible. Experience has shown that, when accessibility features are incorporated in the design phase, less than one percent is added to the total cost of construction. Even for new construction, however, facilities that have less than 3,000 square feet per story or are less than three stories high need not install elevators, unless the building contains a shopping center, mall, or the professional offices of health care providers.

most rigorous accessibility requirements apply to new construction + alterations

Religious Entities

The ADA exempts religious organizations or entities controlled by religious organizations from the public accommodations requirements of the Act. It also appropriately permits a religious entity to hire members of its own faith and to require employees to conform to the religious tenets of the employer. These provisions show a proper respect for the First Amendment interests of religious institutions in conducting their internal affairs without excessive governmental oversight.

Coverage of Drugs

The bill is fully consistent with the nation's commitment to the eradication of the scourge of illegal drug use. It allows employers to prohibit the use of

The Washington Post—July 15, 1990

A More Just Country

People born after the passage of the 1964 Civil Rights Act probably look back with amazement to the time when, in the South, schools and hospitals were segregated by law, the races were separated on buses and trains and even the water fountains were designated black or white. The country went through great turmoil before those practices were changed. But eventually and after much resistance and struggle, society was transformed. The country became more just.

On Friday, the Senate completed action on a bill to ensure the rights of the disabled, and it promises to have some of the same kind of impact. The measure extends the protections of the 1964 law to 43 million Americans with physical or

mental impairments. It will prohibit discrimination in employment based on disability. It will require places of public accommodation, like restaurants, hotels, theaters and stores, to be accessible to disabled patrons and will mandate the gradual replacement of buses and railroad cars with equipment that can accommodate the handicapped. It will make telephone services available for the deaf and speech-impaired, nationwide.

When the president signs this bill, as he has promised to do, millions who will directly benefit by its provisions will have cause for celebration. So will their fellow citizens; a new era of fairness and opportunity will begin.

alcohol or illegal drugs at the workplace by all employees, to require that employees conform their behavior to the requirements of the Drug-Free Workplace Act, and to hold drug users or alcoholics to the same qualification standards applied to others.

The ADA excludes people who currently use illegal drugs from its protections, but does prohibit discrimination against recovering drug addicts and alcoholics. In order to encourage individuals to end drug dependence, the ADA provides civil rights protections for individuals who have successfully completed rehabilitation.

Enforcement and Remedies

With respect to employment, the ADA provides the remedies available under title VII of the Civil Rights Act of 1964, including administrative enforcement by the Equal Employment Opportunity Commission. After those remedies are exhausted, there is a right to sue in Federal court for injunctive relief and monetary relief in the form of backpay. Because title VII does not now include compensatory and punitive damages, these forms of relief are not available under the ADA. The absence of these extraordinary forms of relief is appropriate in that the ADA seeks to develop an environment that fosters voluntary compliance.

With respect to public accommodations, the bill limits relief available in private suits to injunctive relief, attorney's fees, and court costs. The ADA avoids unnecessary fiscal incentives for private litigation by barring compensatory or punitive damages, while ensuring that individual plaintiffs are not deterred from bringing meritorious suits. Authority to seek monetary damages and civil penalties is given only to the Attorney General, and, then, only in pattern or practice cases or suits of general public importance.

Telecommunications Relay System

The ADA amends the Communications Act of 1934 to require that telephone companies provide telecommunications relay services. The relay services must permit speech or hearing-impaired individuals who use TDD's or other non-voice terminal devices opportunities for communication that are equivalent

to those provided to other customers. These services are a vital step toward full integration of persons with speech or hearing impairments into the mainstream.

Technical Assistance

The ADA recognizes the necessity of educating the public about its rights and responsibilities under the Act. Under the ADA, the Attorney General will oversee governmentwide technical assistance activities. The Department of Justice will consult with the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, the National Council on Disability and the President's Committee on Employment of People with Disabilities, among others, in this effort.

The Americans with Disabilities Act represents a dramatic new step in this country's quest to ensure equal opportunity for all of its citizens. The ADA can be the vehicle that, once and for all, brings persons with disabilities into the mainstream of American life. We must all make a personal commitment to take up the challenge of the ADA and turn its grand promises into reality. All Americans will be the beneficiaries of the success of this effort.



John L. Wodatch, a Deputy Section Chief in the Civil Rights Division of the Department of Justice, was charged with helping to develop administration positions throughout the ADA legislative process. His sensitive attitudes toward people with disabilities and steadfast support for the principle of full equality, has made him a hero of the disability community.

"Every so often something happens that brings out the nobility in Congress."

Rep. Hamilton Fish was an early Republican co-sponsor of ADA and supported the principle of full equality in every debate and on every vote.

ADA: Implementation Dates

by Erica C. Jones

see vol.

Title	Laws Effective Date	Regulations Due by Federal Agency	Enforcement Jurisdiction
Title I Employment	July 26, 1992 for employers with twenty-five (25) or more employees; July 26, 1994 for employers with fifteen (15) or more employees	July 26, 1991 all regulations due from Equal Employment Opportunity Commission (EEOC).	Remedies identical to those under Title VII of the Civil Rights Act of 1964 which are private right of action, injunctive relief, i.e. job reinstatement, back pay, and EEOC enforcement.
Title II Public Services All activities of local and state government	January 26, 1992	July 26, 1991, all regulations due from Attorney General	Remedies identical to those under the Rehabilitation Act of 1973 Section 505 which are private right of action, injunctive relief, and some damages.
(Part I) Public transportation (buses, light and rapid rail including fixed guideway systems, paratransit, demand response systems and transportation facilities).	August 26, 1990, all orders for purchases or leases of new vehicles must be for accessible vehicles; one-carper-train must be accessible as soon as practicable, but no later than July 26, 1995; paratransit services must be provided after January 26, 1992; new stations built after January 26, 1992 must be accessible. Key stations must be retrofitted by July 26, 1993; with some extensions allowed up to July 26, 2020.	July 26, 1991, all regulations due from Secretary of Transportation.	Same as above.
(Part II) Public transportation by intercity Amtrak and commuter rail (including transportation facilities).	By July 26, 2000, Amtrak passenger coaches must have same number of accessible seats as would have been available if every car were built accessible; half of such seats must be available by July 26, 1995. Same one-carper-train rule and new stations rule as above. All existing Amtrak stations must be retrofitted by July 26, 2010. Key commuter stations must be retrofitted by July 26, 1993 with some extensions allowed up to 20 years.	July 26, 1991, all regulations due from Secretary of Transportation.	Same as above.
Title III Public accommodations operated by private entities.			
A. Public accommodations (all business and service providers).	January 26, 1992, for businesses with twenty-five (25) or less employees and revenue \$1 million or less; January 26, 1993 for businesses with ten (10) or less employees and revenue \$500,000 or less	July 26, 1991, regulations due from Attorney General. Regulations will be based on standards issued by the Architectural and Transportation Barriers Compliance Board (ATBCB). Due April 26, 1991.	For individuals, remedies identical to Title II of the Civil Rights Act of 1964 which are private right of action, injunctive relief; For Attorney General enforcement in pattern or practice cases or cases of general importance with civil penalties and compensatory damages.
B. New construction, alteration to public accommodations and commercial facilities.	January 26, 1992, for alterations; January 26, 1993 for new construction.	Same as above.	Same as above.
C. Public transportation provided by private entities.	In general January 26, 1992, but by August 26, 1992 orders for purchases or leases of new vehicles must be for accessible vehicles. Calls for a three (3) year study of over-the-road buses to determine access needs with requirements effective January 26, 1996 to July 26, 1997.	July 26, 1991, regulations due from Secretary of Transportation. Regulations will be based on standards issued by the Architectural and Transportation Barriers Compliance Board (ATBCB). Due April 26, 1991.	Same as above.
Title IV Telecommunications	January 26, 1993, telecommunications relay services to be available twenty-four (24) hours per day.	July 26, 1991, all regulations due by the Federal Communications Commission.	Private right of action and Federal Communications Commission
Title V Miscellaneous	Effective dates of Title V are those determined by the analogous sections in Titles I through IV.	In general this title depicts the ADA's relationship to other laws, explains insurance issues, prohibits state immunity, provides congressional inclusion, sets regulations by ATBCB, explains implementation of each title and notes amendments to the Rehabilitation Act of 1973.	

P.L. 101-336

Americans With Disabilities Act of 1990

SECTION 1. SHORT TITLE

CONTENTS

(a) **SHORT TITLE.**—This Act may be cited as the “Americans with Disabilities Act of 1990”.

(b) **TABLE OF CONTENTS.**—The contents of this Act are as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

TITLE I—EMPLOYMENT

- Sec. 101. Definitions.
- Sec. 102. Discrimination.
- Sec. 103. Defenses.
- Sec. 104. Illegal use of drugs and alcohol.
- Sec. 105. Posting notices.
- Sec. 106. Regulations.
- Sec. 107. Enforcement.
- Sec. 108. Effective date.

TITLE II—PUBLIC ACCOMMODATIONS

Subtitle A—Prohibition Against Discrimination and Other General Applicable Provisions

- Sec. 201. Definition.
- Sec. 202. Discrimination.
- Sec. 203. Enforcement.
- Sec. 204. Regulations.
- Sec. 205. Effective date.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Part I—Public Transportation Other Than Taxicab, Aircraft or Certain Rail Operation

- Sec. 221. Definitions.
- Sec. 222. Public entities operating fixed route systems.
- Sec. 223. Paratransit as a complement to fixed route service.
- Sec. 224. Public entity operating a demand responsive system.
- Sec. 225. Temporary relief where title is unavailable.
- Sec. 226. New facilities.
- Sec. 227. Alterations of existing facilities.
- Sec. 228. Public transportation programs and activities in existing facilities and one-to-one train rule.
- Sec. 229. Regulations.
- Sec. 230. Interim accessibility requirements.
- Sec. 231. Effective date.

Part II—Public Transportation by Intercity and Commuter Rail

- Sec. 241. Definitions.
- Sec. 242. Intercity and commuter rail actions considered discriminatory.
- Sec. 243. Conformance of accessibility standards.
- Sec. 244. Regulations.
- Sec. 245. Interim accessibility requirements.
- Sec. 246. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

- Sec. 301. Definitions.
- Sec. 302. Prohibition of discrimination by public accommodations.
- Sec. 303. New construction and alterations in public accommodations and commercial facilities.
- Sec. 304. Prohibition of discrimination in specified public transportation services provided by private entities.
- Sec. 305. Study.
- Sec. 306. Regulations.
- Sec. 307. Exemptions for private clubs and religious organizations.
- Sec. 308. Enforcement.
- Sec. 309. Examinations and courses.
- Sec. 310. Effective date.

TITLE IV—TELECOMMUNICATIONS

- Sec. 401. Telecommunication relay services for hearing-impaired and speech-impaired individuals.
- Sec. 402. Closed-captioning of public service announcements.

TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 501. Construction.
- Sec. 502. State immunity.
- Sec. 503. Prohibition against retaliation and discrimination.
- Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
- Sec. 505. Attorney's fees.
- Sec. 506. Technical assistance.
- Sec. 507. Federal wilderness areas.
- Sec. 508. Transvestites.
- Sec. 509. Coverage of Congressional and the courts of the legislative branch.

Sec. 510. Illegal use of drugs.

Sec. 511. Definitions.

Sec. 512. Amendments to the Rehabilitation Act.

Sec. 513. Alternative means of dispute resolution.

Sec. 514. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—The Congress finds that—
(1) some 43,000,000 Americans have one or more physical or mental disabilities, and the number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

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

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) **AUXILIARY AIDS AND SERVICES.**—

The term "auxiliary aids and services" includes:

(A) qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) **DISABILITY.**—The term "disability" means, with respect to an individual:

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) **STATE.**—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE 1—EMPLOYMENT

SEC. 101. DEFINITIONS

As used in this title:

(1) **COMMISSION.**—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) **COVERED ENTITY.**—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) **DIRECT THREAT.**—The term "direct threat" means a significant risk to the health or

safety of others that cannot be eliminated by reasonable accommodation.

(4) **EMPLOYEE.**—The term "employee" means an individual employed by an employer.

(5) **EMPLOYER.**—

(A) **IN GENERAL.**—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) **EXCEPTIONS.**—The term "employer" does not include:

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(6) **ILLEGAL USE OF DRUGS.**—

(A) **IN GENERAL.**—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) **DRUGS.**—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

(7) **PERSON, ETC.**—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(8) **QUALIFIED INDIVIDUAL WITH A DISABILITY.**—The term "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. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) **REASONABLE ACCOMMODATION.**—The term "reasonable accommodation" may include:

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) **UNDUE HARDSHIP.**—

(A) **IN GENERAL.**—The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) **FACTORS TO BE CONSIDERED.**—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 102. DISCRIMINATION.

(a) **GENERAL RULE.**—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) **CONSTRUCTION.**—As used in subsection (a), the term "discriminate" includes:

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration:

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship

on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(C) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE EXAMINATIONS AND INQUIRIES.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) REQUIREMENT.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

SEC. 103. DEFENSES.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) RELIGIOUS ENTITIES.—

(1) IN GENERAL.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) RELIGIOUS TENETS REQUIREMENT.

Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) LIST C.—INFECTIOUS AND COMMUNICABLE DISEASES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, not later than 6 months after the date of enactment of this Act, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

(2) APPLICATIONS.—In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a

covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) CONSTRUCTION.—Nothing in this Act shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) AUTHORITY OF COVERED ENTITY.—

A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are

(d) DEFINITION OF ILLEGAL USE OF DRUGS.—

(1) IN GENERAL.—The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) DRUGS.—The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

SEC. 511. DEFINITIONS.

(a) HOMOSEXUALITY AND BISEXUALITY.—For purposes of the definition of “disability” in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) CERTAIN CONDITIONS.—Under this Act, the term “disability” shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) DEFINITION OF HANDICAPPED INDIVIDUAL.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

“(C)(i) For purposes of title V, the term ‘individual with handicaps’ does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

“(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

“(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

“(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

“(III) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

“(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under titles I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

“(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action

pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

(v) For purposes of sections 503 and 504 as such sections relate to employment, the term ‘individual with handicaps’ does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.”.

(b) DEFINITION OF ILLEGAL DRUGS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

“(22)(A) The term ‘drug’ means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) The term ‘illegal use of drugs’ means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.”.

(c) CONFORMING AMENDMENTS.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended—

(1) in the first sentence, by striking “Subject to the second sentence of this subparagraph,” and inserting “Subject to subparagraphs (C) and (D),”; and

(2) by striking the second sentence.

SEC. 513. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act.

SEC. 514. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

And the House agree to the same.

Congressional Votes on the Final Passage of The Americans With Disabilities Act

In the House of Representatives

July 12, 1990 the House agreed to the conference report on S. 933, to establish a clear and comprehensive prohibition of discrimination on the basis of disability. This cleared the measure for Senate action.

