



## **NATIONAL COUNCIL ON INDEPENDENT LIVING (NCIL)**

**Statement on:** *Oversight Hearing on "The Americans with Disabilities Act: Sixteen Years Later"*

Submitted to the House Judiciary Committee, Subcommittee on the Constitution, September 13, 2006

Chairman Chabot, Ranking Member Nadler, Chairman Sensenbrenner, Ranking Member Conyers and distinguished members:

Thank you for holding this important oversight hearing which allows us to catalogue the substantial strides which the ADA has achieved for promoting full societal inclusion and participation for persons with disabilities and to document where the full promise of the Americans with Disabilities Act is yet to be realized.

NCIL is the oldest cross-disability, national grassroots organization run by and for people with disabilities. Our membership is comprised of centers for independent living, state independent living councils, people with disabilities and other disability rights organizations. As a membership organization, NCIL advances independent living and the rights of people with disabilities through consumer-driven advocacy. NCIL envisions a world in which people with disabilities are valued equally and participate fully.

A key part of our work is to implement the integration mandate of the Americans with Disabilities Act by moving persons with disabilities out of institutions and into community settings so they can control their own destinies and live independently. NCIL also works tirelessly to ensure that the Americans with Disabilities Act and other crucial civil rights laws are fully implemented and enforced.

We welcome the opportunity to submit the views of the National Council on independent Living, as expressed by our Civil Rights/ Americans with Disabilities Act Subcommittee and look forward to a robust discussion of ways in which we can work together to achieve the full promise of the ADA.

If you have any questions about this testimony, please do not hesitate to contact NCIL Civil Rights Chair Mark Derry at [adamarkd@aol.com](mailto:adamarkd@aol.com) or NCIL Acting Director of Advocacy and Public Policy, Daniel Davis at [Daniel@ncil.org](mailto:Daniel@ncil.org).

Thank you for your consideration:

Respectfully,

John Lancaster  
Executive Director

Mark Derry  
Chair, NCIL Civil Rights/ ADA Subcommittee

## NATIONAL COUNCIL ON INDEPENDENT LIVING

### Civil Rights / ADA Subcommittee

#### Americans with Disabilities Act (ADA)

*...[N]ow I sign legislation which takes a sledgehammer to another wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse, but not grasp.... I now lift my pen to sign this Americans with Disabilities Act and say "Let the shameful wall of exclusion finally come tumbling down." – George H.W. Bush (1990)*

**Background:** Passed with overwhelming bipartisan support, the Americans with Disabilities Act of 1990 was designed as a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Without doubt, the ADA has transformed America's communities, removing barriers to persons with disabilities in the built environment and infrastructure, and has substantively advanced the cause of community integration for persons with disabilities.

**Issues:** Yet, as the National Council on Disability documented in its "Righting the ADA" report, a series of flawed Supreme Court decisions have seriously undermined our ability to realize the full promise of the ADA. In *Sutton v. United Airlines*, and *Toyota v. Williams*, the Supreme Court has taken to interpreting the definition of disability in a restrictive manner that the law never envisioned, placing the burden on persons with disabilities to prove that they are entitled to the ADA's protections – particularly in the employment sphere. This creates a Catch-22 in which employees can be discriminated against on the basis of their disability but unable to enforce their rights because they cannot meet the high threshold the courts have set to prove they are disabled. Furthermore, in *University of Alabama v. Garrett*, the Supreme Court ruled 5-4 that the 11<sup>th</sup> Amendment prohibits suits in federal court by state employees to recover money damages under Title I of the ADA. The Supreme Court's restrictive approach to the ADA in employment cases is especially disconcerting since the unemployment of persons with disabilities wishing to work remains widespread.

Proper implementation of the original intent of the ADA in the employment sphere is absolutely indispensable to the economic self-sufficiency and full societal participation of persons with disabilities that is at the core of the Independent Living (IL) movement. The fact that only 7% of persons with disabilities own their own homes is a reflection of the continued inability of persons with disabilities to enforce their right to non-discrimination in the workplace under the Americans with Disabilities Act.

**Recommendations:** NCIL supports:

- \* Full implementation and enforcement of the ADA, as intended by its bipartisan Congressional authors, with recognition by the Federal courts that the ADA is a law designed to remedy decades of purposeful, unconstitutional discrimination and as such should be given a broad, rather than a narrow, construction.
- \* Funding for ongoing public education on the requirements of the ADA, and adequate funding for strong enforcement by the US Department of Justice, US Equal Employment Opportunity Commission, Federal Communications Commission, and other agencies with enforcement responsibilities.
- \* Creative efforts by federally-funded enforcement, technical assistance, and advocacy organizations to promote the positive aspects of the ADA's accessibility and equal opportunity requirements.
- \* Efforts by States to voluntarily waive their immunity from damage suits brought by people with disabilities under Titles I and II of the ADA.
- \* **Bipartisan Congressional efforts to overturn Supreme Court decisions narrowing the scope of the ADA, provided that these efforts do not turn into an opportunity for ADA critics to further weaken the law.**

NCIL urges all Representatives and Senators to **oppose**:

- The ADA Notification Act (HR 2804), and any other legislative effort to limit individual rights and remedies under the ADA.

HR 2804 unfairly punishes public accommodations that have voluntarily complied with the ADA's accessibility requirements by rewarding their competitors with a free pass for violations of 15-year old requirements. It will not adequately address the lawsuit problem it is designed to remedy, and will create new problems for individuals whose need for access cannot wait 90 days (e.g. people with time-sensitive health conditions that need to be treated by a covered entity). Finally, HR 2804 effectively preempts state law through the inclusion of a new provision imposing these notification requirements on any state that conditions violations of its disability laws on violations of the ADA.

**Contact information:** For more information, contact NCIL at 202/207-0334 (V); 202/207-0340 (TTY). See also NCD's Righting the ADA report, available online at [http://www.ncd.gov/newsroom/correspondence/2004/ada\\_11-16-04.htm](http://www.ncd.gov/newsroom/correspondence/2004/ada_11-16-04.htm).