

**Statement of Carey L. McClure
before the
Health Education Labor and Pensions Committee
United State Senate**

Mr. Chairman and members of the Committee:

Good Morning. My name is Carey McClure, and I am an electrician from Griffin, Georgia. I'd like to thank you for holding this roundtable today, and for giving me a chance to tell my story.

I have been an electrician for over twenty years. I earned a technical certificate from the United Electronics Institute after high school and then worked my way up from apprentice electrician to journeyman electrician. I've always wanted to be an electrician, and I love what I do. It is my hobby, and it is my fun.

When I was fifteen years old, I was diagnosed with facioscapulohumeral muscular dystrophy. "Muscular dystrophy" means progressive muscle degeneration. "Facioscapulohumeral" refers to the parts of my body that are most seriously affected: the muscles in my face, shoulder blades, and upper arms. There are nine types of muscular dystrophy, and this is mine. As a result of my condition, the muscles in my face, back, and upper arms are weak. I'm unable to lift my arms above shoulder-level, and I have constant pain in my shoulders.

But like so many other people with disabilities, I've found ways to live with my condition. For instance, I have a stepstool in my kitchen that I use to reach my cabinets. When I shampoo my hair, I support one hand with the other to get it over my head, or I bend forward so my hands can reach my head. I take showers because it's easier for me to bathe all of my body parts standing rather than sitting down. When I comb my hair or brush my teeth, I prop up my elbow with the other hand. Instead of wearing T-shirts, I generally wear button-down shirts, which don't require me to raise my arms over my head. To put on a T-shirt, I bend at the waist and pull the back of the shirt over my head. When I eat, I hold my head over my plate and prop my elbows on the table so that I can raise my fork or spoon to my mouth. And while I love my grandchildren, and play actively with them, I don't take care of them alone for fear I might suddenly need to lift them above chest-height to get them out of harm's way.

The point is, my muscular dystrophy doesn't stop me from living my life. There is virtually nothing I can't do. Unfortunately, General Motors (GM) didn't feel the same way.

My father and brother both work for GM, so I guess you could say GM practically raised me. GM supported our family, and it pays really well and offers good benefits. It's a great place to work, and for as long as I can remember, it's been my "dream job."

I applied for an apprenticeship with GM three times, but those positions were put on hold and never filled. I applied for a journeyman electrician position another time, but there were 400 applicants for seven or eight positions and so I didn't get that job either.

In September 1999, I gave it another shot and responded to a newspaper ad seeking applicants for electrician positions at the GM assembly plant in Arlington, Texas. This time was different. In November 1999, GM invited me to fly out to its Texas assembly plant to take a written exam and a practical, "hands-on" exam. I passed both of them. In December 1999, GM sent me a letter offering me the job and asked me to take a pre-employment physical. I called back and accepted the job, and scheduled an appointment with GM's plant medical director for January 5th – about a week before my start date.

In the meantime, I got ready for the big move. I quit my electrician job with a roofing company; sold my house in Griffin, Georgia; withdrew my daughter from her high school; and packed up all of our things in anticipation of relocating.

When I got to Texas, I went on a tour of my new plant. From the tour and the job description in the ad I answered, I knew that the job I'd be filling would be easier than the one I had left in Georgia, and would also pay better wages. At my prior job with the roofing company, I was doing electrical maintenance on a production line. That meant that I performed two completely different types of jobs: I was both an electrician and a mechanic. If there was a 400-pound motor sitting there that needed replacing, I'd have to disconnect the wires, unbolt the motor, move the motor, put the new motor in, then wire it back up. The position I'd accepted at GM was much more specialized. There, I would be doing just the job of an electrician – I'd only have to disconnect the wires and then let the GM mechanics take care of the rest.

There was a doctor's office in the plant where I went for my physical exam. It was a normal physical exam like those I'd taken and passed for all of my other jobs. The physical went fine until the doctor asked me to lift my arms above my head, which I could not do.

The doctor asked me hypothetically how I would reach electrical work above my head. I told him I'd get a ladder. He asked what I'd do if the work was higher than the ladder. I told him I'd get a taller ladder.

