



Department of Justice

**STATEMENT OF
EVE HILL
SENIOR COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL
FOR CIVIL RIGHTS
DEPARTMENT OF JUSTICE**

**BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE**

**REGARDING
THE UNITED NATIONS CONVENTION
ON THE RIGHTS OF PERSONS WITH DISABILITIES**

JULY 12, 2012

**Statement of
Eve Hill
Senior Counselor to the Assistant Attorney General for Civil Rights
Department of Justice**

**Before the
Committee on Foreign Relations
United States Senate
Regarding the United Nations Convention on the Rights of Persons with Disabilities**

**Presented
July 12, 2012**

Good morning, Chairman Kerry, Ranking Member Lugar, and members of the Committee. Thank you for holding this hearing about the United States' ratification of the U.N. Convention on the Rights of Persons with Disabilities (Disabilities Convention). I am here today to speak to the relationship between the Disabilities Convention and our American disability-rights laws, which served, to a great extent, as the inspiration and model for the Disabilities Convention.

We in the United States are world leaders in the effort to protect the rights of persons with disabilities. Our early initiatives to protect disability rights and the subsequent decades-long effort to enhance disability rights have resulted in a panoply of American laws that protect the rights of persons with disabilities to a greater extent than any other country on the globe. Where many other countries approach disability rights from an aspirational vantage, we match our legislation with concrete, effective enforcement mechanisms that have led to visible, notable changes in our society in our lifetimes. Curb cuts, ramps, accessible parking spaces, American Sign Language interpreters, service animals – these are just a few of the ground-breaking changes that have swept through our society thanks to our vigorous enforcement of disability-rights laws.

While we in the United States too often take the tremendous advances in disability rights for granted, much work remains to be done and the Department of Justice and other Federal agencies are actively addressing discrimination on the basis of disability arising in a variety of arenas. These implementation efforts are driven by domestic law and practice and this approach would not change with the ratification of the Disabilities Convention. The Americans with Disabilities Act (ADA) addresses the disability nondiscrimination obligations of State and local governmental entities, including educational institutions, local government offices, parks, libraries, hospitals, nursing homes, and more, and by private entities, including stores, restaurants, recreational facilities, banks, and other providers of goods and services. The ADA also prohibits disability discrimination by employers with 15 or more employees. Our disability-rights laws affect more than six million businesses and nonprofit agencies, 80,000 units of State and local government, and 54 million people with disabilities. In addition, our Federal government has been committed to disability rights in its own programs and services, as well as those it funds, for decades through the Rehabilitation Act of 1973, the Architectural Barriers Act, and many other Federal laws.

Along with the Department of Justice, a panoply of other Federal agencies and entities are engaged in efforts to address discrimination on the basis of disability, including the Department of Housing and Urban Development, the Department of Education the Department of Veterans Affairs, the Department of Health and Human Services, the Department of Transportation, the Federal Communications Commission, the U.S. Access Board, and the Equal Employment Opportunity Commission (EEOC), each of which takes on significant responsibilities for the enforcement of our domestic disability-rights laws.

The Disabilities Convention is firmly grounded in, and animated by, the principles underlying U.S. disabilities laws, including the Rehabilitation Act of 1973, the ADA, and the Individuals with Disabilities Education Act. Therefore, ratifying the Disabilities Convention will not require new legislation and will not create any new rights, so long as it moves forward with the recommended Reservations, Understandings, and Declaration (or RUDs). The Convention was finalized in December 2006 after several years of drafting and negotiations, during which a U.S. delegation played an active role and joined in the consensus adoption of the Convention. The influence of U.S. disability law on the Disabilities Convention is apparent in the way the Convention mirrors our robust and well-developed U.S. disability-rights legislation. The Disabilities Convention follows the core principles of U.S. disability-rights laws – equality of treatment and nondiscrimination, with an emphasis throughout the Convention of rights provided “on an equal basis with others.” It incorporates concepts central to U.S. disability-rights law, such as independent living, inclusive education, and reasonable accommodation, limited, as it is in U.S. law, by the qualification that an accommodation need not be made if it entails undue burden or expense.

