

January 28, 2008

The Honorable George Miller
Chairman
Committee on Education & Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable Howard "Buck" McKeon
Ranking Member
Committee on Education & Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

We write today to share our concerns regarding H.R. 3195, the "ADA Restoration Act" that your committee will discuss in a legislative hearing on January 29. As a group, we strongly believe that the Americans with Disabilities Act (ADA) provides important and necessary protections for employees and applicants. However, this legislation as currently drafted would not "restore" the ADA, but would dramatically expand it to cover even the most minor impairments, such as bad eyesight, the flu or a small scar. In short, the bill is inconsistent with Congressional intent expressed when the law was passed in 1990, would trivialize the concept of disability and inappropriately divert employer resources from those who need them most.

As you examine H.R. 3195, it is critical to note the key distinction between "disability" and "impairment" under the law. Under the ADA, an individual is "disabled" if he or she has a physical or mental impairment that *substantially limits a major life activity*. The law defines "impairment" broadly to cover virtually any physical or mental condition. An impairment is considered a covered disability *only* if it substantially limits activities that are central to daily life, such as seeing, reading or breathing. If an individual is found to be disabled and qualified to perform the essential functions of the job, he or she may request an accommodation from the employer. The individual and employer then engage in an interactive process to reach a reasonable accommodation so the employee can perform his or her job. This process has worked well under the law and is structured to respond to the individual needs of employees.

H.R. 3195 drastically expands the definition of "disability," by eliminating the requirements that an individual's impairment *substantially limit a major life activity*. Thus, the bill's concept of "disabled" would be expanded to cover any impairment, regardless of how temporary, intermittent, occasional, mild or minor it is, including health conditions such as the flu. The change would result in the law covering conditions that Congress never intended to be covered by the ADA, exponentially increasing the number of persons who can bring a disability discrimination claim. For example, a person with a minor finger cut requiring stitches would be considered just as disabled as a veteran returning home having lost his or her arm in combat, and an individual with occasional headaches would receive the same protection as an individual with a serious brain damage. In essence, H.R. 3195 would create an environment where anything less than perfect health would cause an individual to be covered under the ADA. The resulting increase in requests for accommodation would overwhelm employers and make it more difficult for them to assist the severely disabled.

These bills make many other unworkable changes to the ADA including a dramatic expansion of employers' reasonable accommodation obligations and a reversal of a long-established rule found in all federal antidiscrimination laws that a person must show that he or she is qualified to perform the job. Instead, the bills would shift this responsibility to employers.

Thank you for your consideration.

Sincerely,

American Architectural Manufacturers Association
American Composites Manufacturers Association
American Hotel & Lodging Association
American Iron and Steel Institute
American Sportfishing Association
American Supply Association
Associated Builders & Contractors
Associated General Contractors
College and University Professional Association for Human Resources
Environmental Industry Associations
Food Marketing Institute
HR Policy Association
Independent Electrical Contractors
International Foodservice Distributors Association
International Franchise Association
International Public Management Association for Human Resources
International Warehouse Logistics Association
National Association of Convenience Stores
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Council of Chain Restaurants
National Federation of Independent Business
National Public Employer Labor Relations Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Shooting Sports Foundation
National Solid Wastes Management Associations
Non-Ferrous Founders' Society
North American Die Casting Association
Printing Industries of America
Retail Industry Leaders Association
Society for Human Resource Management
Sporting Arms and Ammunition Manufacturers' Institute
Steel Manufacturers Association
Textile Care Allied Trades Association
Textile Rental Services Association of America
U.S. Chamber of Commerce
Waste Equipment and Technology Association
Wood Moulding & Millwork Producers Association

cc: Members of the Education & Labor Committee