



# Leadership Conference on Civil Rights

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Wade J. Henderson

November 14, 2007

The Honorable Edward M. Kennedy  
Chairman  
Committee on Health, Education, Labor  
and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510-6300

The Honorable Michael B. Enzi  
Ranking Member  
Committee on Health, Education,  
and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510-6300

## Re: SUPPORT THE AMERICANS WITH DISABILITIES ACT RESTORATION ACT OF 2007 (S.1881)

Dear Chairman Kennedy and Ranking Member Enzi:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we are writing to urge you to support the Americans with Disabilities Act Restoration Act of 2007, S. 1881 ("ADA Restoration Act"). LCCR believes that all workers have a right be free from workplace discrimination based on race, gender, language, national origin, age, religion, or disability.

The ADA Restoration Act restores the original intent of Congress in enacting the original Americans with Disabilities Act ("ADA") in 1990. The ADA barred discrimination based on one's disability, but its purpose was frustrated by court decisions narrowing the definition of "disability," leaving workers vulnerable to discrimination based on a wide range of conditions that are no longer protected in spite of Congress's intent to do so.

In 1990, LCCR strongly supported the ADA, which was passed with overwhelming support, reflecting bipartisan commitment to making this nation's promise of equality and freedom a reality for workers with disabilities. In passing the ADA, Congress clearly intended to broadly protect all workers treated less favorably because of any current, past, or perceived disability. Congress never intended for "disability" to be defined narrowly to exclude individuals with epilepsy, diabetes, cancer, HIV, muscular dystrophy, mental health conditions, intellectual disabilities, and multiple sclerosis, simply because the effects of these conditions on daily life were not significant enough, or could be mitigated through treatment. But this is exactly what the courts have done. **Passage of the ADA Restoration Act is critical to restoring the intent of Congress when it enacted the ADA in 1990.**

These court decisions have created an absurd Catch-22 that allows employers to discriminate against a person because the employer wrongly considers her or him "too disabled" to do the job, or simply harbors unfounded bias against persons with her or his condition, even though the person is not "disabled enough" to be protected by the ADA.

*"Equality In a Free, Plural, Democratic Society"*



As House Majority Leader Steny Hoyer stated when he introduced the ADA Restoration Act of 2007 on July 26, 2007, “The point of the ADA is not disability; it is the prevention of wrongful and unlawful discrimination.” Under current court rulings, however, before a court will hear a person’s discrimination claim, the person is required to first prove in excruciating detail how “disabled” she or he is. Before getting an opportunity to prove that she or he can do the job, the individual’s case may be thrown out of court because her or his condition does not fall within the courts’ definition of “disability.” For example, people who manage their disabilities with medication, prosthetics, hearing aids – “mitigating measures” – are viewed by the courts as “too functional” to have a disability, and receive no protection even when an employer subjects them to adverse action based directly on their medical condition.

As Congressman Jim Sensenbrenner said when he joined Majority Leader Hoyer in the introduction of the ADA Restoration Act of 2007, the ADA Restoration Act helps ensure that the ADA takes its rightful place among other civil rights laws and “will force courts to focus on whether a person has experienced discrimination ‘on the basis of disability,’ rather than require individuals to demonstrate that they fall within the scope of the law’s protection.”

LCCR believes that freedom from discrimination on the basis of disability is a civil right for all workers, regardless of the nature of the disability, and urges you to support the ADA Restoration Act of 2007. For additional information, please contact LCCR Employment Task Force Co-Chair Jocelyn Frye at (202) 986-2600, or Co-Chair Michael Foreman at (202) 662-8600, or LCCR Counsel Paul Edenfield at (202) 263-2852.

Sincerely,

Wade Henderson  
President & CEO

Nancy Zirkin  
Vice President / Director of Public Policy

cc: All Members of Committee on Health, Education, Labor and Pensions