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U.S. Chamber of Commerce Opposes ADA Restoration

**Chamber of Commerce
OF THE
United States of America**

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August 22, 2007

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, opposes H.R. 3195, the "ADA Restoration Act of 2007," and urges you not to co-sponsor or support the measure.

The Chamber strongly supports equal opportunity in employment. The Americans with Disabilities Act (ADA) has served a critical role in meeting this goal by providing opportunities for qualified workers while at the same time balancing the needs of employers by limiting the opportunities for frivolous litigation.

Proponents of H.R. 3195 argue that the ADA needs to be amended to ensure that its protections apply broadly. However, H.R. 3195 is not a simple tweak of the ADA, but rather a wholesale re-writing of it. For example, the bill would change the definition of "disability" so that any individual with an impairment-such as poor eyesight correctible by wearing glasses-would be considered disabled and would trigger the employer's duty to accommodate. By contrast, the ADA's current definition requires individuals to have an impairment that "substantially limits one or more of the major life activities." By rewriting this definition, virtually all of the entire working population in the United States could be covered by the law. H.R. 3195 would also prohibit employers from considering any side effects of medication or corrective devices used to mitigate an individual's impairment, even though side effects from some medications can be quite serious.

In addition, H.R. 3195 would reverse the long-standing rule that allows employers to determine what the essential functions of a job are, allowing plaintiffs to second-guess routine job decisions that employers must make every day. It would also grant inappropriate deference to the interpretations of the law made by government agencies charged with prosecuting potential violations. While it is certainly appropriate for agency interpretations to be given some deference, ultimate authority to interpret the statute should not rest with prosecutors, but with impartial federal courts.

Finally, expanding the ADA's definitions is not limited to employment provisions of the law, but will also expand coverage of the ADA Title III requirements for accessibility in public facilities. Revised guidelines detailing the accessibility obligations are awaiting implementation by the Department of Justice. Expanding the class of people who can assert a claim for accessibility will mean that businesses and other facilities operators will be subject to greater confusion and litigation than is already anticipated from the revised guidelines.

Making these radical changes will not address the needs of those who are deserving of the ADA's protections, but will instead divert significant compliance and enforcement resources to "gotcha" lawsuits that already overwhelm enforcement agencies and the courts. Indeed, the Equal Employment Opportunity Commission found that of the 15,575 charges filed under the ADA in 2006, there was reasonable cause to believe discrimination occurred in only 5.6 percent of the cases.

The Chamber welcomes an opportunity to work with Congress in assessing the extent to which the ADA could be improved. However, because H.R. 3195 would destroy the delicate balance of interests that permitted the ADA to be enacted with broad support and greatly expands the opportunity for frivolous litigation, the Chamber opposes it and urges you to refrain from co-sponsoring or supporting the bill.

Thank you for your consideration of this important matter.

Sincerely,



R. Bruce Josten

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