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CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (TREATY DOC. 112–7)

JULY 31, 2012.—Ordered to be printed

Mr. KERRY, from the Committee on Foreign Relations, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany Treaty Doc. 112–7]

The Committee on Foreign Relations, to which was referred the Convention on the Rights of Persons with Disabilities, signed on June 30, 2009 (Treaty Doc. 112–7) (the "Convention"), having considered the same, reports favorably thereon with three reservations, eight understandings and two declarations, as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of advice and consent.

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I. Purpose

The purpose of this Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.

II. Background

The Convention on the Rights of Persons with Disabilities was negotiated from 2002 to 2006, and was adopted on December 13, 2006. It was opened for signature on March 30, 2007. One hundred and seventeen countries and the European Union are parties to the Convention.

The United States provides greater legal protections against discrimination for individuals with disabilities than most of the rest of the world. Therefore, Americans with disabilities often face significant and, at times, prohibitive, barriers when they travel, work, serve, study and reside in other countries.

Ratification of the Convention will advance our national interest in multiple ways. Among its benefits, the Convention will reaffirm and strengthen the global leadership role of the United States with regard to the rights of disabled persons, one to which our domestic record already attests. As a State Party to the Convention, the United States will be in a position to better promote the fundamental freedoms and individual autonomy of individuals with disabilities. It will allow us to more effectively support, assist, and encourage other countries to bring their domestic laws into compliance with the Convention and up to and in line with U.S. standards. Such action will benefit Americans with disabilities, including our disabled servicemen and servicewomen and disabled veterans, enabling them to travel, work, serve, study and reside in other countries without prohibitive barriers.

July 26, 2012 marked the twenty-second anniversary of the landmark Americans with Disabilities Act. Through this and other legislation, the United States became a world leader in the protection of the rights of disabled individuals. Joining the Convention will be a significant step in continuing this leadership and will give the United States another tool to positively impact the lives of the fifty-four million Americans with disabilities and the one billion disabled individuals worldwide.

III. Major Provisions

A detailed article-by-article analysis of the Convention may be found in the Letter of Submittal from the Secretary of State to the President ("Letter of Submittal"). Key provisions of the Convention are summarized below.

Scope of the Convention

The Convention is intended to recognize and protect the rights of individuals with disabilities. Its stated purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity." Article 3 of the Convention sets out broad principles of autonomy, acceptance, and accessibility for individuals with disabilities. Equality and non-

discrimination are over-arching principles permeating the entire Convention.

All Parties to the Convention agree to "ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability." Article 4 requires Parties to adopt appropriate legislative, administrative, and other measures for the implementation of the rights in the Convention. The Convention's provisions can generally be grouped into the following categories: accessibility, education, equality, employment, and health.

Definition of Disability

The Convention does not contain an explicit definition of "disability." Article 1 states that persons with disabilities "include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." As the Letter of Submittal makes clear, the absence of an express definition of the terms "disability" and "persons with disabilities" was a conscious decision at the negotiating conference for the Convention. As explained in the letter of submittal, "the convention is not intended to supplant detailed and precise definitions of disability found in national legislation but is rather intended to afford States Parties flexibility in defining disability under domestic law." See Letter of Submittal at 5-7. As the U.S. legal framework demonstrates, this approach is preferable given that the definition of these terms may vary depending on the purpose of the law (e.g. employment discrimination or access to health services). See Letter of Submittal at 3-5.

Accessibility Provisions

One fundamental goal of the Convention is to enable disabled persons to live independently and participate in all aspects of life. To that end, Article 9 requires States Parties to:

> take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

These measures include the removal of obstacles to buildings, transportation, information, communications, and electronic and emergency services. Article 18 of the Convention directs States Parties to recognize the rights of disabled individuals to "liberty of movement," to provide the freedom to choose their residence, and to guarantee the right to a nationality, on an equal basis with others. In particular, it requires States Parties to ensure that disabled persons are not deprived of their nationality or their ability to enter their country, arbitrarily or on the basis of their disability, and are free to leave any country, without discrimination on the basis of their disability. It requires children with disabilities to be "registered immediately after birth and [to] have the right from

birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents."

Article 19 emphasizes the right of all persons with disabilities to live and participate in the community on an equal basis. States Parties must ensure that people with disabilities have the opportunity to select their place of residence on an equal basis with others and access residential and other community support services, including assistance necessary for inclusion in the community.

Article 20 emphasizes that States Parties must attempt to ensure personal mobility for people with disabilities, in part by facilitating access to assistive technologies and live assistance.

Education Provisions

Article 24 of the Convention requires States Parties to "ensure an inclusive education system at all levels." Children with disabilities must be offered the same opportunities for free primary and secondary education as other children in their communities. Their individual needs must be reasonably accommodated, and they must receive support "to facilitate their effective education." Additionally, the Convention specifically requires that Parties facilitate methods of communication to assist students with disabilities in fully participating in the educational process, including but not limited to the use of sign language, Braille, and other modes of communication.

Employment Provisions

Article 27 of the Convention recognizes a right of individuals with disabilities to work in an "environment that is open, inclusive and accessible to persons with disabilities." By joining the Convention, Parties agree to prohibit employment discrimination based on an employee or applicant's disability. If necessary, the Parties are to adopt legislation to bar such discrimination in various aspects of the employment process, including recruitment, hiring, retention, promotion, and termination. Employees with disabilities must be reasonably accommodated, permitted access to training programs, and allowed to exercise labor rights on an equal basis with others. States Parties must also employ persons with disabilities in the public sector on a non-discriminatory basis.

Equality Provisions

Article 5 of the Convention creates a broad prohibition against discrimination and requires Parties to recognize that "all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law." States Parties to the Convention must accordingly prohibit discrimination based on disability and take steps to ensure that reasonable accommodation is provided to disabled individuals. In Article 10, Parties reaffirm "that every human being has the inherent right to life" and agree to take all necessary measures to "ensure its effective enjoyment by persons with disabilities on an equal basis with others."

Articles 12 and 13 mandate equal recognition before the law for disabled persons. Parties must provide equal access to justice systems and ensure that measures relating to the exercise of legal capacity provide safeguards to prevent abuse in accordance with

international human rights law, while allowing for impartial judicial bodies. In addition, Articles 6 and 7 of the Convention specifically recognize the human rights of women and children with disabilities.

Article 14 requires Parties to ensure, on an equal basis with others, that persons with disabilities are not unlawfully or arbitrarily deprived of liberty. Article 15 states that persons should not be subjected to torture or cruel, inhuman, or degrading treatment or punishment. Article 16 requires States Parties to take measures to protect individuals with disabilities from all forms of exploitation, violence, and abuse—including gender-based abuse—as well as provide for the physical and psychological recovery of victims and investigation and, where appropriate, prosecution of perpetrators. Article 21 declares that disabled persons must be able to exercise their right to freedom of expression and opinion, through all forms of communication, on an equal basis with others. It advocates for the provision of information in accessible formats and technologies, and the facilitation of sign language, Braille, and other alternative methods of communication. Article 23 requires Parties to eliminate discrimination against persons with disabilities in domestic matters, such as marriage and parenthood. Article 28 requires Parties to promote realization by people with disabilities of their equal right to an adequate standard of living and equal access to food, clothing, and housing. Article 29 requires Parties to guarantee equal political rights, including accessible procedures for voting, as well as promote participation of disabled individuals in public affairs and nongovernmental organizations, on a nondiscriminatory basis. Article 30 requires Parties to recognize the rights of disabled individuals to take part in cultural life and recreational and sporting activities on a nondiscriminatory basis.

Health Provisions

Under Article 25 of the Convention, the States Parties recognize that individuals with disabilities have the same right as others to enjoyment of the highest attainable standard of health. They must be offered the same range, quality, and standard of care as that available to other persons. Health care professionals must provide care on the same basis as they would provide if the individual seeking care did not have a disability. Article 25 also prohibits discrimination based on disability related to the provision of health and life insurance.

Committee on the Rights of Persons with Disabilities

Article 34 of the Convention creates a Committee on the Rights of Persons with Disabilities, whose members are elected by States Parties to the Convention. States Parties are required to submit periodic reports to the Committee that detail the measures they have taken to implement their obligations, as well as progress toward implementation. The Committee will then return "such suggestions and general recommendations on the report as it may consider appropriate." These recommendations are advisory only. They are not binding on States Parties.

IV. Entry Into Force and Amendments

The Convention enters into force for a ratifying or acceding State on the thirtieth day after its instrument of ratification or accession has been deposited. For the United States, this means thirty days after the deposit of the U.S. instrument of ratification with the advice and consent of the Senate.

Amendments to articles 34, 38, 39 and 40 (which concern the Committee on the Rights of Persons with Disabilities) may be adopted only by a consensus decision of States Parties to the Convention. If adopted, such amendments enter into force and become binding on all States Parties thirty days after two-thirds of all States Parties submit instruments of ratification for the amendment.

For all other articles of the Convention, amendments may be adopted by majority vote at a meeting at which at least two-thirds of States Parties are present. If adopted, such amendments enter into force thirty days after two thirds of States Parties submit instruments of ratification for the amendment. However, such amendments are binding only on those States Parties that submit instruments of ratification.

V. Withdrawal

Pursuant to Article 48, a Party may withdraw from the Convention by written notification to the Secretary-General of the United Nations. This withdrawal becomes effective one year after the receipt of notification.

VI. Implementing Legislation

The provisions of the Convention are not self-executing. Accordingly, they cannot be directly enforced by U.S. courts or give rise to individually enforceable rights in the United States.

The United States has a comprehensive network of existing federal and state disability laws and enforcement mechanisms, including the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; the Rehabilitation Act, 29 U.S.C. § 791 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 251(a)(2) and 255; the Fair Housing Act, as amended in 1988, 42 U.S.C. § 3601 et seq.; the Air Carrier Access Act, 49 U.S.C. § 41705; the Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C. § 1973ee et seq.; the Help America Vote Act of 2002, 42 U.S.C. § 15301-15545; the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq.; the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 et seq.; the Copyright Act, 17 U.S.C. §§ 101 et seq.; the Genetic Information Nondiscrimination Act, 42 U.S.C. §§ 200ff et seq.; the Individuals with Disabilities Education Act, 20 U.C.C. § 1400 et seq., and the Architectural Barriers Act, 42 U.S.C. § 4151 et seq. In addition, disability nondiscrimination provisions have been integrated into statutes of general applicability to federal policies and programs. See Letter of Submittal at 91.

In the large majority of cases, existing federal and state law meets or exceeds the requirements of the Convention. The recommended reservations in the resolution of advice and consent (discussed in section VIII below) make clear that the United States

will limit its obligations under the Convention to exclude the narrow circumstances in which implementation of the Convention could otherwise implicate federalism or private conduct concerns. As the Department of Justice made clear, ratification of the Convention with the recommended reservations will not alter the balance of power between the federal government and the states.

No additional implementing legislation is necessary with respect to the Convention.

VII. Committee Action

The committee held a public hearing on the Convention on July 12, 2012. Testimony was received from the Honorable John McCain, United States Senator; the Honorable Tom Harkin, United States Senator; the Honorable Judith Heumann, Special Adviser for International Disability Rights, U.S. Department of State; Ms. Eve Hill, Senior Counselor to the Assistant Attorney General for Civil Rights, U.S. Department of Justice; The Honorable Richard Thornburgh, Former Attorney General of the United States and Of Counsel, K&L Gates, LLP; Mr. John Wodatch, Former Chief of the Disability Rights Section, Civil Rights Division, U.S. Department of Justice; Mr. Steven Groves, Bernard and Barbara Lomas Fellow, The Heritage Foundation; Dr. Michael Farris, Chancellor, Patrick Henry College; and Mr. John Lancaster, 1st Lt., U.S. Marine Corps (Ret.), and Retired Executive Director of the National Council On Independent Living. (The transcript of the Hearing is included in Annex 1.)

On July 26, 2012, the committee considered the Convention and ordered it favorably reported by a roll call vote of 13–6, with a quorum present and a majority of those members physically present and voting in the affirmative. The following Senators voted in the affirmative: Kerry, Boxer, Menendez, Cardin, Casey, Webb, Shaheen, Coons, Durbin, Udall, Lugar, Isakson and Barrasso. The following Senators voted in the negative: Corker, Risch, Rubio, Inhofe, DeMint and Lee.

VIII. Committee Recommendations and Comments

A. General Comments

The committee recommends that the Senate give its advice and consent to ratification of the Convention. The committee believes that the Convention advances important U.S. interests in a number of areas.

The committee is persuaded by the support of experts in disability law and advocacy that ratification of the Convention will enable the United States to more effectively advocate on behalf of the millions of disabled Americans. These experts indicate that it will give the United States a more effective voice in advocating for standards and practices abroad that comport with the high standards for protection of disabled persons found in U.S. domestic law and practice. In addition to our bilateral efforts, ratification will allow the U.S. to nominate U.S. disabilities experts to sit on the Disabilities Committee, giving the United States a formal voice and vote in the Assembly of States Parties to the Convention.

