

April 3, 1996

**PROPOSED LEGISLATION TO AMEND THE FAIR HOUSING ACT
H.R. 2927**

- H.R. 2927, a bill "To amend the Fair Housing Act regarding local and State laws and regulations governing residential care facilities," was introduced by Representative Bilbray on behalf of himself, Mr. Hunter, Mr. Packard, Mr. Cunningham, and Mr. Filner on February 1, 1996. On February 28, concerns were expressed about the bill, and on March 20, a "clarified and revised" version was distributed by Rep. Bilbray. A proposal is pending to schedule this bill again for consideration on an upcoming "Corrections Day" session.
- As originally drafted, H.R. 2927 would have exempted residential care facilities -- housing or shelters for individuals with disabilities -- from important protections provided by the Fair Housing Act to all other kinds of public and private housing.
- The revised version of H.R. 2927 has two components: it permits group homes for persons with disabilities to be zoned out of single-family neighborhoods, and it overrides certain federal court rulings on the rights of individuals to file law suits for discriminatory purposes.

Single Family Zoning

As revised, H.R. 2927 broadens the power of governments to regulate where persons with disabilities live.

- Local governments would be empowered to bar unrelated people from living in the same home, even if this prevents an ailing person from hiring a nurse, or prevents several people who require expensive medical equipment from rooming together to share the expense.
 - The Fair Housing Act requires "reasonable accommodations" in rules, policies, practices or services when those accommodations are necessary to afford equal housing opportunity to persons with disabilities. This section was enacted in large part to allow persons with disabilities to live in small, community-based group homes which are appropriate for their needs.

- Governments would have great power to regulate the proximity of dwellings to each other, even if the purpose of imposing the restriction is racially or otherwise discriminatory.
 - H.R. 2927 would permit states and localities to enact laws and regulations which otherwise would constitute prohibited discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. Currently, all state and local laws that are discriminatory are invalid. In fact, the Supreme Court recently ruled against a locality found to have enforced a local ordinance in a manner that discriminated against residents of a group home (City of Edmonds v. Oxford House, Inc., 115 S.Ct. 1776 (1995)).
- The bill also creates the mistaken impression that the Fair Housing Act applies to actions taken against felons, sex offenders and drug users. This is not true. Nothing in the Fair Housing Act applies to governmental action taken based on the criminal behavior of individuals. The Act does, however, protect recovering substance abusers who do not violate narcotics laws by possessing illegal drugs.

Filing of Lawsuits

The revised H.R. 2927 adds a new section to the Fair Housing Act relating to free speech. By definition, the section would not affect First Amendment rights, which are provided for in the United States Constitution. Instead, the section would expand legal protection for activities that the courts have found do not constitute protected free speech -- activities such as filing frivolous legal actions.

- The bill would overturn a recent court opinion which found that several litigants had filed a lawsuit in state court with the purpose and intent to interfere in the fair housing rights of others. The judge found that the state lawsuit had been filed for an illegal objective and without reasonable basis in law or fact.
- This section encourages such frivolous use of the state court systems, because it creates a loophole for discriminatory acts brought through the courts -- acts which if taken in almost any other forum would be illegal.

The amendment to the Fair Housing Act of 1968 sought by the bill is substantial and far-reaching. The revised H.R. 2927 is not suitable for the Corrections Day calendar.

local zoning boards

- Ppl have petitioned to not have group homes in n'hoods

- DOJ was said intent to discriminate
 petitions can be evidence of
 used as

- if zoning board

→ if petition done for illegal purposes, courts have said not protect

change by govt some amnk

202 225 4099

MAR. -22' 96 (FRI) 17:23 CONG WAXMAN DC

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P.002

To: Correction's Day Advisory Committee
From: Congressman Brian Bilbray
Date: March 20, 1996
Subject: Clarification and revision of H.R. 2927

I want to thank you for allowing me to revisit the consideration of H.R. 2927 for Correction's Day. I am here today to respond to the concerns expressed by some Members on the Advisory Committee at the February 28th meeting. I have taken several steps which I believe clarify the language of my bill, and address these concerns. They are as follows:

1. H.R. 2927 **only** affects convicted felons, registered sex offenders, and recovering drug addicts. H.R. 2927 **does not** impact the mentally and physically disabled at all, nor does it affect the terminally ill. A new "Discussion Draft" has been prepared, in conjunction with Legislative Counsel, which does not make reference to "disabled" or "handicapped" individuals, in order to avoid confusion about whether mentally and physically disabled individuals are impacted by H.R. 2927.
2. The Discussion Draft omits the term "reasonable," in order to avoid confusion about the definition and enforcement of this term.
3. A section has been added to the Discussion Draft regarding the protection of First Amendment rights to free speech and petition, and the government's inability to sue an individual who is exercising these rights.

-but still would have effect

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P. 003

Differences between H.R. 2927 and the Discussion Draft, dated March 12, 1996

- o H.R. 2927 will **only** affect convicted felons, registered sex offenders, and recovering drug addicts. H.R. 2927 **does not** impact the mentally and physically disabled, nor does it affect the terminally ill.
- o As noted in the attached Discussion Draft, the term "*reasonable*" is omitted, due to potential confusion about the definition and enforcement of this term. Additionally, the definition of "residential care facility" is omitted because it is already defined in Title 42, Section 3602 of the U.S. Code.
- o Section 821 was added to the Discussion Draft in order to address concerns expressed to me by both private citizens and public officials (including my colleagues on this Committee), regarding the protection of First Amendment rights to free speech and petition.
- o Rather than introducing another bill to amend the Fair Housing Act, I intend to submit this Discussion Draft to the Judiciary Subcommittee on the Constitution, to which H.R. 2927 has been referred, and provide that a technical amendment which embodies the draft be added to the legislation in markup to clarify these changes.

Please contact me directly, or contact Mickey Pollock of my staff, with any questions or if you would like additional information about H.R. 2927.