The Administration has proposed that the Senate consider a package of three Reservations, five Understandings, and one Declaration that will allow the United States to be in full compliance with the Convention without any changes to U.S. law. These are detailed in the transmittal package, but I would like to speak to three of them today.

First, the package includes a federalism reservation, similar to the federalism RUDs that were taken with the ratification of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). This federalism reservation would limit the obligations of the United States in areas covered by State and local government jurisdiction to measures appropriate to the Federal system, maintaining the current allocation of authority between the Federal Government and the 50 States. While we have a significant network of Federal disability laws, some treaty articles would be primarily implemented under State laws, such as Article 12, which addresses guardianship, and Article 14, which addresses civil commitment. In most cases, State and local laws and practices meet or exceed the requirements of Federal law and thus the Convention. In instances governed primarily by state law where some State and local protections may be less robust than the Convention would require, such as regarding Article 12(4), which addresses safeguards in determinations of legal capacity, the federalism reservation would preserve the existing balance of authority between the Federal Government and the States. As we have observed, led by the advances at the Federal level, the dominant trend in State and local disability-rights laws has been toward improvement and modernization. Thus, while the adoption of a federalism

reservation will allow us to adopt the Disabilities Convention without any new legislation, it in no way will impede us from continuing forward progress in disability rights protection.

I would also like to underscore the recommended reservation on private conduct. Similar to a reservation taken in treaties already ratified, such as the ICCPR and CERD, the private-conduct reservation is intended to ensure that regulation of the conduct of private parties under the Convention, including businesses and nongovernmental organizations, is co-extensive with such regulation under existing domestic law. United States law extensively governs significant areas of nongovernmental activity, such as disability discrimination by public accommodations, transport carriers, communications networks, and employers. At the same time, the U.S. Constitution and laws recognize a zone of private activity that is not extensively governed by Federal or State government, and, in some cases, expressly enjoys constitutional protection. This important reservation, therefore, would limit the treaty obligations undertaken by the United States respecting regulation of private conduct to be coextensive with such regulation under the Constitution and domestic laws of the United States. As the EEOC has separately confirmed to the Committee, with the proposed RUD package, the United States will rely on existing law to fully comply with the Disabilities Convention. (See the attached letter from the EEOC.)

Third, I also would like to address the proposed non-self-executing Declaration which would make it clear that the Convention could not be directly enforced by U.S. courts and would not give rise to individually enforceable rights. This is consistent with our treaty practice under the ICCPR, CERD, and the Convention Against Torture. With this Declaration and the other Reservations and Understandings, the United States would be able to implement its obligations under the Disabilities Convention using the existing network of laws and Federal enforcement machinery that afford protection and guarantees of nondiscrimination to persons with disabilities. As such, no new legislation would be required to ratify and implement the Convention.

With the ratification of the Disabilities Convention, we will greatly enhance our capacity to influence other countries to move towards the vigorous, effective standards we have set at home. In turn, as other countries move forward, American veterans, business people, retirees, students, tourists, active-duty military, and others will be able to enjoy the same kinds of accessibility and nondiscrimination overseas that they currently enjoy in the United States. Thus, with the ratification of the Disabilities Convention, we will level the playing field for American businesses that are already complying with accessibility standards and provide new opportunities for the export of accessible technology.

Protection of the rights of persons with disabilities has historically been grounded in bipartisan support and the principles anchoring the Convention find clear expression in our own domestic law. We therefore urge that this Committee give prompt and favorable consideration to this Convention, and that the full Senate give its advice and consent to its ratification, subject to the Administration's proposed reservations, understandings, and declaration.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

September 19, 2011

The Honorable John F. Kerry
Chairman
The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Affairs
Washington, D.C. 20510

Re: Convention on the Rights of Persons with Disabilities

Dear Chairman Kerry and Ranking Member Lugar:

We are writing to support the ratification of the Convention on the Rights of Persons with Disabilities ("Convention"), subject to the reservations, understandings, and declaration ("RUDs") described in the Executive Branch's transmittal package. We appreciate this opportunity to express our views concerning the Convention.