Sustained and effective U.S. leadership in such areas will have a positive, practical impact on the lives of disabled Americans. Wit-

nesses before the committee testified that U.S. ratification will make it more likely that other governments will adopt standards and regulations concerning the disabled that conform to U.S. practice, and that the ability of disabled Americans to travel, work, serve, study, and live abroad will be enhanced greatly. For example, greater uniformity in standards such as the width of doorways or the size and pitch of ramps could advantage Americans who use wheelchairs when they travel abroad.

Joining the Convention may also benefit American businesses. If countries adhere to the standards set forth in the Convention, then foreign businesses may be required to adopt new standards and practices to conform to new disabilities laws around the globe. To the extent these standards are modeled on U.S. law and practice, American businesses are already equipped to comply and thus have an advantage over foreign competitors. Moreover, American products and services that are already accessible to the disabled will continue to find new markets in countries whose disability standards move closer to those of the United States.

As discussed in section VI and as explained in detail in the Letter of Submittal, in light of the reservations included in the resolution of advice and consent, current federal and state law meets or exceeds the requirements of the Convention and no changes to federal or state law will be required as a result of U.S. ratification.

B. Nature of the Convention as a Nondiscrimination Instrument

The committee notes that the Convention is a nondiscrimination instrument, requiring that services and opportunities be made available on an equal basis to persons with disabilities and those without disabilities. Therefore, as the second understanding in the resolution of advice and consent makes clear, with respect to certain economic, social and cultural rights mentioned in the Convention, States Parties to the Convention are not obligated to provide new rights by virtue of accession to the Convention. Rather, the obligations of Parties to the Convention are to prevent discrimination on the basis of disability in the provision of such rights only insofar as they are already recognized and implemented under domestic law.

This concept includes health services, as Article 25 of the Convention makes clear. In the course of the committee's consideration of the Convention, an understanding was added to the resolution of advice and consent stating that Article 25 requires that health programs and procedures are provided to individuals with disabilities on a nondiscriminatory basis and does not address the provision of any particular health program or procedure.

C. The Disabilities Committee

In the course of the committee's consideration of the Convention, questions were raised concerning the role of the Disabilities Committee established under Article 34 of the Convention. As discussed above, by ratifying the Convention, the U.S. will have the ability to nominate American citizens to serve as experts on the Disabilities Committee. The committee believes that American engagement with the Disabilities Committee will inure to the benefit of disabled Americans when they travel, work, serve, study and reside abroad. The Convention will require the United States to submit

periodic reports to the Disabilities Committee for its review. In these reports, U.S. officials will have an opportunity to highlight the effectiveness of U.S. law and practice concerning individuals with disabilities and demonstrate that our laws and standards would be a good model for the rest of the world.

The text of the Convention is clear that the role of the Disabilities Committee is limited. The Disabilities Committee is authorized under Article 36 to "consider" State Party Reports and to "make such suggestions and general recommendations on the report as it may consider appropriate." Under Article 37, the Disabilities Committee "shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention."

The Disabilities Committee has no authority to compel actions by States Parties. While the conclusions, recommendations, or general comments issued by the Disabilities Committee could in some instances reflect established customary international law, the Disabilities Committee has no authority to create customary international law, and such statements by the Disabilities Committee do not, in and of themselves, constitute customary international law, as the sixth understanding in the resolution of advice and consent makes clear.

States Parties to the Convention are not required to give greater weight to the interpretation of the Convention by the Disabilities Committee than they do their own interpretation. Further, they are not required to conform their interpretations or make them consistent with those of the Disabilities Committee.

D. Parental Rights

The committee closely reviewed the "best interests of the child" standard set forth in Article 7 of the Convention, including whether U.S. ratification of the Convention could negatively impact parental rights with respect to disabled children, including parents who opt to home-school disabled children. The Department of Justice testified unequivocally that parental rights would not be hindered in any way. In response to written questions for the record, Senior Counselor to the Assistant Attorney General for Civil Rights Eve Hill stated that "[i]n light of the federalism and private conduct reservations, among others, there would be no change to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise or educate their children as a result of ratification." To emphasize the unified views of the Senate and the executive branch on this issue, the committee unanimously agreed to include the seventh understanding in the resolution of advice and consent, which makes clear that the term or principle of the "best interests of the child" as used in Article 7(2) will be applied and interpreted to be coextensive with its application and interpretation under United States law, and that nothing in Article 7 requires a change to existing United States law.

E. Support for the Convention

The President has expressed his strong support for U.S. ratification of the Convention. In addition, the committee has received letters of support for the Convention from former President George H.W. Bush, former Senator Bob Dole, and a wide range of affected

groups and associations, including: ACCSES; Advocacy Center (Louisiana); African Methodist Episcopal Church Connectional Health Commission; AHEAD—Association on Higher Education and Disability; Air Force Sergeants Association; Air Force Women Officers Associated; Alabama Disabilities Advocacy Program; Alexander Graham Bell Association for the Deaf and Hard of Hearing; American Academy of Audiology; American Association of People with Disabilities; American Association on Health Disability; American Association on Intellectual and Developmental Disabilities; American Baptist Home Missions Societies; American Bar Association; American Council of the Blind; American Council of the Blind; American Counseling Association; American Foundation for the Blind; American GI Forum; American Muslim Health Professionals; American Psychological Association; American Society for Deaf Children; American Speech Language-Hearing Association; American Speech-Language Hearing Association; American Therapeutic Recreation Association; Americans Association of People with Disabilities; AMVETS; Anti-Defamation League; Arizona Center for Disability Law; Association for Assistive Technology Act Programs; Association of Jewish Family & Children's Agencies; Association of the United States Navy; Association of University Centers on Disabilities; Autism National Committee; B'nai B'rith International; Bazelon Center for Mental Health Law; Blinded Veterans Association; Brain Injury Association of America; Chamber of Commerce of the United States of America; Christian Church of Disciples of Christ (Disciple Home Missions); Christian Reformed Church in North America (Disability Concerns); Client Assistance Program and Protection & Advocacy (American Samoa); Community Legal Aid Society (Delaware); Conference of Educational Administrators of Schools and Programs for the Deaf; Consortium for Citizens with Disabilities; Council for Exceptional Children; Council of American Instructors of the Deaf Council of Parent Attorneys and Advocates; Council of State Administrators of Vocational Rehabilitation; Daniel Jordan Fiddle Foundation; Deaf and Hard of Hearing Alliance; Disability Law & Advocacy Center of Tennessee; Disability Law Center (Massachusetts); Disability Law Center (Utah); Disability Law Center of Alaska; Disability Law Center; Disability Rights California; Disability Rights Center (Arkansas); Disability Rights Center (Maine); Disability Rights Center (New Hampshire); Disability Rights Center of Kansas;Disability Rights Center of Virgin Islands; Disability Rights Education and Defense Fund; Disability Rights Florida; Disability Rights Idaho; Disability Rights Iowa; Disability Rights Mississippi; Disability Rights Montana; Disability Rights Network of Pennsylvania; Disability Rights New Jersey; Disability Rights New Mexico; Disability Rights North Carolina; Disability Rights Oregon; Disability Rights Texas; Disability Rights Vermont; Disability Rights Washington; Disability Rights Wisconsin; Disabled American Veterans; Disciples Justice Action Network; Division for Early Childhood of the Council for Exceptional Children; Easter Seals; Epilepsy Foundation; Equal Rights for Persons with Disabilities International, Inc. Equip for Equality (Illinois); Family Voices; Georgia Advocacy Office; Goodwill Industries International; Guam Legal Services Corporation; Hands and Voices; Hawaii Disability Rights Center; Hearing Health Foundation; Hearing Loss Association of America; Hindu

American Foundation; IDEA Infant Toddler Coordinators Association; Indiana Protection and Advocacy Services; International Hearing Association; Iraq and Afghanistan Veterans of America Jewish War Veterans; Islamic society of North America; Jewish Council for Public Affairs; Jewish Federation of Metropolitan Chicago; Kentucky Protection and Advocacy; L'Arche USA; Lutheran Services in America Disability Network; Maryland Disability Law Center; Mental Health America; Michigan Protection and Advocacy Services; Military Officers Association of America; Minnesota Disability Law Center; Missouri Protection and Advocacy Services; Muslim Public Affairs Council; Nation Council of Jewish Women; National Alliance of Mental Illness; National Association for Black Veterans; National Association of Councils on Developmental Disabilities; National Association of Head Injury Administrators; National Association of States United for Aging and Disabilities; National Association of School Psychologists; National Association of State Directors of Developmental Disabilities Services; National Association of State Directors of Special Education; National Benevolent Association of the Christian Church of Disciples of Christ; National Council of Jewish Women; National Council on Disability; National Council on Independent Living; National Council on the Churches of Christ in the USA; National Court Reports Association; National Disability Rights Network; National Down Syndrome Congress; National Down Syndrome Society; National Guard Association of the United States; National Military Family Association; National Multiple Sclerosis Society; National Rehabilitation Association; Native American Disability Law Center; Nebraska Advocacy Services Nevada Disability Advocacy & Law Center; NETWORK—a National Catholic Social Justice Lobby; New York State Commission on Quality of Care & Advocacy for Persons with Disabilities; North Dakota Protection & Advocacy Project; Northern Marianas Protection & Advocacy Systems; Office of Protection and Advocacy for Persons with Disabilities (Connecticut); Office of the Governor/Ombudsman for Persons with Disabilities (Puerto Rico);Ohio Legal Rights Service; Oklahoma Disability Law Center; Paralyzed Veterans of America; Perkins School for the Blind; Presbyterian Church (U.S.A.) Office of Public Witness; Protection and Advocacy for People with Disabilities (South Carolina); Rabbinical Assembly; Reformed Church in America (Disability Concerns); Registry of Interpreters for the Deaf; Rhode Island Disability Law Center; South Dakota Advocacy Services; Special Olympics; TASH; Telecommunications for the Deaf and Hard of Hearing, Inc.; The Advocacy Institute; The American Legion; The Arc of the United States; The Disability Rights Education and Defense Fund; The Jewish Disability Network; The Jewish Federations of North America; The Leadership Conference on Civil and Human Rights; The Legal Center (Colorado); The Rabbinical Assembly; The Rehabilitation Engineering and Assistive Technology Society of North America; UJA-Federation of New York; Union of Reform Judaism; Unitarian Universalist Association of Congregations; United Cerebral Palsy; United Church of Christ (Justice Witness Ministries); United Methodist General Board of Church and Society United Sates International Council on Disabilities; United Spinal Association; United States International Council on Disabilities; United States Olympic Committee; United Synagogue of Conservative Judaism;

University Legal Services (District of Columbia); Veterans for Common Sense; Veterans of Foreign Wars; Veterans of Modern Warfare; VetsFirst; Vietnam Veterans of America; West Virginia Advocates; Women's Rabbinic Network; Wounded Warrior Project; and the Wyoming Protection and Advocacy System. (Copies of letters received by the committee are included in Annex 4.)

F. Discussion regarding the Resolution of Advice and Consent

The committee has included a number of reservations, understandings and declarations in the resolution of advice and consent. The committee notes that Article 46 of the Convention makes clear that reservations to the treaty are permitted, provided that they are not incompatible with the object and purpose of the Convention.

1. Reservations

Section (a) of the resolution contains three reservations.

Federalism. The first reservation addresses federalism issues. Article 4(1) of the Convention states that the provisions of the Convention "shall extend to all parts of federal States without any limitations or exceptions." Because certain provisions of the Convention concern matters traditionally governed by state law rather than federal law, and because in very limited instances some state and local standards are less vigorous than the Convention would require, a reservation is required to preserve the existing balance between federal and state jurisdiction over these matters.

Non-Regulation of Private Conduct. The second reservation concerns the extent of the United States obligations under the Convention with regard to private conduct. Although the United States generally and broadly applies nondiscrimination laws to private entities with respect to operation in public spheres of life, some laws set a threshold before their protections are triggered. For example, selected employment-related civil rights laws apply only to employers that have 15 or more employees. Thus, existing legislation does not extend to absolutely all private discrimination against persons with disabilities, such as actions by a sole proprietor or rental of a single-family home. Further, individual privacy and freedom from governmental interference in certain private conduct are also recognized as among the fundamental values of our free and democratic society. Accordingly, a reservation is required to make clear that the United States does not accept any obligation under the Convention to enact legislation or take any other measures with respect to private conduct except as mandated by the Constitution and laws of the United States. The committee notes that in a written response for the record, the Department of State and the Department of Justice confirmed that in light of this reservation, ratification of the Disabilities Convention would not impose any new requirements on employers exempted by the Americans with Disabilities Act.

Torture, Cruel, Inhumane or Degrading Treatment. The third reservation concerns the extent of the United States obligations under Article 15 (Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment). As Article 15 of the Convention covers the same subject matter as Articles 2 and 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrad-

ing Treatment or Punishment and Article 7 of the International Covenant on Civil and Political Rights, the third reservation makes clear that the obligations of the United States under Article 15 of the Convention shall be subject to the same reservations and understandings that apply to U.S. ratification of those two treaties.