For over twenty years, I've been an electrician. For over twenty years, I've worked on things above my head without a problem. I've run pipe all the way up against the ceiling. I've worked on lights all the way up against the ceiling. Sometimes I throw my arms up in the air and lock my elbows. Most of the time, there's an object next to me that I can prop my arms on, just like I do when I'm brushing my teeth. Other times, all it takes is a step-stool like I have for my cabinets, or a ladder or a hydraulic lift like many electricians use. When I toured the GM plant, I saw people using those hydraulic lifts just like at every other job I'd had.

But this doctor wouldn't hear of it. He didn't think I could do a job that I'd been doing my entire life, even though he later admitted that he didn't even know what the functions of my electrician job were. Regardless, he recommended that GM revoke my job offer, and that's exactly what GM did. An assistant gave me the bad news, and I just stood there stunned, in the middle of the doctor's office lobby, and I didn't know what had hit me. I had just quit my previous job, had sold my house, packed my bags, and relocated my family from Georgia to Texas for the dream job I'd been trying for my whole professional life. GM had just taken my dream job away from me.

I didn't know much about the Americans with Disabilities Act, but I knew that I had a disability, and that GM took my job away because of my disability – not because I couldn't work as an electrician. I can do that job – that's the bottom line. So I found a lawyer, and we filed a lawsuit.

During my lawsuit, GM's attorney asked me all sorts of personal questions like how I comb my hair and how I brush my teeth. They asked me how I play with my grandchildren. They asked me how I bathe, and how I clean my house. They asked me how I drive a car. They even asked me how I have intercourse. They asked me things they don't need to know – things that don't have anything to do with my ability to work at GM.

Even though GM revoked my offer because of my disability, GM's lawyers started arguing to the federal courts that I didn't have a disability at all. Well, you can't have it both ways – am I disabled or not? If I am, then the ADA should have been there to protect me. If I'm not, then I should be working with my father and my brother at GM right now.

Unfortunately, the courts agreed with GM. The trial court said that my "ability to overcome the obstacles that life has placed in my path is admirable," but that in light of my ability, I was no longer disabled. Basically, the court punished me for making myself a productive member of the workforce for over twenty years. Because I'd adapted so well to living with muscular dystrophy, the court said I wasn't protected by the ADA. That doesn't make any sense to me.

I lost my case. I lost my house. And I lost two jobs – the electrician job with the roofing company that I left, and the electrician job that GM gave and then took away from me. But I have no ill will towards GM. I still buy vehicles from them, and I'd work there today if I could. That's all I've ever wanted to do.

I found another job after GM revoked its offer, but it took me six months to find one that paid the same as my old job with the roofing company, and it still didn't pay as high as GM. In my first evaluation at that job, my boss ranked me excellent in five out of seven categories and next highest on the other two.

I enjoy being an electrician, and I'm good at it. I wish that GM had given me the chance to prove that I could do the job, and I wish that the ADA had been there to protect me

when GM didn't give me that chance. Unfortunately, there are many people with disabilities like me who are not getting the protection they deserve because the courts are telling them that they're not "disabled."

As I told the courts who heard my case, "if one who suffers from undisputed muscular dystrophy is not an individual with a disability under the ADA," then who is?

The Fifth Circuit Court of Appeals told me that they were just interpreting the ADA as the Supreme Court told them to, and that my problem was with the Supreme Court – not them. They told me that the *Sutton* case, and its companion 1999 cases, *Kirkingburg* and *Murphy*, as well as the 2002 *Toyota* case, had set rules that allowed me to be thrown out of court because I wasn't disabled enough:

Now if the Fifth Circuit was right that my problem is with the Supreme Court's bad reading of your good law, then you are the ones who can do something about those interpretations of the ADA. For the sake of people with disabilities like me who want to work but are discriminated against, I hope you will.

I am not a lawyer. But people who are lawyers have looked at the proposed ADA Amendments Act and have explained to me that this proposal would take care of every argument the 5th Circuit made in dealing with my own case, based on those Supreme Court opinions.

Millions of Americans like me will thank you for every day for the rest of our lives if you can pass a law that fixes the coverage problem for people with conditions like mine, a law like the ADA Amendments Act which has the support of both the business community and disability advocates.

And the sooner the better, because every day that goes by, more people with disabilities are discriminated against and, like me, cannot get justice in the courts.

Thank you for giving me the opportunity to speak before you today, and for your help in getting a new ADA passed this year.