For—377	Against—28	Not Voting—27
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In the Senate

July 13, 1990 the U.S. Senate agreed to the conference report on S. 933, to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

For—91	Against—6	Not Voting—3
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The Americans with Disabilities Act became law when it was signed by President George Bush at 10:26 AM on July 26, 1990.

to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) **DEFINITION.**—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

508. TRANSVESTITES.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) **COMMITMENT TO RULE XLII.**—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:

"No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof:

“(a) fail or refuse to hire an individual;

“(b) discharge an individual; or

“(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.”

(2) **APPLICATION TO SENATE EMPLOYMENT.**—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act

of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) **INVESTIGATION AND ADJUDICATION OF CLAIMS.**—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(4) **RIGHTS OF EMPLOYEES.**—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) **APPLICABLE REMEDIES.**—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) **MATTERS OTHER THAN EMPLOYMENT.**—

(A) **IN GENERAL.**—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) **REMEDIES.**—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A).

Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) **PROPOSED REMEDIES AND PROCEDURES.**—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(7) **EXERCISE OF RULEMAKING POWER.**—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraphs (1), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) **COVERAGE OF THE HOUSE OF REPRESENTATIVES.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this Act or of law, the purposes of this Act shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) **EMPLOYMENT IN THE HOUSE.**—

(A) **APPLICATION.**—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) **ADMINISTRATION.**—

(i) **IN GENERAL.**—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) **RESOLUTION.**—The resolution referred to in clause (i) is House Resolution 15 of the One Hundredth First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) **EXERCISE OF RULEMAKING POWER.**—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) **MATTERS OTHER THAN EMPLOYMENT.**—

(A) **IN GENERAL.**—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) **REMEDIES.**—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) **APPROVAL.**—For purposes of subparagraph (B), the Architect of the Capitol shall

submit proposed remedies and procedures to the Speaker of the House of Representatives for the approval of the Speaker, after consultation with the House Office Building Commission.

(c) **INSTRUMENTALITIES OF CONGRESS.**—

(1) **IN GENERAL.**—The rights and protections under this Act shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) **ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.**—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) **REPORT TO CONGRESS.**—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) **DEFINITION OF INSTRUMENTALITIES.**—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) **CONSTRUCTION.**—Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

SEC. 510. ILLEGAL USE OF DRUGS.

(a) **IN GENERAL.**—For purposes of this Act, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) **RULES OF CONSTRUCTION.**—Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) **HEALTH AND OTHER SERVICES.**—Notwithstanding subsection (a) and section 511(b)(3), an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) **ACCOMMODATIONS AND SERVICES.**—Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

SEC. 502. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 503. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) **RETALIATION.**—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) **INTERFERENCE, COERCION, OR INTIMIDATION.**—It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) **REMEDIES AND PROCEDURES.**—The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III, respectively.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) **ISSUANCE OF GUIDELINES.**—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) **CONTENTS OF GUIDELINES.**—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) **QUALIFIED HISTORIC PROPERTIES.**—

(1) **IN GENERAL.**—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) **SITES ELIGIBLE FOR LISTING IN NATIONAL REGISTER.**—With respect to alterations of buildings or facilities that are eligible for

listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) **OTHER SITES.**—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) **PLAN FOR ASSISTANCE.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) **PUBLICATION OF PLAN.**—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) **AGENCY AND PUBLIC ASSISTANCE.**—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) **IMPLEMENTATION.**—

(1) **RENDERING ASSISTANCE.**—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) **IMPLEMENTATION OF TITLES.**—

(A) **TITLE I.**—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for title I.

(B) **TITLE II.**—

(i) **SUBTITLE A.**—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) **SUBTITLE B.**—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) **TITLE III.**—The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) **TITLE IV.**—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) **TECHNICAL ASSISTANCE MANUALS.**—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) **GRANTS AND CONTRACTS.**—

(1) **IN GENERAL.**—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this Act. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) **DISSEMINATION OF INFORMATION.**—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) **FAILURE TO RECEIVE ASSISTANCE.**—An employer, public accommodation, or other entity covered under this Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) **STUDY.**—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) **SUBMISSION OF REPORT.**—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit a report required under subsection (a) to Congress.

(c) **SPECIFIC WILDERNESS ACCESS.**—

(1) **IN GENERAL.**—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(d) REGULATIONS.—

(1) **IN GENERAL.**—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) **TECHNOLOGY.**—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

(3) JURISDICTIONAL SEPARATION OF COSTS.—

(A) **IN GENERAL.**—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) **RECOVERING COSTS.**—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

"(e) ENFORCEMENT.—

(1) **IN GENERAL.**—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) **COMPLAINT.**—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

(1) **STATE DOCUMENTATION.**—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) **REQUIREMENTS FOR CERTIFICATION.**—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) **METHOD OF FUNDING.**—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) **SUSPENSION OR REVOCATION OF CERTIFICATION.**—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

"(g) COMPLAINT.—

(1) **REFERRAL OF COMPLAINT.**—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

(2) **JURISDICTION OF COMMISSION.**—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) a final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f)."

(b) **CONFORMING AMENDMENTS.**—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Section 711 of the Communications Act of 1934 is amended to read as follows:

"SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and "(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement."

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) **IN GENERAL.**—Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) **RELATIONSHIP TO OTHER LAWS.**—Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.

(c) **INSURANCE.**—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) **INJUNCTIVE RELIEF.**—In the case of violations of sections 302(b)(2)(A)(iv) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) **ENFORCEMENT BY THE ATTORNEY GENERAL.**—

(1) **DENIAL OF RIGHTS.**—

(A) **DUTY TO INVESTIGATE.**—

(i) **IN GENERAL.**—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) **ATTORNEY GENERAL CERTIFICATION.**—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) **POTENTIAL VIOLATION.**—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) **AUTHORITY OF COURT.**—In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including

monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding \$50,000 for a first violation; and

(ii) not exceeding \$100,000 for any subsequent violation.

(3) **SINGLE VIOLATION.**—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) **PUNITIVE DAMAGES.**—For purposes of subsection (b)(2)(B), the term “monetary damages” and “such other relief” does not include punitive damages.

(5) **JUDICIAL CONSIDERATION.**—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EXAMINATIONS AND COURSES.

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SEC. 310. EFFECTIVE DATE.

(a) **GENERAL RULE.**—Except as provided in subsections (b) and (c), this title shall become effective 18 months after the date of the enactment of this Act.

(b) **CIVIL ACTIONS.**—Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—

(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less; and

(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less.

(c) **EXCEPTION.**—Sections 302(a) for purposes of section 302(b)(2)(B) and (C) only, 304(a) for purposes of section 304(b)(3) only, 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV-TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) **TELECOMMUNICATIONS.**—Title II of the Communications Act of 1934 (47 U.S.C. 201

et seq.) is amended by adding at the end thereof the following new section:

“SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

“(a) **DEFINITIONS.**—As used in this section—

(1) **COMMON CARRIER OR CARRIER.**—The term ‘common carrier’ or ‘carrier’ includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

(2) **TDD.**—The term ‘TDD’ means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) **TELECOMMUNICATIONS RELAY SERVICES.**—The term ‘telecommunications relay services’ means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

“(b) **AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.**—

(1) **IN GENERAL.**—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) **USE OF GENERAL AUTHORITY AND REMEDIES.**—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

“(c) **PROVISION OF SERVICES.**—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

SEC. 305. STUDY.

(a) PURPOSES.—The Office of Technology Assessment shall undertake a study to determine

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs through all forms of boarding options.

(b) CONTENTS.—The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadline specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board

established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) TRANSPORTATION PROVISIONS.—

(1) GENERAL RULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 302(b)(2)(B) and (C) and to carry out section 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS.

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus, except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) EFFECTIVE PERIOD.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) FINAL REQUIREMENT.—

(i) REVIEW OF STUDY AND INTERIM REQUIREMENTS.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) ISSUANCE.—Not later than 1 year after the date of the submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) EFFECTIVE PERIOD.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) LIMITATION ON REQUIRING INSTALLATION OF ACCESSIBLE RESTROOMS.—

The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(D) STANDARDS.—The regulations issued pursuant to this subsection shall include standards

applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) CONSISTENCY WITH ATBCB GUIDELINES.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

(d) INTERIM ACCESSIBILITY STANDARDS.—

(1) FACILITIES.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) VEHICLES AND RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this title, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this title and are in effect at the time such design is substantially completed.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a-6(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies

is not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) OVER-THE-ROAD BUSES.—

(i) LIMITATION ON APPLICABILITY.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) ACCESSIBILITY REQUIREMENTS.—For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) SPECIFIC CONSTRUCTION.—Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

SEC. 303. NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (c), as applied to public accommodations and commercial facilities, discrimination for purposes of section 302(a) includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of

the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN SPECIFIED PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) and with the requirements of section 303(a)(2);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except

that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) HISTORICAL OR ANTIQUATED CARS.—

(1) EXCEPTION.—To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) DEFINITION.—As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) **RAIL AND RAILROAD.**—The terms “rail” and “railroad” have the meaning given the term “railroad” in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(9) **READILY ACHIEVABLE.**—The term “readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this Act;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) **SPECIFIED PUBLIC TRANSPORTATION.**—The term “specified public transportation” means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) **VEHICLE.**—The term “vehicle” does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under this title.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) **GENERAL RULE.**—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases

to), or operates a place of public accommodation.

(b) **CONSTRUCTION.**—

(1) **GENERAL PROHIBITION.**—

(A) **ACTIVITIES.**—

(i) **DENIAL OF PARTICIPATION.**—

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) **PARTICIPATION IN UNEQUAL BENEFIT.**—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) **SEPARATE BENEFIT.**—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) **INDIVIDUAL OR CLASS OF INDIVIDUALS.**—For purposes of clauses (i) through (iii) of this subparagraph, the term “individual or class of individuals” refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) **INTEGRATED SETTINGS.**—Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) **OPPORTUNITY TO PARTICIPATE.**—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) **ADMINISTRATIVE METHODS.**—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) **ASSOCIATION.**—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) **SPECIFIC PROHIBITIONS.**—

(A) **DISCRIMINATION.**—For purposes of subsection (a), discrimination includes—

(i) the imposition or application of

eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) **FIXED ROUTE SYSTEM.**—

(i) **ACCESSIBILITY.**—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 10 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) **EQUIVALENT SERVICE.**—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 10 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) **DEMAND RESPONSIVE SYSTEM.**—or purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which

readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, 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 after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and

drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

SEC. 243. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SEC. 244. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part.

SEC. 245. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 244, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242(a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the

Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 246. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 242 and 244 shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication.

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country

(2) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) PRIVATE ENTITY.—The term "private entity" means any entity other than a public entity (as defined in section 201(1)).

(7) PUBLIC ACCOMMODATION.—The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(C) SPECIAL RULE FOR SINGLE-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE-LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE-LEVEL DINING CARS.—On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail

cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) ACCESSIBILITY.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger; (ii) space to fold and store a wheelchair; or (iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems,

and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

SEC. 228. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES.—

(1) IN GENERAL.—With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) or section 227(b) (relating to key stations).

(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) ONE CAR PER TRAIN RULE.—

(1) GENERAL RULE.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) HISTORIC TRAINS.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 222(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 229. REGULATIONS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part (other than section 223).

(b) STANDARDS.—The regulations issued under this section and section 223 shall include

standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 230. INTERIM ACCESSIBILITY REQUIREMENTS.

If final regulations have not been issued pursuant to section 229, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 226 and 227, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

SEC. 231. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 shall become effective on the date of enactment of this Act.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

SEC. 241. DEFINITIONS.

As used in this part:

(1) COMMUTER AUTHORITY.—The term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8)).

(2) COMMUTER RAIL TRANSPORTATION.—The term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9)).

(3) INTERCITY RAIL TRANSPORTATION.—The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) RAIL PASSENGER CAR.—The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) RESPONSIBLE PERSON.—The term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) STATION.—The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 242. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) SPECIAL RULE FOR SINGLE-LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) **PROVISION OF SERVICES BY OTHERS.**—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) **OTHER PROVISIONS.**—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) **REVIEW OF PLAN.**—

(1) **GENERAL RULE.**—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) **DISAPPROVAL.**—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) **MODIFICATION OF DISAPPROVED PLAN.**—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) **DISCRIMINATION DEFINED.**—As used in subsection (a), the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) **STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

SEC. 224. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 225. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.

(a) **GRANTING.**—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 222(a) or 224 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) **DURATION AND NOTICE TO CONGRESS.**—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) **FRAUDULENT APPLICATION.**—If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SEC. 226. NEW FACILITIES.

For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 227. ALTERATIONS OF EXISTING FACILITIES.

(a) **GENERAL RULE.**—With respect to altera-

tions of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) **SPECIAL RULE FOR STATIONS.**—

(1) **GENERAL RULE.**—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) **RAPID RAIL AND LIGHT RAIL KEY STATIONS.**—

(A) **ACCESSIBILITY.**—Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) **EXTENSION FOR EXTRAORDINARILY EXPENSIVE STRUCTURAL CHANGES.**—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least 2/3 of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) **PLANS AND MILESTONES.**—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan

(3) **FIXED ROUTE SYSTEM.**—The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) **OPERATES.**—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) **PUBLIC SCHOOL TRANSPORTATION.**—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) **SECRETARY.**—The term "Secretary" means the Secretary of Transportation.

SEC. 222. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS.

(a) **PURCHASE AND LEASE OF NEW VEHICLES.**—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) **PURCHASE AND LEASE OF USED VEHICLES.**—Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) **REMANUFACTURED VEHICLES.**—

(1) **GENERAL RULE.**—Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system.

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended; unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) EXCEPTION FOR HISTORIC VEHICLES.—

(A) **GENERAL RULE.**—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph

(1) and which do not significantly alter the historic character of such vehicle.

(B) **VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.**—For purposes of this paragraph and section 228(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

SEC. 223. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) **GENERAL RULE.**—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) **ISSUANCE OF REGULATIONS.**—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) **REQUIRED CONTENTS OF REGULATIONS.**—

(1) **ELIGIBLE RECIPIENTS OF SERVICE.**—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section.

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period

of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to 1 other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) **SERVICE AREA.**—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) **SERVICE CRITERIA.**—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) **UNDUE FINANCIAL BURDEN LIMITATION.**—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) **ADDITIONAL SERVICES.**—The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) **PUBLIC PARTICIPATION.**—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) **PLANS.**—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) TRANSPORTATION EMPLOYEES.—Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

(a) POWERS, REMEDIES, AND PROCEDURES.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination

on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) COORDINATION.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

SUBTITLE A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

SEC. 201. DEFINITION.

As used in this title:

(1) PUBLIC ENTITY.—The term “public entity” means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or 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 public entity.

SEC. 202. DISCRIMINATION.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203. ENFORCEMENT.

The remedies, procedures, and rights set forth

in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SEC. 204. REGULATIONS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) RELATIONSHIP TO OTHER REGULATIONS.—Except for “program accessibility, existing facilities”, and “communications”, regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to “program accessibility, existing facilities”, and “communications”, such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) STANDARDS.—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

SEC. 205. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Section 204 shall become effective on the date of enactment of this Act.