2. Understandings

Section (b) of the resolution contains eight understandings.

First Amendment. The first understanding makes clear that the Convention, including Article 8, does not authorize or require legislation or other action that would restrict the right of free speech, expression, and association protected by the Constitution and laws of the United States of America.

Economic, Social and Cultural Rights. The second understanding makes clear that with respect to the application of certain economic, social and cultural rights set forth in specific articles of the Convention, the United States understands that its obligations are only to prevent discrimination on the basis of disability in the provision of any such rights insofar as they are recognized and implemented under U.S. federal law.

Equal Employment Opportunity. The third understanding makes clear that the Convention does not require the adoption of a comparable worth framework for persons with disabilities. The committee notes that in a written response for the record, the Department of State and the Department of Justice confirmed their view that current U.S. law is consistent with the language in Article 27 regarding equal pay for work of equal value.

U.S. Military Departments. The fourth understanding concerns Article 27 of the Convention and the obligation to take appropriate steps to afford to individuals with disabilities the right to equal access to equal work, including nondiscrimination in hiring and promotion of employment of persons with disabilities in the public sector. Under current U.S. law, certain departments of the U.S. military charged with defense of the national security are exempted from liability under the Rehabilitation Act of 1973. The understanding makes clear that the United States understands the obligations of Article 27 to take appropriate steps as not affecting hiring, promotion, or other terms or conditions of employment of uniformed employees in the U.S. military departments and that Article 2 does not recognize rights in this regard that exceed those rights available under U.S. federal law.

Definitions. The fifth understanding clarifies that the terms "disability," "persons with disabilities," and "undue burden" (terms that are not defined in the Convention), "discrimination on the basis of disability," and "reasonable accommodation" are defined for the United States of America coextensively with the definitions of such terms pursuant to relevant United States law.

Article 34 Committee. The sixth understanding concerns the Committee on the Rights of Persons with Disabilities, established under Article 34 of the Convention. It clarifies with particularity the limited powers of that Committee, including that it has no authority to compel actions by states parties, and the United States does not consider conclusions, recommendations, or general comments issued by the Committee as constituting customary inter-

national law or to be legally binding on the United States in any manner.

Health Programs and Procedures. The seventh understanding clarifies that the Convention is a nondiscrimination instrument, and that therefore nothing in the Convention, including Article 25, addresses the provision of any particular health program or procedure. Rather, the Convention requires that health programs and procedures are provided to individuals with disabilities on a nondiscriminatory basis.

Best Interest of the Child. The eighth understanding concerns the "best interests of the child" standard set forth in Article 7(2) of the Convention. It clarifies that the term or principle of the "best interests of the child" as used in Article 7(2), will be applied and interpreted to be coextensive with its application and interpretation under United States law, and that consistent with this understanding, nothing in Article 7 requires a change to existing United States law.

3. Declarations

Section (c) of the resolution contains two declarations.

Non Self-Executing. The first declaration states that the provisions of the Convention are not self-executing. This reflects the shared understanding of the committee and the executive branch that the provisions of the Treaty are not self-executing, are not directly enforceable in U.S. courts, and do not confer private rights of action enforceable in the United States.

U.S. Law Complies. The second declaration provides that, in view of the reservations to be included in the instrument of ratification, current United States law fulfills or exceeds the obligations of the Convention for the United States. As discussed in section VI above, the committee is satisfied that, in view of the reservations in the resolution of advice and consent and the comprehensive network of existing federal and state disability laws and enforcement mechanisms, no additional implementing legislation is necessary for the United States to comply with the Convention.

VIII. Text of Resolution of Advice and Consent to Ratification

Resolved, (two-thirds of the Senators present concurring therein),

That the Senate advises and consents to the ratification of the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on December 13, 2006, and signed by the United States of America on June 30, 2009 ("the Convention") (Treaty Doc. 112–7), subject to the reservations of subsection (a), the understandings of subsection (b), and the declarations of subsection (c).

(a) Reservations.—The advice and consent of the Senate to the ratification of the Convention is subject to the following reservations, which shall be included in the instrument of ratification:

(1) This Convention shall be implemented by the Federal Government of the United States of America to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the obligations of the

United States of America under the Convention are limited to the Federal Government's taking measures appropriate to the Federal system, which may include enforcement action against state and local actions that are inconsistent with the Constitution, the Americans with Disabilities Act, or other Federal laws, with the ultimate objective of fully implementing the Convention.

(2) The Constitution and laws of the United States of America establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in certain private conduct are also recognized as among the fundamental values of our free and democratic society. The United States of America understands that by its terms the Convention can be read to require broad regulation of private conduct. To the extent it does, the United States of America does not accept any obligation under the Convention to enact legislation or take other measures with respect to private conduct except as mandated by the Constitution and laws of the United States of America.

(3) Article 15 of the Convention memorializes existing prohibitions on torture and other cruel, inhuman, or degrading treatment or punishment contained in Articles 2 and 16 of the United Nations Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and further provides that such protections shall be extended on an equal basis with respect to persons with disabilities. To ensure consistency of application, the obligations of the United States of America under Article 15 shall be subject to the same reservations and understandings that apply for the United States of America with respect to Articles 1and 16 of the CAT and Article 7 of the ICCPR.

(b) UNDERSTANDINGS.—The advice and consent of the Senate to the ratification of the Convention is subject to the following understandings, which shall be included in the instrument of ratification:

(1) The United States of America understands that this Convention, including Article 8 thereof, does not authorize or require legislation or other action that would restrict the right of free speech, expression, and association protected by the Constitution and laws of the United States of America.

(2) Given that under Article 1 of the Convention "[t]he purpose of the present Convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities," with respect to the application of the Convention to matters related to economic, social, and cultural rights, including in Articles 4(2), 24, 25, 27, 28 and 30, the United States of America understands that its obligations in this respect are to prevent discrimination on the basis of disability in the provision of any such rights insofar as they are recognized and implemented under U.S. Federal law.

(3) Current U.S. law provides strong protections for persons with disabilities against unequal pay, including the right to equal pay for equal work. The United States of America under-

stands the Convention to require the protection of rights of individuals with disabilities on an equal basis with others, including individuals in other protected groups, and does not require adoption of a comparable worth framework for persons with disabilities.

(4) Article 27 of the Convention provides that States Parties shall take appropriate steps to afford to individuals with disabilities the right to equal access to equal work, including nondiscrimination in hiring and promotion of employment of persons with disabilities in the public sector. Current interpretation of Section 501 of the Rehabilitation Act of 1973 exempts U.S. Military Departments charged with defense of the national security from liability with regard to members of the uniformed services. The United States of America understands the obligations of Article 27 to take appropriate steps as not affecting hiring, promotion, or other terms or conditions of employment of uniformed employees in the U.S. Military Departments, and that Article 27 does not recognize rights in this regard that exceed those rights available under U.S. Federal law.

(5) The United States of America understands that the terms "disability," "persons with disabilities," and "undue burden" (terms that are not defined in the Convention), "discrimination on the basis of disability," and "reasonable accommodation" are defined for the United States of America coextensively with the definitions of such terms pursuant to relevant United States law.

(6) The United States of America understands that the Committee on the Rights of Persons with Disabilities, established under Article 34 of the Convention, is authorized under Article 36 to "consider" State Party Reports and to "make such suggestions and general recommendations on the report as it may consider appropriate." Under Article 37, the Committee "shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention." The United States of America understands that the Committee on the Rights of Persons with Disabilities has no authority to compel actions by states parties, and the United States of America does not consider conclusions, recommendations, or general comments issued by the Committee as constituting customary international law or to be legally binding on the United States in any manner.

(7) The United States of America understands that the Convention is a nondiscrimination instrument. Therefore, nothing in the Convention, including Article 25, addresses the provision of any particular health program or procedure. Rather, the Convention requires that health programs and procedures are provided to individuals with disabilities on a nondiscriminatory basis.

(8) The United States of America understands that, for the United States of America, the term or principle of the "best interests of the child" as used in Article 7(2), will be applied and interpreted to be coextensive with its application and interpretation under United States law. Consistent with this understanding, nothing in Article 7 requires a change to existing United States law.

(c) DECLARATIONS.—The advice and consent of the Senate to the ratification of the Convention is subject to the following declarations:

The United States of America declares that the provisions of the Convention are not self-executing.

The Senate declares that, in view of the reservations to be included in the instrument of ratification, current United States law fulfills or exceeds the obligations of the Convention for the United States of America.

X. MINORITY VIEWS OF SENATORS RISCH, RUBIO, INHOFE, DEMINT, AND LEE

During the foundational years of our country, the leaders who charted its course warned us about foreign entanglements that would undermine our sovereignty and threaten our domestic affairs. So strong was his concern that President George Washington focused part of his farewell address on this issue. President Thomas Jefferson, author of the Declaration of Independence, stated:

> Peace, commerce, and honest friendship with all nations—entangling alliances with none.

The Founders wisely cautioned future generations of Americans against foreign entanglements such as the U.N. Convention on the Rights of Persons with Disabilities. The admirable goal of advancing the interests of disabled people does not necessitate ascension to an international treaty that will assume the same legal authority as the Constitution upon ratification.

The Constitution requires a two-thirds vote of the Senate for treaty ratification, which demonstrates the seriousness and concern the framers of the Constitution held for such international accords. They sought to ensure these agreements were comprehensively scrutinized, overwhelmingly supported, and ratified only when vital U.S. national interests were advanced.

The Foreign Relations Committee passed this Convention out of committee just two months after it was first presented to the Senate. Members of the Committee were given one opportunity to discuss the merits of and their concerns with the treaty in a single hearing that included both proponents of the treaty and opposition witnesses. We voted on the Resolution of Ratification shortly thereafter. To say the least, this treaty has not been properly or thoroughly scrutinized. Furthermore, not all the members of the committee have full confidence that the language of the treaty or the Resolution of Ratification will fully protect the interests or the sovereignty of the United States.

Language in the Convention that specifically references domestic issues outside the realm of ″disabilities″ requires further explanation. Article 25(a) of the Convention addresses the range and quality of health care, including ″sexual and reproductive health″. The previous Administration found it necessary to submit statements explicitly declaring that these terms do not include abortion. Poland, Malta, and Monaco made similar reservations when they signed the treaty. However, no language defining sexual and reproductive health has been placed in the Administration's instrument of ratification, and an attempt to do so in the Foreign Relations Committee was defeated. We are particularly concerned about this

issue because Secretary Clinton stated in 2009 in front of the House Foreign Affairs Committee that:

> We happen to think that family planning is an important part of women's health, and reproductive health includes access to abortion, that I believe should be safe, legal, and rare.

Abortion remains a highly controversial issue in the United States, and we strongly believe it should be determined by State and local governments, not at an international level.

Through the admission of this Administration we know the treaty will not improve the rights of the disabled in the United States. Our country has already set the highest standard for treatment of and assistance to the disabled; so much so that the drafters of this Convention used U.S. laws and regulations to build its framework. As for the disabled in other countries, there is little evidence available to suggest this Convention will assist other nations' efforts to improve their disabilities standards. Of the 117 member countries, the Convention's committee only has issued recommendations for improvements to three countries: Tunisia, Spain, and Malta.

The United States Constitution guarantees certain rights to the American people—rights such as freedom of speech, freedom of worship, and freedom from slavery. The United States Constitution does not provide the right to be subjected to an action of another person or group—nor should any treaty or alliance to which the United States subjects itself. Should the United States accede to this treaty, we will be obligated to write a status report every four years regarding our disability laws and receive criticism and recommendations from a committee of representatives from countries that have lower standards for the disabled than our own. This undermines our sovereignty and our Constitution. According to Article 35 of the Convention, this report must include a list and description of measures taken to fulfill the obligations of the treaty. We do not know the scope of this report or its financial and labor costs to the American taxpayer.

As noted in hearing testimony, similar committees born of other United Nations conventions have an extensive record of overstepping their authority and making recommendations that are contrary to the interests and values of the United States. For example, the Committee on the Elimination of Racial Discrimination issued a report in 2008 that addressed issues well beyond the scope of its mandate, such as U.S policies regarding the death penalty, voting rights, and detention at Guantanamo Bay. The Committee associated with the Convention on the Elimination of All forms of Discrimination Against Women brashly issued recommendations regarding the legalization of prostitution, gender quotas, and increased termination of pregnancies.

Proponents of this treaty believe its ratification would signal to the world our commitment to advancing the interests of those with disabilities. The U.S. Senate should not ratify this or any other treaty on these grounds. In this particular instance, the United States enjoys the moral high ground because we lead the world in advancing the interests of the disabled. We rightly reject the idea that our moral authority in the world is ever derived through ascension to subjective international conventions.

Article II, Section 2 of the Constitution states:

> [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties.

