

I am proud to be a cosponsor, and I said at this point in my career, Mr. Hoyer, that I would never repeat anything that anybody had said before me. The only problem is, I wanted to point out that the most active supporter of the Americans with Disabilities Act is Cheryl Sensenbrenner, but I was co-opted on that, so I will ask unanimous consent to put my statement in the record.

Thank you very much.

[The prepared statement of Mr. Conyers is available in the Appendix.]

Mr. NADLER. Without objection. And I would ask that other Members submit their statements for the record.

Without objection, all Members will have 5 legislative days to submit opening statements for inclusion in the record.

Without objection, the Chair will be authorized to declare a recess of the hearing, although the Chair hopes we won't have to do that.

As we ask questions of our witnesses, the Chair will recognize Members in the order they are in the Subcommittee, alternating between majority and minority, provided that the Member is present when his or her turn arrives. Members who are not present when their turn begins will be recognized after the other Members have had the opportunity to ask their questions.

The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time.

Our first witness is the Honorable Steny Hoyer, the majority leader of the House of Representatives, and importantly the representative of Maryland's Fifth Congressional District. Now serving his 14th term in Congress, he also became the longest-serving Member of the U.S. House of Representatives from Maryland in history on June 4, 2007.

Among his other accomplishments, Congressman Hoyer is perhaps best known for guiding the landmark Americans with Disabilities Act to passage. He has continued his leadership in fighting for the rights of the disabled. He was elected to the Maryland Senate at the age of 27, and just a few years later at the age of 35, he was elected president of the Senate, the youngest ever in State history.

I am pleased to welcome our distinguished colleague to the Subcommittee. Your written statement will be made part of the record in its entirety. I would ask you to now summarize your testimony in 5 minutes or less. To help you stay within that time, as you know, there is a timing light at the table. When 1 minute remains, the light will switch from green to yellow, then red when the 5 minutes are up.

Now that we have gone through the usual paraphernalia, I am glad to recognize the witness and you may proceed.

**TESTIMONY OF THE HONORABLE STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND, AND MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES**

Mr. HOYER. Thank you very much for this opportunity to appear before this Committee and thank you for proceeding quickly, Chair-

man Nadler and Ranking Member Franks, thank you very much for your remarks and for your co-sponsorship of this legislation.

The distinguished Chairman of the Committee, John Conyers, my good and dear friend, who has been a giant in terms of ensuring that all Americans have their rights observed as the Constitution perceived, was an extraordinarily effective and important leader in the adoption of the Americans with Disabilities Act, working with the first President Bush, who signed this legislation.

And I also want to thank my good friend and cosponsor of this legislation, he and I are partners in this effort, Jim Sensenbrenner. It has been observed now twice, I will observe a third time, and maybe I think I mention it in my remarks as well, that Cheryl Sensenbrenner has been herself a giant in not only the initial adoption of the Americans with Disabilities Act but during those 17 years that have transpired since that time, been an extraordinarily effective advocate.

I want to thank the other Members of the Subcommittee for being with us as well.

Let me make an observation at the outset. This legislation essentially adopts the premise to all the courts, Supreme and otherwise, perhaps we weren't as clear as we needed to be on what we clearly intended.

If in fact we weren't as clear and, therefore, you interpreted it differently, then it is essential for us to pass this legislation, to clarify what clearly, unequivocally and absolutely was our intent.

I want to thank you for holding this hearing. Let me assure you that one of the things at the outset of my testimony. The purpose of this legislation is straightforward and unambiguous. The bill does not seek to expand the rights guaranteed under the landmark Americans with Disabilities Act. Mr. Franks had expressed that concern, and that focused and said, 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 the ADA passed.

Mr. Sensenbrenner and I have talked about that. That is and was our intent and continues to be.

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. That is the purpose of this legislation, to clarify that 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 Rehab Act of 1973. We did this because the

courts had generously interpreted this definition in the Rehabilitation Act and we thought using established language could help avoid a potentially divisive political debate over the definition of disability. Unfortunately, we made a mistake.

Therefore, we could not have fathomed that people with diabetes, epilepsy, heart conditions, cancer, mental illnesses and other disabilities would have their ADA claims denied because with medication they would be considered too functional to meet the definition of disabled. Nor could we have fathomed a situation where the 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. What a contradictory position that would have been for the Congress to take.

