



June 24, 2008

U.S. House of Representatives  
Washington, DC 20515

**Re: ACLU Urges a Yes Vote on H.R. 3195, ADA Amendments Act of 2008**

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU) and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we urge you to vote in favor of the ADA Amendments Act of 2008 (ADAAA). The ADAAA restores the original promise of the Americans with Disabilities Act of 1990 (ADA) – that individuals with disabilities, who are willing and able to work, should be able to do so free from discrimination. Unfortunately, a series of Supreme Court decisions has eroded that basic promise.

Last week, the ADAAA passed out of the House Judiciary and Education and Labor Committees with overwhelming bipartisan support. We understand that the bill may be on the floor as soon as tomorrow. Now is the time to restore the ADA to its place as one of our country's great civil rights laws.

**An Important Civil Rights Legacy**

In 1990, Congress, with strong bipartisan support, passed and President George H.W. Bush signed the ADA. Leaders from both parties heralded the Act, which was described as an “emancipation proclamation for people with disabilities.” Prior to the passage of the ADA, studies indicated that people with disabilities were underprivileged and disadvantaged as compared to other Americans. They suffered from higher rates of poverty, lower levels of education, social isolation, and fewer opportunities because of discrimination, fear, and neglect.

Like other historic civil rights laws before it, the ADA was built on the framework of equal opportunity, economic independence, and full participation. It was Congress' intention that people with disabilities would be protected from discrimination in the same manner as those who had experienced discrimination on the basis of race, color, sex, national origin, religion, or age – by treating these characteristics as factors that are ordinarily irrelevant for purposes of making determinations regarding employment.

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## **Judicial Rollback of the ADA**

Unfortunately, through a series of decisions in the employment context, the Supreme Court narrowed the definition of disability contrary to Congress' intent. The ADA's protections have been diminished in three main ways:

- by holding that individuals with impairments who function well due to their use of “mitigating measures” – such as medication, hearing aids, and prosthetics – are not covered by the ADA, even if they are discriminated against because of that impairment;<sup>1</sup>
- by interpreting the definition of “disability” so strictly as to create an overly demanding standard for qualifying as disabled;<sup>2</sup> and
- by requiring individuals who allege their employer regarded them as disabled show that their employer believed them incapable of performing a broad range of jobs, not just the job they were denied.<sup>3</sup>

This cramped reading is inconsistent both with Congress' intent and with the other civil rights statutes upon which the ADA was modeled. It is well established that our civil rights laws are intended to have a broad remedial purpose. By interpreting the definition of disability so narrowly, the Supreme Court inappropriately shifted the focus away from the employer's alleged misconduct and on to the individual's ability to meet a demanding standard for qualifying as disabled.

## **A Modest Congressional Fix**

This erosion of rights requires an appropriate congressional fix. The ADAAA is the product of collaboration and negotiations between the business and disability communities, which strikes an appropriate balance between the necessary and intended protections for individuals with disabilities and the obligations and requirements of employers. Specifically, the bill includes the following key provisions:

- **Coverage under the ADA** - The bill clarifies that Congress intended the ADA's coverage to be broad and to cover anyone who faces unfair discrimination because of a disability.
- **Definition of Disability** - The bill retains the requirement that an individual's impairment substantially limits a major life activity in order to be considered a disability.
- **Protection for Mitigating Measures** - The bill would overturn several court decisions to provide that people with disabilities not lose their coverage under the ADA simply because their condition is treatable with medication or can be addressed with the help of assistive technology.
- **“Regarded As” Standard** - The bill affords broad coverage for individuals who have been discriminated against because of an actual or perceived impairment. However, the proposal makes it clear that an employer does not need to provide a reasonable accommodation when an employee is solely “regarded as” disabled.

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<sup>1</sup> See *Sutton v. United Airlines, Inc.*, 527 U.S. 471(1999); *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999).

<sup>2</sup> *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184, 197-98 (2002).

<sup>3</sup> *Sutton*, 527 U.S. at 492.

If enacted, the ADAAA would restore the ADA's original goal of protecting the thousands of individuals unfairly refused coverage because of the Court's narrow interpretations. We urge you to support this bill without amendment. If you have any questions please contact Deborah J. Vagins at (202) 715-0816 or [dvagins@dcaclu.org](mailto:dvagins@dcaclu.org).

Sincerely,



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Director



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