SUBTITLE B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

SEC. 221. DEFINITIONS.

As used in this part:

(1) DEMAND RESPONSIVE SYSTEM.—The term “demand responsive system” means any system of providing designated public transportation which is not a fixed route system.

(2) DESIGNATED PUBLIC TRANSPORTATION.—The term “designated public transportation” means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 241)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

THE WHITE HOUSE

WASHINGTON

July 18, 1995

As we mark the fifth anniversary of the Americans with Disabilities Act, I am delighted to join citizens across the country in celebration.

With the enactment of this landmark civil rights law, America became the first country in the world to make equal rights and equal opportunity a guarantee for its 49 million citizens with disabilities. Across the nation, our people began coming together to ensure equal access to the American Dream.

Today, thanks to these efforts, Americans are recognizing that we all gain as citizens of a country in which everyone can participate fully. And America is reaping the benefits of a more inclusive society. Employers have a larger pool of qualified workers. Businesses are opening doors to new customers. State and local governments are enjoying broader citizen participation. Most important, individuals are being judged not by their disabilities, but by their abilities.

We have made great strides as a nation in fulfilling America's promise of commonsense justice. Still, much remains to be done. My Administration is firmly committed to the vigorous implementation and enforcement of the ADA. No longer will Americans with disabilities be kept from realizing their dreams by closed doors or narrow minds. Building partnerships between government and business and people throughout the land, we best celebrate this day by rededicating ourselves to creating a society of equal access and equal rights for all.

A handwritten signature in black ink, reading "Bill Clinton". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

THE WHITE HOUSE
WASHINGTON

July 25, 1995

**ROUNDTABLE DISCUSSION ON THE FIFTH ANNIVERSARY OF
THE AMERICANS WITH DISABILITIES ACT**

DATE: Wednesday, July 26, 1995
TIME: 10:00AM
LOCATION: The Cash Room, Treasury Department
FROM: Alexis Herman, Assistant to the President
and Director of Public Liaison
Debbie Fine, Office of Public Liaison
Diana Fortuna, Domestic Policy Council

I. PURPOSE

The purposes of this event are to:

- 1) celebrate the 5th anniversary of the Americans with Disabilities Act (ADA), and to affirm this administration's commitment to vigorous enforcement of the ADA;
- 2) recognize the excellent progress under the ADA, while acknowledging that it is a young law and that it will take more time and work before its goals are realized, and focusing on the areas of education, training and employment;
- 3) underscore that the proposed Republican budget cuts will have a significant impact on this community and on our nation, in terms of progressing in the areas of education, employment, training, and health care; and
- 4) to shore up support from activists who will help us in key states around the country by reassuring them of your commitment to the ADA in the face of some recent attacks.

II. BACKGROUND

You will participate in a roundtable discussion with approximately 20 leaders in the disability community, individuals who have benefitted from the ADA in a significant way, Members of Congress who have fought hard for this legislation, and several members of the Administration whose focus is implementing or enforcing the ADA.

The ADA

July 26 marks the fifth anniversary of the signing of the Americans with Disabilities Act, landmark civil rights legislation that prohibits discrimination against people with disabilities in employment, services rendered by state and local governments, places of public accommodation, transportation, and telecommunications.

Passage of the ADA was driven by a growing realization that government is spending far too much on custodial, medical and income support in ways that perpetuated the isolation and dependency of people with disabilities, while spending far too little on measures that would enable people with disabilities to live productively and independently. (Bush often cited that over \$200 billion (in 1984 dollars) was being spent to keep persons with disabilities dependent.)

Five years later, although there has been much progress under the ADA, people with disabilities and their families acknowledge that much remains to be done in order to achieve economic independence for people with disabilities: eliminating physical and attitudinal barriers that obstruct people with disabilities from getting jobs or accessing goods and services; empowering students with disabilities; and training adults of all ages for productive lives.

Current Perceptions of the ADA

Currently there is a heightened sense of fear in the disability community that the ADA will be weakened as a result of efforts to cut federal regulations, give more flexibility to the states, and downsize government. The distrust has been directed more at Members of Congress; however, they are not convinced that the Administration would draw a line in the sand at legislation that weakens the federal government's ability to enforce the ADA. Although this distrust is unfounded, one cannot underestimate the depth of the emotional tie to this law and the hope it offers to members of the community, nor the fear and panic they now have about its being repealed or reformed. The group is looking to the Administration for a strong signal that we will resist any changes to the ADA. This event will give you an opportunity to restate your support of the ADA and to reassure this group that you will fight attempts to weaken the law.

Points to Note

- In the 1992 election, among people with disabilities who voted, 50% voted for you, 26% voted for George Bush, and 18% voted for Ross Perot.
- On May 18th of this year, the DNC announced formation of a DNC Disability Advisory Council. Their overall mission is to increase the level of participation of people with disabilities in the political process, specifically in support of you and state and local Democratic candidates.
- Some, including Justin Dart and Becky Ogle, have already begun efforts to raise money and they are ready to organize for your reelection campaign.

Primary Issues of Concern for the Disability Community

Attacks on the ADA:

Using anecdotes about frivolous claims, critics of the ADA allege that the law requires businesses and state and local government to make unreasonable and expensive accommodations that are used by few people, and that it encourages litigation by people with illegitimate disabilities such as back pain, overweight, or drug abuse.

These attacks ignore the fact that the ADA's enforcement provisions are very flexible and rooted in common sense.

Enforcement of the ADA:

The disability community would prefer to see more aggressive enforcement of the law by the Justice Department, Transportation Department, Equal Employment Opportunity Commission, and Federal Communications Commission. However, they also recognize that the emphasis should be on voluntary compliance and that overly aggressive enforcement could reduce public support for the ADA. The disability community is also concerned that regulatory reform proposals could hamper enforcement of the ADA.

Budget Cuts:

The budget cuts proposed by Congress would mean a step backward for people with disabilities, even as they are seeking to move forward through the ADA. Cuts in Medicaid and Medicare particularly affect this community. There are also significant cuts in education, developmental disabilities, and the National Council on Disability. See attached document for details.

IDEA:

The Individuals with Disabilities Education Act (IDEA) is the 20-year old law governing special education that first guaranteed the right to an education for children with disabilities. For the disability community, IDEA is a key piece of civil rights legislation. The law is up for reauthorization this year. The Department of Education has just sent a proposal to the Hill that would increase IDEA's focus on outcomes, cut paperwork, and broaden slightly the circumstances under which disabled children who pose discipline problems can be removed from the classroom. Reaction from the Hill to Education's proposal has so far been positive.

III. PARTICIPANTS

At the Table:

Julie Clark; Springfield, Virginia: She recently filed and won a suit (now appealed) against the Virginia Board of Bar Examiners to bar a mental health inquiry that violated the ADA on the law license application in Virginia. She now works at Bazelon Center for Mental Health Law in Washington D.C.

Justin Dart; Washington D.C.: He is former Chair of the President's Committee on Employment of People with Disabilities under Bush and you. As you know, Justin is a big supporter of this administration and its agenda. He and his wife have contributed financially to the Re-Elect, they are organizing the grass roots in support of you and they also spent hundreds of thousands of dollars in the fight for health care reform last year.

Danny Delcambre; Seattle, Washington: He owns the Ragin' Cajun restaurant in Seattle, where you have eaten. Danny recently participated in the Pacific Rim Economic Conference in Portland. In 1994 he won an Employer of the Year Award from the President's Committee on Employment of People with Disabilities. This year his was one of ten small businesses to win the Mayor's Award.

Anthony Jones, Prince Frederick, Maryland: He works for Dorsey Gray, a car dealership cleaning cars, transporting customers home and doing general custodial work. He has mental retardation. Receives support services through The Arc of Southern Maryland. Needs supports to keep his job.

Diane Lipton; Richmond, California: She is the parent of a 23-year old woman with cerebral palsy. She has been a lawyer at the Disability Rights Education Defense Fund since 1985, where she directs The Children with Disabilities and Family Advocacy Program. She became a lawyer in order to advocate more effectively for her daughter.

Laurie Powers, Ph.D.; Hanover, New Hampshire: Dr. Powers is Associate Director of the Hood Center for Family Support at Dartmouth Medical School and Assistant Professor of Pediatrics and Adolescent Medicine.

Ronnie Pulliam; Philadelphia, Pennsylvania: He is an Americorps volunteer who graduated from Temple University this year, and was accepted into graduate school for sports administration. He is active with "The Rolling Owls," Temple University's wheelchair basketball team.

H. Rutherford (Rudd) Turnbull; Lawrence, Kansas: Co-Director of the Beach Center on Families and Disability and Professor of Special Education and Courtesy Professor of Law at the University of Kansas. He is the father of a 27-year old man with mental retardation and autism.

Heather Whitestone; Birmingham, Alabama: In addition to being Miss America 1995, she is also an accounting student at Jacksonville State University in Alabama; an Executive Member of the President's Committee on Employment of People with Disabilities; and she serves as the national spokesperson for the public service campaign aimed at early identification of hearing loss, created by Alexander Graham Bell Association for the Deaf and the Miss America Organization.

Pat Yates; Little Rock, Arkansas: Pat is a special education teacher at Hall High School in Little Rock. She was Hamp Rasco's teacher; and as you know, you knew her father Jack Yates when you were teaching at law school.

From the Administration:

The President

The Attorney General

Marca Bristo: Chair of the National Council on Disability and Executive Director of Access Living in Chicago, Illinois. She recently concluded a 50-state town hall meeting tour on the ADA, and will present the report of their findings to you.

Chairman Gil Casellas, EEOC

Tony Coehlo: Chairman of the President's Committee on Employment of People with Disabilities and Senior Advisor at Schroder Wertheim & Co. As you know, he has epilepsy and he was the author of the original Americans with Disabilities Act. He also helped fund the travel costs for some of the roundtable participants today.

R. Scott Hitt, M.D., Chair of the President's HIV/AIDS Advisory Council.

Members of Congress

Senator Harkin, Iowa

Congressman Hoyer, Maryland

In the Audience:

The audience will be comprised of approximately 75 disability rights activists from around the country, heads of national disability organizations, and senior appointees with disabilities or those who work closely with the disability community implementing and enforcing the ADA.

IV. SEQUENCE OF EVENTS

- You will be announced into the room by WHCA.
- You will proceed to the podium positioned on the table.
- You will welcome participants at the table and in the audience and make brief remarks. (The press departs after you conclude your remarks.)
- You will be seated.
- Tony will begin the meeting by introducing the first of five individuals who will tell a little about why they are present.
- As each person talks about his or her situation, you may follow up with question or comments. (Suggested options attached.)
- After the five have spoken, you will open up the meeting for discussion by posing 2 to 3 questions for the group to discuss. (Suggested options attached.)
- Tony Coehlo will signal the end of the meeting.
- You will summarize and close, work the ropeline, and depart.

V. PRESS PLAN

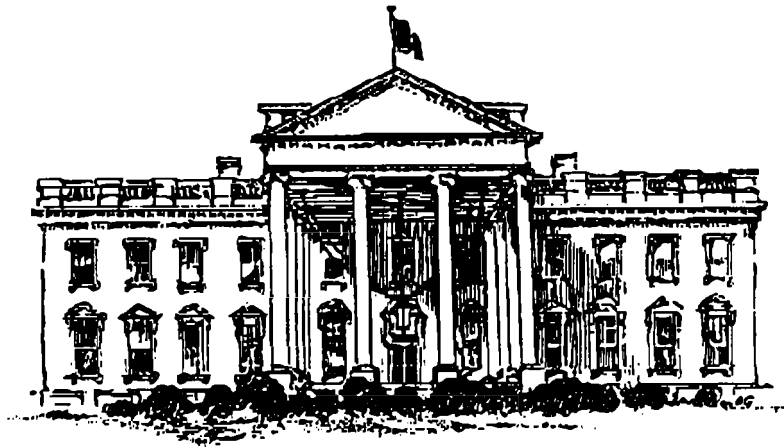
There will be pooled press at the top of the meeting for your remarks. Following the meeting, roundtable participants will proceed to a stake-out.

VI. REMARKS

To be provided.

Also, see attached for:

- additional information on roundtable participants and suggested questions;
- further information on the impact of the budget on the disability community; and
- a copy of your special message on the ADA.



THE WHITE HOUSE

To: Fortuna, Diana

Date: 7-27-95

From: FINE_D

Page 1 of 3

Attached is the President's opening remarks at the roundtable discussion held yesterday in honor of the fifth anniversary of the ADA. Please feel free to use it in any stories you may be doing on the ADA anniversary celebrations.

I expect to have the transcript of the meeting available tomorrow and will send it out as soon as I do.

Thank you.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 26, 1995

REMARKS BY THE PRESIDENT
IN OPENING REMARKS
TO THE AMERICANS WITH DISABILITIES ACT ROUNDTABLE

U.S. Treasury

10:22 A.M. EDT

THE PRESIDENT: Thank you very much. Secretary Rubin, Attorney General Reno; to the distinguished members of this panel, Senator Harkin and Congressman Hoyer, Chairman Coahlo, Dr. Hitt, Gil Casellas, Marica Bristol; the members of the administration who are here -- I see Reed Hunt and Datsy Fleming out there -- I thank all of you for being here to celebrate this fifth anniversary of the Americans with Disabilities Act.

Five years ago, when the ADA became law, we became the first nation in the world to commit ourselves to equal rights and equal opportunities for all citizens with disabilities. Because of the ADA, our country is stronger today. Our fellow citizens are being judged by their ability to contribute, not by their disabilities. Now, all of you, and millions of others all across this country have an opportunity they never had before to make the most of their own lives.

That opportunity is critical to what we have to do as a nation to meet the great challenges we face and to move forward into the next century. In many ways, the ADA is the perfect example of what I mean when I talk about our job is to create more opportunity and demand more responsibility from all of our citizens.

The ADA has meant more opportunity for 19 million Americans with disabilities to their part to make us a stronger and better country. It has meant that more people could go to work and participate in community life, and do things that most Americans take for granted, like helping to take care of their families or

getting a good education or registering and voting. It's also a perfect example of what I have meant in recent weeks when I have urged the American people to come together to find common ground in order to move forward together as a nation.

That was true across party lines. Members of both parties, including three who are here today -- Senators Harkin, Representative Hoyer and former Congressman Tony Coelho -- fought for the ADA in the Congress. And President Bush signed it into law. The ADA became law because Americans like so many of you worked together in the best interest of everyone, putting party behind country. There was a realization that the best way to keep our country moving forward was to allow every American, regardless of whether he or she used a wheelchair, was blind, had a mental disability or was HIV positive, to live up to his or her God-given potential.

And today, even as we celebrate the rights gained under the ADA, the budget cuts proposed by the congressional majority would sharply reduce the services and the supports that enable people to effectively exercise the rights granted by the ADA. Under the proposed cuts, states would be forced to drop 1.4 million people with disabilities from Medicaid rolls, and 4 million disabled Americans on Medicare would have to pay more every year for the same health care. They also have proposed eliminating funds for training special education teachers.