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Sec. 807

CIVIL RIGHTS ACT OF 1968

74

DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

SEC. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

[42 U.S.C. 3606]

EXEMPTION

SEC. 807. (a) Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

(2) As used in this section, 'housing for older persons' means housing—

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

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H.L.C.

[DISCUSSION DRAFT]

MARCH 12, 1996

104TH CONGRESS
2D SESSION**H. R. _____**

IN THE HOUSE OF REPRESENTATIVES

Mr. BILBRAY introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Fair Housing Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fair Housing Reform
5 and Freedom of Speech Act of 1996."

6 **SEC. 2. AMENDMENTS TO FAIR HOUSING ACT.**

7 (a) IN GENERAL.—The first sentence of section
8 807(b)(1) of the Fair Housing Act (42 U.S.C. 3607(b)(1))
9 is amended by inserting before the period the following:

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H.L.C.

2

1 “, including any restriction relating to the maximum num-
2 ber of unrelated persons permitted to occupy a dwelling,
3 governing the proximity of dwellings to each other, or the
4 occupancy of a dwelling by a convicted felon, sex offender,
5 or recovering drug addict, if the purpose of the restriction
6 is to restrict land use to single family dwellings”.

7 (b) PROTECTION OF CERTAIN ACTIVITIES.—Title I
8 of the Fair Housing Act (42 U.S.C. 3601 et seq.) is
9 amended by adding at the end the following new section:
10 **“SEC. 821. PROTECTION OF CERTAIN ACTIVITIES.**

11 “Nothing in this Act shall be construed to apply to
12 any otherwise lawful activity engaged in by one or more
13 persons, including the filing or maintaining of a legal ac-
14 tion, that is engaged in solely for the purpose of—

15 “(1) achieving or preventing action by a govern-
16 mental entity or official; or

17 “(2) receiving an interpretation of any provision
18 of this Act in a court of competent jurisdiction.”.

- legislatively overturn 1983 case: if lawsuit purpose:
illegal objectives
or improperly motivated,
then not protected

HUD Betsey Julian / Sheryl Fox 708-4252
DOS Stewart Ishimaru, DOS (Deval Patrick's office)
OMB Anna Briatico > 514-3845
Susan Carr

Original bill $\xrightarrow{HR}$ 2927 - brought up before
Car. Day Adv Comm

HUD: major unit; not approp
- given analysis

New bill $\rightarrow$ up Car Day Comm, but not calendared
 $\rightarrow$ 2 sections: 1) allows amendments diff't section
2) adds Free Speech
- takes res'l care facilities out
- expands section allowing
reg of occupancy +
proximity

City of Edmonds v. 115 Supct
Bill would overturn Oxford House Supct 1776
facilities have resp. to enforce 1996
- overturned city appl of ordinance that
said only related persons can live together
in single-family

- Billman plans to intro on Corrections Day (not sched'd yet) - been out there a month or two
- No LRM out yet, bec not yet scheduled

2 mtgs of Corr. Day

2 bills - uncertain which he'll introduce

- haven't heard from

- still have to go thru Committee process - Comm. can say we'll Rules on Corr. Day;

{ Waxman
 Lynn Rivers
 Berman } Corrections Day committee

- Judiciary Comm. - Barney Frank - subcomm
- ^{John} Conyers, MI - full comm

➔ clearly aimed @ homeless shelters

Not on next

➔ Corrections Day

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

F A C S I M I L E

Date: 7/10/96
To: Molly Brostrum
Phone: _____ Fax: 456-7228

From: Laurel Weir
Number of Pages (including cover): 4

Comments: Molly, here's the legislation. The talking
points were put together by someone at FHEO
at HUD. We were told by someone over in HUD's
legislative affairs office that the House may ~~not~~ to
get this passed as a "Correction's Day" piece.

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Law Center Fax: (202) 626-2737

TO:

RECEIVED

FEB 20 1996

104TH CONGRESS
2D SESSION

H. R. 2927

To amend the Fair Housing Act regarding local and State laws and regulations governing residential care facilities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1996

Mr. BILBRAY (for himself, Mr. HUNTER, Mr. PACKARD, Mr. CUNNINGHAM, and Mr. FILNER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Fair Housing Act regarding local and State laws and regulations governing residential care facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 816 of the Fair Housing Act is amended by
4 adding at the end "Nothing in this title shall be construed
5 to invalidate or limit any reasonable local or State law or
6 regulation governing residential care facilities, including
7 laws and regulations governing the proximity of such fa-
8 cilities to each other, the maximum allowable number of
9 occupants, whether related or unrelated, of such a facility
10 or other dwelling, or the ownership, use, or occupancy of

1 a residential care facility by a convicted felon, registered
2 sex offender, or recovering drug addict. As used in this
3 section, the term 'residential care facility' means a build-
4 ing or place that is maintained and operated to provide
5 sleeping accommodations, with or without food service, to
6 disabled individuals."

Betsy Julian → Sheryl Fox
708-4252

FILED TALKING POINTS

PROPOSED LEGISLATION TO AMEND THE FAIR HOUSING ACT H.R. 2927

H.R. 2927, a bill "To amend the Fair Housing Act regarding local and State laws and regulations governing residential care facilities," was introduced by Representative Bilbray on behalf of himself, Mr. Hunter, Mr. Packard, Mr. Cunningham, and Mr. Filner on February 1, 1996. The bill was referred to the Judiciary Committee. A proposal is pending to schedule this bill for consideration on an upcoming "Corrections Day" session.

H.R. 2927 would exempt residential care facilities -- housing or shelters for individuals with disabilities -- from important protections provided by the Fair Housing Act to all other kinds of public and private housing.

The Fair Housing Act requires "reasonable accommodations" in rules, policies, practices or services when those accommodations are necessary to afford equal housing opportunity to persons with disabilities. This section was enacted in large part to allow persons with disabilities to live in small, community-based group homes which are appropriate for their needs. This bill would basically repeal this major reform.

