

THE AMERICANS WITH DISABILITIES ACT

(S.933)

SEPTEMBER 6, 1989

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

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

BI-PARTISANSHIP IN ACTION

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

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

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

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

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

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

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

AN IMPROVED BILL

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

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

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

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

COSTS

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

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

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



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



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

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

I believe both positions have merit. Individuals with disabilities are entitled to access to transportation even in the rural areas, to the extent that access is technologically feasible and cost effective. This is an area I intend to follow closely. My support for ADA is based upon my commitment to seeing that its provisions can work to the benefit of all and the detriment of none.

INCENTIVES AND TECHNICAL ASSISTANCE FOR SMALL BUSINESSES

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

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

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

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

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

CONCLUSION

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

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

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

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