Now, we have to join together to maintain our commitment and our common ground. I will vigorously implement and enforce the ADA through the Cabinet and the administration. We will not allow Americans with disabilities to be kept from realizing their dreams by closed doors or narrowed minds.

We should also celebrate, all of us, this fifth anniversary of the Americans with Disabilities Act in the best way possible: By all, each of us, rededicating ourselves to creating a society of equal access and equal rights for all. That is the best kind of affirmative action for all the American people.

Thank you very much. (Applause.)

END

10:26 A.M. (EDT)



THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

cc Carol Rasco-Fyl
-Diana Fortuna

26 JUL 1995

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DEFENSE FIELD ACTIVITIES
COMMANDER, ARMY AND AIR FORCE EXCHANGE SERVICE
CHIEF, NATIONAL GUARD BUREAU

SUBJECT: Anniversary of the Americans with Disabilities Act

Today is the 5th anniversary of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). It is the intent of this landmark civil rights legislation to make individuals with disabilities full participants in the daily life of our nation and full partners in the pursuit of our national aspirations. The anniversary of the Act is a fitting occasion on which to reaffirm this Department's goal to increase employment of persons with severe disabilities from 1.3 percent to 2.0 percent of our civilian work force.

Toward that end, I congratulate the organizations in the Department of Defense that have reached out this year to employ college students with disabilities in summer jobs. In July of 1994, the Under Secretary of Defense (Personnel and Readiness) joined forces with the Chairman of the President's Committee on Employment of People with Disabilities to expand DoD's highly successful recruitment program for individuals with disabilities to serve other Federal agencies. At that time, we announced that within the Department we would make resources available to fill 100 summer jobs through the program each year.

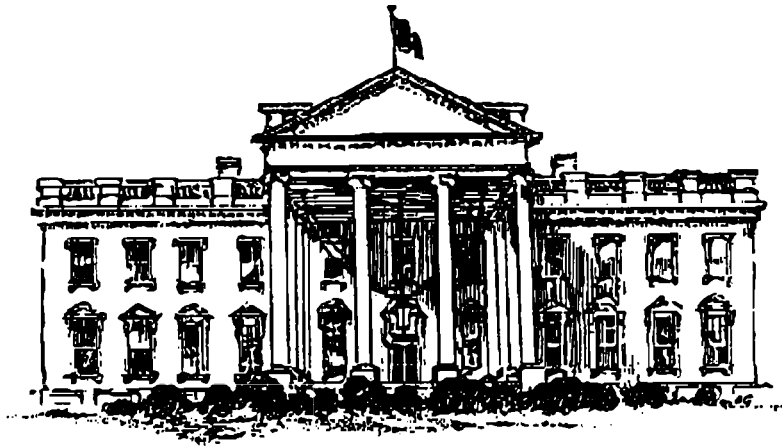
Over 800 college students with disabilities have been referred for employment this year. Eighty-nine of the 152 individuals hired to date have been placed in DoD summer jobs. Participating agencies are still reviewing applications and considering possibilities for additional hiring.

U37989 195

Summer employment has been an area of special emphasis, but many of the applicants registered with the program are available for permanent employment. Please consider their qualifications as you fill vacancies in the coming year. Information and applications are available from Ms. Judith C. Gilliom, Disability Program Manager, Office of the Deputy Assistant Secretary of Defense (Equal Opportunity), at (703) 697-8661 or DSN 227-8661.

I join President Clinton in the belief that our entire nation will share in the economic and social benefits that result from full participation of Americans with disabilities in our society.

William J. Perry



THE WHITE HOUSE

To: Fortuna, Diana

Date: 7-26-95

From: FINE_D

Page 1 of 5

Attached please find information on the Administration's commemoration of the ADA.

PRESIDENT CLINTON PARTICIPATES IN ROUNDTABLE ON THE 5TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT

July 26, 1995

President Clinton will commemorate the five-year anniversary of the signing of the Americans with Disabilities Act (ADA) by participating in a roundtable discussion with 12 distinguished Americans, including Miss America 1995 Heather Whitestone.

The event will open with remarks by the President, which will be open to pool coverage. The President will then participate in a private roundtable discussion with these 12 Americans, Attorney General Janet Reno, Chairman Gilbert Casellas of the Equal Employment Opportunity Commission, Chair Marca Bristo of the National Council on Disability, Chair Scott Hitt of the President's Advisory Council on HIV/AIDS and Tony Coelho, Chairman of the President's Committee on Employment of People with Disabilities and author of the original Americans with Disabilities Act. Senator Harkin and Congressman Hoyer will also participate. A list of the roundtable participants is attached, as is a schedule of other administration events commemorating the ADA's 5th anniversary.

The audience for the roundtable discussion will be comprised of approximately 75 disability rights activists from around the country, heads of national disability organizations, and senior appointees with disabilities, or those who work closely with the disability community implementing and enforcing the ADA.

In his remarks, the President will restate his support of the ADA and his commitment to fight attempts to weaken the law.

Background on The ADA

July 26 marks the fifth anniversary of the signing of the Americans with Disabilities Act, landmark civil rights legislation that prohibits discrimination against people with disabilities in employment, services rendered by state and local governments, places of public accommodation, transportation, and telecommunications.

Passage of the ADA was driven by a growing realization that government is spending far too much on custodial, medical and income support in ways that perpetuated the isolation and dependency of people with disabilities, while spending far too little on measures that would enable people with disabilities to live productively and independently.

Five years later, although there has been much progress under the ADA, people with disabilities and their families acknowledge that much remains to be done in order to achieve economic independence for people with disabilities: eliminating physical and attitudinal barriers that obstruct people with disabilities from getting jobs or accessing goods and services; empowering students with disabilities; and training adults of all ages for productive lives.

-30-30-30-

PARTICIPANTS

Julie Clark; Springfield, Virginia: She recently filed and won a suit (now appealed) against the Virginia Board of Bar Examiners to bar a mental health inquiry that violated the ADA on the law license application in Virginia. She now works at Bazelon Center for Mental Health Law in Washington D.C.

Justin Dart; Washington D.C.: He is former Chair of the President's Committee on Employment of People with Disabilities under Presidents Clinton and Bush.

Danny Delcambre; Seattle, Washington: Mr. Delcambre owns the Ragin' Cajun restaurant in Seattle and recently participated in the Pacific Rim Economic Conference in Portland. In 1994 he won an Employer of the Year Award from the President's Committee on Employment of People with Disabilities.

Anthony Jones, Prince Frederick, Maryland: Mr. Jones, who is mentally retarded works for Dorsey Gray, a car dealership, cleaning cars, transporting customers home and doing general custodial work. He receives support services through The Arc of Southern Maryland.

Diane Lipton; Richmond, California: Lipton is the parent of a 23-year old woman with cerebral palsy. She has been a lawyer at the Disability Rights Education Defense Fund since 1985, where she directs The Children with Disabilities and Family Advocacy Program. She became a lawyer in order to advocate more effectively for her daughter.

Laurie Powers, Ph.D.; Hanover, New Hampshire: Dr. Powers is Associate Director of the Hood Center for Family Support at Dartmouth Medical School and Assistant Professor of Pediatrics and Adolescent Medicine.

Ronnie Pulliam; Philadelphia, Pennsylvania: Pulliam is an Americorps volunteer who graduated from Temple University this year, and was accepted into graduate school for sports administration. He is active with "The Rolling Owls," Temple University's wheelchair basketball team.

H. Rutherford (Rudd) Turnbull; Lawrence, Kansas: Co-Director of the Beach Center on Families and Disability and Professor of Special Education and Courtesy Professor of Law at the University of Kansas. He is the father of a 27-year old man with mental retardation and autism.

Heather Whitestone, Miss America 1995; Birmingham, Alabama: In addition to being Miss America 1995, she is also an accounting student at Jacksonville State University in Alabama and an Executive Member of the President's Committee on Employment of People with Disabilities. She serves as the national spokesperson for the public service campaign aimed at early identification of hearing loss, created by Alexander Graham Bell Association for the Deaf and the Miss America Organization.

Pat Yates; Little Rock, Arkansas: Yates is a special education teacher at Hall High School in Little Rock.

OTHER ADMINISTRATION EVENTS COMMEMORATING ADA

In addition to the President's event, other activities include:

DEPARTMENT OF JUSTICE:

The Attorney General will participate in "Voices of Freedom: America Speaks Out on ADA" with Dick Thornburgh, former Attorney General under President Bush, at the National Press Club in Washington D.C. The National Council on Disability has organized this forum to celebrate the 5th Anniversary of the ADA and to release the report of their findings from their 50 state tour of town hall meetings on the ADA.

The Attorney General will also participate in the President's roundtable discussion.

Deval Patrick, Assistant Attorney General for Civil Rights, will attend and deliver remarks at a reception co-chaired by Tony Coelho and Senator Bob Dole to celebrate the ADA and to announce the formation of a new, national, non-partisan membership organization called the American Association of People with Disabilities.

The Department of Justice has also issued a special fifth anniversary status report on Enforcing the ADA, that included a message from Deval Patrick and other enforcement and technical assistance highlights

DEPARTMENT OF EDUCATION:

Secretary Riley celebrated the 5th Anniversary of the ADA in Tallahassee, Florida with Governor Chiles on Monday, July 24th. Together they symbolically etched the date the ADA was signed into law into the commemorative wall in Tallahassee which marks all of the civil rights milestone events and dates besides the ADA. **Judy Heumann, Assistant Secretary of Education for the Office of Special Education and Rehabilitative Services**, accompanied the Secretary.

Judy Heumann attended and delivered remarks at a Disability Independence Day Rally at Orange Pavilion near San Diego on Saturday, July 22.

Judy Heumann will also deliver remarks at the reception for the American Association of People with Disabilities.

DEPARTMENT OF TREASURY:

On Wednesday, July 26, Deputy Secretary Frank Newman and U.S. Treasurer Mary Ellen Withrow will conduct an accessible tour of the Bureau of Printing and Engraving. Participants will include guests at the President's roundtable earlier in the day

DEPARTMENT OF TRANSPORTATION:

Secretary Pena: On July 25, in Atlanta, Secretary Pena announced a \$13 million grant to the city for operation and maintenance of buses to be used in transporting athletes and visitors during the Olympics and to support the special services of the Paralympics Transportation system.

The Federal Transit Administration (FTA):

The FTA is sponsoring a two-day "paratransit forum" in Washington on July 27 and 28, co hosted by the National Easter Seal Society Project ACTION.

They are also hosting a 5th Anniversary ADA Reception on Wednesday evening July 26.

FEDERAL COMMUNICATIONS COMMISSION:

FCC Chairman Reed Hundt and Miss America 1995, Heather Whitestone, will kick off a campaign to increase public awareness of the Telecommunications Relay Service (TRS) at a press conference on Wednesday, July 26. They will conduct a live telephone call through a TRS operator with Chairman Hundt on one phone and Ms. Whitestone at a second phone using TTY text telephone device.

VETERANS AFFAIRS:

The Under Secretary of Health distributed to each VA Medical Center copies of several publications from the President's Committee on Employment of People with Disabilities that address advancement of employment opportunities under the ADA.

The Under Secretary for Benefits issued a notice advising all VA Regional Offices of the ADA anniversary, encouraging participation in local activities.

The Under Secretary for Benefits will recognize ADA and its importance in his remarks at the Disabled American Veterans Convention in Las Vegas, Nevada this week.

Please note that this is not meant to be a comprehensive account of all administration activities.

The White House

July 18, 1995

As we mark the fifth anniversary of the Americans with Disabilities Act, I am delighted to join citizens across the country in celebration.

With the enactment of this landmark civil rights law, America became the first country in the world to make equal rights and equal opportunities a guarantee for its 49 million citizens with disabilities. Across the nation, our people began coming together to ensure access to the American Dream.

Today, thanks to these efforts, Americans are recognizing that we all gain as citizens of a country in which everyone can participate fully. And America is reaping the benefits of a more inclusive society. Employers have a larger pool of qualified workers. Businesses are opening doors to new customers. State and local governments are enjoying broader citizen participation. Most important, individuals are being judged not by their disabilities, but by their abilities.

We have made great strides as a nation in fulfilling America's promise of commonsense justice. Still, much remains to be done. My administration is firmly committed to the vigorous implementation and enforcement of the ADA. No longer will Americans with disabilities be kept from realizing their dreams by closed doors or narrow minds. Building partnerships between government and business and people throughout the land, we best celebrate this day by rededication ourselves to creating a society of equal access and equal rights for all.

Bill Clinton

TO: Debbie Fine 456-2983
Diana Fortuna 456-7028

FR: Myron Marlin
616-2765

RE: ADA Settlement with Safeway
Wall Street Journal Op Ed

DA: July 25, 1995

Attached is a copy of the Safeway press release that we will likely distribute to the media shortly before 10:00 AM Wednesday. We think this release will help the White House get more coverage of the President's statement. We plan to aggressively sell the story to local papers in the 16 states where Safeway is located, and we will attach the President's statement. (We may hand the release to press at the Treasury event if the White House Press Office approves.)

I have also included a copy of a Wall Street Journal Op Ed by Janet Reno and Dick Thornburgh that will appear on Wednesday. We will bring copies to distribute to the press and guests.



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, JULY 26, 1995

CR
(202) 616-2765
TDD (202) 514-1888

**SAFeway SUPERMARKETS TO BECOME MORE ACCESSIBLE TO CUSTOMERS
WITH DISABILITIES UNDER AGREEMENT WITH THE JUSTICE DEPARTMENT**

WASHINGTON, D.C. -- One of the nation's largest supermarket chains, Safeway Stores, Inc., will become more accessible to customers with disabilities under an agreement reached today with the Justice Department and several disability rights advocates.

Today's settlement falls on the fifth anniversary of the Americans with Disabilities Act (ADA) -- a landmark law that prohibits discrimination against persons with disabilities.

"The ADA is a common sense law that is opening up doors for millions of Americans with disabilities," said Attorney General Janet Reno.

To commemorate the anniversary, Reno and President Clinton meet today with members of the disability community to discuss the law's success.

The Safeway agreement, which affects more than 800 stores in 16 states, resolves a complaint filed with the Justice Department alleging that the supermarket chain violated the ADA. The complaint, filed by a Wisconsin resident with a disability,

(MORE)

- 2 -

claimed that wheelchair users found it difficult to shop in the supermarket because the entrances were surrounded by poles. The poles, or security bollards, are intended to prevent customers from wheeling shopping carts into the parking lot.

"We have focussed our enforcement on access to the fundamentals of everyday life," said Assistant Attorney General for Civil Rights Deval L. Patrick. "Few things are more fundamental than getting into the neighborhood grocery store."

Title III of the ADA requires existing public accommodations, such as supermarkets, to remove barriers where it can be done without much difficulty or expense. Supermarkets, and other public accommodations, built or altered after the law went into effect must be built according to specific standards set by law.