H.R. 2927 would permit states and localities to enact "reasonable" laws and regulations which otherwise would constitute prohibited discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. Currently, all state and local laws that are discriminatory are invalid. In fact, the Supreme Court recently ruled against a locality found to have enforced a local ordinance in a manner that discriminated against residents of a group home (City of Edmonds v. Oxford House, Inc., 115 S.Ct. 1776 (1995)).

Residential care facilities, as defined by the bill, would include a small group home for frail seniors, a technical school for young adults with mental retardation, or even a family-run foster home caring for disabled children. The bill is not needed to protect neighbors from dangerous group home residents because the protections of the Fair Housing Act do not extend to any individuals, regardless of their status, that threaten the health or safety of others.

The amendment to the Fair Housing Act of 1968 sought by the bill is substantial and far-reaching. H.R. 2927 is not suitable for the Corrections Day calendar.

rankly minor
- Waxman's office calling
- Before recess, 7 bills slated w/o Demo @ Corrections Day
Calendar committee mtg



U.S. Department of Justice

Civil Rights Division

DJ 175-017-16
DLP:PFH:gb

Housing and Civil Enforcement Section
P.O. Box 65998
Washington, DC 20035-5998

JAN 31 1996

Ms. Cameron Whitman
National League of Cities
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Ms. Whitman:

We are pleased to continue a dialogue with the National League of Cities (NLC) regarding the obligations of municipalities under the Fair Housing Act. I am sorry that we have not responded sooner to the questions raised by the Community and Economic Steering Committee, but the committee members raised many issues warranting careful consideration. We are not authorized to provide legal opinions to non-federal agencies, but we can explain the basic requirements of the law, the judicial interpretations of the Fair Housing Act, and the program that we have in place for enforcement. The League and our Department share a common objective of promoting voluntary compliance with the law, and we agree that a free exchange of information promotes that objective. Thus, although our response is rather lengthy, we have attempted to address each of the questions presented by your members, and to provide an explanation in the context of our overall enforcement program.

A common theme pervades the questions raised by the committee members, and that concerns the actions to be taken by municipalities to ensure that they do not discriminate in housing against persons with disabilities in violation of the Fair Housing Act. A number of questions have also been raised regarding the relationship between the Department of Housing and Urban Development (HUD) and the Department of Justice in enforcing the Act.

As a starting point, we believe that it is important to understand the historical structure of the Fair Housing Act, the compliance obligations imposed upon municipalities, and the methods of enforcement. That understanding provides a context for the more

recent requirements regarding the fair housing rights of persons with disabilities, as well as the revised enforcement structure.

I. The Fair Housing Act of 1968

The Fair Housing Act originally was enacted in 1968. The statute prohibited discrimination in housing on the basis of race, color, religion, or national origin. Congress amended the Act in 1974 to add gender as a prohibited basis of housing discrimination. The original Act, as amended in 1974, imposed compliance duties upon municipalities. Our Department, for example, has brought lawsuits against municipalities that used their zoning or land use authority to exclude African Americans and members of other protected classes from municipalities. See United States v. City of Birmingham, 538 F. Supp. 819 (E.D. Mich. 1982), aff'd and modified as to relief, 727 F.2d 560 (6th Cir.), cert. denied, 469 U.S. 821 (1984); United States v. City of Parma, 494 F. Supp. 1049 (N.D. Ohio 1980), aff'd, 661 F.2d 562 (6th Cir. 1981), cert. denied, 456 U.S. 926 (1982); United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975). See also United States v. Village of Airmont, 67 F.3d 412 (2d Cir. 1995) (exclusion of Hasidic Jews from suburb).¹

The Act also authorized us to take legal action against governmental bodies or public officials that acted to discriminate on a prohibited basis in other ways, such as acting to record or enforce racially restrictive covenants. See, e.g., Mayers v. Ridley, 465 F.2d 630 (D.C. Cir. 1972) (en banc) (concluding that Section 804(c) of the Act, which prohibits the publishing of discriminatory statements or notices with respect to the sale or rental of a dwelling, prevented the local Recorder of Deeds from filing restrictive covenants on future house deeds).²

At the federal level, the Department of Housing and Urban Development (HUD) and the Department of Justice shared enforcement responsibility, but the enforcement authority of both agencies was somewhat limited. HUD was authorized to receive and investigate complaints of unlawful discrimination, and, if a complaint appeared

¹ In cases alleging disparate treatment such as Village of Airmont, we have established a prima facie case of intentional discrimination by showing that animus against the protected group was a motivating factor in the position taken by the municipal decision-makers or by those to whom the decision-makers were knowingly responsive. Village of Airmont, 67 F.3d at 425; United States v. Yonkers Bd. of Educ., 837 F.2d 1181, 1217, 1223, 1226 (2d Cir. 1987), cert. denied, 486 U.S. 1055 (1988); City of Birmingham, 538 F. Supp. at 828.

² But see Woodward v. Bowers, 630 F. Supp. 1205, 1207 (M.D. Pa. 1986) (disagreeing with the decision in Mayers).

to be meritorious, HUD was authorized to seek a voluntary resolution through a process of conciliation. HUD lacked authority to compel a remedy or to institute legal proceedings against persons that violated the Act.

The Department of Justice was limited to bringing enforcement actions that challenged a "pattern or practice" of unlawful conduct or unlawful conduct that impacted a group of persons protected by the Act, and raised issues of general public importance. Our Department was not authorized to challenge individual instances of unlawful conduct. The relief that we were authorized to obtain in litigation was limited to equitable relief and injunctive relief; we were not authorized to seek monetary damages for victims of unlawful discrimination.

Because of the limited enforcement authority given to the federal agencies, the original Act relied heavily on enforcement by private individuals and organizations.

