



The American Civil Liberties Union

Written Statement
For a Hearing on

**“Restoring Congressional Intent and Protections under the Americans
with Disabilities Act”**

**Submitted to the Senate Committee on Health, Education, Labor and
Pensions**

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Statement of the American Civil Liberties Union in Support of the Americans with Disabilities Act Restoration Act of 2007 (S. 1881)

The American Civil Liberties Union (ACLU) applauds the Senate Health, Education, and Labor Committee for holding this hearing on the Americans with Disabilities Act (“ADA”) Restoration Act of 2007 and appreciates the opportunity to submit a statement for the record. The ACLU also wishes to thank Senators Harkin (D-IA), Specter (R-PA), and Kennedy (D-MA) for their important leadership in championing this key legislation.

The ACLU is a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. The ACLU consists of hundreds of thousands of members, activists, and 53 affiliates nationwide. The ACLU has pursued pioneering work in disability rights for over 35 years. A highlight in this long record was the ACLU’s leadership role in securing passage of the Americans with Disabilities Act (“ADA”) in 1990.¹ In addition, the ACLU has participated in landmark disability litigation including Bragdon v. Abbott, 524 U.S. 624 (1998)²; Sutton v. United Airlines, Inc., 527 U.S. 471 (1999)³; Chevron, USA, Inc. v. Mario Echazabal, 122 S. Ct. 2045 (2002).⁴

In 1990 Congress passed the ADA with overwhelming bipartisan support, creating a landmark civil rights law that improved the lives of millions of people with disabilities. In passing the ADA, Congress advanced the goals of ensuring equal opportunity, full participation, independent living, and economic self-sufficiency for all people with disabilities.⁵ The purpose of the ADA was to “provide a clear and comprehensive national mandate for the elimination of discrimination” on the basis of disability, and “to provide clear, strong, consistent, enforceable standards” for addressing such discrimination.⁶

Unfortunately 17 years after enactment of the ADA, the promise of equal opportunity in employment has gone unfulfilled for many people with disabilities due to a series of U.S. Supreme Court decisions that have narrowed the definition of disability under the ADA contrary to Congressional intent. This has resulted in the exclusion of many persons whom Congress intended to protect including people with cancer, epilepsy, diabetes, hearing loss, multiple sclerosis, HIV infection, intellectual disabilities, post traumatic stress syndrome, and many other impairments. The ACLU believes that an individual has the right to be judged on the basis of

¹ Chai Feldblum, former legislative counsel with the ACLU, served as a lead legal advisor to the disability and civil rights communities in the drafting and negotiating of the ADA in the late 1980s and 1990.

² The ACLU wrote an amicus brief in Bragdon which addressed whether individuals with asymptomatic HIV and AIDS were covered under the protections of the ADA. Available at <http://www.aclu.org/scotus/1997/226831g119980201.html>.

³ The ACLU wrote an amicus brief in Sutton, arguing that the ADA was intended to be applied broadly to protect individuals with disabilities from discrimination in the workplace. Available at <http://www.aclu.org/scotus/1998/226391g119990222.html>.

⁴ The ACLU wrote an amicus brief in Echazabal, arguing that an employer violates the ADA when refusing to hire an individual on the basis of her or his disability. The ACLU further argued that allowing individuals to decide what risks – physical, social, or otherwise – she or he is willing to take is at the very core of a person’s civil rights. Available at http://www.aclu.org/images/asset_upload_file411_21954.pdf.

⁵ See 42 U.S.C. § 12101(a)(8).

⁶ See Americans with Disabilities Act § 2(b), 42 U.S.C. § 12101(b) (2007).

her or his individual capabilities, not on the presumed characteristics and capabilities that others may attribute to those who share a particular impairment. The court decisions are at odds with this regimen and have created an unintended Catch-22 where individuals taking medication or using other mitigation measures to manage their condition may no longer qualify as “disabled” under the ADA. Thus those individuals who diligently manage their condition or impairment may be denied reasonable accommodations or be terminated, without ever being able to present the merits of their case in court.

The ACLU supports the ADA Restoration Act of 2007 (S. 1881) as a necessary fix to this Catch-22 problem. The ADA Restoration Act restores Congress’s original intent in extending discrimination protections to all people with disabilities, regardless of mitigating measures, who are discriminated against because of their disability. The ACLU encourages its passage in order to guarantee equal protection for all people, regardless of disability.