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May 25, 2005

The Honorable Elliott Naishtat
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768

RE: Request for Interim Study

Dear Representative Naishtat,

We are grateful for your leadership in issues of interest to Texans with disabilities. In the 79th Legislature, SB1128 raised awareness of an important and misunderstood civil rights issue. SB1128 would have waived the state's sovereign immunity to violations under the federal Americans with Disabilities Act (ADA). The Coalition of Texans with Disabilities and AARP-Texas seek your assistance in designating this issue for study during the interim preceding the 80th Legislature.

Currently, when a lawsuit is brought against the State for an ADA violation, the Texas Attorney General is claiming sovereign immunity under the 11th amendment to the U. S. Constitution. Under the immunity defense, the facts and merits of a case are summarily dismissed. Even the most egregious acts of discrimination based on a person's disability may be denied admissibility under this defense. Sovereign immunity does not apply to any acts of local government, the private sector or acts of the federal government within Texas. Only states have been able to claim the sovereign immunity defense, yet a majority of state attorneys general in last year's *Lane v. Tennessee* case argued before the U. S. Supreme Court wrote that states *are* liable for ADA violations.

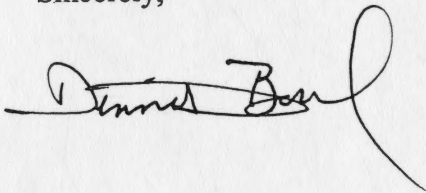
We believe that an interim study would be extremely helpful in identifying and defining the issues for Texas legislators. A sample of questions to study include:

- What have courts ruled on the sovereign immunity question?
- Why do some states believe that it does not apply?
- What would be the potential impact on state services to people with disabilities?
- What costs have been incurred by the State in claiming sovereign immunity, up to the costs of representing the State at the 5th Circuit Court of Appeals?
- Where does public opinion fall on the issue?

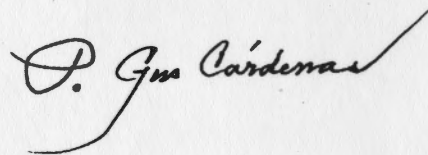
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Governor Perry's website estimates there are 4 million Texans with disabilities. The Coalition of Texans with Disabilities is a statewide non-profit social impact organization with 63 member organizations. AARP-Texas has over 2 million individual members. AARP studies show that 68% of persons over 65 identify themselves as having a disability. The scope of this issue is very large and we respectfully request your help in securing an interim study.

Sincerely,



Dennis Borel
Executive Director
Coalition of Texans with Disabilities



P. Gus Cardenas
State President
AARP-Texas