II. The 1988 Amendments to the Fair Housing Act

In 1988 Congress again amended the Fair Housing Act, and the amended Act became effective on March 12, 1989. We are enclosing a copy of the amended Act and will refer to its provisions as we address the questions raised by your members.³ We would be happy to provide additional copies of the amended Act if you desire. The amendments expand the substantive provisions of the Act to protect families with children and disabled persons from discrimination in housing. In order to protect families with children from housing discrimination, the Act prohibits discrimination on the basis of "familial status." That term is defined in Section 802 of the amended Act, and basically means a family including children under the age of 18.

The amended Act also prohibits discrimination on the basis of "handicap," a term that is synonymous with "disability." The term "handicap" also is defined in Section 802 of the amended Act. The types of conduct addressed by the Act are described in Section 804. You will note that the prohibitions are quite broad. The Act prohibits the refusal to sell or rent housing on a prohibited basis; discrimination in the terms, conditions or privileges of sale or rental; advertisements or other statements that indicate an

³ We are also enclosing for your information a copy of HUD's regulations under the Act, which are set forth at 24 C.F.R., Ch. 1, Subch. A, Part 100. While the regulations do not directly address all the questions you have posed, they do provide further guidance in interpreting the Act. Subpart D of the regulations deal particularly with the Act's prohibition against discrimination because of handicap.

unlawful preference; blockbusting or steering; or any other conduct that makes housing unavailable on a prohibited basis.⁴

The above-described prohibitions are virtually identical to the prohibitions of the original Act. Thus, just as the original Act made it unlawful for municipalities to utilize their governmental authority, including zoning and land use authority, to discriminate against racial minorities, a similar prohibition is now applicable to discrimination against persons with disabilities. An example of the application of this general prohibition would be a challenge to a municipal policy which allowed any number of unrelated persons to reside together in the same dwelling, but restricted such occupancy if the residents were disabled. Indeed, the House Committee Report accompanying the amended Act stated that the Act was "intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of [the disabled] to live in the residence of their choice in the community." H.R. Rep. No. 100-711, 100th Cong., 2d Sess. 24 (1988).

In addition to the general prohibitions, however, Congress found it necessary to include other requirements to ensure an equal opportunity for housing for persons with disabilities. Thus, for purposes of evaluating claims of discrimination against persons with disabilities -- and only such persons -- the Act defines discrimination to include:

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;

(C) [Failure to make newly constructed multifamily housing accessible to persons with disabilities.]

The full text of these provisions is in Section 804(f)(3) of the enclosed amended Act.

These provisions can best be described as common sense approaches to providing fair housing opportunities to persons with

⁴ Additional prohibitions dealing primarily with real estate-related lending, appraisal practices and real estate brokerage services are contained in Sections 805 and 806 of the amended Act.

disabilities. For example, subsection (A) above, would require a housing provider to permit a person using a wheelchair to widen the doorway of an existing dwelling, at his or her own expense, in order to make the dwelling usable to that person. Subsection (B) would require an apartment complex that prohibited pets to permit a visually impaired person to reside in the complex with his or her guide dog; such an accommodation, to the "no pets" policy is reasonable and necessary to afford the disabled person an equal opportunity to use and enjoy a dwelling.

Like other provisions of the Fair Housing Act, the subsections quoted above are applicable to municipalities.⁵ For example, if a municipality supplies or manages residential housing, it must permit disabled persons to make the "reasonable modifications" envisioned by the Act. A municipality may also be required to waive a setback requirement, if necessary, to permit the construction of a ramp to be used by a disabled person.

The requirements of subsection (B) have had a more direct impact on municipalities. The language of the subsection -- *i.e.*, "rules, policies, practices, or services" -- encompasses zoning and land use requirements, and thus the Act imposes a duty on municipalities to make reasonable accommodations to such zoning and land use rules or policies where necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling.

Our experience in enforcing the Act, as well as the questions raised by your committee members, reveal that the application of this provision most often arises when persons with disabilities seek to live together in a congregate living arrangement, and a municipal requirement limits the ability of persons not related by blood or marriage to live together. Congregate living arrangements are often necessary to enable persons with disabilities to live in the community; integration into the community has been found to enhance the functioning of persons with various disabilities. Such congregate living arrangements for persons with disabilities are often referred to as "group homes." A number of lawsuits filed by our Department have challenged the refusal of municipalities to make reasonable accommodations to zoning and land use laws that may be necessary to afford equal housing opportunities to persons with disabilities. See United States v. City of Taylor, 872 F. Supp. 423 (E.D. Mich. 1995); United States v. City of Philadelphia, 838 F. Supp. 223 (E.D. Pa. 1993), aff'd w/o opinion, 30 F.3d 1488

⁵ A committee member asked whether there are "model fair housing plans that HUD and DOJ can share with cities." Although neither HUD nor this Department has any such "model plans," we believe that compliance can best be promoted by educational programs that ensure that city officials and employees understand their obligations under the law.

(1994); United States v. Village of Marshall, 787 F. Supp. 872 (W.D. Wis. 1991).

It should be emphasized that the impact of this provision on local zoning and land use requirements is, by its terms, limited. The legal requirement is applicable only when necessary to provide equal housing opportunity for persons with disabilities, and, the Act imposes no comparable requirement to provide a similar accommodation for "universities, fraternities, [or] groups of unrelated young workers," as one of your committee members queried. Another of your committee members noted that the purpose of zoning is to "locationally discriminate" and questioned whether the Act "would result in the elimination of multiple residential districts." The answer to this question is "No" and we again emphasize the narrow accommodation to a specifically protected class of persons that the Act envisions. ✓

The reasonable accommodation provision most often is invoked as to municipalities when a provider of housing for persons with disabilities requests permission to occupy a dwelling in an arrangement that otherwise would violate zoning or land use regulations, such as a limitation on the number of unrelated persons who may reside together. We believe the Act envisions a fact-specific inquiry regarding each such request. If it appears that the requested occupancy may be necessary to afford persons with disabilities equal opportunities to use and enjoy a dwelling, the jurisdiction should consider such factors as whether granting the requested accommodation would require a fundamental alteration in the nature of the zoning scheme. For example, a group home that functions in a manner similar to a nuclear family may be consistent with the fundamental purposes of a single-family zoning category. The issue of whether the requested accommodation would impose an undue financial or administrative burden on the municipality also is relevant in determining whether the accommodation should be granted.

