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(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. R.

To restore the intent and protections of the Americans with Disabilities
Act of 1990.

IN THE HOUSE OF REPRESENTATIVES

Mr. HOYER introduced the following bill; which was referred to the Committee
on _____

A BILL

To restore the intent and protections of the Americans with
Disabilities Act of 1990.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ADA Restoration Act
5 of 2007”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) in enacting the Americans with Disabilities
9 Act of 1990 (ADA), Congress intended that the Act

1 “establish a clear and comprehensive prohibition of
2 discrimination on the basis of disability,” and pro-
3 vide broad coverage and vigorous and effective rem-
4 edies without unnecessary and obstructive defenses;

5 (2) decisions and opinions of the Supreme
6 Court have unduly narrowed the broad scope of pro-
7 tection afforded in the ADA, eliminating protection
8 for a broad range of individuals who Congress in-
9 tended to protect;

10 (3) in enacting the ADA, Congress recognized
11 that physical and mental impairments are natural
12 parts of the human experience that in no way dimin-
13 ish a person’s right to fully participate in all aspects
14 of society, but Congress also recognized that people
15 with physical or mental impairments having the tal-
16 ent, skills, abilities, and desire to participate in soci-
17 ety are frequently precluded from doing so because
18 of prejudice, antiquated attitudes, or the failure to
19 remove societal and institutional barriers;

20 (4) Congress modeled the ADA definition of
21 disability on that of section 504 of the Rehabilita-
22 tion Act of 1973, which, through the time of the
23 ADA’s enactment, had been construed broadly to en-
24 compass both actual and perceived limitations, and
25 limitations imposed by society;

1 (5) the broad conception of the definition had
2 been underscored by the Supreme Court’s statement
3 in its decision in *School Board of Nassau County v.*
4 *Arline*, 480 U.S. 273, 284 (1987), that the section
5 504 definition “acknowledged that society’s accumu-
6 lated myths and fears about disability and disease
7 are as handicapping as are the physical limitations
8 that flow from actual impairment”;

9 (6) in adopting the section 504 concept of dis-
10 ability in the ADA, Congress understood that ad-
11 verse action based on a person’s physical or mental
12 impairment is often unrelated to the limitations
13 caused by the impairment itself;

14 (7) instead of following congressional expecta-
15 tions that disability would be interpreted broadly in
16 the ADA, the Supreme Court has ruled, in *Toyota*
17 *Motor Manufacturing, Kentucky, Inc. v. Williams*,
18 534 U.S. 184, 197 (2002), that the elements of the
19 definition “need to be interpreted strictly to create
20 a demanding standard for qualifying as disabled,”
21 and, consistent with that view, has narrowed the ap-
22 plication of the definition in various ways; and

23 (8) contrary to explicit congressional intent ex-
24 pressed in the ADA committee reports, the Supreme
25 Court has eliminated from the Act’s coverage indi-

1 individuals who have mitigated the effects of their im-
2 pairments through the use of such measures as
3 medication and assistive devices.

4 (b) PURPOSE.—The purposes of this Act are—

5 (1) to effect the ADA’s objectives of providing
6 “a clear and comprehensive national mandate for the
7 elimination of discrimination” and “clear, strong,
8 consistent, enforceable standards addressing dis-
9 crimination” by restoring the broad scope of protec-
10 tion available under the ADA;

11 (2) to respond to certain decisions of the Su-
12 preme Court, including *Sutton v. United Airlines,*
13 *Inc.*, 527 U.S. 471 (1999), *Murphy v. United Parcel*
14 *Service, Inc.*, 527 U.S. 516 (1999), *Albertson’s, Inc.*
15 *v. Kirkingburg*, 527 U.S. 555 (1999), and *Toyota*
16 *Motor Manufacturing, Kentucky, Inc. v. Williams*,
17 534 U.S. 184 (2002), that have narrowed the class
18 of people who can invoke the protection from dis-
19 crimination the ADA provides; and

20 (3) to reinstate original congressional intent re-
21 garding the definition of disability by clarifying that
22 ADA protection is available for all individuals who
23 are subjected to adverse treatment based on actual
24 or perceived impairment, or record of impairment, or
25 are adversely affected by prejudiced attitudes, such

1 as myths, fears, ignorance, or stereotypes concerning
2 disability or particular disabilities, or by the failure
3 to remove societal and institutional barriers, includ-
4 ing communication, transportation, and architectural
5 barriers, and the failure to provide reasonable modi-
6 fications to policies, practices, and procedures, rea-
7 sonable accommodations, and auxiliary aids and
8 services.

9 **SEC. 3. CODIFIED FINDINGS.**

10 Section 2(a) of the Americans with Disabilities Act
11 of 1990 (42 U.S.C. 12101) is amended—

12 (1) by amending paragraph (1) to read as fol-
13 lows:

14 “(1) physical or mental disabilities are natural
15 parts of the human experience that in no way dimin-
16 ish a person’s right to fully participate in all aspects
17 of society, yet people with physical or mental disabil-
18 ities having the talent, skills, abilities, and desires to
19 participate in society frequently are precluded from
20 doing so because of discrimination; others who have
21 a record of a disability or are regarded as having a
22 disability also have been subjected to discrimina-
23 tion;”.