Under the agreement Safeway will create at least one 32-inch opening between the security poles at many of its stores so that customers who use wheelchairs can have greater access. In close consultation with the Justice Department, Safeway also will launch a nationwide effort to survey its 835 stores, determine where the stores do not meet the ADA's requirements, and take steps to ensure compliance.

The survey will examine such things as the width of check out aisles, the availability of accessible parking, the height of ATMs and deli, bakery and checkout counters, and the accessibility of telephones and public restrooms.

(MORE)

- 3 -

"Safeway's plan to review stores nationwide demonstrates its commitment to access," added Patrick. "Even before the agreement was reached, Safeway began taking steps to make its stores more accessible. We look forward to continuing our cooperative relationship with Safeway."

Other parties to today's agreement include two individuals with disabilities and the Disability Rights Council of Washington, D.C., which sued the chain under the ADA, as well as the Disability Rights Education and Defense Fund (DREDF) of Berkeley, which had received several complaints about Safeway's California stores.

The supermarket chain has stores in the following 16 states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Maryland, Montana, Nebraska, New Mexico, Nevada, Oregon, South Dakota, Virginia, Washington, Wyoming, and Washington, D.C.

Last year Attorney General Janet Reno launched a national campaign to educate Americans about their rights and obligations under the ADA. She is committed to reaching out to businesses to urge voluntary compliance with the law. The campaign, which includes television and radio public service announcements, advertises a toll-free ADA information line. The number is 800-514-0301 or 800-514-0383 (TDD).

#

95-415

FROM WSJ

07.25.1995 16:32

P. 1

TO: MYRON MAXLIN
 FROM: Max Boot, WSJ, 212-416-2566

By Janet Reno
 And Dick Thornburgh

Urgent edited version

Today, America celebrates the fifth anniversary of the Americans with Disabilities Act, the ADA. It is a good time to step back and examine a record of substantial achievement. Already, barriers to the full participation of people with disabilities are coming down--in grocery stores, restaurants, and hotels, in government buildings, banks, and movie theaters.

In 1990, before the ADA became law, people with disabilities often could not get a job, ride a city bus, or go to a restaurant or store. These barriers imposed staggering costs on the country. In signing the ADA, President Bush estimated that each year federal, state and local governments spent almost \$200 billion to support people with disabilities.

When it passed the law, Congress found that an overwhelming majority of individuals with disabilities lived in isolation and dependence. And it recognized that when store owners or employers excluded people because of their disabilities, civil rights laws were simply inadequate to redress this discrimination.

Thanks to the ADA, this bleak picture is beginning to brighten. The nation's six million private businesses and 80,000 state and local governments are making their services accessible ~~to disabled people~~.

To a great extent, these outstanding results are a testament to the approach the Justice Department--in both Republican and Democratic administrations--has taken to enforcing the ADA. Our top priority has been to encourage voluntary compliance. We have geared the department's efforts toward education--providing technical assistance and information to help businesses and local governments comply with the act in easy, cost-effective ways. We have turned away from fringe issues and focused on the core principles of the act: equal access to goods and services that are necessary to daily life. And we have sought to use the ADA's enforcement tools--litigation and civil penalties--only as a resort against those who thumb their noses at the law.

Readers of this page frequently hear a different story about the ADA. Although a recent Harris poll, commissioned by the National Organization on Disability, found that the overwhelming majority of business leaders support the act, some journalistic naysayers have charged that the law imposes unreasonable burdens. They mischaracterize the ADA by implying that it requires businesses to spend outrageous sums removing barriers almost overnight.

These criticisms miss the mark. The ADA's requirements provide flexibility to business and government. The ADA strikes a carefully calibrated balance between the rights of people with disabilities and the legitimate concerns of business and government, including cost. It merely codifies common sense.

For example, businesses must remove architectural barriers in existing facilities only when this goal is "readily achievable," that is, only when it can be done "without much difficulty or expense." What may not be readily achievable for a small business this year may well be achievable if profits improve next year. And the ADA encourages low-cost ways to solve a problem. Restaurants do not have to provide menus in braille; waiters can

The Edited version is just
 set back.

FROM WSJ

07.25.1995 16:33

P. 2

read them to blind customers. A business located on the second floor of an older building need not install an elevator. It would be enough to offer curbside service to customers with disabilities.

Critics also charge that the ADA requires extensive renovation of all state and local government buildings. Again, they don't understand the law. The ADA requires all government *programs*, not all government *buildings*, to be accessible. Local governments need not do anything that would result in an undue financial burden. A town library, for example, need not provide elevators to reach upper floors, so long as librarians are available to retrieve books for patrons who use wheelchairs.

Finally, some claim that the ADA is harming businesses by subjecting them to lawsuits by people without real disabilities. But litigation under the act has been rare. The Justice Department and the Equal Employment Opportunity Commission, together, have averaged fewer than 25 suits during each of the past five years. A Justice Department review revealed about 850 ADA cases nationwide. Whether you compare these numbers to the total number of non-ADA cases in federal courts (about 850,000) or the number of employers covered by the act (about 850,000), one thing is clear: The ADA has not resulted in a flood of litigation.

Further, the ADA does not require employers to hire anyone who is not qualified for the job. An employee or job applicant may not succeed in claiming discrimination under the ADA unless he or she meets all of the requirements of the job and can perform its essential functions. The act simply demands that employers provide "reasonable accommodation" for otherwise qualified workers. Experience shows that most accommodations can be made without difficulty and at little or no cost. A recent study commissioned by Sears indicates that of 438 reasonable accommodations provided by the company, 69% cost nothing, 28% cost less than \$1,000, and only 3% cost more than \$1,000.

Most people in the business community understand that the ADA has been good for business; it has expanded the markets served by most establishments and opened the doors to productive people with disabilities, all at a minimal cost. We are committed to making the ADA's goals a reality, to give Americans with disabilities an equal chance to participate in all this nation has to offer.

Ms. Reno is the attorney general of the United States. Mr. Thornburgh was attorney general in the Bush administration.

END

7-21 8:46 am draft -- confidential and incomplete

July 20, 1994

MEMORANDUM FOR CAROL H. RASCO

FROM: STANLEY S. HERR

SUBJECT: The Status of the Americans with Disabilities Act

Table of Contents

Introduction and Scope of this Report

- I. The main goals of the ADA
- II. The President's commitments to full ADA implementation
- III. The Agencies' statutory responsibilities and accomplishments
- IV. The private sector's roles in training and enforcement
- V. Recommendations to senior White House officials
- VI. Concluding observations: ADA as centerpiece of national disability policy

Endnotes

Appendices

Executive Summary

The Americans with Disabilities Act is the leading civil rights law for the 49 million persons with disabilities. The gap between its promise and its practice is wide, but narrowing in some significant respects. The Federal government can take a number of steps independently and in conjunction with private sector actors, to improve ADA implementation in fact and in appearance. Those steps include:

- 1) the staging of a significant White House event to celebrate the anniversary of ADA's enactment (July 26th);
- 2) a positive campaign to publicize the importance of the ADA and the values it represents;
- 3) renewed efforts to bring the ADA to fruition through technical assistance, targeted public education, alternative dispute resolution, enforcement, and other means to improve compliance.

INTRODUCTION

The ADA represents both the symbol and the practical means of ensuring equal rights and full inclusion for the 49 million Americans with disabilities. It is truly a Magna Charta for persons with disabilities.¹ As such it is both a central symbol and a practical means of redress to achieve the aspirations of this huge constituency of Americans with disabilities and their families and friends.

Although Congress adopted a finding in 1990 that there were 43 million such Americans, the Census Bureau now concludes that at least 49 million persons -- nearly one in five Americans -- has a disability. This December 1993 report defined disability as a limitation in a functional activity or a socially defined task.² Other significant demographic facts are that 1) persons with disabilities are the single largest minority in America, 2) their numbers will increase dramatically as the population ages and as medical and rehabilitation advances extend life expectancies, and 3) their ranks will also expand as disability status loses some of its historic stigma and instead affords more positive legal protection and benefits. Already we are witnessing the emergence of so-called "new disabilities," such as chemical and environmental sensitivities, cancer, AIDS, and other health or congenital conditions not traditionally associated with a disability label.³

The Clinton Administration has repeatedly affirmed its commitment to full and aggressive enforcement of the ADA! In Putting People First: How We Can All Change America, the campaign articulated our now famous disability credo, linking it first and foremost to ADA implementation. The Clinton-Gore Administration pledged not to "rest until America has a national disability policy based on three simple creeds: inclusion, not exclusion; independence, not dependence; and empowerment, not paternalism." The first of four action steps then proclaimed that we would:

"Work to ensure that the Americans with Disabilities Act (ADA) is fully implemented and aggressively enforced to empower people with disabilities to make their own choices and to create a framework for independence and self-determination. The ADA is not about handouts -- and it is not a giveaway -- it guarantees the civil rights of American citizens with disabilities."⁴

In his first major address to a disability audience (the May 13th commencement address at Gallaudet University), President Clinton stressed the centrality of the ADA to the rights and aspirations of persons with disabilities, both here and abroad. Per his prepared text, he stated: "For the now more than 49 million

Americans who are deaf or disabled, the signing of the ADA was the most important legal event in history. For almost a billion persons with disabilities around the world, it stands as a symbol of simple justice and inalienable human rights. " Viewing the ADA, as part of the "seamless web of civil rights" protection, President Clinton emphatically proclaimed that "as your President, I pledge to see it is fully implemented and aggressively enforced across America -- in schools, in the workplace, in Government, in public places. It is time to move from exclusion to inclusion, from dependence to independence, from paternalism to empowerment."⁵

For the variations on that theme repeatedly enunciated by President Clinton, see Part II, infra at page ____ 8.

Despite the strong rhetoric, the implementation history of the Act is uneven. Due in part to the complexity of the statute and its regulations, as well as the relative novelty of some of its outcomes, the ADA inspires mixed reviews. There are the "cheerleading reports" such as ADA Watch -- Year One, transmitted to the President by the National Council on Disability on April 5, 1993. This report concluded that the federal government had, "overall, performed well in its ADA implementation responsibilities," that there was substantial progress in the early stages of implementing the ADA, and that no amendments to the law were needed at that time."⁶ In contrast, ideologists from the right, such as the Wall Street Journal, have produced opinion pieces that have sought to erroneously portray the ADA as a threat to public health or an assault on a profit-minded business.⁸ Although Administration spokespersons have sometimes risen to defend the ADA in the media (such as Kristine Gebbie's unpublished letter to the editor refuting the above charges of public health hazards or Assistant Attorney General Deval Patrick's published and spirited defense of the settlement of the public accommodations case in question⁹), there is a need for consistent responsive as well as affirmative messages to the various interested communities. The White House could continue to encourage such a proactive public relations campaign.

Joseph P. Shapiro, the distinguished author, has identified one of the rationales for such a campaign: unlike African-Americans, disabled people won their rights without a prolonged period of significant consciousness-raising, and now fear that society could roll-back those gains. The general public now needs that consciousness-raising and public education to support progress rather than retrenchment. But what the ADA has indisputably done, according to Shapiro, is to convince millions of disabled people to "see themselves as a class, united in discrimination and empowered by law. Their expanding ranks would give the disability rights movement soaring power, educate others to their issues, and in the end, create a society more hospitable

to all. They are full players now in a civil rights struggle, complete with progress and backlash."¹⁰

Notwithstanding the ideologically charged battle to define the ADA as a success or a hindrance, public and private actors are making real progress in putting ADA's principles into practice. Millions of Americans with disabilities, as well as their families and friends, are now benefitting from the ADA in numerous ways. Here are a few examples:

- Ramps, curb cuts in sidewalks, and other signs of architectural accessibility are increasingly commonplace.
- Telephone relay systems now operate in all 50 states and the District of Columbia and TTY machines in offices and airports now aid deaf and hard-of-hearing individuals.
- Picture menus and illustrated signboards in fast-food restaurants offer practical help for persons with cognitive or speech limitations.
- In institutions that range from museums to doctors' offices, and from Fortune 500 corporations to small businesses, the issues of inclusion, reasonable accommodations, and barrier removal have become pressing matters for self-evaluation, planning and action steps to meet the needs of employees, customers, and members of the general public.
- Leaders in business, nonprofit and governmental circles increasingly recognize that compliance with the ADA is not only a legal duty and the ethically right thing to do, but an opportunity to tap the patronage, talents, and loyalties of persons with disabilities as customers, clients, voters, and employees.
- Employment practices are becoming fairer as the ADA's employment provisions reach a larger proportion of American businesses. As of July 26th of this year, President Clinton will have the opportunity to mark not only the 4th anniversary of ADA's enactment, but the last major milestone in the extension of its employment provisions to businesses with as few as 15 employees. [The current threshold for the Act's coverage under Title I is 25 employees or more. For discussion of a White House event to mark this dual occasion, see recommendations below].

The disability community can take pride in these gains and the recognition of their community marked by the White House event. This community, however, also has real concerns that the bright triumph of the law's enactment may be eclipsed by drift and backlash. They complain of a backlash directed at the ADA that weakens respect for the law and draws no forceful Administration response.¹¹ They see a civil rights enforcement

effort that has been hampered by lengthy vacancies at the top at EEOC and Justice and insufficient staffing at the investigative and enforcement ground levels. Their leaders point to needs to better coordinate technical assistance by various agencies, monitor progress, and conduct outreach in terms of public education to under-represented groups of people with disabilities such as the members of minority communities, rural communities and people with mental disabilities. These leaders are distressed that the ADA that they prize as a civil rights law is mischaracterized in the NPR report as a prime example of an "unfunded mandate" that should be subject to limiting Presidential directive.¹² They argue, with legitimacy, that civil rights laws such as the ADA advance constitutional imperatives of equal protection that should not be undermined by being cast as merely another underfinanced federal mandate.

We can take a series of steps to reassure this community now. The factors of this constituency's size, important role in mustering support for health care reform, and general harmony with our "people first" agenda all support this recommendation. Thus, we can bolster the Administration's capabilities for immediate and longer-term strategies of vigorous but balanced enforcement. We also need to produce some type of booklet and messages to convey what we have accomplished to date and our plans for the future.

This status report has six parts. Part I identifies the main goals of the ADA. Part II recounts President Clinton's statements to date on the ADA. Part III summarizes the statutory duties of the various Federal departments and agencies under the ADA and their main activities so far. Part IV highlights ways that the private sector can and has assisted in training, technical assistance, public education, compliance and enforcement aspects of the ADA's implementation. Part V offers recommendations for us to consider in the narrow context of ADA as well as the broader context of our disability rights objectives. Part VI concludes with some observations on how the ADA can serve as one of the centerpieces of a national disability policy that largely remains to be articulated. Endnotes and appendices are provided as documentation for these conclusions.

I. MAIN GOALS OF THE AMERICANS WITH DISABILITIES ACT OF 1990

Congress articulated four national goals through findings and legislative history to the ADA. In outline form, these goals seek to:

- 1. provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities;**

- The history and ongoing effects of segregation and isolation of individuals with disabilities constitutes a serious social and legal problem.

