



Statement on
The ADA: Sixteen Years later
September 13, 2006
Submitted to the U.S. House of Representatives
Committee on the Judiciary, Subcommittee on the Constitution
by
The Arc of the United States and United Cerebral Palsy

The Arc of the United States and United Cerebral Palsy commend the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution for holding an important oversight hearing on the Americans with Disabilities Act (ADA) on September 13, 2006. We also commend the leadership of Chairman Jim Sensenbrenner, Jr. (R-WI) and Ranking Member John Conyers (D-MI) as well as that of Rep. Steve Chabot (R-OH), Chairman of the Subcommittee on the Constitution and Rep. Jerrold Nadler (D-NY), Ranking Member.

The Arc is a membership organization that is more than fifty-five years old. It is made up of people with intellectual disabilities (mental retardation) and related disabilities, their families, friends, interested citizens, and professionals in the disability field. Together they form nearly 900 state and local chapters of The Arc, the 10th largest non profit organization in the United States. The Arc also advocates for people without intellectual disabilities but who at times will need similar supports and services in order to be as productive and independent as possible. For more than half a century, chapters of The Arc have worked throughout the nation to ensure that their constituents have the

supports and services they need, are accepted in their communities, and have control of their own lives.

United Cerebral Palsy (UCP) is a national nonprofit organization that has also been committed to change and progress for people with disabilities for more than fifty years. The national organization and its nationwide network of more than 100 affiliates strive to ensure the inclusion of people with disabilities in every facet of society. UCP's mission is to advance the independence, productivity, and full citizenship of people with cerebral palsy and other disabilities through commitment to the principles of independence, inclusion, and self-determination. United Cerebral Palsy affiliates serve more than 30,000 children and adults with disabilities and their families every day.

Both The Arc and United Cerebral Palsy are active participants and leaders in the Consortium for Citizens with Disabilities (CCD), the nation's leading coalition of national disability organizations.

First, let us emphasize that the Americans with Disabilities Act is a landmark piece of legislation that guarantees equal opportunity for individuals with disabilities in the areas of employment, state and local government services, public transportation, privately operated transportation available to the public, places of public accommodation and telephone services offered to the general public. Many regard the ADA as the most sweeping piece of civil rights legislation since the Civil Rights Act of 1964; others believe that because of the widespread barriers the ADA has caused to be removed, it is the most far-reaching civil rights law ever enacted. Both The Arc and UCP were instrumental in the enactment of this vital law.

The ADA has made it possible for millions upon millions of people with a vast array of disabilities to participate in and contribute to their communities and society like never before in the history of our nation. This need and desire for full participation is undeniable, and is the very fabric of the freedom and opportunity available to all citizens of the United States.

The drive for full participation in American society led to the passage of the Rehabilitation Act of 1973 and P.L. 94-142, the Education for All Handicapped Children Act of 1975 (now the Individuals with Disabilities Education Act). The Rehabilitation Act prohibits discrimination on the basis of disability in local programs and activities that receive federal funds. Its enforcement has resulted in improved accessibility for people with disabilities to health care, social services, recreation, housing, transportation and many other areas of everyday life.

P.L. 94-142 guarantees every child with a disability the right to a free, appropriate public education, a right previously denied by school systems to more than 1 million children. The Individuals with Disabilities Education Act raised the bar, requiring the inclusion of students with disabilities into regular classrooms and the establishment of individualized educational programs for students with disabilities.

The passage of the Americans with Disabilities Act in 1990 recognized the fact that while educational and vocational training opportunities for individuals with disabilities were greatly improved, employment opportunities in the private sector and access to places of public accommodation had not kept pace. The promise of the ADA was that people with disabilities would realize the still elusive goal of *full and complete* participation in American society.

There is no doubt that the country has changed for the better for people with disabilities since the passage of the ADA and that there have been significant changes in the hearts and minds of our society. Taken together, Title I of the ADA, which prohibits discrimination in employment, Title II, which prohibits discrimination in public services including public transportation, and Title III, which prohibits discrimination in public accommodations operated by private entities, should provide protection from discrimination to individuals with disabilities in the same full range of services and facilities available to the public at large.

Much of the promise of the ADA has worked well in the 16 years since the law's enactment. There is no question that the ADA has transformed America's communities, removing barriers to persons with disabilities in the physical environment, and has

substantively advanced the cause of full community participation for persons with disabilities. Yet, there is still much work to do to fully secure the promise of the ADA. We know that hate, fear and prejudice cannot be eradicated through legislation alone.

Title I -- It is undeniable that, for many individuals, their rights to discrimination-free employment opportunities under Title I of the ADA have been dramatically diminished by interpretations of the law by the Supreme Court and other courts that do not consider many people with disabilities to have disabilities at all. Under the current definition, many people, including people whose disabilities might be mitigated or aided by medication or other methods, are considered too functional to be regarded as having a disability.

In *Sutton v. United Airlines*, and *Toyota v. Williams*, for instance, the Supreme Court interpreted the definition of disability in a restrictive manner that the law never envisioned, placing the burden on people with disabilities to prove that they are entitled to the ADA's employment protections. This creates a situation in which employees can be discriminated against on the basis of their disability but unable to enforce their rights because they cannot meet the standard the courts have set to prove they even have a disability. Also, in *University of Alabama v. Garrett*, the Supreme Court ruled 5-4 that the 11th Amendment prohibits suits in federal court by state employees to recover money damages under Title I of the ADA.

These decisions are especially egregious since the unemployment of people with disabilities who wish to work remains a national embarrassment, 16 years after the enactment of the ADA.

There is no other civil rights law in our country that requires claimants to "prove" they are members of the class the law seeks to protect in order to enjoy the protections of the law. These court interpretations of the ADA have led our country full circle -- to a virtually re-disempowered population -- daily facing insufferable discrimination, yet knowing they may well not make it to "first base" if they file a complaint, because the

Supreme Court has said that people much like themselves do not even have a disability.

Title III - There is an additional issue that has been raised by members of the business community regarding what are considered by the commercial community as unscrupulous, excessive, frivolous and vexatious law suits – filed against business owners who claim they were not aware they were out of compliance with the law's public access provisions. These provisions require businesses to be accessible to people with disabilities so that they can enjoy all of the business's offerings to the same extent as those without disabilities.

While the points about excessive suits may be well-taken, particularly in some instances in some areas of the country, it must be understood that, by and large, the claims raised in these suits are entirely valid. Overly zealous litigation does not mitigate the fact that many of these businesses are absolutely out of compliance with the ADA and denying the benefits of their commercial products or services to an entire population.

Recommendations:

I. The Arc and United Cerebral Palsy support full restoration of the Title I employment provisions of the Americans with Disabilities Act as they were intended by the Congress.

We support language that clarifies the intent of the Congress that the ADA has full and broad application to anyone who suffers discrimination based on disability, regardless of the severity of the disability, the visibility of the disability or whether or not the disability is mitigated. If discrimination in the workplace occurs, based on a real or perceived disability, it should be understood to come under the purview of the ADA.

II. The Arc and United Cerebral Palsy do not support any legislation (such as the ADA notification Act, HR 2864) or other remedies that would serve to undermine voluntary

compliance with the ADA or to encourage “we’ll wait until we’re sued” behavior on the part of business owners. Such “solutions” would put a chilling effect on legitimate lawsuits and severely weaken a landmark civil rights law.

The Arc and United Cerebral Palsy would again like to thank the Committee and Subcommittee leadership for this opportunity to submit a statement for the record of the September 13, 2006 hearing *The ADA: Sixteen Years later*.

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