

Honorable George Miller (D-CA)
Chairman, House Education and Labor Committee
Opening Statement at Committee Mark-Up of H.R. 3195,
The ADA Amendments Act of 2008
Wednesday, June 18, 2008

* * *

Today, the Committee on Education and Labor will consider H.R. 3195, the ADA Amendments Act of 2008.

For nearly two decades, the Americans with Disabilities Act has made it possible for millions of productive, hard-working Americans to participate in our nation's economy.

Among other rights, the law guaranteed that workers with disabilities would be judged based on their merits and their job performance, and not on an employer's prejudices.

But since enactment of this landmark civil rights law, the rights it afforded have been eroded. Several Supreme Court rulings have dramatically reduced the number of workers with disabilities who are protected from employment discrimination under the ADA.

These court rulings have effectively made the very workers Congress intended to cover nearly two decades ago subject to legal employment discrimination today. Workers with diabetes, cancer, epilepsy – the very workers the ADA had intended to protect – can be legally fired or passed over for promotion just because of their disability.

In January, the committee heard testimony from Carey McClure, an electrician looking for a better paying job with good benefits. Despite being diagnosed with muscular dystrophy at age 15, Carey had managed to become an electrician and practiced his craft for more than twenty years. He was initially offered his dream job with General Motors pending a physical.

During the physical, the GM doctor asked Carey to hold his arms above his head. He could not. The doctor asked how he would perform his job if it required reaching over his head. Carey gave a common-sense answer: He would use a ladder.

According to Carey's testimony, the doctor then asked what he would do if the work was still out of reach when he was atop the ladder. Carey responded that he would just get a taller ladder.

Like so many others who live with a disability, Carey found ways to successfully perform his job and all of life's daily tasks despite his muscular dystrophy. But when GM learned that Carey had a disability, it rescinded the job offer.

Carey challenged GM's decision because he thought the Americans with Disabilities Act would protect him. He was wrong.

The court ruled that since Carey had adapted to his condition by modifying the way he performed everyday tasks like washing his hair, he was not disabled and therefore not protected by the ADA.

Because of U.S. Supreme Court rulings, Carey and many others are now caught in a legal Catch-22. The U.S. Supreme Court has determined that individuals whose disabilities do not "prevent or severely restrict" major life activities, and those who mitigate their impairments through means such as hearing aids or medications, should not be considered disabled.

In other words, an employer could fire or refuse to hire a fully qualified worker like Carey McClure simply on the basis of his disability, while contending in court that the worker is not "disabled enough" to qualify for protection under the law.

We will begin to remedy this problem today.

H.R. 3195 is legislation introduced by Majority Leader Steny Hoyer and Congressman Jim Sensenbrenner. It enjoys strong bipartisan support. The bill would reverse these erroneous court decisions and restore the original Congressional intent of the Americans with Disabilities Act.

H.R. 3195 will clarify the definition of a physical or mental impairment that substantially limits one or more major life activities.

It will also prohibit the consideration of mitigating measures such as medication, prosthetics, and assistive technology in determining whether an individual has a disability.

The legislation will cover workers whose employers discriminate against them based on a perception that the worker is impaired, regardless of whether the worker has a disability.

And, most importantly, the ADA Amendments Act will make it absolutely clear that the Americans with Disabilities Act provides broad coverage to protect anyone who faces discrimination on the basis of disability.

The court's narrow interpretation of disability has also denied many students with impairments protection under the ADA. The ADA Amendments Act will ensure that students with disabilities will have access to the accommodations and modifications they need.

Over the last several months, in discussions on the legislation, much of the disability and business communities have reached a consensus in support of this bill while recognizing the need to address a number of concerns with the original draft.

The staffs on both sides of the aisle on the committee have done the same. I am pleased that Ranking Member McKeon and I have been able to work together on this bill and reach agreement to move it in a bipartisan fashion.

And so, I will shortly be offering for consideration a substitute amendment. This substitute will reflect the bipartisan consensus we have reached on amending H.R. 3195.

When Carey McClure came before this Committee five months ago, he spoke on behalf of millions in calling on Congress to act to ensure civil rights for persons with disabilities.

After a great deal of hard work by the all the stakeholders, the Committees, and congressional leadership on this bill, the time to act has come.

It is time to restore the original intent of the ADA and I urge members of the committee to support this bipartisan effort.

###