Thus, it may be reasonable for a group home of handicapped persons to locate in an area zoned for single-family residences, if the facts show that the operation of the home would not impose an undue burden upon the neighborhood, e.g., the home's physical structure would not stand out significantly from its neighbors; the home would not generate significantly more noise or traffic than a typical single-family home; and so on. A large, institutional type facility, however, might be completely out of place in a single-family neighborhood, and might be more appropriately placed in a multi-family or commercial district. Again, the Act requires inquiry into individual circumstances.

The issue, of course, is not whether the zoning requirement to which an accommodation has been requested is itself reasonable, but rather whether it would be reasonable to grant a request for a specific exception to the requirement. The processes for

considering such requests for accommodation vary greatly among political jurisdictions, but we believe it important for municipalities to have in place a procedure, such as a special permit or variance procedure, that can be followed when persons with disabilities desire to request an accommodation to zoning or land use requirements.⁶ United States v. Village of Palatine, 37 F.3d 1230 (7th Cir. 1994).

Special permit processes often utilize public hearings as a method of obtaining public input regarding specific exceptions to zoning or land use rules. A requirement for a public hearing which applies to all permit applicants, and not just the disabled, will generally be upheld under the Fair Housing Act. See Oxford House, Inc. v. City of Virginia Beach, 825 F. Supp. 1251, 1262 (E.D. Va. 1993) (upholding permit application process which applied to all unrelated groups of more than four persons who desired to live in congregate arrangements); accord Village of Palatine, *supra*. If the requirement for a special permit applies only to residences for disabled individuals, that requirement may be subject to challenge. See Stewart B. McKinney Foundation, Inc. v. Town Plan & Zoning Comm'n, 790 F. Supp. 1197, 1213 (D. Conn. 1992) (noting that the disputed local procedure did not generally apply to nondisabled groups); accord: Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth, 876 F. Supp. 641 (D.N.J. 1994); see also Potomac Group Home Corp. v. Montgomery County, 823 F. Supp. 1285 (D. Md. 1993) (striking down a neighbor notification

⁶ A municipality may of course decide to provide a blanket accommodation for certain types of group homes for persons with disabilities, for example, homes under a certain size that are licensed by the state. A municipality may also wish to establish its own procedures setting forth how requests for a reasonable accommodation will be accomplished. For instance, we note that the City of Philadelphia has recently issued regulations governing requests for reasonable accommodations from provisions of applicable city codes, including requests seeking modifications of any public hearing requirements. Under these regulations, an applicant for a license or permit may elect to request a reasonable accommodation pursuant to procedures set forth therein, in lieu of the process to which the license or permit would usually be issued under the local code. Our Department only recently received a copy of these regulations and has not reviewed them in detail. Moreover, as noted at the beginning of this letter, we are not authorized to provide legal opinions to non-federal agencies and do not purport to do so as to these regulations. Nevertheless, we thought it might be helpful to your members to alert you to the approach adopted by one municipality. Copies of these regulations may be obtained from the Office of Accessibility Compliance, City of Philadelphia, 1401 John F. Kennedy Boulevard, 10th Floor, Philadelphia, PA 19102.

requirement contained in a local ordinance which only applied to providers of group homes for persons with disabilities).

Aside from the issue of whether the special permit process singles out disabled groups, some disabled-advocacy groups voice objection to any public discussions regarding the nature and extent of persons' disabilities. At times, such public hearings have included presentations by citizens of overt opposition to persons with disabilities residing in their neighborhood. The First Amendment protects the right of citizens to express their views, regardless of how repugnant others might find them. Public officials, however, are obligated to make their decisions on a nondiscriminatory basis, and may not deny housing opportunities to persons with disabilities merely because others may want to exclude such persons from their neighborhood. See United States v. Borough of Audubon, 797 F. Supp. 353, 361 (D. N.J. 1991) aff'd 968 F.2d 14 (3d Cir. 1992) (noting that municipality could not avoid conclusion that it had violated the Fair Housing Act "by arguing that its actions were merely a response to community sentiment"); A.F.A.P.S. v. Regulations & Permits Admin., 740 F. Supp. 95, 104 (D. P.R. 1990) (noting that "if an official act is performed simply in order to appease the discriminatory viewpoints of private parties, that act itself becomes tainted with discriminatory intent even if the decisionmaker has no strong views on the matter.").

III. Judicial Interpretations of the Amended Act

The language of the amended Fair Housing Act does not provide definitive answers to all issues that arise in implementing the Act's terms. In such situations, it is left to the courts to interpret the intent of the Congress. One such issue that has been raised by a committee member regards requirements imposed by some political jurisdictions that a group home for the disabled be located a specified distance from other group homes for the disabled. In one lawsuit, the Department of Justice challenged a spacing requirement that required a substantial distance between group homes, and appeared to be utilized as a method of excluding persons with disabilities. Zimmer & United States v. Moon Township, C.A. No. 89-1139, consent decree entered March, 19, 1990 (W.D. Pa.).

The relevant facts regarding the purpose and effect of a spacing requirement most often guide the courts' determination regarding legality under the Fair Housing Act. But the decisions that have been rendered to date do not provide a standard that can be applied in all circumstances. For example, one federal court of appeals has upheld a spacing requirement when many group homes were located in very close proximity to each other. Familystyle of St.