The Supreme Court's decision in *Sutton*, *Kirkingnirg* and *Murphy* in 1999 and *Toyota Manufacturing* in 2002 are, simply put, misinterpretations of what we intended and, in my opinion, of the law.

In *Toyota*, 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, "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 had mitigated the effects of their impairment with medication or assistive devices, as in *Sutton*, *Murphy* and *Kirkingburg*.

Again, this is not what Congress intended when it passed the ADA. Tony Coehlo mitigates his disability. But for us to have said if he mitigates, my failing to employ Tony Coehlo because he is an epileptic, but because it is mitigated that the discrimination somehow does not exist, what an absurd result that would be.

Simply put, the point of the ADA is not disability. It is the prevention of wrongful and unlawful discrimination. Let me give you an example. I am not Catholic, but let's say for the purpose of argument I was Catholic. And let's say an employer would not hire me if I were a Catholic. Only if I could prove I was a Catholic, which I was not, would I be able to claim I am being discriminated against under the logic of the disability.

That makes no sense, and what we are doing here is to clarify our intent. H.R. 3195 introduced by myself and Congressman Sensenbrenner, the former Chairman of the Judiciary Committee and a strong supporter of this legislation when we passed it—he and I were partners then—is designed to restore the broad reach of ADA that we believe was plain in 1990.

Among other things, the bill will, first point, amend the definition of disability so that people who Congress originally intended to protect from discrimination are covered under the ADA. We adopted the original definition, which was broadly interpreted by the courts in the Rehab Act, but that has not been the case, which is why we have to take this action, to restore, not to change, prevent courts from considering mitigating measures, such as eyeglasses or medication, when determining whether a person qualifies for protection under the law, and in addition 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. We use that figure, Mr. Franks has quoted it again today, and as well as deleting that, the finding pertaining to discrete and insular minority. Again, what we are talking about is discrimination against people, against individuals, who are guaranteed under our Constitution equal rights and equal access to opportunity, to life, liberty and the pursuit of happiness.

Let me conclude by noting that this past July 26 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, Mr. Chairman and Members of this Committee, to restoring Congressional intent, to achieving the ADA's promise and to creating a society in which Americans with disabilities can realize their potential and be the assets to this country that we know they can be as well as to themselves.

Thank you very much, Mr. Chairman, for this opportunity to appear before you.

By the way, if you ask me any complicated questions, my lawyer, as I refer to her, distinguished professor at Georgetown University, Chai Feldblum, is here. She will be one of your witnesses, but if the questions are tough I will simply turn to her, as I did throughout the course of the consideration of the Americans with Disabilities Act. She did an extraordinary job working with Congressman Steve Bartlett, Republican Member of Congress from Texas, elected mayor of Dallas, now a distinguished representative in the business community in this city. But I will turn to her for the tough ones.

Mr. NADLER. Thank you very much.

I know the distinguished majority leader has many demands on his mind, so do any Members have any questions of the majority leader?

If not, the gentleman is excused with the thanks of the Subcommittee, even though he didn't need the assistance of a counselor for those tough questions.

Mr. HOYER. Mr. Chairman, those questions I can handle. Thank you very much.

Mr. NADLER. I would now like to introduce our second panel. I would invite the second panel to come to the table and be seated.

Mr. HOYER. Mr. Chairman?

Mr. NADLER. Withdraw that again.

Without objection, the distinguished majority leader is recognized again.

Mr. HOYER. We have one of the most extraordinary representatives in our presence today. Her husband was a giant, in league with the Martin Luther Kings and John Lewises as it relates to those with disabilities.

Justin Dart was my friend. Justin Dart was one of the great leaders of this country. And I did not note the presence of his wife, Yoko Dart, who is just an extraordinary human being, and she has been faithful to Justin's dream and a partner in his work, and I wanted to recognize her presence.

We thank you for all you have done.

Mr. NADLER. We are pleased to welcome her and— [Applause.]

Mr. HOYER. Mr. Chairman, this is Justin Dart's hat, and I know that he is with us.

Mr. NADLER. We are pleased to welcome her and we are pleased to welcome Mr. Dart's hat. [Laughter.]

And now would the second panel please assume seats at the table.

While they are doing that, I will begin the introduction of our second panel.

