

MEMORANDUM TO SENATOR DOLE

DA: February 15, 1995  
FR: Alec Vachon *KV*  
RE: UPDATE ON ADA & STATE AND LOCAL GOVERNMENTS

As I wrote you (memo attached), working to fix some reported problems with ADA. Again, this project is proactive--as far as I know, you have not received any requests to change ADA, nor have contacts with state & local government associations yielded any requests. For example, Mayor Victor Ashe of Knoxville, currently President of the U.S. Conference of Mayors, has been vocal about the costs of curb cuts, but has not asked the Conference to work on this matter.

I am working also to keep the heat down. As you know, disability issues are emotionally and politically charged--for example, during the unfunded mandates debate Chairman Goodling felt obliged to issue a letter of support for ADA (attached).

EXTENDING THE DEADLINE FOR CURB CUTS

*OY* \* Curb cuts are a large, unique capital expense--and the single biggest complaint of local governments. Attached is a draft letter to the Justice Department to amend the regs to extend the deadline--working proposal is 5 more years for curbs cuts in heavily traveled areas; 10 years in other places. All four other ADA co-sponsors, Harkin, Hatch, Kennedy, and McCain are willing to sign this letter.

\* I met with Justice officials this morning--they are ready to act when they get the letter.

\* To drum up support, on Friday I will meet with the National Association of Counties, the National Association of Towns and Townships, and the National League of Cities--next week, U.S. Conference of Mayors and perhaps NGA.

\* This letter should be ready to go after these meetings.

SIMPLIFY REGULATORY BURDEN--BUILDING CODES

*OY* \* Attached is another letter to Justice--asking it to certify the three model building codes upon which virtually all 15,000 state and local building codes are based. State and local governments will not have to apply for approval of their codes--automatic as long as they use a model code. This suggestion came from a building code inspector in Overland Park, Tim Ryan, who you met with last year.

JUSTICE TO MEET WITH STATE AND LOCAL GOVERNMENTS ASSOCIATIONS

\* Justice has agreed to meet with state & local government associations to improve technical assistance--will discuss this with the state and local government associations.

*cc: Dan -  
Shelia -  
Dennis -*



FRIST HEARINGS ON ADA IMPLEMENTATION

- \* Frist, as new Chairman of the Subcommittee on Disability Policy, is interested in holding hearings in July on ADA (ADA anniversary). Any problems with ADA might be raised in these hearings as well.



WILLIAM F. GOODLING, PENNSYLVANIA,  
CHAIRMAN

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UNFUNDED MANDATES ALERT!  
**IDEA and ADA Are PROTECTED Under H.R. 5.**

MAJORITY--(202) 225-4577

MINORITY--(202) 225-3725

January 19, 1995

Dear Colleague:

As the House prepares to consider H.R. 5, the Unfunded Mandate Reform Act of 1995, I would like to clarify the bill's effect on the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA).

In recent weeks, you probably have received urgent phone calls from constituents asking you to resist the alleged repeal of the IDEA, which provides for special education and early intervention services for infants and toddlers and children with disabilities.

These phone calls are the result of a fax and mail alert originated by a disability advocacy organization in late December. The alert alleged that the Unfunded Mandates legislation under consideration by the House and Senate would force the repeal of IDEA. Apparently, the group developed and distributed the alert a few days AFTER my staff conducted an outreach meeting specifically to explain that the unfunded mandate legislation includes provisions that would PROTECT both IDEA and the ADA from coverage as an unfunded mandate!

Since there continues to be confusion about the effect of H.R. 5, let me clarify exactly how IDEA and the ADA are protected under the bill.

**Exemption of IDEA:**

Under Section 301, "Legislative Mandate Accountability and Reform," there is a definition of the term Federal Intergovernmental Mandate. The definition would NOT apply to voluntary, non-entitlement Federal programs, and therefore, does NOT include IDEA.

As a condition of receiving funds under IDEA, States must agree to comply with the requirements of the law. Although the cost of providing special education far exceeds the limited federal funds provided, in a legal sense, participation in IDEA by States is voluntary. In addition, funds for the IDEA State grant program are provided through annual appropriations made on a discretionary basis. Thus, IDEA is not an entitlement program. For these reasons, IDEA does not meet the definition of an intergovernmental mandate in this legislation.

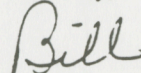
**Exemption of ADA:**

Sec. 4 of H.R. 5 says that the bill will not apply to "any provision in a Federal statute or a proposed or final Federal regulation, that-- (1) enforces constitutional rights of individuals; (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status.

This provision was specifically drafted to exempt the Americans with Disabilities Act and other federal legislation related to protecting civil rights from coverage under the bill.

I hope that this statement clarifies any misimpression that has arisen with regard to the issue of H.R. 5's effect on IDEA and ADA. If you have further questions about this issue, please call Hans Meeder (225-6558) of the Committee on Economic and Educational Opportunities.

Sincerely,



BILL GOODLING  
Chairman



MEMORANDUM TO SENATOR DOLE

Date: January 30, 1995  
From: Alec Vachon *AV*

RE: UPDATE/ADA AND STATE AND LOCAL GOVERNMENTS--  
WHAT ARE THE PROBLEMS? HOW CAN YOU HELP?