Paul, Inc. v. City of St. Paul, 923 F.2d 91 (8th Cir. 1991).⁷ Other courts have viewed spacing requirements as quotas which impermissibly limit the right of disabled persons to reside in a neighborhood of their choice. See Horizon House Developmental Services, Inc. v. Township of Upper Southampton, 804 F. Supp. 683 (E.D. Pa. 1992), aff'd 995 F.2d 217 (3rd Cir. 1993) (enjoining enforcement of ordinance that imposed 1,000 foot spacing requirement between group homes). Accord: Larkin v. State of Michigan, 883 F. Supp. 172 (E.D. Mich. 1995), appeal pending, No. 95-1138 (6th Cir.); Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth, 876 F. Supp. 641 (D.N.J. 1994). Analogous limitations applied to racial minorities were deemed illegal under the original Fair Housing Act. See United States v. Starrett City Associates, Inc., 840 F.2d 1096 (2d Cir. 1988), cert. denied, 488 U.S. 946 (1989) (striking down racial quotas used by a large housing complex to maintain integration).

In our own enforcement of the Act, we have viewed spacing requirements with suspicion because they operate so much like a "ceiling quota" that has been held to violate the terms of the Act. Many court decisions agree with this reasoning. This Department has brought suit against a city which imposes such a spacing requirement, where the group homes affected by the requirement appear to qualify as "families" under the definition of that term in the zoning ordinance and, thus, would be entitled to reside in the single family zone but for the disabilities of their residents. United States v. City of Charlotte, Civil Action No. 3:94CV394-MU (W.D. N.C.).

We again emphasize, however, that each case must be evaluated in light of the specific facts presented. Such case-by-case evaluation is particularly important when considering whether particular health and safety requirements are discriminatory. While the Fair Housing Act does not prohibit generally the enforcement of such requirements, such requirements must be reasonable and not used as a pretext for excluding persons with disabilities. See Marbrunak, Inc. v. City of Stow, 974 F.2d 43, 47-48 (6th Cir. 1992) (affirming district court decision that held that a city's zoning code that imposed stringent safety requirements on a residence for four disabled adults with "no attempt at

⁷ At least one Court of Appeals has refused to follow the standard employed by the Eighth Circuit in Familystyle of St. Paul for reviewing governmental restrictions that discriminate against the disabled. See Bangerter v. Orem City Corp., 46 F.3d 1491, 1503 (10th Cir. 1995) (noting that "use of an Equal Protection analysis [as employed by the Eighth Circuit] is misplaced * * * because this case involves a federal statute and not the Fourteenth Amendment"). Accord: Oxford House-C v. City of St. Louis, 843 F. Supp. 1556, 1577 (E.D. Mo. 1994), appeal pending, No. 94-1600 EMSL (8th Cir.) (questioning standard applied in Familystyle of St. Paul).

individualizing its requirements to the needs or abilities of particular kinds" of disabilities violated the Fair Housing Act "on its face").⁸ Moreover, jurisdictions should consider requests for reasonable accommodations to the requirements. As the Court of Appeals in Bangerter, 46 F.3d at 1503, recently emphasized in reviewing a municipality's requirement for 24 hour supervision at a group home: "Restrictions predicated on public safety cannot be based on blanket stereotypes about the handicapped, but must be tailored to particularized concerns about individual residents."

We also have addressed situations wherein restrictive covenants have been used in an effort to prevent persons with disabilities from occupying a residence. For example, in United States v. Scott, 788 F. Supp. 1555 (D. Kan. 1992), we filed suit on behalf of the owners of a home who had sought to sell it to a purchaser who wished to use it as a group home for six developmentally disabled persons. The Court held that the subdivision residents had violated the Fair Housing Act by attempting to enforce a facially neutral restrictive covenant in an effort to block the sale of the home -- an effort which the Court found had been undertaken "for the purpose of denying equal housing opportunities to disabled individuals." Id., 788 F. Supp. at 1562.⁹

⁸ The facts presented in City of Stow reveal an example of an unreasonable application of health and safety requirements; the interests of health and safety could easily have been satisfied while, at the same time, accommodating the needs of persons with disabilities. Instead, the City's zoning code included "nearly every safety requirement that one might think of as desirable to protect persons handicapped by any disability -- mental or physical" and applied "to all housing for developmentally disabled persons, regardless of the type of mental condition that causes their disabilities or of the ways in which the disabilities manifest themselves." 987 F.2d at 47.

⁹ The restrictive covenant in Scott had stated that no lot in the subdivision could be used for other than "residential purposes" and that no building could be "erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling * * *." In a ruling by the state court issued prior to the federal decision, that court ruled that, as a matter of state law, the use of the property as a group home did not violate the covenant and, as a matter of federal law, that the Fair Housing Act made "unlawful the application of restrictive covenants to situations in which the enforcement of the restrictive covenant" discriminates against those protected by the Act. Scott v. Haberer, C.A. No. 89-C-103 (D. Ct., Russell, KS Dec. 14, 1990). We note that the Supreme Court of New Mexico recently issued a similar ruling interpreting a restrictive covenant under state law and

Several of the questions presented by committee members concern the impact upon municipalities of the Supreme Court's decision in City of Edmonds v. Oxford House, Inc., 115 S.Ct. 1776 (1995). In Edmonds the Supreme Court interpreted a provision in Section 807 of the Fair Housing Act stating that the Act would not limit "the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The legislative history indicates that this provision, added to the Act as part of the 1988 Amendments, was designed to alleviate concerns that protecting families with children from discrimination in housing would require political jurisdictions to permit persons to live in overcrowded conditions.

The City of Edmonds claimed that the Section 807 exemption encompassed the city's land use restriction reserving certain neighborhoods for occupancy by persons related by blood or marriage and up to five unrelated persons. The Supreme Court disagreed. The Court held that the exemption was designed to address maximum occupancy restrictions that limit the number of occupants per dwelling (most often in relation to available floor space or the number and type of rooms), and was not designed to exempt land use restrictions defining who may compose a family unit for residence in certain zoning districts. The Court summarized its decision as follows:

In sum, rules that cap the total number of occupants in order to prevent overcrowding of a dwelling "plainly and unmistakably" . . . fall within [Section 807(b)(1)'s] absolute exemption from the FHA's governance; rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not.

