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WHY NCH'S PROPOSED BILL MUST BE OPPOSED

The National Council on the Handicapped's (NCH) recommendation for a new comprehensive law for disabled people would throw the baby out with the bath water. The proposed bill would require each federal agency to develop its own regulations to implement this law. Its effect would replace all existing federal handicapped laws and regulations.

We need only look at the history of Section 504 regulations to see the folly of this proposal. Disabled people thought the passage of Title V of the Rehabilitation Act of 1973 assured them protection against discrimination. In 1974, Congressional committees requested agencies to promptly promulgate regulations to implement Title V. But it took four long years of meetings, written comments and finally litigation and demonstrations to convince the Department of Health, Education and Welfare to issue its 504 regulations for recipients in 1977. The HEW Regulation has been a comprehensive model for other agencies. Yet it took several more years before other federal agencies began to issue their 504 regulations. Considerable time was also spent on educating recipients and consumers on the regulatory requirements. Court challenges on the scope and validity of these regulations continued for many years and it was not until 1984 and 1985 that the U.S. Supreme Court unanimously held in ConRail and Choate that the 1977 HEW Regulations are legitimately related to the purposes of the statute and merit great deference.

Disabled individuals would lose these hard fought regulatory protections and have to begin anew with the proposed bill.

It is unnecessary, time consuming and dangerous for agencies to write regulations from scratch to implement NCH's bill.

It is unnecessary because comprehensive regulations such as those covering employment are already in place. ~~It is time consuming~~ because that is the very nature of agencies. Above all, it is dangerous because of this Administration's record of trying to weaken handicap regulations on numerous occasions, e.g.,

- 1) Vice President Bush's Task Force on Regulatory Reform, including Section 504
- 2) Department of Education's effort to change PL 94-142 Regulations
- 3) Department of Transportation's alteration of its mass transit regulations
- 4) Justice Department's coordination prototype for federally conducted programs.
- 5) Justice Department's opposition to coverage of major airlines in Paralyzed Veterans case.

There is also the real threat that those required to comply with existing federal statutes and regulations will justify their non-compliance on the basis that a new comprehensive bill to replace the existing law is pending; and if passed, that existing regulations are not yet issued; and if issued, that the courts have not finally determined their validity. A generation of disabled individuals have just gone through this frustrating maze. How many more generations of disabled citizens must wait for implementation of their rights?

The National Council says it is recommending a total replacement of the existing handicap law to correct certain Supreme Court limitations such as Grove City, Scanlon and Gottfried and the refusal of most courts to recognize a private right of action under Section 503. These limitations are serious, but corrective legislation on some of these issues are already pending in Congress. Disabled citizens are part of the civil rights coalition that has made passage of the Civil Rights Restoration Act a number one priority. This coalition has received broad congressional support. NCH's approach, however, would sever this handicap constituency support from the Restoration Act by creating a separate handicap bill.

Congressional experience and common sense indicates that specific amended legislation corrects limitations of scope and remedy especially where the substance of handicap protection are intact in current law. The NCH approach would open for debate and compromise not only court limitations but all existing law including the definition of handicapped person and the scope of reasonable accommodation.

Finally, the proposed National Council bill would dilute existing employment protection by removing the affirmative action requirements of Sections 501 and 503 for federal employers and federal contractors. Instead, the proposed bill would encourage outreach and recruitment efforts. This proposal would do nothing for the plight of most handicapped workers - underemployment and the denial of promotional opportunities.