Cheryl Sensenbrenner appears today as chairwoman of the Board of the American Association of People with Disabilities, the largest national nonprofit trust disability member organization in the United States. AAPD is dedicated to ensuring economic self-sufficiency and political empowerment for the more than 56 million Americans with disabilities.

Mrs. Sensenbrenner has been married to Congressman F. James Sensenbrenner, our former Chairman, for more than 30 years. They have two sons, Frank and Bob.

Her younger sister, Tara, has an intellectual disability. In 1972, as a passenger in a car accident, Mrs. Sensenbrenner sustained a spinal cord injury at the T12 level. Mrs. Sensenbrenner has worked in a number of Republican Party positions, both before and after her injury.

Stephen Orr is a licensed pharmacist from Rapid City, South Dakota. Mr. Orr experienced discrimination based upon his diabetes and was found not to be disabled under the Americans with Disabilities Act. He is here today to share his story with the Subcommittee.

Mr. Orr has two sons and a daughter and serves as a volunteer for the American Diabetes Association.

Michael Collins is the executive director of the National Council on Disability, the NCD. The NCD is an independent Federal agency charged with advising the President and Congress about the broad spectrum of issues of importance to people with disabilities. NCD activities are governed by a 15-member council that is appointed by the President and confirmed by the Senate.

Prior to joining NCD, Mr. Collins was the executive director of the California State Independent Living Center, a State agency working to maximize opportunities for persons with disability.

Lawrence Lorber is a partner in the Washington, D.C. office of Proskauer Rose LLC. Mr. Lorber is an employment law practitioner who counsels and represents employers in connection with all aspects of labor and employment law. Mr. Lorber testifies today on behalf of the Chamber of Commerce, the world's largest business federation, representing more than 3 million businesses.

Chai Feldblum is a professor of law at Georgetown University Law Center in Washington and Director of Georgetown's Federal Legislation Clinic. On behalf of various organizational clients at the Federal Legislation Clinic, Professor Feldblum has been involved in a range of Federal legislative and administrative issues dealing with disability over the past 15 years, including civil rights, health, benefits and immigration.

I am pleased to welcome all of you.

As a reminder, each of your written statements will be made part of the record in its entirety.

I would ask that you now summarize your testimony in 5 minutes or less. To help you stay within that time, there is a timing light on your table. When 1 minute remains, the light will switch from green to yellow, and then red when the 5 minutes are up.

It is customary in this Committee on swearing the witnesses, so would you please—would the witnesses please stand, those who can.

Will you please hold up your right hand. Do you all swear or affirm that the testimony you are about to give is the complete truth as far as you know?

Thank you.

Let the record reflect that all of the witnesses responded in the affirmative.

We will first hear from Mrs. Sensenbrenner. Mrs. Sensenbrenner is recognized for 5 minutes.

**TESTIMONY OF CHERYL SENSENBRENNER, CHAIR,  
AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES**

Ms. SENSENBRENNER. Thank you, Mr. Chairman.

Good morning.

Chairman Nadler, Ranking Member Franks and Members of the House Judiciary Subcommittee, thank you for the invitation today to discuss the topic of ADA Restoration, an issue that affects the ability of literally millions of people with disabilities, our ability to enter and maintain our participation in the American workforce.

My name is Cheryl Sensenbrenner, and I am pleased to offer my testimony today as the board chair of the American Association of People with Disabilities, AAPD.

AAPD is the largest national cross-disability membership organization in the United States.

But I must start out my testimony by saying I am so proud of my husband, Congressman Jim Sensenbrenner, as well as Majority Leader Hoyer, for their hard work and leadership in introducing this legislation.

But I will assure you, like them, I will be around, I will continue to work relentlessly and keep on working on this bill until it is passed.

But in addition to my affiliation with AAPD, I offer my testimony today based on my own experiences as a disabled woman and as a family member of people with disabilities.

I acquired my disability at age 22 when I was in a car accident. I remember the doctors telling me, because my back was in pieces and crushed, that I would spend the rest of my life in bed, operating from bed. I knew I was hurt, but I also knew I wanted to be a full member of society. I wanted to do the best I could. So I continued to try hard and do the best I could with everything I could toward the goal that I had always dreamed of.

Since that time, I have lived my life using a wheelchair, Canadian crutches or walking with a cane and a leg brace. And I am proud of my full life as a disabled woman, as a wife, as a mom and as a citizen.