The very purpose of a treaty is to advance a specific U.S. security or economic interest, and the United States should only join those treaties that make us a stronger or safer nation. In no way do we take issue with the goal of promoting higher standards for the treatment of disabled people. However, this Convention is not essential to the security or economic interests of the United States. We firmly believe that the issues concerned in this Convention would be better addressed in a format that would not require the ratification of a legally binding international treaty that would carry the same authority as the Constitution.

X. ANNEX 1.—CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (TREATY DOC. 112–7)

Thursday, July 12, 2012

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 9:05 a.m., in room SD–G50, Dirksen Senate Office Building, Hon. John F. Kerry (chairman of the committee) presiding.

Present: Senators Kerry, Menendez, Cardin, Shaheen, Coons, Durbin, Lugar, Corker, Risch, DeMint, Isakson, Barrasso, and Lee.

OPENING STATEMENT OF HON. JOHN KERRY, U.S. SENATOR FROM MASSACHUSETTS

The CHAIRMAN. Good morning. The hearing will come to order. Thank you all very much for being here today.

We are meeting to examine the Convention on the Rights of Persons with Disabilities. We are very grateful to have a number of our colleagues who have had a longtime interest in this prepared to testify. And I know that there will be other Senators arriving. Senator Lugar has told me he is going to be a little bit late, but he will be here.

It has been 22 years since the Americans with Disabilities Act knocked down barriers to employment and Government service here at home, and Senator Harkin played such a key role, along with my former colleague Senator Ted Kennedy, in achieving that goal and many others. Now it is time to do the same for Americans with disabilities when they travel overseas.

The world obviously faces many competing crises, and all of them contend for attention and for leadership. But I believe very strongly that we have a responsibility on this committee to ensure that issues deserving attention also receive a focus.

As the author and civil rights activist James Baldwin reminds us, "Not everything that is faced can be changed, but nothing can be changed until it is faced."

I couldn't agree more. All Americans have an inherent right to be treated as equal citizens of our Nation. But the historic march toward a better, fairer America can come about only if we are willing to make those with certain challenges the focus of our work.

Like most of you, I have witnessed over time firsthand the challenges and discrimination of people with disabilities and the many ways in which they are prevented from fully participating in activities that most of us are privileged to take for granted.

That is why early on in my career in the Senate, when I first came here, I served with Senator Lowell Weicker on the HELP Committee, what is now the HELP Committee. And I was chairman for a brief period of time of something back then anachronistically called the Handicapped Subcommittee. And we actually did the first work that unleashed technology and has produced assistive devices that help people with challenges to be able to speak and communicate.

I am proud of that, and I cosponsored the Ending the Medicare Disability Waiting Period Act to phase out a 24-month waiting period for individuals with disabilities to become eligible for Medicare benefits. That is why I happily worked with Senator Pryor on the 21st Century Communications and Video Accessibility Act, which improves access to audio and visual materials for the deaf and the blind.

And it is why I recently introduced the Children's Mental Health Accessibility Act to provide States an option to serve children and adolescents on Medicaid with intensive home or community-based mental health treatment services and also to replace the also anachronistically term "mentally retarded" in the Social Security Act with the more appropriate term "intellectually disabled."

So this is a march that goes on for all of us. We all learn, and we all eventually, I hope, make progress. I have heard from countless advocates on this issue, the issue we are here to talk about today, from the Perkins School of the Blind in my home State to disabled Americans across the country to veterans groups, all of whom tell me this treaty will make a difference in their daily lives.

It is not only the right thing to do. It is also the smart thing to do. And it will extend essential protections and liberties to millions of U.S. citizens with disabilities when they travel overseas, including our disabled service men and women and all veterans.

As I understand it, there really are only upsides to joining this Convention, which enshrines the principles of the ADA. The United States is already a leader in domestic disability rights protection, and joining the Convention will provide a critical tool as we work with other countries to advocate what they follow and, hopefully, that they will follow our lead and ensure that people with disabilities are free to live and work and travel wherever they want.

This is important. Across the developing world, persons with disabilities face indignities and prejudice on a daily basis. They are prevented from attending schools, subject to discriminatory hiring practices, often unable to enter public buildings, safely cross a street, or even ride a public bus.

Americans may not witness these discriminatory acts in our daily lives, but they sting our conscience from half a world away. Ratifying the Convention would strengthen our hand as we push for higher standards internationally, standards to which all of us should aspire.

Twenty-two years ago, President George H.W. Bush signed the ADA into law with the promise of fostering full and equal access to civic, economic, and social life for individuals with disabilities. Upon its passage, Senator Ted Kennedy, who played the role that I described, said, "The act has the potential to become one of the great civil rights laws of our generation. This legislation is a bill

of rights for the disabled, and America will be better and a fairer nation because of it."

That was the spirit that animated passage of the ADA, and it is the same spirit that has inspired a bipartisan group of Senators to work tirelessly in support of this Convention. I especially want to acknowledge the effort here of three longtime Senate leaders on disabilities issues.

Senator Harkin, who is here now, who chaired the HELP Committee and been such an extraordinary leader on this issue and on the ADA itself. Senator Durbin, who will be here and who will chair part of this because I have some conflicts, but we will share that responsibility. And Senator McCain. And we are grateful for their leadership.

I am also pleased that several other members of this committee—Senator Barrasso, Senator Coons, and Senator Udall—are part of this bipartisan group. They are each great champions for persons with disabilities, and I know that they are going to work to do whatever it takes to move this process forward and help deserving Americans enjoy the full measure of their rights.

To help us explore these issues, we have three excellent panels of witnesses. On the first panel, we are pleased to be joined by our friends and colleagues I mentioned, John McCain and Tom Harkin. In addition to his own views, Senator McCain will be sharing with us a statement from former majority leader Bob Dole.

On our second panel, we welcome Judith Heumann, Special Adviser for International Disability Rights at the State Department, and Eve Hill, Senior Counsel to the Assistant Attorney General for Civil Rights at the Justice Department.

And on the final panel, we have Richard Thornburgh, former Attorney General of the United States and of counsel to the law firm K&L Gates. We have John Wodatch, the former Chief of the Disability Rights Section at the Civil Rights Division, the Justice Department. Steven Groves, the Bernard and Barbara Lomas Fellow at the Heritage Foundation, and John Lancaster, a Vietnam veteran, retired executive director of the National Council on Independent Living, and a respected advocate for the disabled community.

Rounding out the panel, we have Michael Farris, chairman and general counsel of the Home School Legal Defense Association and chancellor at the Patrick Henry College in Purcellville, VA.

So welcome to all of you, and we look forward to your testimony.

In the absence of Senator Lugar and with the permission of Senator Corker, if I may, I want to turn to Senator Barrasso, who has been advocating for this. And we appreciate his bipartisan efforts in that regard, and I ask him to make some opening comments.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman.

I appreciate you holding this hearing today to examine such an important effort, this Convention.

The United States has opened the door for millions of Americans to actively participate and contribute to our great country. Through numerous U.S. laws and enforcement measures, our Nation has

worked to end discrimination and breaking down barriers that prevent full participation of all members of our society.

We have raised the conscience of our Nation regarding disabilities and the impact that they have on people's lives. The fair treatment of citizens of the United States is paramount. Every citizen, regardless of obstacles in their lives, should have this opportunity to work, to live, to fully take part in our society. These are the ideals of the American people.

It is important to our citizens and individuals with disabilities across the globe that these fundamental values are advanced worldwide. The Convention on the Rights of Persons with Disabilities is based on the same principles as the Americans with Disabilities Act.

The general principles embodied in this Convention include nondiscrimination, equal opportunity, independence, accessibility, human dignity, and full and effective participation and inclusion in society. So I strongly support these principles and believe that they should be promoted by the international community.

The Convention offers the United States a forum to utilize our wealth of knowledge and practical experiences to influence our nations in recognizing the rights of people with disabilities. It can help in advancing policies so Americans with disabilities can receive the same protections while working, studying, and traveling abroad, including, and very importantly, our veterans.

Ratification of the Convention also demonstrates our Nation's ongoing commitment to equality and opportunity for individuals with disabilities.

Chairman Kerry, I do ask that a letter from President George Herbert Walker Bush expressing his support for U.S. ratification of the Convention on the Rights of Persons with Disabilities be placed in the record. I have that letter with me.

The CHAIRMAN. Without objection, it will be.

Senator BARRASSO. And Mr. Chairman, I also ask that another letter I have, signed by 21 veterans and military organizations in favor of U.S. ratification of the Convention, also be placed in the record.

The CHAIRMAN. Without objection.

[EDITOR'S NOTE.—The two letters mentioned above can be found in Annex II.]

Senator BARRASSO. Thank you, Mr. Chairman.

I welcome our guests. I welcome all those who are here in attendance and those testifying.

And thank you, Mr. Chairman, for holding this vital hearing.

The CHAIRMAN. Thanks very much.

And it is unusual. I don't usually do this, but since Senator Durbin has agreed to chair part of this because of my conflicts, I just want to ask him if he has any opening comment. He has been particularly involved also in helping to bring us here.

STATEMENT OF HON. RICHARD J. DURBIN, U.S. SENATOR FROM ILLINOIS

Senator DURBIN. Thanks, Senator Kerry.

I want to thank Senator Barrasso—I caught the end of your statement here—for his strong support.

Particularly, thanks to our first two witnesses here. Senator McCain, I have worked with him in putting together a bipartisan coalition supporting this. And Tom Harkin. On the Democratic side, there is no person who has a stronger reputation and history and record when it comes to standing up for people with disabilities.

Having you here as a lead-off witness, Tom, is a signal to all of us that this is the real thing. I can think back to when you and Senator Dole really stepped forward and brought America into a position of leadership when it came to standing up for disabled people all around the world.

We now have 153 nations that have signed on to this Convention or treaty; 117 have ratified. It is time for the United States to step up and to say that the principles that we fought for in the Americans with Disabilities Act are worth fighting for all over the world.

To make sure that when our disabled veterans travel overseas, they have accessibility and the kind of respect that they deserve, to make sure that people all around the world have access to places where they are currently excluded.

You know personally, both of you do, the amazing stories of people with disabilities. When given a chance and given accessibility, they have made America a stronger nation and will make this a better world. I want the United States to be at the front of the table in talking about leading the world into the 21st century and into a new generation of thinking.

We can build on the Americans with Disabilities Act. I am honored that former Senator Dole has become such a major spokesman in terms of pushing this forward. I am honored that the veterans groups have stepped up and said this means a lot to those who risked their lives for America and gave not only life, but limb many times. They want to see this done.

So thank you, Senator Kerry. I know your busy schedule and commitment to other issues, but this is historic. And it is strongly bipartisan, as evidenced by the turnout today and by the first witnesses. I am honored to be part of putting it together with Senator McCain.

Thank you.

The CHAIRMAN. Thank you very much, Senator Durbin.

Senator Harkin, if you would lead off, by matter of seniority, and Senator McCain.

STATEMENT OF HON. TOM HARKIN,
U.S. SENATOR FROM IOWA

Senator HARKIN. Good morning.

First of all, I want to thank Chairman Kerry and the committee for holding this hearing, seeking input about the importance of the U.N. Convention on the Rights of Persons with Disabilities, or CRPD, as it is known. And I appreciate the opportunity to testify on an issue that has been a central priority of mine since I first came to the Congress in 1974 and the Senate in 1984.

Mr. Chairman, Senators of this committee, one of my greatest joys in the Senate has been my work over 30 years with Senators Dole and McCain, Senators Kennedy, Hatch, and many others on the Americans with Disabilities Act of 1990.

I also saw so many people here that were instrumental in its passage and its implementation after it was passed.

I would be remiss if I didn't recognize the former White House counsel Boyden Gray and all the great work he did in getting people together on this bill back in 1989 and 1990. Former Attorney General Dick Thornburgh, who was so instrumental in helping to pass this bill and implementation afterward. Former Congressman Tony Coelho.

All of them here who just were so instrumental. And I am glad you mentioned, Mr. Chairman, Lowell Weicker, who may not be here, but he was one of the most instrumental persons in pushing this idea of a national civil rights law covering people with disabilities.

And last, there are so many here that I met when I came in that were here at the beginning and, as I said, worked so hard to get this passed and implemented, I don't have the time, I wouldn't take the time to try to mention them all, Mr. Chairman. But let me try to honor all of those who are sitting back here who have been so instrumental in the full implementation of ADA over the last 22 years by recognizing one person who is here and one spirit who is here.

That is Yoshiko Dart who is here, and she always carries Justin Dart's old cowboy hat. So Justin Dart is here also. Oh, Marca Bristo has his hat, I guess. I thought Yoshiko did.

[Laughter.]

So, again, I just honor all those who are here who were part of this whole effort over all these years.

As Senator Barrasso said, the ADA stands for a simple proposition, that disability is a natural part of the human experience and that all people with disabilities have a right to make choices, pursue meaningful careers, and participate fully in all aspects of society. Thanks to the ADA, our country is a more welcoming place not just for people with a variety of disabilities, but for everyone.