- This discrimination continues in fields such as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

- This discrimination takes the forms of:

- a. Intentional exclusion -- this includes refusal to serve persons with a disability in restaurants, refusal to accommodate the users of wheelchairs in theaters, exclusion of children with disabilities from parks and zoos, and exclusion of students from educational opportunities;

- b. Exclusionary effects of architectural and design barriers -- this includes the design of larger buildings currently under construction that make no accommodation for the needs of persons with disabilities, such as Braille indicators in elevators, automatic doors, and audible directories for persons with hearing impairments, as well as the failure to modify older buildings to make such accommodations;

- c. Exclusionary qualifications and standards that bear no relationship to the individual's abilities -- this includes job requirements of height or abilities that bear no relation to the needs of the job, or failure to hire or promote persons with disabilities simply because it would require reasonable modifications of the job.

2. Bring persons with disabilities into the economic, cultural, and social mainstream of American life;

- People with disabilities, as a class, are severely disadvantaged socially, economically, and educationally.

- Men and women with severe disabilities are far less likely to be employed than persons with no disabilities (28% versus 81% employment rate), while those with a non-severe disability lag about 5% below their peers in employment (females 73% versus 67%; males 89% versus 84%).¹³

- Many more persons with disabilities, however, are physically and mentally able to work and are motivated to improve their economic and social conditions, but face the barriers of intentional exclusion, exclusionary effects, and exclusionary requirements, as well as disincentives to work under the existing unreformed systems of health care, welfare and disability benefits.

- The existence of these disincentives and discriminatory barriers denies people with disabilities the opportunity to function in society on an equal basis with other persons.

- The cumulative effects of these barriers and disincentives often lead to dependency, despair and inactivity.

3. Provide enforceable standards capable of remedying discrimination against individuals with disabilities;

- The 49 million Americans with disabilities, notwithstanding their numbers and many allies among families and friends, are often politically powerless to remove the barriers of discrimination or to exert pressure commensurate with the magnitude of their problems.

- The ADA is designed to add the force of the Federal government to their cause and is consistent with the equality imperative -- the Jeffersonian ideal of providing all Americans with equal opportunities to participate in the Nation's government, economy and civic life.

- The ADA has struck an appropriate balance by providing people with disabilities with the necessary legal support to achieve equal opportunity, while not overly burdening the employers, public entities and providers of goods and services of whom the ADA requires reasonable accommodation to the needs of persons with disabilities.

4. Ensure that the Federal government plays a central role in applying and enforcing these antidiscrimination standards;

- The Civil Rights Division of the Department of Justice and the Equal Employment Opportunity Commission have key enforcement obligations under the ADA.

- Federal law enforcers negotiate, mediate and, if necessary, go to court to seek compliance with the Act. Voluntary compliance is the preferred solution, but the ADA does permit the imposition of a range of sanctions, including injunctions, fines, fees, costs, and damages on recalcitrant individuals or entities who continue to discriminate against people with disabilities.

- These enforcement powers of the Federal government flow from the broad authority of the Fourteenth Amendment and the Commerce Clause of the U.S. Constitution.

- The ADA is thus emphatically a civil rights law grounded in the constitutional requirement of equal protection, and like other civil rights laws barring discrimination on the basis of race, gender or religion is not to be construed as an

"unfunded mandate" in the terminology of current political debates. Just as the costs of dismantling "Jim Crow" segregation based on race were routinely borne by state and local governments, so the costs of achieving illegitimate segregation based on disability as a condition of birth, injury or illness.

For the full text of the Act and commentary on its provisions, see pages 265-313 of Implementing the Americans with Disabilities Act: Rights and Responsibilities of All Americans (L. Gostin & H. Beyer, eds. 1993), the book which I presented to you.

II. THE PRESIDENT'S COMMITMENT TO FULL IMPLEMENTATION OF THE ADA

Last year President Clinton marked the anniversary of the ADA by meeting with key disability leaders on July 27, 1993. According to his talking points, he emphatically stated that "our Administration is committed to [the ADA] from top to bottom, as the activities of Attorney-General Reno and many other government agencies yesterday showed."¹⁴

In October 1993, President Clinton announced "National Disability Employment Awareness Month." In so doing, he emphasized key elements that form the underpinnings of the ADA. President Clinton equated the ADA with previous Civil Rights legislation, stating, "[we will not be satisfied as a Nation until we have fully implemented the laws that offer equal opportunity for Americans with disabilities.")

7 The President also mentioned the enormous social costs of not granting equal rights and equal responsibilities to people with disabilities: a smaller pool of talent from the nation to draw upon; the \$300 billion annual cost of keeping productive citizens dependent upon welfare and forcing them into non-productivity; and lower tax revenues resulting from fewer people in the workforce.)

President Clinton emphasized the need for dignity that these Americans want and deserve, but that is too often denied them. In proclaiming October 1993 as National Disability Employment Awareness Month, the President reminded the nation of his commitment to full implementation of the ADA.

As recently as May 13th the President reiterated that commitment -- to aggressively implement and enforce the ADA. Speaking at the Gallaudet commencement, he referred to the ADA as symbolizing the threshold of a new era "for all Americans, those of us with disabilities and those of us without."¹⁵ The ADA represented a triumph "over partisanship and prejudice" and proved "once again that the right cause can unite us."

III. THE AGENCIES' STATUTORY RESPONSIBILITIES AND ACCOMPLISHMENTS

The Act divides implementation responsibilities among five agencies: the Department of Justice, the Equal Employment Opportunity Commission, the Federal Communications Commission, the Department of Transportation, and the Access Board. This section highlights the respective duties, accomplishments, and limitations of these five agencies in respect of the President's directive to "fully implement and aggressively enforce" the ADA.

Department of Justice.

Duties. DOJ has responsibility for enforcement of Title III (public accommodations) of the ADA, and shared jurisdiction over complaints concerning State and local government actions under Title II. The Attorney General has also promulgated regulations on Title II (other than transportation matters reserved for the Secretary of Transportation). Such regulations are to be consistent and coordinated with Section 504 regulations under the Rehabilitation Act.¹⁶

Accomplishments. DOJ currently allocates its Title III work to its Public Access Section in the Civil Rights Division and Title II to its Coordination and Review Section. DOJ currently assigns 50 professional staff to ADA matters, but acknowledges that this is too small a complement for the load of complaints they receive. They recently added 10 people to a telephone hotline for advice and technical assistance (circa February 1994), and added 5 attorneys to the Public Access section (circa October 1993). They have entered over 150 Title III and 100 title II formal and informal settlement agreements. Some of their notable successes include:

- the availability of sign-language interpreters and other auxilliary aids to permit students in review courses for professional licensure to learn and communicate effectively.¹⁷

- settlement, without litigation, of a complaint that emergency medical technicians had refused to assist an individual with HIV through a remedy that includes training of the technicians and publicizing a new policy that persons with HIV/AIDS be able to benefit fully from emergency medical services.¹⁸

- settlement of physical accessibility complaints related to ensuring access to public areas of the Empire State Building, including the lobby, observation decks, restrooms and telephones.¹⁹

Improvements. The past lack of leadership due to the vacant Assistant Attorney General for Civil Rights and deputy posts exposed the Administration to some criticism of our ADA implementation. The appointment of respected ex-NAACP litigator,

Deval Patrick, has done a great deal to overcome the appearance of time lost. The initial public reaction to his nomination was quite favorable, with the Washington Post front page of Feb. 2, 1994 trumpeted his interest in "aggressively enforcing civil rights laws against lending and housing discrimination, as well as the protection and expansion of voting rights and enforcement of the Americans With Disabilities Act"²⁰ Another sign of appropriately vigorous implementation of the ADA is the Wall Street Journal's critique of one recent settlement, and Mr. Patrick's published reply. Most complaints are settled without a lawsuit becoming necessary. However, the Department has shown its willingness to file appropriate (such as claims against a police and firefighters pension fund that excluded officers on the basis of disability, or against dentists who refused to provide dental treatment to individuals who test positive for AIDS). As these cases are adjudicated or settled, the Department will have a stronger track record of well-publicized enforcement.

The DOJ is drastically understaffed for its mission and informal role as lead agency for ADA action. For instance, as of October 1993, a staff of 20 professionals (14 attorneys, 3 architects, and 3 paralegals) were responsible for over 950 Title III investigations. The staffing numbers are equally daunting for DOJ's Title II enforcement. Better coordination with EEOC over Title II employment claims may alleviate some of the stress but more staff at Justice in this burgeoning and novel area of civil rights enforcement seems vital. However, recent reports about Congressional action on such appropriation requests are not encouraging.

Public confidence in ADA enforcement is critical for continued progress. Sometimes the ADA achieves dramatic results such as Oregon's decision to revisit its medical rationing plan when it was challenged as imposing discrimination based on disability.²¹ Most times it does not. Indeed, some critics believe that businesses and other covered entities choose not to comply because the likelihood of enforcement is relatively low. They argue that those entities take corrective actions only when a complainant appears with the backing of a legal advocate. Paradoxically, despite a relatively small number of litigated cases, leaders in the disability community express apprehension that the "other shoe will drop" as business and state and local government react to the ADA in terms of an unfunded mandate and then lobby for some future rollback of the law's requirements through statutory or regulatory amendments.

The Equal Employment Opportunity Commission

Duties. EEOC is charged with the enforcement of the employment sections (Title I) of the ADA, which prohibits discrimination

against people with disabilities in private sector employment and in public sector jobs in state and local governments.

Accomplishments. Although the underlying law is a bit murky, the EEOC has had some early successes in obtaining consent agreements or preliminary rulings in ADA-based AIDS bias claims against health insurers.²²

The EEOC's new Alternate Dispute Resolution (ADR) program seeks to settle ADA and other civil rights disputes in a timely and cost-effective manner, without resort to litigation.

The EEOC has litigated some violations, however. Although they may not be eager to jump into litigation, they did win their first suit outright.²³ That case involved a jury award of back pay, compensatory damages, and punitive damages to an executive in a security investigations firm who was fired because he had lung cancer notwithstanding his ability to perform the essential functions of his job.²⁴ The court's judgement also barred retaliation for bringing an ADA claim or assisting another as a witness in a claim, gave notice to other employees of their ADA rights and the employer's violation of this particular executive's rights, and required such notice in the company's employee handbook or training manual.²⁵

Improvements. The EEOC, as enforcer of Title I, must vigorously challenge Title I violations. If it is doing so (through ADR, other mediation, or the courts), it must be more effective in getting the word out to employers and the concerned public. If it is not, the EEOC must be reinvigorated. Backlogs in complaint processing are long and said to be growing longer.

Department of Transportation

Federal activities to improve transportation accessibility are one of the least heralded aspects of ADA implementation. The ADA is only one source of statutory authority for such accessibility. The Air Carrier Access Act of 1986 and the Rehabilitation Act of 1973 (Section 504) also undergird efforts to create a barrier-free environment and ensure that travelers with disabilities will be treated without discrimination in mass transit, intercity rail service, inter-city buses, federally aided streets and highways, maritime transport, and aviation. Without access to the nation's transportation system, Americans with disabilities are unable to reach their jobs and places of educational, cultural, and social opportunities.

Accomplishments

DOT can point to many solid gains, such as:

• every Federally-subsidized mass transit system provides some type of accessible services usable by passengers with disabilities.

• about half of the nation's 52,500 fixed route buses in urbanized areas, i.e., 26,000 buses are now lift- or ramp-equipped (versus 35% pre-ADA).

• all 8,106 rapid railcars are accessible to wheelchair users.

• over 104 of the 540 ADA paratransit areas planned to be in compliance by the end of 1993, with some 440 expecting to be in full compliance by the end of 1996 (only two areas have so far requested a waiver due to financial burden).

• Amtrak service is becoming accessible, with 47 accessible Superliner cars received as of May 1994 and anticipated statutory compliance of the one accessible car per train per the ADA's July 1995 deadline.

• Steps are being taken to improve street and highway accessibility features such as curb cuts, ramps, or other sloped areas, and regulations on signage, emergency road-side call boxes, and other items in public rights-of-way.

Improvements

Several significant transportation issues remain to be resolved. they include:

• Rule-making on over-the-road bus (OTRB) accessibility that affects some 25,000 buses and 3,500 private companies which has sparked controversy over the extent of costs to be incurred in installing lifts and wheelchair storage space.

IV. THE PRIVATE SECTOR'S ROLES IN TRAINING AND ENFORCEMENT

The Federal government has subsidized significant training activities that are undertaken by independent living centers, disability organizations, university-based programs, business-based programs and other agencies. For instance, the National Institute on Disability and Rehabilitation Research (NIDRR) has a network of regional Disability and Business Technical Assistance Centers and other training projects that annually train some 60,000 persons, respond to 80,000 technical assistance requests, and distribute 540,000 documents, materials either produced or reviewed by DOJ or EEOC.²⁶

In terms of enforcement activity, private parties have brought many of the most significant ADA cases. These victories include:

- the right of a Little League baseball coach who uses a wheelchair to coach from the coach's box and otherwise participate fully in the responsibilities of a coach as he had been doing quite successfully for the past three years. As the court noted, coach Lawrence Anderson's "significant contributions of time, energy, enthusiasm, and personal example" not only benefitted numerous children, but his work with young people taught them "the importance of focusing on the strengths of others and helping them rise to overcome their personal challenges."²⁷

- the right of a blind person not to be categorically excluded from jury service. Judge Joyce Hens Green correctly reasoned that archaic attitudes and unsubstantiated prejudices should not permit a per se rule of exclusion since the very same court had the service of a blind judge as sole trier of fact, a juror could be excused from a particular trial where documentary evidence would be extensive, a juror could assess credibility based on the auditory correlates to nervousness, and a juror could benefit from reasonable accommodations such as a reader's help. The court also ordered arbitration as method of encouraging the speedy resolution of the case's remaining issues.²⁸

- the right of law school graduates with severe disabilities such as a severe visual disability²⁹ or severe dyslexia to extra days to take the bar examination (DOJ filed an amicus curiae brief in the latter case that led to a settlement).³⁰

- the duty of municipalities to install curb cuts or slopes at intersections with curbs when resurfacing city streets. The Third Circuit has upheld the ruling in Philadelphia that such resurfacing constitutes an "alteration" under Title II of the ADA.³¹

- inquiries into past mental health problems for professional licensure have been limited, such as The DC Court of Appeal's 5-year limit on questions about drug or alcohol treatment or hospitalization for mental illness.³²

- outpouring of literature in trade association magazine on how or to comply, or least to avoid penalty. My favorite: "Avoid fines: Adjust Hiring Policies to Meet ADA Requirements: Making Reasonable Accommodations" for disabled employees is now required under the A D Act, 9 Night club and Bar Magazine 40 (Aug. 1993).

V. RECOMMENDATIONS

1. Coordination

There is a need for policy coordination, and coordination of overlapping public information, technical assistance, enforcement functions if the ADA is to be part of the truly "seamless web of civil rights" that the President sketched in his Gallaudet speech.

