

~~10/31/89~~

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Results from 10/30 Meeting with Repub Staff
Responses for 10/31 Meeting

#1. Drugs: a) Discuss issue of drug addicts who are in treatment or who have been rehabilitated and who are no longer using drugs. See if we can get Bartlett's concern narrowed to safety sensitive and national security jobs (can't do jobs re children). Need to get sign-off on rest of technical, clean-up language.

b) They want report language re drug testing: can discriminate against someone who shows up positive on a drug test, even if person says--I am no longer currently using.
Response: fine.

#2. Contractual liability: a) They seem to have accepted our statutory language for the employment title.

b) They want report language that explains that the phrase "to the discrimination prohibited by this title" means -- if it's a reasonable accommodation issue, the undue hardship defense applies. Checked with folks--fine.

c) They did not raise the knowledge issue, but they still could. We should develop the rest of the statutory language.

d) In public accommodations area, need to put in language that clarifies that only covered entity's clients and customers are covered. We are fine on substance of that.

e) Also in public accommodation area, they want to know if the general prohibitions cover anything not in the specific -- and if not, can we say that. That will take care of their request to have an undue burden limitation in all contractual relationships.

Response: We need to modify my answer from yesterday. There are some areas in which the general provisions cover something the specific provisions do not -- e.g., the general statement that discrimination means one can't deny services. (That doesn't appear anywhere in the specific provisions.) But we can say: wherever there is no cost limitation/standard on the entity itself, there should be no limitation in what is done indirectly/contractually; conversely, wherever there is such a limitation on the entity itself, it appears in the contractual relationship also.

f) Give them Bob B's language on landlord/tenant control and responsibility.

#3. Linkage: a) Pat M's idea should work here. Let's do this as 5a and 5b -- with the accompanying report language.

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b) Re statutory language for 103(a): If we take their language -- "unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity," we need to say explicitly: "or, where a reasonable accommodation does impose an undue hardship, unless the applicant or employee provides his or her own accommodation." And that could get real messy.

Offer: "and such performance cannot be accomplished by reasonable accommodation, as required under this title."

And then explain it further in report language.

Site specific: Arlene and Bob have gone over the language, made modifications, and can leave with the end result as statutory language.

#4. Alterations

a) No final word back from them on the AIA language changing "major structural alteration."

b) Re their statutory language on "potential places of employment," their first paragraph can go into report language and their second paragraph, as modified slightly, can go into the statute. (Arlene seemed to think we gained something by putting the latter into the statute.)

#5. Pass

(Note that their statutory language does not include reasonable accommodation piece.)

#6. Monetary damages: We should see if they blink first in putting pain and suffering in the statute. I could actually live with just saying no punitive damages in the statute, and have the report language refer to the other damages. Arlene agrees.

#7/18. Pattern or Practice:

a) AGREEMENT on counting violations -- our report language.

b) Disagreement on entity subdivisions. They agreed (I think) to get input from DOJ. Also to come up with entity stuff re violations.

c) No language given us on wilful and egregious.

d) I will write up paragraph on "vindicate the public interest" and "good faith." Include concept of "fair misreading" of the law. (Also, storekeeper should think in terms of certain disabilities?)

#8. Preemption: Strong statement from Reggie and us re not wanting to set a precedent different from other civil rights laws.

Agreed to: report language re no duplicative law suits and talk about the coordinating mechanisms available.

#9-10. Wards Cove. No agreement.

#11. Price Waterhouse -- AGREEMENT, if Bartlett will accept Randy's offer. We can accept Randy's proposed language (i.e., just drop the first sentence on p. 45, third paragraph.)

#12. Timing: Just language on the TA manual.

#13. Association: We need to clarify where Bartlett is on this.

#14. Compliance review. Disagreement. They didn't like the idea of the paragraph I was going to write. I say we trade them not pushing for any change in the statute in return for us being silent in the report (which the Dems can control.)

#15. Essential function: Drop our report language and accept Randy's last deal: just go with Senate language, and drop "as a matter of business necessity" in Senate Report, p. 26. Unclear whether Bartlett will go along with this or if Randy will withdraw the offer.

#16. Anticipatory discrimination: Agreement: Add to statute: "or there are reasonable grounds to believe is about to be subjected to ..."

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