Twenty-two years ago this month, President Bush gathered hundreds of Americans with disabilities on the White House lawn for the ADA signing ceremony. At that time, he noted—and listen to this exact quote from President Bush: "This historic act is the world's first comprehensive declaration of equality for people with disabilities—the first. Its passage has made the United States the international leader on this human rights issue."

Well, thanks to the ADA and other U.S. laws, America has shown the rest of the world how to honor the basic human rights of children and adults with disabilities; how to integrate them into society; how to remove barriers to full participation in activities that most Americans take for granted.

Our support for disability rights has inspired a global movement. Think about that. It has inspired a global movement that led the United Nations to adopt the CRPD. Our legal framework influenced the substance of the Convention and is informing its implementation in 116 countries that I have, Senator Durbin, and also the European Union who have signed and ratified the CRPD.

I am very grateful for the long history of leadership on both sides of the aisle—Senator Dole, Senator McCain—going way back even before the ADA. I want to acknowledge the leadership and support

of Senators Barrasso and Durbin, Moran, Coons, and Udall, all of whom have publicly expressed their strong support for ratification of the CRPD.

I would also like to acknowledge the pro bono work of the Mayer Brown law firm and Carolyn Osolinik, who many of us remember was Senator Kennedy's chief aide when we passed the Americans with Disabilities Act back in 1990.

By ratifying this Convention, the United States will be reaffirming our commitment to our citizens with disabilities. As has been said a couple of times by Senators on the dais, Americans with disabilities, including disabled veterans, should be able to live and travel, to study, and to work abroad with the same freedoms and access that they enjoy here in America.

And as the state parties to the Convention come together to grapple with the best ways to make progress and remove barriers, we should be at the table with them, helping them to learn from our experience.

The administration has submitted reservations, understandings, and declarations that make clear that U.S. ratification will not require any changes in U.S. law and will have no fiscal impact. No fiscal impact. But my hope is that U.S. ratification will have a moral impact.

My hope is that it will send a signal to the rest of the world that it is not OK to leave a baby with Down syndrome on the side of the road to die. It is not OK to warehouse adults with intellectual and psychiatric disabilities in institutions, chained to the bars of a cell, when their only "crime" is having a disability.

That it is not OK to refuse to educate children because they are blind or deaf or use a wheelchair. That it is not OK to prevent disabled people from voting, getting married, owning property, having children. It is not OK to rebuild infrastructures in Iraq and Afghanistan and Haiti or other war-torn or disaster-stricken areas without improving the accessibility of the infrastructure at the same time.

So I thank this committee for scheduling today's hearing. I commend you all for recognizing the long history of bipartisan support for disability rights in this country.

I urge the committee to report favorably on the treaty and recommend that the Senate give its advice and consent to ratification prior to July the 26th of 2012, the 22nd anniversary of the Americans with Disabilities Act.

Thank you, Mr. Chairman.

[The prepared statement of Senator Harkin follows:]

PREPARED STATEMENT OF SENATOR TOM HARKIN, CHAIRMAN, U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Good Morning. I would like to thank Chairman Kerry and the committee for holding this hearing seeking input from others about the importance of the U.N. Convention on the Rights of Persons with Disabilities or the "CRPD." I appreciate this opportunity to testify today on an issue that has been a central priority for me since I was first elected to the Senate in 1984.

Mr. Chairman, Ranking Member Lugar, and members of the committee, one of my greatest joys in the Senate has been my work with Senators Dole, McCain, and others on the Americans with Disabilities Act (ADA) of 1990. The ADA stands for a simple proposition—that disability is a natural part of the human experience and

that all people with disabilities have a right to make choices, pursue meaningful careers, and participate fully in all aspects of society.

Thanks to the ADA, our country is a more welcoming place not just for people with a variety of disabilities, but for everyone.

Twenty-two years ago this month, President Bush gathered hundreds of Americans with disabilities on the White House lawn for the ADA signing ceremony. At the time, he noted: "This historic act is the world's first comprehensive declaration of equality for people with disabilities—the first. Its passage has made the United States the international leader on this human rights issue."

Thanks to the ADA and other U.S. laws, America has shown the rest of the world how to honor the basic human rights of children and adults with disabilities; how to integrate them into society; and how to remove barriers to their full participation in activities that most Americans take for granted. Our support for disability rights has inspired a global movement that led the United Nations to adopt the CRPD. Our legal framework influenced the substance of the Convention and is informing its implementation in the 117 countries that have signed and ratified the CRPD.

I am very grateful for the long history of leadership of both Senators Dole and McCain on disability issues, going back to before the ADA. I also want to acknowledge the leadership and support of Senators Barrasso, Durbin, Moran, Coons, and Udall, all of whom have publicly expressed their strong support for ratification of the CRPD.

By ratifying this Convention, the United States will be reaffirming our commitment to our citizens with disabilities. Americans with disabilities, including disabled veterans, should be able to live, travel, study and work abroad with the same freedoms and access that they enjoy in the United States. And as the state parties to the Convention come together to grapple with the best ways to make progress and remove barriers, we should be at the table with them helping them learn from our experience.

The administration has submitted reservations, understandings and declarations that make clear that U.S. ratification of the CRPD will not require any change in U.S. law and will have no fiscal impact. My hope is that U.S. ratification of the CRPD will have a moral impact. My hope is that it will send a signal to the rest of the world that it is not okay to leave a baby with Down syndrome on the side of the road to die; not okay to warehouse adults with intellectual and psychiatric disabilities in institutions chained to the bars of a cell when their only "crime" is having a disability; not okay to refuse to educate children because they are blind or deaf or use a wheelchair; not okay to prevent disabled people from voting, getting married, owning property, or having children; not okay to rebuild infrastructures in Iraq, Afghanistan, Haiti, and other war-torn or disaster-stricken areas without improving the accessibility of the infrastructure at the same time.

I thank this committee for scheduling today's hearing. I commend you for recognizing the long history of bipartisan support for disability rights in this county. And I urge the committee to report favorably on the treaty and recommend that the Senate give its advice and consent to ratification.

The CHAIRMAN. Thank you very much, Senator Harkin. Appreciate that testimony.

Senator McCain.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman.

And I, after hearing your eloquent statement and Dick's and John Barrasso's and Tom's, I am reminded of my beloved friend, Morris Udall, who once said everything that could possibly be said about this has been said, only not everyone has said it. So I will try to be brief in my remarks and spend—I am really here to read a statement by our beloved friend and former colleague and leader, Bob Dole.

And so, but I also would like just to take a moment to thank our warriors here who have been with us for the last 22 years not only in the passage of this legislation, but also in the long process of its implementation.

I want to thank Dick Durbin. I want to thank you, my old friend, Senator Kerry, and John, and everybody who has been involved. And Senator Moran and Tom Udall and others.

And this is an example that from time to time, we can engage in a bipartisan effort in this body.

There are two people who are not here who I think are really here in many respects, and one is our old friend, Justin Dart, who we all know was one of the great leaders in this effort. And his beloved wife is here.

And the other, of course, is my old friend and combatant, Ted Kennedy, who played an incredibly important role on this and other issues. I enjoyed working with him, and I enjoyed working against him.

[Laughter.]

But I think his spirit is here today because he did have the ability of bringing people together, as we all know.

Tony Coelho and Boyden Gray and Dick Thornburgh are here. I would like to thank them as well.

I would just like to make two quick points, Mr. Chairman. One is I am proud to be pro-life. This is a pro-life piece of resolution, in my view, because too often children, as Tom pointed out, with disabilities are never allowed to live.

I would also like to point out that it is—finally, I would like to mention that it is not an accident that literally every veterans organization in this country supports this legislation because it is our veterans, many of whom are coming home as we speak, that needed this legislation. And I think that when you travel around the world and you see the conflicts around the world—I just came from Libya, where 30,000 of their citizens were wounded in the conflict that, thank God, has just been over. And so many of them with disabilities.

So I would argue that this resolution, this treaty is probably more important today in the world perhaps than it has been in the past.

With that, I would like to read a letter from Bob Dole, which in his own unique way is, I think, rather moving.

"Chairman Kerry, Ranking Member Lugar, and members of this committee, when I delivered my maiden speech on the Senate Floor on April 14, 1969, the anniversary of the day I was wounded in World War II, it was customary to speak about something in which you had a deep interest, and something about which you could offer some leadership. I chose to speak about a minority group, as I said then, the existence of which affects every person in our society, and the very fiber of our Nation.

"It was an exceptional group I joined during World War II, which no one joins by personal choice. It is a group that neither respects nor discriminates by age, sex, wealth, education, skin color, religious beliefs, political party, power, or prestige. That group, Americans with disabilities, has grown in size ever since. So, therefore, has the importance of maintaining access for people with disabilities to mainstream American life, whether it's access to a job, an education, or registering to vote.

"When we passed the Americans with Disabilities Act (ADA) in 1990, it was not only one of the proudest moments of my career, it was a remarkable bipartisan achievement that made an impact on millions of Americans. The simple goal was to foster independence and dignity, and its reasonable accommodations enabled Americans with disabilities to contribute more readily to this great country.

"Americans led the world in developing disability public policy and equality and, while there are places that still have no rights for people with disabilities, many countries have followed our lead. In 1994, I wrote to the Secretary of State to ask that the United States include the status of people with disabilities in its annual

report on human rights. To its credit, the State Department acted, and, since then, has included a profile on the rights of people with disabilities in each country in the world. Some of the news is good, but, in too many countries, people with disabilities remain subject to discrimination.

"The United States supported approval of the Convention on the Rights of Persons with Disabilities (CRPD) in December 2006. On the anniversary of the ADA in 2009, the U.S. signed the CRPD. This landmark treaty requires countries around the world to affirm what are essentially core American values of equality, justice, and dignity. Now the package has been submitted to the Senate for your advice and consent. I want to express my personal support for U.S. ratification of the CRPD and to ask that you continue the proud American tradition of supporting the rights and inclusion of people with disabilities.

"U.S. ratification of the CRPD will improve physical, technological, and communication access outside the U.S., thereby helping to ensure that Americans—particularly, many thousands of disabled American veterans—have equal opportunities to live, work, and travel abroad. The treaty comes at no cost to the United States. In fact, it will create a new global market for accessibility goods. An active U.S. presence in implementation of global disability rights will promote the market for devices such as wheelchairs, smart phones, and other new technologies engineered, made, and sold by U.S. corporations.

"With the traditional reservations, understandings, and declarations that the Senate has adopted in the past, current U.S. law satisfies the requirements of the CRPD. The CRPD works to extend protections pioneered in the U.S. to the more than 1 billion people with disabilities throughout the world. This is an opportunity for the U.S. to join its allies—including Australia, Canada, France, Mexico, South Korea, the United Kingdom, and Germany—in continuing our historical leadership on disability rights.

"Passage of the ADA constituted a proud moment in U.S. history, when we joined together as a nation to stand up for a worthy cause. Now is the time to reaffirm the common goals of equality, access, and inclusion for Americans with disabilities—both when those affected are in the United States and outside of our country's borders. I urge you to support U.S. ratification of this important treaty."

Mr. Chairman, you know that there is nothing that Bob Dole would have wanted more than to be here before this committee today. You also know that he has had his challenges in the past recent months and years. I hope that all of us will respect this magnificent American who came and served his country, was grievously wounded. He and our dear, beloved Senator Inouye were in the same hospital.

And this is one thing I think that we could do for Bob Dole that would make him exceedingly proud.

Thank you, Mr. Chairman.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF SENATOR JOHN MCCAIN OF ARIZONA

Thank you for that introduction. I am pleased to come before the committee to offer my support for the Convention on the Rights of Persons with Disabilities and to be here on behalf of one of my closest friends, Bob Dole. Bob asked me to come before you and present his statement in support of this treaty. As you know, Bob has dedicated nearly his entire life to this country—through his military service and following that, many years in public service.

Senator Durbin and I began discussing months ago how we can work together, in a bipartisan manner and build bipartisan support for ratification of this treaty. We have been working closely with Senators Moran, Barrasso, Coons, Tom Udall, and Harkin. The list of bipartisan supporters continues to grow.

And there's a good reason that the list of supporters is expanding. Protecting the rights of persons with disabilities, ANY persons, is not a political issue. It is a human issue, regardless of where in the world a disabled person strives to live a normal, independent life where basic rights and accessibilities are available. Disability rights and protections have always been a bipartisan issue and ratifying this treaty should be no different.

Ratifying this treaty will continue our global leadership to protect and recognize the rights of people living with disabilities that began almost 22 years ago with the

enactment of the Americans with Disabilities Act. In fact, the 22d anniversary of the act is later this month.

Some may question why the U.S. needs to join the 117 other countries that have already ratified this treaty.