Created by the landmark Civil Rights Act of 1964, the Equal Employment Opportunity Commission ("EEOC" or "Commission") is a bipartisan body whose five members are appointed by the President and confirmed by the Senate. The EEOC is responsible for enforcing federal laws prohibiting employment discrimination on the basis of race, color, sex, religion, national origin, age, disability, and genetic information. The EEOC plays a central role in enforcing the employment provisions of the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), and the Rehabilitation Act, and has recently issued bi-partisan final regulations for the ADA Amendments Act of 2008. As the United States Congress recognized in enacting the ADA, anti-discrimination protection on the basis of disability benefits society as a whole by integrating people with disabilities into the workplace, and we believe that it works well for both people with disabilities and employers.

In requiring equal treatment for persons with disabilities, the Convention is anchored in the core concepts of U.S. civil rights law, which rejects stereotypes about the limitations of persons with disabilities and instead emphasizes the need for individualized assessment of a job applicant's or worker's qualifications and abilities. The Convention, like the federal disability laws, including those enforced by the EEOC, promotes inclusion, respect for human dignity, and accessibility.

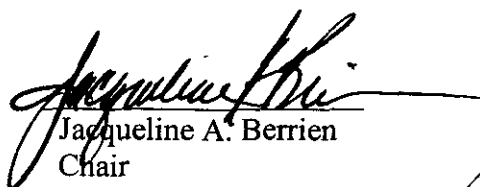
The EEOC does not usually take positions on international conventions. However, we believe that our assessment of the Convention and the RUDs may be of utility to the Committee on Foreign Affairs as it considers ratification. Ratification of the Convention will benefit persons with disabilities in the United States and worldwide by promoting the extension of the U.S.'s innovative and precedent-setting approach to accommodating persons with disabilities to foreign countries. It will help lead to greater protections and benefits for the millions of U.S. citizens

with disabilities who travel, conduct business, study, or reside overseas, including American veterans. Additionally, ratification will benefit American businesses by leveling the playing field and encouraging countries around the world to harmonize their standards with the Convention (U.S. standards meet or exceed those of the Convention). Finally, ratification will provide the United States—an historic leader on disability rights issues—with an enhanced opportunity to share its interpretations of disability law and its technical expertise regarding accommodations for persons with disabilities with foreign governments.


As the Executive Branch's transmittal package has concluded, the United States will rely on existing law to comply with the Convention, including its employment-related provisions, as modified by the recommended RUDs. The Commission therefore has no intention to change the way it currently enforces the ADA, GINA, and the Rehabilitation Act. Indeed, the Convention's employment-related provisions and accompanying RUDs are squarely anchored in the principles of U.S. disability law, including the statutes that EEOC enforces. Similarly, the treaty transmittal package recommends a federalism reservation to make clear that ratification would not require changes in the laws of the fifty states, including state employment non-discrimination laws, and would impose no burden on state legislatures.

Thank you for your attention to this important matter. We hope you find our assessment of the Convention and the RUDs to be useful as the Committee on Foreign Affairs considers ratification.

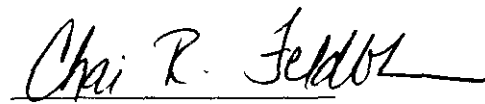
Sincerely,




Jacqueline A. Berrien
Chair



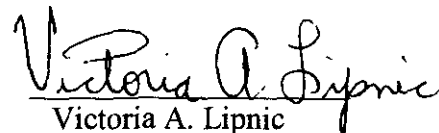
Stuart J. Ishimaru
Commissioner



Chai R. Feldblum
Commissioner



Constance S. Barker
Commissioner



Victoria A. Lipnic
Commissioner