115 S. Ct. at 1781.

The conclusion that such land use restrictions are not exempt from the requirements of the Fair Housing Act merely means that municipalities may not use their land use authority to discriminate against persons with disabilities, or other categories of persons protected by the Act. With respect to persons with disabilities only, municipalities must be prepared to consider requests for reasonable accommodations to land use restrictions that might be

holding that its enforcement violated the federal Fair Housing Act. Hill v. The Community of Damien of Molokai, No. 21,715 (S. Ct. N.M. Jan. 10, 1996).

necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling.¹⁰

It is important to emphasize what the Edmonds decision does not mean. To start, the decision certainly does not preclude municipalities from enacting and enforcing reasonable restrictions regarding the maximum number of persons who may occupy a dwelling; the above-quoted portion of the Court's decision emphasizes that that is the purpose of the statutory provision.¹¹

The Edmonds decision does not preclude a municipality from creating and maintaining residential (R-1) neighborhoods, from

¹⁰ Committee members note that several lawsuits have alleged discrimination against persons desiring to reside in an "Oxford House," a group home for recovering alcoholics and substance abusers. The definition of "handicap" contained in Section 802 of the Act does encompass persons recovering from drug and alcohol addiction. See 24 C.F.R. §100.201. However, the Act does not protect persons currently using a controlled substance. The Oxford House concept requires abstinence from drugs and alcohol as a condition of residence. The Fair Housing Act envisions that people will be treated on their merits rather than on stereotypical views of their disability. Thus, it seems to us quite reasonable to ensure fair treatment for persons who at one time may have used drugs or alcohol, but have faced recovery and desire to continue in a living arrangement that demands sobriety. See United States v. Southern Management Corp., 955 F.2d 914 (4th Cir. 1992).

At the same time, the Act permits housing providers to consider the conduct of persons in determining whether to permit initial or continued occupancy of a dwelling. The disability provisions of the Act include a specific statement that the Act does not require "that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." Section 804(f)(9). This statutory design would not preclude a housing provider, for example, from evicting a tenant for the substantial physical damage done to the property while the tenant was drunk.

¹¹ One committee member asked our Department and HUD to define "reasonable" restrictions on total occupancy of dwellings. HUD's response to the question noted that the agency envisions rule making to provide more guidance on this issue. We note also that most enforcement issues regarding reasonable occupancy limitations concern occupancy limits adopted by private housing providers; and in evaluating such limitations, our Department and HUD often compare the private limitation to the limitations imposed by the municipality, or suggested by widely utilized model codes, to determine whether the private restrictions are reasonable.

establishing and enforcing zoning codes based on density, nor from placing limits on the number of unrelated persons who may occupy a dwelling in a single-family district. Municipalities remain obligated, of course, not to use these governmental powers to discriminate against persons protected by the Fair Housing Act. And, as we have said before, municipalities must be prepared to consider requests for reasonable accommodations to these zoning and land use requirements to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. See Turning Point, Inc. v. City of Caldwell, ___ F.3d ___, 1996 WL 29263, *4 (9th Cir. Jan. 24, 1996) (noting "affirmative duty" of a municipality under the Fair Housing Act "to reasonably accommodate handicapped persons" and observing that "whether a city will have to alter its policies to accommodate the handicapped" will depend on the facts of a given case). For example, a municipality may determine that its land use scheme would not be materially impacted by allowing a group of mentally retarded persons to live together in a single-family neighborhood, even if the occupancy would contravene a numerical limit on unrelated persons.

IV. The Federal Enforcement Structure.

The remainder of the questions asked by committee members concern the enforcement structure of the amended Fair Housing Act. The 1988 amendments made significant changes to the enforcement structure of the original Act, primarily by providing enhanced enforcement authority to HUD and the Department of Justice.

These federal enforcement procedures are described beginning with Section 810 of the Act. Persons who believe that they have been aggrieved by conduct that violates the Fair Housing Act may, within one year of the allegedly unlawful action, file a complaint with HUD.¹² HUD is required to make efforts to achieve a voluntary resolution of the complaint through a process of conciliation. HUD also is authorized to investigate the complaint to determine if

¹² The Act also contains provisions requiring deference to fair housing enforcement by states or local units of government that have enacted and are enforcing fair housing laws that are substantially equivalent to the federal Fair Housing Act. If HUD receives a complaint of discrimination that is within the jurisdiction of the substantially equivalent state or local enforcement authority, HUD must refer the complaint to such state or local authority, and HUD takes no further action unless specific conditions are met. The state-federal enforcement structure is described in Section 810(f) of the Act.

there is reasonable cause to conclude that the terms of the Act have been violated.¹³

In the event that conciliation is unsuccessful and the HUD investigation reveals that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, HUD issues a Charge on behalf of the aggrieved person. The effect of the Charge is to begin an administrative procedure to obtain a remedy for the alleged violation of the Act.

An exception to the administrative enforcement structure that is important to municipalities is contained in Section 810(g)(3) of the Act. That Section provides that if HUD determines that the issue presented by the complaint and investigation involves "the legality of any State or local zoning or land use law or ordinance," HUD must refer the matter to the Department of Justice, and our Department makes a determination as to whether litigation should be initiated in federal court. Thus, HUD does not issue Charges that involve zoning and land use issues, and such matters are not resolved in the administrative hearing process that is described below.

Upon referral of a zoning or land use matter, our Department reviews the facts gathered by HUD, conducts any additional investigation that we believe to be appropriate, and determines whether a lawsuit should be filed in federal court.¹⁴ Initially,

¹³ The federal enforcement agencies may utilize the jurisdiction of federal courts to protect fair housing rights during the period of the HUD investigation. This procedure is known as Prompt Judicial Action and is described in Section 810(e) of the Act. As an example, a complaint filed with HUD alleging that an eviction from housing on account of race will occur within a week provides little opportunity for HUD to conduct a full investigation before an injury will occur. If HUD determines that the factual circumstances justify a delay in the eviction pending a full investigation, HUD may request the Department of Justice to seek such relief in federal district court.