As I have traveled around the world to many countries and areas of conflict, I have seen firsthand the many members of our Armed Forces who have become disabled in their service to our country. I have also seen the countless numbers of victims in these areas of conflict that become disabled and must try to return to and assimilate into their own societies, few of which have anywhere near the basic protections and opportunities for independence that people living with disabilities have in our country. In many cultures children born with disabilities don't even have a chance. Ratifying this treaty affirms our leadership on disability rights and shows the rest of the world our leadership commitment continues.

Further, every action that we have ever taken on disability policy has been bipartisan. Being able to live independently is a basic human dignity that we support and is a value that we can help advance internationally through ratification of this treaty.

Many of you have served with Senator Dole and you know that he has been one of the true leaders on disability issues. And it is truly my honor to present his testimony in support of the Convention on the Rights of Persons with Disabilities.

The CHAIRMAN. Well, thank you, Senator McCain.

I think the testimony that you have given personally, but most importantly, that you have just shared with us from Senator Dole could not be more important and significant with respect to this.

I would hope that all of our colleagues would read his letter. We will certainly distribute it to every colleague and hope that it can have that impact.

I had a wonderful visit with him just a few months ago, and we reminisced about the efforts that we did together, I think it was in the late 1980s, when the Little League was barring young kids with disabilities from actually participating in Little League. And we created now all across America, there is a physically challenged Little League, formal Little League participation.

So Bob Dole has played just a critical role, and he is a tremendous role model and example as a leader. So I would hope that people will, in fact, heed that, and we thank you.

Senator McCain, I cannot help but comment how much, as your good friend—and you and I have been through a lot of things together—how much it either disturbs me or confounds me that you take as much pleasure from working against those you enjoy working with. So we have got to work this out.

[Laughter.]

Let us continue doing that. Thanks for being here with us.

I know you are busy. So you are excused.

We invite the first panel up. If we could have the Honorable Judith Heumann, SpecialAadviser for International Disability Rights at the Department of State. And Ms. Eve Hill, Senior Counselor to the Assistant Attorney General for Civil Rights.

I am at this point, with your permission, going to turn it over to Senator Durbin to chair for a while. And then I will be back because I do want to get some questions in with respect to some of these things.

Thank you.

Senator Durbin.

Senator DURBIN [presiding]. Thank you very much, Chairman Kerry, and we will proceed with the first panel.

[Pause.]

STATEMENT OF HON. JUDITH HEUMANN, SPECIAL ADVISER FOR INTERNATIONAL DISABILITY RIGHTS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Ms. HEUMANN. Thank you, Senator Durbin and members of the committee.

And thank you for the opportunity to speak in support of ratification of the Convention on the Rights of Persons with Disabilities, which both President Obama and Secretary of State Clinton strongly endorse.

Ratification of the Disabilities Convention by the United States would, as we have heard before, result in a shining moment in this Nation's enduring commitment to advancing and promoting disability rights both at home and abroad.

I ask that my full statement be submitted for the record.

Senator DURBIN. Without objection.

Ms. HEUMANN. As the special adviser for international disability rights at the State Department, I firmly believe ratification will help us to advance U.S. interests abroad.

I grew up at a time when our country was just beginning to realize the value of ensuring equality for persons with disabilities. At that time, we had only begun the process of recognizing that societies are stronger when they respect and promote the dignity and equality and contributions of disabled individuals.

However, as a child, I did not have the benefit of accessible communities, inclusive schools, or accessible transportation. I am 64. I did not attend school until I was 9. And when I applied for my first job as a teacher, I was initially denied my certification simply because I could not walk. This was the official reason.

Today, thanks to strong legislation and decades of enforcement, such blatant forms of discrimination are no longer permissible in the United States. Unfortunately, the same cannot be said for the majority of the 1 billion disabled people around the world or Americans with disabilities who live, work, serve, retire, study, and travel abroad.

In developing countries, it is estimated that 90 percent of children with disabilities do not attend school.

Many disabled children are killed at birth simply because of their disability. Basic physical access of disabled people is still a dream in many countries.

In many countries, it is unfathomable that a significantly disabled person like me would ever leave their home, much less have a government job, wish to board an international flight, and where government buildings, hotels, and even bathrooms are not accessible.

Against this backdrop of exclusion and discrimination is the vision of what we have achieved in the United States. That vision inspired the international community to draft this Disabilities Convention. At its very core, the Convention seeks to ensure that persons with disabilities enjoy the same rights as everyone else.

The Disabilities Convention is animated by the principles underlying U.S. disabilities law—inclusion, respect for human dignity and individual autonomy, accessibility, and equal enjoyment of rights. It does not create new rights for disabled people, and no new legislation would be required to implement the Convention if

ratified with the recommended, reservations, understandings, and declarations.

Significantly, the United States would implement its obligations under existing law. Therefore, you may ask why should we bother to ratify? Simply put, ratification of the disabilities Convention will strengthen U.S. interests. It will promote tangible benefits for U.S. businesses and approximately 54 million Americans with disabilities who wish to live, work, serve, retire, study, and travel abroad.

Only by ratifying the Convention will we put ourselves in the best position to influence our international partners to enhance disability rights, especially in such key areas as education, accessibility, and employment. Improved standards abroad will open up the world to Americans with disabilities and their families.

Though I take great pride in the U.S. record, it is, frankly, difficult to advance the interests of Americans with disabilities and others when we, as the United States, have not ratified the Convention. Failure to ratify deprives us of a crucial tool to secure concrete improvements, such as fewer architectural barriers and more accessible air travel, in international practice, improvements that will afford greater protections, opportunities, and benefits to the millions of U.S. citizens, civilians and veterans, with disabilities who currently face barriers abroad.

Ratification would also be good for American business. By encouraging other countries to join and implement the Convention, we would also help to level the playing field for U.S. companies. A U.S. role in shaping international standards would afford U.S. businesses increased opportunities to export innovative products and technologies. As accessibility standards become more harmonized, the competitive edge increases for U.S. companies even further with the opening of markets.

In sum, ratification will be a significant step in our longstanding bipartisan tradition of support for the rights of disabled people. It will provide the United States with a critical platform to secure better international disability standards and promote equality of individuals with disabilities, including Americans who travel or live abroad.

Quite simply, ratification is good for America and good for Americans, both for its profound impact on our diplomatic leadership and for its tangible benefits to everyday Americans.

Finally, in keeping with America's strong longstanding bipartisan tradition of support for the rights of persons with disabilities, ratification of the disabilities Convention is the right, smart, and just thing to do.

Thank you again for the opportunity to testify, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Heumann follows:]

PREPARED STATEMENT OF JUDITH HEUMANN

Chairman Kerry, Ranking Member Lugar, and members of the committee, thank you for the opportunity to appear before you this morning to speak in support of ratification of the Convention on the Rights of Persons with Disabilities, which both the President and the Secretary of State strongly endorse. Ratification of the Disabilities Convention by the United States would be a shining moment in this Nation's enduring commitment to advancing and promoting disability rights both at home and abroad. I am privileged to have this opportunity to speak to you on behalf of the administration, drawing from my life-long personal and professional commit-

ment to promoting the rights of persons with disabilities in the United States and abroad.

As the Special Adviser for International Disability Rights at the U.S. Department of State, I firmly believe ratification will help us to advance our diplomacy abroad, enabling us to highlight how our advances have helped improve the lives of millions of disabled people and their family members. I grew up at a time when our country was just beginning to realize the value of ensuring the rights of persons with disabilities. Thanks to unstinting leadership from parents and disabled people, and the advocacy of many people, including Members of Congress and disabled veterans, we had begun the process of recognizing that our society should respect and promote the dignity, equality, and contributions of disabled individuals. However, as a child I did not have the benefit of accessible communities, inclusive schools, or accessible transportation. Without even simple curb cuts, I wheeled in the streets amongst oncoming traffic. I could not ride our buses or trains. I was not allowed to go to school until I was 9 years old, and then received poor quality education segregated from the rest of my peers. When I applied for my first job as a teacher, I was initially denied my certification simply because I could not walk.

Today, I am proud to say that such blatant forms of discrimination are no longer permissible in our society. The United States has been a leader in this area. With strong legislation and effective enforcement honed over more than four decades of experience, Americans with disabilities are respected and included in our society to a degree unrivalled in our history. We can live, work, and travel with our fellow citizens, and we see Americans with disabilities serving at the highest levels of government and industry. Unfortunately, the same cannot be said for the majority of the 1 billion disabled people around the world, or Americans with disabilities, including veterans, who live, work, serve, retire, study, travel, and reside abroad. In developing countries it is estimated that 90 percent of children with disabilities do not attend school. Many disabled children are killed at birth simply because of their disability. I know from my own international work that basic physical access for disabled people is still a dream in many countries, and that enduring cultural stigmas force people with disabilities, who yearn to work and contribute to their families and societies, into abject poverty. I have also experienced firsthand the frustration of traveling in places where it is unfathomable that a significantly disabled person like me would ever leave their home, much less wish to board an international flight.

Against this backdrop of exclusion and discrimination is the vision of progress that we have achieved in the United States, made real through the rule of law, which inspired the international community to draft the Disabilities Convention. At its core, the Convention seeks to ensure that persons with disabilities enjoy the same rights as everyone else and lead their lives as do other individuals, if given the same opportunities. As with the comprehensive network of U.S. Federal disability law, the Convention expresses the principles and goals of inclusion, respect for human dignity and individual autonomy, accessibility, and equal enjoyment of rights. Equality of opportunity and nondiscrimination are the primary principles permeating both the Convention and U.S. domestic disability law. They animate the important issues addressed by the Convention, including: political participation; access to justice; respect for home and the family; education; access to health care; employment; freedom of expression; and respect for individual autonomy including the freedom to make decisions about how a person wishes to live their life. By requiring equality of opportunity and reasonable accommodation for persons with disabilities, the Convention is reflective of the principles of U.S. disability law, drawn from such core legislation as the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). This principle of equality is of course enshrined in the Fifth and Fourteenth Amendments to the United States Constitution.

Given that the Disabilities Convention is animated by the principles underlying U.S. disabilities law, and that it does not create new rights for disabled people, no new legislation would be required to implement the Convention if ratified with the recommended reservations, understandings, and declaration. Significantly, the United States would implement its obligations under existing law; the Convention would not give rise to any new individually enforceable rights. Therefore, you may ask why we should bother to ratify the Convention? Simply put, ratification of the Disabilities Convention will strengthen U.S. interests. It will promote tangible benefits for U.S. business and the approximately 50 million Americans with disabilities, including the 5.5 million American veterans with disabilities, who wish to live, work, serve, retire, study, travel, and reside abroad. By ratifying this Convention we will be putting ourselves in a position to assist our international partners to do as much as we have done domestically to enhance disability rights.

Prior to the adoption of the Convention, fewer than 50 countries around the world had adopted some form of nondiscrimination legislation to protect the rights of persons with disabilities. Ratification of the Convention by over 114 countries has since led to a dramatic increase in international interest in addressing the rights of persons with disabilities. However, overall standards of protection around the world typically remain subpar, as does enforcement of the protections that do exist. Such conditions limit opportunities abroad for Americans with disabilities. U.S citizens with disabilities frequently face barriers when they travel, conduct business, study, serve, reside, or retire overseas. With our extensive domestic experience in promoting equality and inclusion of persons with disabilities, the United States is uniquely positioned to help interested countries understand how to effectively comply with their obligations under the Convention. Indeed, provision of such technical assistance and knowledge sharing forms an important part of my work with the Department of State. However, the fact that we have yet to ratify the Disabilities Convention is frequently raised by foreign officials, and deflects from what should be center stage: how their own record of promoting disability rights could be improved. Though I take great pride in the U.S. record, it is frankly difficult to make best use of the "bully pulpit" to challenge disability rights violations on behalf of Americans with disabilities and others, when we have not ratified the Convention. Ratification would give the United States legitimacy and a platform from which to push for the adoption and implementation of the Convention's standards in other countries. This in turn will likely result in concrete improvements (such as fewer architectural barriers and accessible air travel) in those nations that bring their national laws into compliance, thus affording greater protections, opportunities, and benefits to the millions of U.S. citizens with disabilities who currently face barriers abroad.

Our failure to ratify has also undermined our advocacy for persons with disabilities in multilateral and regional fora, where ratification of the Convention has become a de-facto prerequisite for meaningful engagement in discussions on promotion of disability rights. For example, by ratifying we would be able to amplify our voice in the Disabilities Convention's Conference of States Parties, to which the United States sends delegations of disability rights experts but currently only as an observer. This severely curtails the role that the United States can play in such meetings, particularly as more countries ratify. By joining the 114 other States Parties to the Convention, we could help shape the international disability agenda by taking a more prominent role in future Conferences, shaping and leading Conference meetings and panel discussions and more actively contributing to the international disability rights dialogue. We will be a leading force in the drive to both improve lives and increase understanding and cooperation among States, as well as to impact the development of international standards on accessibility. Disability diplomacy will have a positive effect on overall bilateral and regional diplomacy of the United States, by allowing us to leverage the shared value of disability rights to promote dialogue on other issues of importance to U.S. foreign policy. We have found that inclusion of disability rights in the work of the State Department amplifies our ability to achieve our broader foreign policy objectives. However, this work is unduly hampered by our not having a seat at the table as a State Party.