- \* As you know, I have contacted state & local government associations, asking questions like: How is ADA going? What kind of help do you need? Groups contacted: National Assn. of Counties, National Assn. of Towns, National Conference of State Legislatures, National Governors Assn., National League of Cities, and U.S. Conference of Mayors.
- \* Have also spoken to key ADA co-sponsors: Kennedy, Hatch, Harkin, and McCain.

GOOD AND BAD NEWS--AND SOME SURPRISING ANSWERS

- \* Everyone has heard of ADA, and most communities have begun to move. Incidentally, no one call ADA an "unfunded mandate"--U.S. Conference of Mayors: "ADA got tagged as an unfunded mandate because it showed up on top of an undoable agenda--ADA last one through." But staffer noted, "On a personal basis, ADA is a good thing. Should have been done a longtime ago."
- \* Generally pleased with ADA regs. The National Assn. of Towns called them a "model of flexibility."
- \* Problems:
  1. Biggest single capital expense is curb cuts--and deadline for compliance passed on Thursday, 1/26.
  2. Getting fast, definitive answers from the Justice Department. Complain ADA regs are not detailed enough.

AM EXPLORING THREE ACTIONS--FINAL OPTIONS NEXT WEEK

- \* CURB CUTS--Drafting letter to Justice w/ADA co-sponsors to extend deadline 5-10 years. Kennedy & Harkin support this action--Harkin says disability groups will not oppose.
- \* PROCESS FOR QUICK ANSWERS AND SOLVING FUTURE PROBLEMS. Letter to Tony Coelho at President's Committee asking him to set up regular meeting of state & local government associations, Justice, and disability groups to get kinks worked out. President's Committee affiliates in most states are the state agency for ADA implementation.
- \* SIMPLIFY REGULATORY BURDEN. Example: Rather than each jurisdiction apply for ADA certification of building code, Justice would certify model codes--jurisdictions would be deemed in compliance unless vary from model codes.



(2/13/95B)

[Date]

The Honorable Janet F. Reno  
Attorney General  
U.S. Department of Justice  
Constitution Avenue & 10th Street, N.W.  
Washington, D.C. 20530

Dear Madam Attorney General:

As the principal Senate co-sponsors of the Americans with Disabilities Act (P.L. 101-336) ("ADA"), we are writing to request the U.S. Department of Justice extend the time period for installation of curb ramps by public entities under 28 C.F.R. 35.150. As you may know, it was our intent to carefully craft ADA to include fair and balanced provisions and specific safeguards for state and local governments regarding costs. We are concerned that curb cuts are a unique, significant capital expense, and that our intent would be more properly fulfilled over a longer time period.

Currently, we understand that public entities were required to have completed all necessary curb cuts by January 26, 1996 ("effective date"). We believe that the Department should have separate time periods for at least two classes or tiers of curb cuts, provided public entities have a written transition plan with specific milestones for completing all curbs cuts within the extended time period. Tier I cuts are ones that serve state and local government offices, transportation, places of public accommodation, other places of employment, other heavily traveled routes, and private homes of persons with disabilities, and should be completed no later than 5 years after the effective date. Tier II serve residential and other non-commercial areas where pedestrian walkways exist, and a public entity should be given 10 years from the effective date to install the necessary curb ramps.

We urge you to adopt this modification as soon as possible. If you have any questions or if we can be otherwise helpful, please contact Bobby Silverstein of Senator Harkin's staff at 224-6265, or Alexander Vachon of Senator Dole's staff at 224-8959.

Sincerely yours,

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(2/13/95B)

[Date]

The Honorable Janet F. Reno  
Attorney General  
U.S. Department of Justice  
Constitution Avenue & 10 Street, N.W.  
Washington, D.C. 20530

Dear Madam Attorney General:

As the principal Senate co-sponsors of the Americans with Disabilities Act (P.L. 101-336) ("ADA"), we are writing to ask you to implement a change in the procedure for deeming that state and local building codes comply with the regulations under ADA. We believe the procedure proposed below would ease the regulatory burden on both the Justice Department and on state and local governments, and improve accessibility without resort to enforcement through complaints.

Currently, under the regulations governing Title III of ADA (see 28 C.F.R. 36.607 et seq.), the Justice Department will issue a "certificate of equivalency" upon request that a state or local building code meets or exceeds the requirements of ADA. Under statute, such certification constitutes rebuttable evidence that a code meets the requirements of ADA. However, Justice will not certify -- although it will informally review -- any of the three models codes upon which virtually all 15,000 state and local building codes are based. Those models codes are prepared by Building Officials & Code Administrators (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International (SBCCI).

We urge the Justice Department to first certify or otherwise approve model codes, which we believe it has current authority to do, and then allow all state and local codes that adopt such codes as equivalent. State and local government would only have to submit for certification any variances from the model codes.

We urge you to adopt this modification as soon as possible. If you have any questions or if we can be otherwise helpful, please contact Alexander Vachon of Senator Dole's staff at 224-8959, or Bobby Silverstein of Senator Harkin's staff at 224-6265.

Sincerely yours,

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