¹⁴ Since the Department of Justice makes the final determination as to whether zoning and land use matters should be the subject of litigation, HUD's former Assistant Secretary for Fair Housing and Equal Opportunity said, as one of your members notes, that our Department has "primary jurisdiction over zoning issues." As the text describes, however, HUD has authority to receive complaints involving zoning and land use issues, to attempt to conciliate such complaints and to conduct investigations. In recognition of the importance of these issues, Congress provided that contested issues involving zoning and land use issues would be resolved in federal court rather than before an administrative law judge.

of course, we seek to determine whether the facts support an allegation of a violation of federal law. We are not required -- and do not -- challenge each violation of federal law that might exist. Such factors as the nature and importance of the issue presented by a particular case, whether a private suit is already pending, and resource limitations may influence our final decision as to the extent of our involvement.¹⁵

If the matter does not involve a zoning or land use issue, HUD may issue the above-described Charge which begins a proceeding before an administrative law judge to obtain a remedy. These proceedings are handled by HUD attorneys, and the procedures for the conduct of the proceedings are described in Section 812 of the Act. If the administrative law judge concludes that a violation of the Act has occurred, the judge may issue injunctive relief, award compensatory monetary damages to the aggrieved person, and assess a civil monetary penalty (which is payable to the United States Treasury) against the person liable for the unlawful conduct. Decisions of administrative law judges can be reviewed by federal courts of appeals, and any such appeals are handled by Department of Justice lawyers.

Section 812 also provides an option to the parties whereby the issues raised by the HUD Charge can be resolved in federal court rather than before the administrative law judge. If such an "election" is made to proceed in federal court, a lawsuit is filed

Although the Act grants final authority to the Department of Justice to determine whether a zoning or land use matter should be challenged in federal court, we are not precluded from working in partnership with HUD to address such issues. For example, even after referral to our Department the agencies may work together in any subsequent investigation that is necessary, and if conciliation at that stage would further the interests of justice, we would encourage a resumption of conciliation efforts.

¹⁵ One committee member asked whether a "disparate effect" is a "threshold" necessary to pursue a violation. The impact or effect upon the categories of persons protected by the Fair Housing Act certainly is an important element of case evaluation. Other factors we will consider when a municipality is involved may include, but are not necessarily limited to, the historical background of the challenged action or ordinance; contemporaneous statements by members of the decisionmaking body; substantive departures from factors usually considered important by the decisionmaker; any pattern of selective enforcement; the justifications offered for taking the action; and the availability of less discriminatory alternatives. See e.g., Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 267-68 (listing factors) and on remand, 558 F.2d 1283, 1290 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978).

and litigated by Department of Justice attorneys, and the administrative proceeding terminates. The remedies available in a federal court "election" lawsuit differ somewhat from those available in an administrative proceeding. Remedies available in federal court include injunctive relief, compensatory monetary damages and punitive monetary damages; the court is not authorized to assess civil penalties in "election" lawsuits.

Although "election" lawsuits always are initiated by a HUD Charge, the Department of Justice also retains its traditional authority to initiate lawsuits alleging a pattern or practice of discriminatory conduct, or challenges to unlawful conduct that impacts a group of persons and raises issues of general public importance. This authority is provided by Section 814 of the Act. In such lawsuits, the Department is authorized to seek injunctive relief, compensatory and punitive monetary damages for persons aggrieved by the unlawful conduct, and civil monetary penalties.¹⁶

Both HUD and the Department of Justice have important responsibilities for enforcing the Fair Housing Act and the agencies must work in close partnership to make the Act effective. A shorthand method of describing the Department of Justice's role in enforcement is that we are responsible for all fair housing issues that are presented to federal courts.¹⁷

In closing, I want to emphasize our desire to continue to discuss Fair Housing Act issues that you and your members believe important.¹⁸ I suggest that we schedule a meeting to explore

¹⁶ You should also be aware that private parties may institute lawsuits to challenge violations of the Fair Housing Act. The Department of Justice is authorized to intervene in these private lawsuits. See Section 813 of the Act.

Additionally, the Act authorizes the Department of Justice to aid HUD's enforcement efforts by initiating federal court actions to obtain compliance with conciliation agreements and to enforce HUD's investigative subpoenas. See Sections 810(c), 814(b)(2)(a), and 814 (c).

¹⁷ One committee member asked whether "there are any factors that have inhibited a consistent application of FHAA between HUD and DOJ?" We are not aware of any inconsistent application by the agencies of the Act's terms, and since no examples were given, we are unable to address this matter further. If any of your members perceive a problem to exist, however, we would be happy to discuss this issue with you.

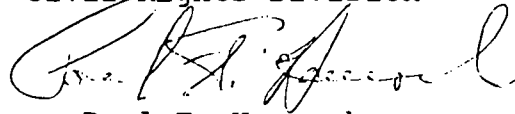
¹⁸ You should keep in mind that Title II of the Americans with Disabilities Act (ADA) also prohibits discrimination on the basis of disability by state and local governments and their

future steps after you have had an opportunity to digest the information supplied in response to the questions of your members.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:



Paul F. Hancock
Chief
Housing and Civil Enforcement
Section

Enclosures

instrumentalities. Title II provides that "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." 42 U.S. C. §12132. The ADA provides relief for discrimination against persons with disabilities in three broad areas, each governed by a specific subchapter of the Act: (1) employment, (2) public services, and (3) public accommodations and services provide by private entities. In some circumstances, denial of a zoning permit may give rise to a claim for relief under both the Fair Housing Act and the ADA, see Oak Ridge Care Center, Inc. v. Racine County, 896 F. Supp. 867 (E.D. Wis. 1995). Some courts have held that zoning decisions are not covered by the ADA. See United States v. City of Charlotte, 904 F. Supp. 482 (W.D. N.C. 1995). The United States believes that these cases were erroneously decided.

The Disability Rights Section of the Civil Rights Division has principal responsibility for enforcing Title II of the ADA. The Chief of that Section is John Wodatch.