

## **Testimony of Steny H. Hoyer House Majority Leader**

### **U.S. House of Representatives Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

#### **Hearing on H.R. 3195 “ADA Restoration Act of 2007”**

**October 4, 2007**

#### **As Prepared for Delivery**

Chairman Nadler, Ranking Member Franks and Members of the Committee:

I first want to thank you for holding this hearing on H.R. 3195, the "ADA Restoration Act of 2007" – legislation that was introduced on July 26 and which already has been co-sponsored by 221 Members from both sides of the aisle.

Let me assure you of one thing at the outset of my testimony: The purpose of this legislation is straight-forward and unambiguous.

The bill does not seek to expand the rights guaranteed under the landmark Americans With Disabilities Act.

Instead, it seeks to clarify the law, restoring the scope of protection available under the ADA; responding to court decisions that have sharply restricted the class of people who can invoke protection under the law; and reinstating the original Congressional intent when we passed the ADA.

When the first President Bush signed the ADA into law on July 26, 1990, he hailed it as "the world's first comprehensive declaration of equality for people with disabilities." This landmark civil rights law prohibited discrimination against Americans with disabilities in the workplace, public accommodations, and other settings.

We knew that it would not topple centuries of prejudice overnight, but we believed that it could change attitudes and unleash the talents of millions of Americans with disabilities.

And, we were right. Since its enactment, thousands of Americans with disabilities have entered the workplace, realizing self-sufficiency for the first

time in their lives.

However, despite our progress, the courts – including the U.S. Supreme Court – have narrowly interpreted the ADA, limiting its scope and undermining its intent.

Let me be clear: When we wrote the ADA, we intentionally used a definition of disability that was broad – borrowing from an existing definition from the Rehabilitation Act of 1973.

We did this because the courts had generously interpreted this definition in the Rehabilitation Act. And, we thought using established language would help us avoid a potentially divisive political debate over the definition of "disabled."

Therefore, we could not have fathomed that people with diabetes, epilepsy, heart conditions, cancer, and mental illnesses would have their ADA claims kicked out of court because, with medication, they would be considered too functional to meet the definition of "disabled."

Nor could we have fathomed a situation where an individual may be considered too disabled by an employer to get a job, but not disabled enough by the courts to be protected by the ADA from discrimination.

The Supreme Court's decisions in the Sutton, Kirkingburg and Murphy cases in 1999, and Toyota Manufacturing in 2002 are, simply put, egregious misinterpretations of the law.

In Toyota Manufacturing, for example, Justice O'Connor, writing for the Court, said the terms "substantially limited" and "major life activities," need to be "strictly interpreted to create a demanding standard for qualifying as disabled." The Court went on to say that "substantially limited" means to prevent or severely restrict. This was not our intent when Congress passed the ADA.

Nor did we anticipate that, contrary to our explicit instructions, the Court would eliminate from the Act's coverage individuals who have mitigated the effects of their impairments with medication or assistive devices, as in Sutton, Murphy and Kirkingburg.

Again, this is not what Congress intended when it passed the ADA. We intended a broad application of this law. Simply put, the point of the ADA is not disability, it is the prevention of wrongful and unlawful discrimination.

Thus, H.R. 3195 – introduced by myself and Congressman Sensenbrenner,

the former Chairman of the Judiciary Committee, is designed to restore the broad reach of ADA that we believed was plain in 1990.

Among other things, the bill will:

- amend the definition of "disability" so that people who Congress originally intended to protect from discrimination are covered under the ADA;
- prevent courts from considering "mitigating measures" – such as eyeglasses or medication – when determining whether a person qualifies for protection under the law; and
- modify findings in the ADA that have been used by the courts to support a narrow reading of "disability." Specifically, this bill strikes the finding pertaining to "43 million Americans" and the finding pertaining to "discrete and insular minority."

Let me conclude by noting that this past July 26th, we marked the 17th anniversary of this landmark law. I believe that its promise remains unfulfilled but very much still within reach.

Passage of this legislation – H.R. 3195 – is imperative to restoring Congressional intent, to achieving the ADA's promise, and to creating a society in which Americans with disabilities can realize their potential.