24 (2) by amending paragraph (7) to read as fol-
25 lows:

1 “(7) individuals with disabilities have been sub-
2 ject to a history of purposeful unequal treatment,
3 have had restrictions and limitations imposed upon
4 them because of their disabilities, and have been rel-
5 egated to positions of political powerlessness in soci-
6 ety; classifications and selection criteria that exclude
7 persons with disabilities should be strongly
8 disfavored, subjected to skeptical and meticulous ex-
9 amination, and permitted only for highly compelling
10 reasons, and never on the basis of prejudice, igno-
11 rance, myths, irrational fears, or stereotypes about
12 disability;”.

13 **SEC. 4. DISABILITY DEFINED.**

14 Section 3 of the Americans with Disabilities Act of
15 1990 (42 U.S.C. 12102) is amended—

16 (1) by amending paragraph (2) to read as fol-
17 lows:

18 “(2) DISABILITY.—

19 “(A) IN GENERAL.—The term ‘disability’
20 means, with respect to an individual—

21 “(i) a physical or mental impairment;

22 “(ii) a record of a physical or mental
23 impairment; or

24 “(iii) being regarded as having a
25 physical or mental impairment.

1 “(B) RULE OF CONSTRUCTION.—

2 “(i) The determination of whether an
3 individual has a physical or mental impair-
4 ment shall be made without considering
5 the impact of any mitigating measures the
6 individual may or may not be using or
7 whether or not any manifestations of an
8 impairment are episodic, in remission, or
9 latent.

10 “(ii) The term ‘mitigating measures’
11 means any treatment, medication, device,
12 or other measure used to eliminate, miti-
13 gate, or compensate for the effect of an
14 impairment, and includes prescription and
15 other medications, personal aids and de-
16 vices (including assistive technology devices
17 and services), reasonable accommodations,
18 or auxiliary aids and services.

19 “(iii) Actions taken by a covered enti-
20 ty with respect to an individual because of
21 that individual’s use of a mitigating meas-
22 ure or because of a side effect or other
23 consequence of the use of such a measure
24 shall be considered actions taken on the
25 basis of a disability under this Act.”.

1 (2) by redesignating paragraph (3) as para-
2 graph (7) and inserting after paragraph (2) the fol-
3 lowing:

4 “(3) PHYSICAL IMPAIRMENT.—The term ‘phys-
5 ical impairment’ means any physiological disorder or
6 condition, cosmetic disfigurement, or anatomical loss
7 affecting one or more of the following body systems:
8 neurological; musculoskeletal; special sense organs;
9 respiratory, including speech organs; cardiovascular;
10 reproductive; digestive; genito-urinary; hemic and
11 lymphatic; skin; and endocrine.

12 “(4) MENTAL IMPAIRMENT.—The term ‘mental
13 impairment’ means any mental or psychological dis-
14 order such as mental retardation, organic brain syn-
15 drome, emotional or mental illness, or specific learn-
16 ing disabilities.

17 “(5) RECORD OF PHYSICAL OR MENTAL IMPAIR-
18 MENT.—The term ‘record of physical or mental im-
19 pairment’ means having a history of, or having been
20 misclassified as having, a physical or mental impair-
21 ment.

22 “(6) REGARDED AS HAVING A PHYSICAL OR
23 MENTAL IMPAIRMENT.—The term ‘regarded as hav-
24 ing a physical or mental impairment’ means being
25 perceived or treated as having a physical or mental

1 impairment whether or not the individual has an im-
2 pairment.”.

3 **SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.**

4 Section 102 of the Americans with Disabilities Act
5 of 1990 (42 U.S.C. 12112) is amended—

6 (1) in subsection (a), by striking “against a
7 qualified individual with a disability because of the
8 disability of such individual” and inserting “against
9 an individual on the basis of disability”; and

10 (2) in subsection (b), in the matter preceding
11 paragraph (1), by striking “discriminate” and in-
12 serting “discriminate against an individual on the
13 basis of disability”.

14 **SEC. 6. QUALIFIED INDIVIDUAL.**

15 Section 103(a) of the Americans with Disabilities Act
16 of 1990 (42 U.S.C. 12113(a)) is amended by striking
17 “that an alleged application” and inserting “that—

18 “(1) the individual alleging discrimination
19 under this title is not a qualified individual with a
20 disability; or

21 “(2) an alleged application”.

22 **SEC. 7. RULE OF CONSTRUCTION.**

23 Section 501 of the Americans with Disabilities Act
24 of 1990 (42 U.S.C. 12201) is amended by adding at the
25 end the following:

1 “(e) BROAD CONSTRUCTION.—In order to ensure
2 that this Act achieves its purpose of providing a com-
3 prehensive prohibition of discrimination on the basis of
4 disability, the provisions of this Act shall be broadly con-
5 strued to advance their remedial purpose.

6 “(f) REGULATIONS.—In order to provide for con-
7 sistent and effective standards among the agencies respon-
8 sible for enforcing this Act, the Attorney General shall
9 promulgate regulations and guidance in alternate acces-
10 sible formats implementing the provisions herein. The
11 Equal Employment Opportunity Commission and Sec-
12 retary of Transportation shall then issue appropriate im-
13 plementing directives, whether in the nature of regulations
14 or policy guidance, consistent with the requirements pre-
15 scribed by the Attorney General.

16 “(g) DEFERENCE TO REGULATIONS AND GUID-
17 ANCE.—Duly issued Federal regulations and guidance for
18 the implementation of this Act, including provisions imple-
19 menting and interpreting the definition of disability, shall
20 be entitled to deference by administrative bodies or offi-
21 cers and courts hearing any action brought under this
22 Act.”.