Ratification would also be good for American business. By encouraging other countries to join and implement the Convention, we would also help level the playing field to the benefit of U.S. companies. It would enhance the competitive edge for our companies whose operations and hiring already meet accessibility requirements. Guiding and encouraging improved disability standards abroad would also afford U.S. businesses increased opportunities to export innovative products and technologies (such as electronic wheelchairs and other mobility devices, as well as accessible computers and electronics), thereby potentially stimulating job creation at home. As accessibility standards become more harmonized—a business objective that the United States can more credibly support if it becomes a State Party—the competitive edge increases for U.S. companies even further with the opening of markets.

As I travel and meet disabled people from around the world, I am often reminded of how far we have come in the United States over the course of my lifetime, and how far so many countries have yet to go in ensuring that persons with disabilities are full and equal members of their societies. I also meet Americans with disabilities and their family members, who talk of the struggles they have faced abroad to live, work, and study with dignity and respect. Just as the ADA and related laws have become the gold standard for domestic disabilities legislation, U.S. ratification of the Disabilities Convention would represent a paradigm shift in the international treatment of persons with disabilities. The treaty is anchored in the overarching principles of inclusion, equality, and nondiscrimination that Americans already

value at home. Ratification would serve both to underscore the enduring U.S. commitment to disability rights and to enhance the ability of the United States to promote these rights overseas. U.S. ratification would better position the United States to exercise its leadership role to guide and encourage other countries to ratify and implement the Convention. Leading by example, in what we do and what we say, is a hallmark of America's principles and policies. Any opportunity that we have to positively influence the practice of other countries in respecting the rights of persons with disabilities helps to create a world in which Americans with disabilities can promote American values by pursuing travel, work and study abroad unhindered by the barriers they currently face. Such opportunities can only be enhanced by our ratification of the Disabilities Convention.

In sum, ratification is good for America and good for Americans. It will provide the United States with a critical platform from which to urge other countries to improve equality of individuals with disabilities, including Americans who travel or live abroad, and including children with disabilities, whose plight is particularly neglected in many parts of the world. The transformation which paved the way in the United States for children with disabilities to grow up with their families, go to school, and live as full participants in society has simply not taken place in much of the rest of the world. To promote the rights of individuals with disabilities overseas more effectively, the United States can use its ratification of the Convention as a vehicle to encourage, guide, pressure, and persuade other States Parties to implement better disability standards and provide greater disability rights protection in their countries, including to Americans. Ratification is a win-win, as protections in the United States would not need to be changed, and joining would not affect U.S. sovereignty. Ratification would open up opportunities for U.S. citizens, organizations, and businesses abroad, including our disabled youth, who rightly expect to be full participants in shaping our world's future.

Ratification of the Disabilities Convention would mark a momentous step toward the protection and advancement of the rights of persons with disabilities wherever they may live. It is a significant step for both its profound impact on our diplomatic leadership and for its tangible benefits to everyday Americans. Finally, in keeping with America's longstanding bipartisan tradition of support for the rights of disabled people, ratification of the Disabilities Convention is the right and just thing to do.

Senator DURBIN. Thank you, Ms. Heumann.

Eve Hill is the Senior Counselor to the Assistant Attorney General for Civil Rights in the Department of Justice.

Please proceed.

STATEMENT OF EVE HILL, SENIOR COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. HILL. Good morning, Senator Durbin, Ranking Member Lugar, other members of the committee.

I am very pleased to be here today. Thank you for holding this hearing on the United States ratification of the Disabilities Convention.

I would ask that my full statement be submitted for the record.

I am here 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 Convention.

We in the United States are world leaders in disability rights. We have developed a panoply of American laws that protect the rights of people with disabilities to a greater extent than any other country in the globe. Where many other countries approach disability rights from an aspirational vantage, we match our legislation with effective enforcement mechanisms that have led to notable changes in our society.

Curb cuts, ramps, parking spaces, American sign language interpreters, service animals—these are just a few of the groundbreaking changes that we have come to take for granted in

this country. But they are not available when Americans travel, study, work, or learn overseas.

Federal laws address disability rights discrimination in a variety of areas. The Americans with Disabilities Act—ADA— addresses disability nondiscrimination obligations of State and local government entities, and of private entities, including stores, restaurants, and other providers of goods and services. The ADA also prohibits discrimination in employment.

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. We implement domestic disability rights laws through a variety of means, including education and guidance, supporting voluntary compliance, mediation, and litigation. These implementation efforts are driven by domestic law and practice and would not change with the ratification of the Disabilities Convention. Therefore, ratifying the Convention, as proposed, will not require new legislation or create new rights.

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 comply with the Convention without any changes to U.S. law. These are detailed in the ratification package, but I would like to speak to three of them today.

First, the package includes a federalism reservation, similar to the federalism reservations 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. The federalism reservation would limit the obligations of the United States under the Convention in areas covered by State and local government jurisdiction to measures appropriate to our Federal system.

It would, thus, maintain the current balance and allocation of authority between the Federal Government and the 50 States. While we have a network of Federal disability laws, some treaty articles primarily implicate State laws, such as Article 12, which address guardianship, and Article 14, which addresses civil commitment.

In most cases, State and local laws on these issues meet or exceed the requirements of the Convention. But in some issues governed by State law, such as legal capacity, some State and local protections may be less robust than the Convention. In these cases, the federalism reservation would preserve the existing balance of authority between the Federal Government and the States.

I would also like to underscore the recommendation for a reservation on private conduct. This is similar to a reservation taken in treaties already ratified, such as the ICCPR and CERD. The private conduct reservation ensures that regulation of private parties under the Convention, including individuals, businesses, and nongovernmental organizations, is coextensive with such regulation under current domestic law.

U.S. law extensively governs some areas of nongovernmental activity, such as disability discrimination by public accommodations. At the same, the U.S. Constitution and laws recognize a zone of private activity that is not governed by Federal or State government and, in some cases, expressly enjoys constitutional protection.

This important reservation, therefore, would limit U.S. treaty obligations regarding private conduct to be coextensive with such regulation under the Constitution and laws of the United States.

Third, the proposed non-self-executing declaration 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 practice under treaties on civil and political rights, racial discrimination, and torture.

With this Declaration and the other Reservations and Understandings, the United States would be able to implement the Convention using the existing network of laws and Federal enforcement mechanisms that guarantee nondiscrimination to Americans with disabilities at home. As such, no new legislation would be required to ratify the Disabilities Convention.

With the ratification of the Disabilities Convention, we will greatly enhance our ability to influence other countries to move toward adopting and implementing effective standards that are consistent with those that we have established at home. As a result, we hope that American veterans, business people, retirees, students, tourists, military, and others will be able to enjoy the same levels of accessibility and nondiscrimination protections overseas that they currently benefit from in the United States.

Protection of disability rights laws has historically been grounded in bipartisan support, and the principles anchoring the Convention find clear expression in our own domestic law. We, therefore, urge this committee to give prompt and favorable consideration to the Disabilities Convention and that the full Senate give its advice and consent to ratification, subject to the proposed Reservations, Understandings, and Declarations.

Thank you for inviting me today, and I look forward to your questions.

[The prepared statement of Ms. Hill follows:]

PREPARED STATEMENT OF EVE HILL

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 groundbreaking 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 6 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 coextensive 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 toward 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, DC, September 19, 2011.

Re Convention on the Rights of Persons with Disabilities

Hon. JOHN F. KERRY,
Chairman,
Hon. RICHARD G. LUGAR,
Ranking Member,
Committee on Foreign Affairs,
Washington, DC.

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 of2008. 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 Jaws 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.
CONSTANCE S. BARKER,
Commissioner.
CHAI R. FELDBLUM,
Commissioner.
VICTORIA A. LIPNIC,
Commissioner.

Senator DURBIN. Thank you, Ms. Hill.

Before proceeding with a couple questions for each of you, I would like to again acknowledge two people and a third who has not been acknowledged. First, Tony Coelho, who was my colleague in the U.S. House of Representatives, a leader on disability issues from the start. And Tony, thank you for your leadership in bringing us here today.

My former colleague, Steve Barlett from Texas, who joins us and I know has been a strong supporter of this effort. Thank you so much.

And if you will give me some home State privilege here, I am so proud of Marca Bristo. She is my "shero" when it comes to disability issues in the State of Illinois and nationally. And Marca, thank you for all that you have done. You are just the very best.

So let us address a couple issues head on. What we hear about when we open our e-mail on this subject is the question of children's education. You have raised the point, Ms. Heumann, that with this, with the passage of this Convention, that we are opening up educational opportunities for disabled children in many places around the world where they are currently denied.

The critics of this Convention argue that we are limiting educational opportunities for American children, particularly when it comes to home schooling. So I would like to ask you and Ms. Hill to address that issue head on.

Ms. HEUMANN. Well, I would like to state that we believe that there will be no changes to the ability of families to home school their children. What is very important to understand is, when I mentioned in my earlier statement that 90 percent of disabled children are not able to attend school overseas, we want the United States to be able to lead as an example of what we have done since the development and implementation of the Individuals with Disabilities Education Act when, in 1975, 1 million disabled children in this country were not attending school.

Today, disabled children are in school. Parents have significant rights, and play a very important role in the education of their children. We want our laws to be able to be a beacon for parents and governments and civil society overseas so they can learn what it is that we have so successfully done, which is resulting in more students graduating from high school, and students with disabilities going to the universities. And now, many of them in the room today wishing to work and live and travel abroad.

Ms. HILL. I would add that by its terms, the treaty does not proceed to undermine the rights of either individual parents or schools to change the requirements for home schooling. The Convention doesn't change the ways in U.S. law governing parental authorities, which is a matter for the States, and that would be supported by the federalism reservation that I mentioned before that will not take this down to the State level.

And where not regulated by State law, that is an individual decision, again limited by the private action reservation that I mentioned earlier as well.

Senator DURBIN. So, Ms. Hill, let me follow through on another aspect of this, and the question is whether or not this new Convention would create any rights of enforcement or legal rights in courts for American citizens to enforce the provisions of this Convention. Could you address that?

Ms. HILL. It does not. The non-self-executing declaration makes clear that the Convention's requirements cannot be enforced in U.S. courts and do not provide individual rights of action.

Senator DURBIN. Your testimony notes that the panoply of Federal agencies that play a role in enforcing already existing U.S. laws ensure access, inclusion, and opportunity include the Department of Justice, Housing and Urban Development, Veterans Affairs, Equal Employment Opportunity Commission.

Our country's existing legal framework for protecting those with disabilities is the best in the world and it has been very effective. By ratifying the treaty, would the United States be required to change its current legal framework for protecting the rights of those with disabilities?

Ms. HILL. It will not. Again, the federalism reservation makes clear that the Federal level is responsible for implementation and that the limits of our current federalism system reduce the ability to carry those obligations through to any State level.

In addition, the limitations recognizing our zones of private conduct prevent further extension into those areas.

Senator DURBIN. A witness on another panel asserts that the treaty will violate principles of American sovereignty and liberty. He asserts that if the United States ratifies this treaty, our ability to have absolute freedom of choice concerning public policy on the subject will be extinguished, in his words.

Do you agree with this assertion that ratifying the treaty will cede U.S. sovereignty to an international body, or is there any aspect of this argument that you would find compelling?

Ms. HILL. I do not agree at all with that assertion. The body created by the Convention is a committee that is nonbinding on state parties, that can make recommendations, that can make suggestions, and that can make its opinions known. But we have no obligation to follow those recommendations, and they are completely nonbinding on the United States.

Senator DURBIN. Thank you.

Senator Lugar.

Senator LUGAR. Let me ask either of the distinguished witnesses, how is the committee to deal with the fact that the Cabinet officers of many other departments of our Government might assert that they have an interest in this, quite apart from various other committees of the Senate? It is a wide-ranging treaty. We are having this in the Foreign Relations Committee.

But as you advocate on behalf of advice and consent, are you dealing with other committees, with other branches of the Cabinet or the Government so that we understand that we are all on the same page?

Ms. HEUMANN. Thank you very much for the question, Senator.

The process that the Government undertook in developing this package was quite exhaustive and involved 16 other Federal agencies. It was a year and a half process.

So all of the heads of these governmental agencies and their staff did a very thorough review of the provisions that are part of the Convention and how it pertains to U.S. law. So I believe that we have thoroughly done what you have requested us to do and that we believe that this committee is the appropriate committee for jurisdiction because of the fact that it is a treaty.

Senator LUGAR. Let me ask, can you give us some idea of the members of the Convention—or other countries who have ratified the Convention? I am not asking for an entire encyclopedia. But are there countries in Europe, in Africa, in Latin America? Give us some idea of the range of how many countries already are involved in this situation that you are advocating that we join.

Ms. HEUMANN. So, as you may be aware, there are, as of today, 116 countries that have ratified, plus the U.N. The committee itself is made up of many very recognized, prestigious, significantly disabled individuals who in some cases have actually traveled and studied in the United States.