2. Public Education

Although there have been considerable efforts to educate the American public to their rights and responsibilities under ADA, that must be renewed and intensified. Misperceptions still abound. Ignorance of the law is still a common response to complaints. Outright distortions of its costs and purposes are sometimes encountered. Unless those misperceptions and distortions are countered, unless knowledge replaces ignorance, the risks of backlash, delays and intransigence are great.

3. Training and Technical Assistance

see evaluation from Abt. mixed reviews.

4. Federal Government as model employer and model of public accommodation

Unless the Federal Government raises its sights and performance as a workplace for persons with disabilities, as a source of accessible recreation, information and other public accommodations, we will be prone to charges of a double standard from the private sector. This may require executive orders and other leadership from senior White House officials.

4. Enforcement

A review of 151 federal cases that make some reference to the ADA suggests a random, even haphazard effort at judicial enforcement of the act. Some type of summit meeting between federal law enforcement officials, public interest law firms, and major disability organizations could assist in the development of more strategic approaches to case selection and case sequencing. Whether such meetings are ongoing or one-time, high-profile or low, the point is that scarce enforcement resources need to be pooled, coordinated, and animated by some broader vision than a case-by-case approach based on who is the first or loudest to clamor for attention.

5. Alternative Dispute Resolution (ADR)

While the ADA encourages and everyone agrees that alternative means of dispute resolution are desirable (such as negotiations, factfinding, facilitation, conciliation, mediation and other ADR modes), systematic mapping and reporting on the use of ADR could increase their use in this field.³³ At present there seems to be

some uncertainty as to the utility of ADR techniques in this field.³⁴

6. White House Event

On July 27th, the planned White House event offers the President the chance to put a Democratic face on the ADA and to energize the entire Federal Government and the disability rights movement to implement it. It will also offer us a good mailing list for publications and follow-up activities at the state and regional level.

7. ADA-Section 501 person in the White House

A GSA audit due to reach us on July 21, 1994 will reveal the extent to the White House Complex needs changes to meet appropriate accessibility standards. Not only is someone or some group needed to oversee timely corrections, but some individual is needed with some permanent status here who can serve as a point of contact with the disability community on their manifold political, public liason, policy, ADA-Rehabilitation Act enforcement, and communications concerns.

8. Communications about the ADA

ADA should be a short-hand for not only the Act's implementation, but the linked concerns with the Rehabilitation Act's antidiscrimination provisions that cover the federal government, federal contractors, and federally assisted entities. Seen in this wider context, the President, Vice-President, the First Lady, and Ms. Gore can find many opportunities to call for across the board advances in nondiscrimination and a fair playing field for persons with disabilities and their families.

9. Complaint handling

Anecdotal information suggests that the Administration has a long distance to go in improving the ways we handle disability complaints received at EEOC and DOJ. Complainants at EEOC report lack of interest, and lack of responsiveness on the part of investigators. A high proportion of Title III complaints at DOJ receive a form letter that due to the high volume of cases and not the merits of the particular claim, DOJ cannot assist. In the Justice Department's Title II work -- where there is not the same discretion to turn aside complaints without investigation -- it is said that there is a six-year backlog of cases and the Act has only been in force for two years! These problems will only grow more acute as a) the ADA reaches smaller businesses (15-24 employees in size) as of July 26th; b) more and more members of the disability community learn of their ADA rights and become disenchanted with footdragging responses to them; and c) a generation of more assertive and self-confident graduates of IDEA

rights-based special education problems confront barriers and discrimination. This is a recipe for political fallout. The solutions to avert that include not only more ADR staff, investigators, and advocates, but better engineered and customer-friendly complaint handling processes.

10. International activities

The United States has a marvelous chance to be the world-leader in achieving rights and dignity for its citizens with disabilities. When visitors come to this country, they can also take back the message that here the ADA and other disability rights are taken seriously and deep changes are on the way. What I wrote a year ago remains equally apt in this context:

The outcome of [the struggle to implement the ADA fully] will be closely watched in countries with far fewer resources and less developed civil rights infrastructure than the United States. If the ADA succeeds, other countries may choose to reevaluate the adequacy of their own laws and nonlegal approaches to combatting discrimination. If the ADA falters, the lessons drawn from that experience also may have international reverberations. In the United States, the ADA can be a catalyst to actions at the state and local levels to enable persons with disabilities regardless of the nature and seriousness of those disabilities, to have the "right to enjoy a decent life, as normal as full as possible" (UN Declaration on the Rights of Disabled Persons, 1975). The ADA is a necessary but not sufficient step toward realizing those values and human rights.³⁵

VI. CONCLUDING OBSERVATIONS

Our celebration of the ADA reminds us that one piece of landmark legislation does not constitute the whole of a disability policy we would hope to craft. As we recall the 25th anniversary of the moon landing, there is something sobering about a Nation great enough to put a man on lunar ground but not yet able to help a child with a disability to get into a school or transport an adult by accessible means to an accessible workplace.

The ADA embodies the themes of greater independence, empowerment, and inclusion that we have articulated. A national disability policy would look at the consistency with which those themes are carried forward in Social Security Administration disability programs, vocational rehabilitation programs, the various stages of education from pre-school to higher education and school to work programs. In health care reform and welfare reform, we are on the right track in including people with

disabilities in our reform initiatives. However as we press to make generic programs truly inclusive, we will face ADA and Section 504 issues. And we will also have to take into account programs that cater to persons with severe disabilities, deaf persons or other groups that for one reason or another need or prefer to have their own distinctive programs. ADA as the product of a coalition of 133 national organizations at least offers a good place from which to extend that consensus to the next generation of service and accommodation issues. One of those issues, for instance, is how the National Information infrastructure will help to ensure the full participation of Americans with disabilities in the commercial, cultural, and social life of the nation.

Compared to the hard work of its implementation, enactment of the ADA was the easy part. The Clinton Administration is well-positioned to make that authentic implementation its own accomplishment. I would be pleased to offer any further advice or elaboration on any of these points.

1. Americans with Disabilities Act of 1990, 42 U.S.C. ss 12101-12213.
2. John M McNeil, Americans with Disabilities: 1991-92 Data From the Survey of Income and Program Participation [Current Population Reports, Household Economic Studies P70-33, issued Dec. 1993](US Dept. of Commerce, Bureau of the Census, Economics and Statistics Administration).
3. Irving Zola, "The Sleeping Giant in our Midst: Redefining 'Persons with Disabilities'," in Implementing the Americans with Disabilities Act: Rights and Responsibilities of All Americans (Lawrence Gostin & Henry Beyer, eds., 1993) (hereinafter implementing the ADA).
4. Governor Clinton & Senator Gore, Putting People First: How We Can All Change America 82 (1992).
5. Remarks at the Gallaudet University commencement Ceremony, 30 Weekly Compilation of Presidential Documents 1061, 1063 (May 16, 1994).
6. National Council on Disability, ADA Watch -- Year One: A Report to the President and Congress on Progress in Implementing the Americans with Disabilities Act i, 4 (April 5, 1993).
7. E.g., James Bovard, "Disabilities Law, Health Hazard: Regulatory Chokehold," Wall Street Journal, March 23, 1994, at A-14.
8. "Disabilities Dissenter Crushed," (editorial), Wall Street Journal, May 18, 1994.
9. Letter to the Editor, Deval Patrick, "In Aiding the Disabled, Our Policy is Clear," Wall Street Journal, May 23, 1994, A15. (editorial ignores "our extensive efforts to educate businesses about their obligations under the act in order to help them avoid costly litigation and settlement expenses. I am proud of the work we are doing to aggressively seek full and equal access to our society for individuals with disabilities, and the division will continue its efforts.").

10. Joseph P. Shapiro, No Pity: People with Disabilities Forging a New Civil Rights Movement 332 (Times Books, Random House, 1993).

11. see National Council on Disability, Summary: ADA Watch Planning Meeting at 1 (Feb. 10, 1994, Dirksen Senate Office Building, Washington, DC).

12. Vice President Al Gore, From Red Tape to Results: Creating A Government that Works Better & Costs Less: Report of the National Performance Review 37-38 (Sept. 7, 1993):

Action: The President should issue a directive limiting the use of unfunded mandates by the administration.

As the federal deficit mounted in the 1980s, Congress found it more and more difficult to spend new money. Instead, it often turned to "unfunded mandates" -- passing laws for the states and localities to follow, but giving them little or no money to implement those policies. As of December 1992, there were at least 172 separate pieces of federal legislation in force that impose requirements on state and local governments. many of these, such as clean water standards and increased public access for disabled citizens, are unquestionably noble goals. [emphasis added).

the recommendation goes on to question how local governments will pay

13. Census Bureau, 1993, supra note 2, at 11-13.

14.

15. 30 Weekly Compilation of Presidential Documents 1061, 1062 (quoting President I. King Jordan).

16. 42 U.S.C. s. 12134(a)-(b) (cross-referencing 29 U.S.C. s. 794).

17. U.S. v. Becker C.P.A. Review, 1993 WL 632257 (D.D.C. Dec. 22, 1993) (cross motions for summary judgment denied), CA No. 92-2879 settlement decree (May 11?, 1994).

18. Formal settlement with Philadelphia, Pennsylvania, in US Department of Justice, enforcing the ADA: A Status Report from the department of justice 5 (April 4, 1994).

19. Empire state Building, New York City. Id. at 7.

20. Washington Post, Feb. 2, 1994, at 1. (emphasis added).

21. See Shapiro, supra note ____, at 324-28.

22. Milt Freudenheim, "In Minnesota, Settlement is First for AIDS Bias by Health Insurer," N.Y. Times, Dec. 22, 1993, A19. (noting settlement with damages awarded where employer reduced AIDS health insurance coverage from \$300,000 to \$5,000).

23. There are many potential reasons for a reticence to prosecute. EEOC has many competing claims on its prosecution resources and may be waiting to see how committed to the ADA is its incoming leadership. It may wish to keep out of court because of the backlog of complaints it faces and the need to demonstrate ADR restraint and flexibility. A third possibility is that, while eager to prosecute, the EEOC strategically believes it must wait for clear "winners" so as to appear the effective enforcer and deter others into compliance.

24. U.S. Equal employment Opportunity Commission v. AIC Security Investigations, 820 F. Supp. 1060 (N.D. Ill. 1993) (summary judgment for plaintiff denied); 823 F. supp. 571 (N.D. Ill. 1993) (jury award of \$500,000 reduced to \$150,000; \$50,000 in compensatory damages and \$22,000 in back pay also awarded).

25. Id. 823 F. Supp. at 581.

26. NIDRR's Americans with Disabilities Act (ADA) Technical Assistance Initiative (briefing paper distributed on July 19, 1994, and attached as Appendix___).

27. Anderson v. Little League Baseball, Inc, 794 F. Supp. 342, 345 (D. Arz. 1992).

28. Galloway v. The Superior Court of the District of Columbia, 816 F. Supp. 12, 17 (D.D.C. 1993).

29. D'Amico v. N. Y. State Board of Law Examiners, 813 F. supp. 217 (W.D.N.Y. 1993).

30. Rosenthal v. N.Y. State Board of Law Examiners, No. 92-CIV-1100 (S.D.N.Y. 199).

31. Kinney v. Yerusalem, 812 F. Supp. 547 (E.D. Pa. 1993), aff'd 9 F.3d 1067 (3rd Cir. 1993).

32. "Bar examiners respond to the ADA: Spurred by suits or the law, officials grant more test time to disabled applicants," ABAJ 20 (Nov. 1992).

33. 42 U.S.C. s. 12212 states: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes under this Act."

34. See Loren Allison & Eric Stahlhut, "Arbitration and the ADA: Do the Two Make Strange Bedfellows?," 37 Res Gestae 168 (Oct. 1993).

35. Herr, "The ADA in International and Developmental Disabilities Perspectives," Implementing the Americans with Disabilities Act: Rights and Responsibilities of All Americans 229, 247 (L. Gostin & H. Beyer, eds., 1993).

Hundreds and hundreds of business people have told me that sort of thing. Today in New York, I was in the 10th largest retail grocery chain in the United States of America, and every one of their employees has comprehensive health benefits. And they said, "If we can do it, why can't all the other people in our business?" That's the kind of attitude we need in this country, people taking responsibility for themselves, their employees, and their future.

Ladies and gentlemen, this is not going to be easy. Six Presidents have tried over 60 years to solve the health care crisis in America, and we have not done it. But this year we can do it with the same kind of courage that finally turned the deficit around, with the same kind of courage in the Congress that finally took on the interest groups for the assault weapons ban, with the same kind of courage that broke a 7-year deadlock for family and medical leave, a 7-year deadlock for the Brady bill, a 5-year deadlock on this crime bill. Let's do it in one year for health care and finally put this issue behind us.

Thank you very much, and God bless you all.

NOTE: The President spoke at 5:55 p.m. at the T.F. Green Airport. In his remarks, he referred to Lt. Gov. Robert Weygand; State Attorney General Jeffrey Pine; State Secretary of the Treasury Nancy Mayer; and Guy Dufault, Rhode Island Democratic State chairman.

Proclamation 6686—Asian/Pacific American Heritage Month, 1994

May 9, 1994

By the President of the United States of America

A Proclamation

The Pacific Ocean is ringed by some of the most populous, dynamic, and promising countries the world has ever known. So rapid has the progress been in this region that the new Pacific community has come to exemplify the ideals of growth and prosperity. America is well-placed to play a major role in that thriving community, not only because of geography and history, but also because of the leading role that countless Americans

of Asian/Pacific descent play in our diverse society.

Americans of Asian and Pacific ancestry share twin heritages—the stimulating cultural legacy of the lands of their ancestors and the liberty that is the birthright of every American. Drawing on the values and customs of their homelands and their expectations of America's promise, Asian/Pacific Americans have long helped to advance and enrich our Nation. We can all be profoundly grateful for their contributions to every field of human endeavor, from science, law, and literature to agriculture, commerce, government, and the arts.

Many of these achievements have been the work of brave and tireless immigrants who, through determination, creativity, intelligence, and dedication to American ideals of freedom and fairness, have added strong threads to the fabric of America's multicultural society. As they have built a community of tremendous talent and breadth, they have helped our country to usher in this new era of great opportunity and unlimited hope.

To honor the achievements of Asian/Pacific Americans and to recognize their contributions to our Nation, the Congress, by Public Law 102-450, has designated the month of May of each year as "Asian/Pacific American Heritage Month."

Now, Therefore, I, William J. Clinton, President of the United States of America, do hereby proclaim the month of May 1994, as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

In Witness Whereof, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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ject to detailed interagency reviews. Based on these reviews, I have concluded that the United States should become a Party to the Convention and to its Protocols I and II. As described in the report of the Secretary of State, there are concerns about the acceptability of Protocol III from a military point of view that require further examination. I therefore recommend that in the meantime the United States exercise its right under Article 4 of the Convention to accept only Protocols I and II.

I believe that United States ratification of the Convention and its Protocols I and II will underscore our commitment to the principle that belligerents must refrain from weapons or methods of warfare that are inhumane or unnecessary from a military standpoint. I am also mindful of the strong sense of the Congress that the Convention should be submitted to the Senate for advice and consent to ratification, as evidenced in section 1365 of the National Defense Authorization Act for Fiscal Year 1993 (October 23, 1992, Public Law 102-484) and section 1423 of the National Defense Authorization Act for Fiscal Year 1994 (November 30, 1993, Public Law 103-160).

More specifically, by becoming Party, we will encourage the observance by other countries of restrictions on landmines and other weapons that U.S. Armed Forces and those of our allies already observe as a matter of humanity, common sense, and sound military doctrine. The United States will be able to take the lead in negotiating improvements to the Mines Protocol so as to deal more effectively with the immense threat to the civilian population caused by the indiscriminate use of those weapons. It will strengthen our efforts to encourage adoption of a moratorium on export of all anti-personnel landmines.

I therefore recommend that the Senate give early and favorable consideration to the Convention and its Protocols I and II and give its advice and consent to ratification subject to the conditions contained in the report of the Department of State.

William J. Clinton

The White House,
May 12, 1994.

Remarks at the Gallaudet University Commencement Ceremony May 13, 1994

Thank you. Thank you so much for the warm reception and for the honorary degree.

I must tell you at the beginning that I have been deeply moved by the wonderful statements of your students, Jeanette and Andre. I think they have already said everything I could hope to say as well or better. And I wish only that I could say it to you in their language as well.

I'm delighted to be here with Dr. Jordan, whom I have admired so much and Dr. Anderson, a native of my home State; with my great friend and your champion, Senator Tom Harkin; with many Members of Congress, including Major Owens, who will receive an honorary degree, Congressman David Bonior, Congressman Steve Gunderson, and your own Representative in Congress, Eleanor Holmes Norton.

I honor, too, here the presence of those in the disability rights community, the members of our own administration, but most of all, you the class of 1994, your families, and your friends. You have come to this extraordinary moment in your own life at a very special moment in the life of your country and what it stands for.

Everywhere, nations and peoples are struggling to move toward the freedom and democracy that we take for granted here. Our example is now over 200 years old, but it continues to be a powerful magnet, pulling people toward those noble goals. This week we all watched and wondered as a former prisoner stood shoulder to shoulder with his former guards to become a President of free and democratic South Africa.

Yet each day across the—from Bosnia to Rwanda and Burundi, and here in America in neighborhood after neighborhood, we wonder whether peace and progress will win out over the divisions of race and ethnicity, of region and religion, over the impulse of violence to conquer virtue. Each day we are barraged in the news as mutual respect and the bonds of civility are broken down a little more here at home and around the world.

It is not difficult to find in literature today many who suggest that there are large num-

bers of your generation who feel a sense of pessimism about the future. People in my generation worry about that. They worry whether young people will continue to try to change what is wrong, continue to take responsibility for the hard work of renewing the American community.

I wish everyone who is worried about America could see your faces today and could have heard your class speakers today. Our whole history and our own experience in this lifetime contradict the impulse to pessimism. For those who believe that nothing can change, I say, look at the experience of Rabin and Arafat as the police representing the Palestinians begin to move into Gaza and to Jericho. For those who proclaim there is no future for racial harmony and no hope in our common humanity, I say, look at the experience of Mandela and de Klerk. For those who believe that in the end people are so vulnerable to their own weakness they will not have the courage to preserve democracy and freedom, I say, look to the south of our borders where today of almost 3 dozen nations in Latin America, all but two, are ruled by democratically elected leaders.

Here at home, with all of our terrible problems, for every act of craven violence, there are 100 more acts of kindness and courage. To be sure, the work of building opportunity and community, of maintaining freedom and renewing America's hope in each and every generation is hard. And it requires of each generation a real commitment to our values, to our institutions, and to our common destiny.

The students of Gallaudet University who have struggled so mightily, first for simple dignity and then for equal opportunity, you have built yourselves, and in the process you have built for the rest of us, your fellow citizens of this country and the world, a much better world. You have regiven to all of us our hope. Gallaudet is a national treasure.

It is fitting, as Dr. Anderson said, that President Lincoln granted your charter because he understood better than others the sacrifices required to preserve a democracy under diversity. And ultimately, Lincoln gave his life to the cause of renewing our national rights. He signed your first charter in the midst of the Civil War where he had the vi-

sion to see not just farmland and a tiny school but the fact that we could use education to tear down the walls between us, to touch and improve lives and lift the spirits of those who for too long had been kept down.

Over the years, pioneers have built Gallaudet, sustained by generations of students and faculty, committed to the richness and possibility of the deaf community and the fullness of the American dream. This school stands for the renewal that all America needs today.

Lincoln's charter was an important law. But let me refer to another great president to make an equally important point, that just as important as laws are the attitudes that animate our approach to one another. The president that I'm referring to is your president, King Jordan. When the Americans with Disabilities Act passed, he said, and I quote, "We now stand at the threshold of a new era for all Americans, those of us with disabilities and those of us without." He went on to say that in this pursuit, as in every pursuit of democracy, our task is to reach out and to educate each other about our possibilities, our capabilities, and who we are.

I ran for President because I thought we were standing on the threshold of a new era, just as President Jordan says. I felt we were in danger of coming apart when we ought to be coming together, of arguing too much about going left or right, when we ought to be holding hands and going forward into the future together. I grew weary of hearing people predict that my own daughter's generation would be the first generation of Americans to do less well than their parents. I was tired of hearing people say that our country's best days were behind us. I didn't believe it in 1992, and I sure don't believe it after being here with you today.

My responsibilities to you and your generation are significant. That's why all of us have worked hard to restore the economy, to reward work, to bring down the deficit, to increase our trade with other nations, to create more jobs; why we've worked to empower all Americans to compete and win in a global economy through early education and lifetime training and learning, through reforming the college loan program, to open the doors of college to all Americans; why we have worked to strengthen the family

through the Family and Medical Leave Act; why we have worked to create a safer America with the Brady bill and the ban on assault weapons and putting more police on the street and punishing and preventing more crime as well.

But I say to you that, in the end, America is a country that has always been carried by its citizens, not its Government. The Government is a partner, but the people, the people realize the possibility of this country and ensure its continuation from generation to generation.

I think there is no better symbol of this than the program which I hope will be the enduring legacy of our efforts to rebuild the American community, the national service program. Six Gallaudet students, including four members of this class, will be part of our national service program, Americorps' very first class of 20,000 volunteers. I am very proud of you for giving something back to your country.

By joining the Conservation Corps and committing yourselves to rebuild our Nation, by exercising your freedom and your responsibility to give something back to your country and earning something for education in return, you have embodied the renewal that America must seek. As King Jordan reminded us, Government can make good laws, and we need them. But it can't make good people. In the end, it's our values and our attitudes that make the difference. Having those values and attitudes and living by them is everyone's responsibility and our great opportunity.

Look at the changes which have occurred through that kind of effort. Because previous generations refused to be denied a place at the table simply because others thought they were different, the world is now open to those of you who graduate today. Most of you came here knowing you could be doctors, entrepreneurs, software engineers, lawyers, or cheerleaders—[laughter]—because over the years, others spoke up for you and gave you a chance to move up. And you have clearly done your part. You have made a difference. You have believed in broadening the unique world you share with each other by joining it to the community at large and letting the rest of us in on your richness, your

hearts, your minds, and your possibilities. For that, we are all in your debt.

Perhaps the greatest moment in the history of this university occurred in 1988 when the community came together and said, "We will no longer accept the judgment of others about our lives and leadership in this university; these are our responsibilities and we accept the challenge." In days, what was known as the "Deaf President Now" movement changed the way our entire country looks at deaf people. The Nation watched as you organized and built a movement of conscience unlike any other. You removed barriers of limited expectations, and our Nation saw that deaf people can do anything hearing people can, but hear.

That people's movement was a part of the American disability rights movement. Just 2 months after King Jordan took office, the Americans with Disabilities Act was introduced with the leadership of many, including my friend Tom Harkin. In 2 years it became law and proved once again that the right cause can unite us. Over partisanship and prejudice we can still come together. For the now more than 49 million Americans who are deaf or disabled, the signing of the ADA was the most important legal event in history. For almost a billion persons with disabilities around the world, it stands as a symbol of simple justice and inalienable human rights.

I believe that being deaf or having any disability is not tragic, but the stereotypes attached to it are tragic. Discrimination is tragic. Not getting a job or having the chance to reach your God-given potential because someone else is handicapped by prejudice or fear is tragic. It must not be tolerated because none of us can afford it. We need each other, and we do not have a person to waste.

The ADA is part of the seamless web of civil rights that so many have worked for so long to build in America, a constant fabric wrapped in the hopes and aspirations of all right-thinking Americans. As your President, I pledge to see that it is fully implemented and aggressively enforced in schools, in the workplace, in Government, in public places. It is time to move from exclusion to inclusion, from dependence to independence, from paternalism to empowerment.

I mention briefly now only two of the many tasks still before me as your President and you as citizens. Our health care system today denies or discriminates in coverage against 81 million Americans who are part of families with what we call preexisting conditions, including Americans with disabilities. It must be changed. If we want to open up the workplace and if we are serious about giving every American the chance to live up to his or her potential, then we cannot discriminate against which workers get health care and how much it costs. If you can do the job, you ought to be able to get covered. It's as simple as that. And that simple message is one I implore you to communicate to the Congress. We have fooled around for 60 years. Your time has come. You are ready. You are leaving this university. You want a full, good life and you do not wish to be discriminated against on health care grounds. Pass health care reform in 1994.

The last thing I wish to say that faces us today also affects your future. The Vice President has worked very hard on what is called the information superhighway. We know that America is working hard to be the technological leader of the information age. The technologies in which we are now investing will open up vast new opportunities to all of our people. But information, which will be education, which will be employment, which will be income, which will be possibility, must flow to all Americans on terms of equal accessibility without regard to physical condition. And we are committed to doing that.

Finally, let me just say today a personal word. A few days ago when we celebrated Mother's Day, it was my first Mother's Day without my mother. And so I have been thinking about what I should say to all of you, those of you who are lucky enough still to have your parents and, perhaps, some of you who do not. On graduations, it is important for us to remember that none of us ever achieves anything alone. I dare say, as difficult as your lives have been, you are here today not only because of your own courage and your own effort but because someone loved you and believed in you and helped you along the way. I hope today that you will thank them and love them and, in so doing,

remember that all across this country perhaps our biggest problem is that there are too many children, most of who can hear just fine, who never hear the kind of love and support that every person needs to do well. And we must commit ourselves to giving that to those children.

So I say, there may be those who are pessimistic about our future. And all of us should be realistic about our challenges. I used to say that I still believed in a place called Hope, the little town in which I was born. Today I say, I know the future of this country will be in good hands because of a place called Gallaudet.

For 125 years, young people have believed in themselves, their families, their country, and their future with the courage to dream and the willingness to work to realize those dreams. You have inspired your President today and a generation. And I say to you, good luck and Godspeed.

NOTE: The President spoke at 2:20 p.m. In his remarks, he referred to Jeanette Anne Pereira and Andre Laurent Thibeault, students; I. King Jordan, president; and Glenn B. Anderson, chairman, board of trustees, Gallaudet University. A tape was not available for verification of the content of these remarks.

Remarks Announcing Stephen G. Breyer as Supreme Court Associate Justice Nominee and an Exchange With Reporters

May 13, 1994

The President. Good afternoon. Today I am proud to nominate Judge Stephen Breyer to serve on the United States Supreme Court.

I believe a President can best serve our country by nominating a candidate for the Supreme Court whose experience manifests the quality in a Justice that matters most, excellence: excellence in knowledge, excellence in judgment, excellence in devotion to the Constitution, to the country, and to the real people. It is a duty best exercised wisely and not in haste.

I have reflected on this decision now for the last several weeks, about 37 days. I have been well served by the White House Coun-

And this is my girlfriend, Ellen, who came with me.

The President. And you've now been seeing who?

Ms. Rosen. No, I'm not. I can't get treatment. I can't even find out what the possibilities are because I have no health coverage. And I just can't afford it.

Anita Lampert. My name is Anita Lampert. This is my husband, Steven, and my son, Cameron, who's getting very restless. My husband is self-employed. And so I wrote a letter discussing the problems of a self-employed individual, like probably a lot of you, photographers, freelance artists, plumbers, architects, anybody who's self-employed, and the problem with rates being so high. If you don't work for a big corporation, it's very hard to get insurance at affordable rates. And when you have a child that comes into your life, health insurance is very, very important.

The President. They might not be organized, but there are tens of millions of them. And we've already received—Hillary and I have received a million letters. We're just trying to give voice to them.

So in addition to all the economic arguments and all the substantive arguments I made in there in the speech, the real compelling case for health care reform is with these folks here.

Thank you.

NOTE: The exchange began at 2:10 p.m. in the Mercury Ballroom at the New York Hilton. In his remarks, he referred to Gov. Lawton Chiles of Florida. A tape was not available for verification of the content of this exchange.

Remarks to the Community in Warwick, Rhode Island

May 9, 1994

The President. Thank you so much. Thank you. Thank you, Senator Pell, Congressman Reed, Governor Sundlun. And thank you, ladies and gentlemen, for such a wonderful welcome. It's good to be back in Rhode Island and to see so many of you here.

Governor Sundlun thanked me for our quick approval of Rhode Island's plan to extend health care to pregnant women and to young children. I thank him and the people

of Rhode Island for putting this plan together.

Our administration has granted more initiatives for more States than any in history, but few as good as the one from Rhode Island to try to help the health care of your little children. And I congratulate you on that.

I also want to say a special word of thanks to Senator Pell for his leadership of the Senate Foreign Relations Committee and his work with me on some of the most difficult issues of our time. In the last year, we have succeeded in opening up the United States in trade areas, investment areas, in ways that were literally not even thought of just a little while ago.

We also have continued our work to make the world safer. When I became President there were four countries in the former Soviet Union with nuclear weapons. Now three have agreed to give them up and are giving them up. And the nuclear arsenal in Russia is no longer pointed at the United States, nor are our missiles pointed at them. I thank Senator Pell for his support of that.

Finally, I want to thank your Congressman for his leadership in the Goals 2000 legislation that I signed a few weeks ago, which establishes national standards for our public schools and supports grassroots reforms to achieve those standards for the first time in American history, and for his courage in leading the United States House of Representatives to vote to ban the 19 serious assault weapons that are used for killing people on our streets.

I want to thank your Lieutenant Governor, your State treasurer, your attorney general, the State democratic chairman, and the Mayor of Providence, Lincoln Chafee, all of them for being here today. What?

Gov. Bruce Sundlun. The mayor of Warwick.

The President. The mayor of Warwick—I'm sorry.

Governor Sundlun. He's John Chafee's son.

The President. Yes, the Governor says he's John Chafee's son, I know that. And I want to thank John Chafee for having a health care bill that covers all Americans. I'm going to work with them, and we're going