As an example, there is a woman named Professor Degener, who is a woman who was born without arms when her mother took thalidomide, experienced various forms of discrimination in Germany and got her LLM here at the United States at UC-Berkeley. She

is a noted attorney and scholar, and she is an indication of the type of person.

The people on the committee themselves are knowledgeable about disability. As I said, many have personal experience. They also understand the importance of good law and good jurisprudence.

And what they are trying to do is to be able to help advance, working collaboratively with governments, many of whom, as we have said previously, want to be doing the right thing but have very limited knowledge and experience about how to develop good laws in areas of accessibility or education, have little information about how to implement those laws.

The United States has great experience in this area. Our ability to be able to sit at the table and help advance this and the role that the committee can play we think is very advantageous.

Senator LUGAR. So, in fact, the committee or sort of the governing instance in this case is giving advice to governments in 118 countries about ways in which they might be more humane and more thoughtful to disabled people, but the committee is not able to enforce this. In other words, this is an advisory function, essentially——

Ms. HEUMANN. Exactly, Senator.

Senator LUGAR [continuing]. Which is the sharing of experience. Is that your idea of the nature of the Convention, or is that too narrow a view?

Ms. HEUMANN. No, the committee is an advisory body. The committee's expertise is to, as I have been saying, help facilitate advancement. They will make recommendations, for example. We believe they are going to be discussing issues of accessibility with the committee in the future, in the near future.

And therefore, again, the importance of our being able to play a role in helping to explain U.S. standards, how our standards have been developed, the effectiveness of implementation of those standards, the changes those standards have made in the United States and can make abroad we believe is very important.

Senator LUGAR. Let me just ask hypothetically, has the committee been active in Russia, China, or—to take an instance in Africa—Kenya, or in Brazil? In other words, have they made recommendations, and have they been accepted? What has been the progress in any of these countries?

Ms. HEUMANN. Sir, as you know, the Convention itself is relatively new. The committee has thus far received three reports. The way the process goes is once a country has ratified, it will submit a report 2 years later.

China actually, I think, has now submitted its report, and it is going to be under review in the fall. And I think this is a report that we would like to also be paying close attention to, and our ability to be a member of the body—in ratifying, it will enable us to seek to have a position on this committee in the future.

Senator LUGAR. Well, when you receive this report from China, it will—I suppose the Chinese will outline ways they are helpful to handicapped persons is that thing. Then the committee takes a look at this report and says how about this or this or this? Is this the way the conversation is likely to work?

Ms. HEUMANN. The committee will gather. It will review the report. It will put forth a report on recommendations that it has for the governments. One interesting aspect that is going on right now also is that civil societies in many of these countries are also, as you know very well, Senator Lugar, developing something called shadow reports.

I think what is particularly important about shadow reports, which are being developed by civil societies around the world, is that in many countries, the voices of disabled people have not really been heard. They have not been organized. They have not been knowledgeable about how, in fact, to submit such a report.

So I think we are seeing the committee playing a critical role in articulating what their concerns will be, recommendations that they will make, and also the voices of civil society that are coming behind the government's report to say what they think about the report.

Senator LUGAR. Well, thank you.

Hopefully, maybe over the Internet, some of these shadow reports might be found, and there could be some worldwide communication of that.

Ms. HEUMANN. I am sure that the shadow reports are available, Mr. Senator.

Senator LUGAR. Thank you.

Senator DURBIN. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

The transmittal package from the administration states that no new legislation would be required to ratify and implement the Convention. There are about 50 articles in the Convention that cover a broad range of topics, including health, education, work and employment, and so on. Is the administration confident that there are not any gaps in compliance if the United States becomes a party to the Convention?

Ms. HILL. We are confident that to the extent that there are any gaps, they are addressed by the Reservations, Understandings, and Declaration. So, for example, if State law, which is a traditional area left to the States, were in some case less than what the Convention would require, the federalism reservation would make clear that the Convention's requirements did not extend to the State law.

This may lead some to advocate with States to say you may want to consider moving your State law in this direction, but there would be no binding effect on that. Again, the non-self-executing declaration would make clear that in the U.N. Disabilities Convention, even if someone believed that it didn't—that our compliance did not meet the standard set out by the Convention, there would be no binding authority to tell us to tell us to change it. It would simply be recommendations.

And we, of course, are always open to learning new ideas from other countries. So there is no way. There is no enforcement way for the Convention to force us to change new laws. We are confident that after substantial review by a number of Federal agencies that any gaps in our compliance with the U.N. Disabilities Convention would be protected by the RUDs and that any gaps are very, very minor and that we are by far the leaders in this ability to comply with the Convention.

Senator MENENDEZ. Fine. I think Senator McCain said in his statement that there would be no financial obligations upon ratification of the Convention. Is that State's understanding as well?

Ms. HEUMANN. Yes, it is, Mr. Senator.

Senator MENENDEZ. And, with some minor exceptions as you have noted, it would seem to me that we are largely already in the lead here. So, it seems to me that, well, one other question before I make that statement.

Is there any ceding of sovereignty here that will ultimately take away some of our sovereign rights in this field?

Ms. HEUMANN. No, Mr. Senator.

Ms. HILL. There is not. The articles that set up the commission for the Convention do not give the commission any authority to bind or to otherwise take any pieces of sovereignty away from the states parties.

Senator MENENDEZ. And it is my understanding that you responded to the chairman in terms of the best interests of how parents would care for disabled children. They would still have their absolute rights under that?

Ms. HILL. They still have the rights that are consistent with current State and Federal law.

Senator MENENDEZ. So it seems to me that as a leader in the world already, it would not only be prudent, but desirable for the United States to join and help others follow our lead so that a citizen anywhere in the world would ultimately be able to enjoy the benefits of these rights.

Ms. HEUMANN. Yes. And I would also like to say, you know, we are living in a globalized world, and the changes that have been made in the United States over the last four decades have afforded disabled people in this country tremendous opportunities. And as such, many of those individuals are now needing to be able to be competitive on the world market.

Those individuals with more significant disabilities who have studied at universities, have studied in the appropriate fields for international work, in many cases are being thwarted by barriers which exist overseas. You will hear from John Lancaster that in spite of many of these barriers, people are, nonetheless, going overseas.

But they do want to be able to feel when they are traveling that they can be able to say that their country has ratified this treaty. That they can freely speak about the great legislation that we have in the United States, the collaborative approaches that government and civil society have been able to use over the years.

The reality is those of you on the dais today and in committees across this Congress are the ones who have promulgated meaningful legislation that has resulted in great changes for millions of Americans living here and wishing to work, study, and travel abroad. So I think we should take the great work that we have done and, with great pride, use it as an active diplomacy to be able to work with governments and civil society to help them make the advancements that 1 billion people need.

Senator MENENDEZ. I think you have summarized it so well that I will yield back the balance of my time.

Thank you.

Senator DURBIN. Thank you, Senator Menendez.

Senator Risch.

Senator RISCH. Thank you.

Ms. Hill, I am interested, I want to focus on your testimony regarding the non-self-executing declaration. How far back do we reach to find the inception of that in treaties? When was the first time that was used? Do you know?

Ms. HILL. I believe it was in the International Convention on the Civil and Political Rights.

Senator RISCH. What year would that have been, ballpark?

Ms. HILL. And I am not sure the year of that. Sixty-six.

[The information requested to the question above follows:]

After consultation with the Department of State, attached is a list that surveys recent examples of the use of declarations in Senate resolutions of advice and consent regarding the non-self-executing status of treaties. The attached list is not intended to be exhaustive, but to provide a useful survey of recent practices.

[EDITOR'S NOTE.—The list mentioned above can be found in Annex II.]

Senator RISCH. Then the other question I would have is I think all of us are familiar with the frustration, I guess, Congress has had over the centuries trying to restrict the jurisdiction of another branch of Government. I am familiar with some of the litigation in that regard, but I am not familiar with any litigation regarding the non-self-executing declaration. Has that issue been litigated up through the highest court?

Ms. HILL. No, not through the highest court. It was brought to one court. The court found that the non-self-executing declaration was effective and did not affect the particular issue in the case.

Senator RISCH. Was that a circuit court or a district court, or do you know?

Ms. HILL. I believe that it was a district court, but I can get back to you with the details.

Senator RISCH. Could you, please? Yes, I would like the citation on that.

[The information requested to the question above follows:]

Id. In the leading case of *Sosa* v. *Alvarez-Machain,* 524 U.S. 692 (2004), the Supreme Court treated a non-self-executing declaration as dispositive. The Court noted that "The United States ratified the [International Covenant on Civil and Political Rights] on the express understanding that it was not self-executing and so did not itself create obligations enforceable in the federal courts." The Court accordingly held without any further analysis that the ICCPR is not directly enforceable.

Thank you very much.

Thank you, Mr. Chairman.

Senator DURBIN. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

And let me thank all of our witnesses and those who have participated. Also I am glad you acknowledged our former colleagues, Steve Bartlett and Tony Coelho.

When I came to Congress in 1987, it was Tony Coelho who I think sensitized those of us in Congress to the needs of people with disabilities, and I remember one person who he had an incredible impact on, who was my closest friend, and that is Congressman Steny Hoyer, who took the leadership in the House in the passage of the ADA law. So I just really want to thank Tony for his longstanding work here in moving this country forward.

We are proud of the progress that we have made in the United States, and I think the points that have been brought up here about how we can impact what is happening around the world are important. I remember Steny Hoyer the year after the ADA law passed, in his capacity as chairman of the U.S. Helsinki Commission, took the cause of people with disability internationally.

And in 1991, through Steny Hoyer's leadership, through the leadership of the United States, we were able to get the OSCE to pass a declaration on the rights of people with disabilities, known as the Moscow document, which is somewhat aspirational since it points out the needs for us to respect the rights of people with disabilities in the workplace, in the Government, accessibility, et cetera.

So I just really want to follow up in one respect to the comments that both our witnesses have made, and that is this, that you continuously state that the United States laws are the strongest and that whereas other countries have expressed their support for the rights of people with disabilities, they have not followed up with the type of legislative action and support that would provide effective changes.

You are correct. Americans have the rights here in America, but they do travel, and we do first have a responsibility for international leadership, but also to protect our citizens when they travel to other countries. By the ratification of this Convention, can you just perhaps expand a little bit further as to what position the United States would be in to point to the laws that we have passed and how they have effectively advanced the rights of people with disability?

I remember very clearly when these bills were moving through Congress, we heard all the horror stories that it couldn't be done, et cetera, et cetera. And now, as we have seen, we have been able to balance the pragmatic concerns with the needs of our people with disabilities.

And so, what position are we in if we ratify the Convention to try to get the international community to take a look at our laws and use them as an international model since we have advanced the rights of people with disability in a lot more effective way than other countries around the world?

Ms. HEUMANN. Senator, ratification will give us the ability to participate in various international fora where there is a focus on the Convention. This will enable us to help develop the agendas for discussion, to participate in those discussions, and then to participate in working with other governments to help them get a better understanding of how our laws have been developed.

Let me give you kind of a very basic example that many of us who use wheelchairs experience when we are trying to travel overseas. We have a law called the Air Carriers Access Act, which is at this point I think about 20-some years old. It provides great protections for disabled people in the United States, and it is one that we, since it was passed so many years ago, many people just take it for granted.

It means simple things like you have to be able to take your wheelchair to the door of the plane. And when you arrive, they have to bring your wheelchair to the door of the plane. If you need

assistance on and off the plane, there should be something like an aisle chair that should have seatbelts so that you don't fall.

I was traveling in a country once where I needed to bring my wheelchair to the door of the plane. I have a specially designed seat. And the staffer said to me, "I have worked in this airport for 18 years. I have never allowed someone to bring their wheelchair to the door, and you are not going to be the first person to allow that to happen."

That type of an example of being able to work with their governments and allow their governments to understand the law that we have promulgated, how it has been implemented, how it has been appropriately enforced, and what it means for disabled people is very important.

One of the colleagues here today from the State Department and I have recently been traveling, and we continuously have difficulty in getting our simple pieces of equipment because in other countries people accept when someone says, "We will not bring it to you," that they just won't. And they get off the plane, sitting on aisle chairs without seatbelts, in chairs that don't fit them, and putting themselves at great risk.

This is kind of a very simple, basic issue, and I believe that what we have been able to do over these many decades is go from simple issues to very complex issues like education of disabled children, and promulgation of regulations.

Our expertise working with governments and civil society in a meaningful way will help to improve laws overseas because we can demonstrate with data. We have done great funding in this Congress on data. Our data can show the progress that has resulted because of our good legislation.

Senator CARDIN. Thank you very much.

Ms. Hill, do you want to add anything?

Ms. HILL. If I could go, return to the question about the courts upholding the RUDs non-self-executing? There is a Supreme Court case that did address that issue and found the non-self-executing declaration to be dispositive. So that has gone up through the First Circuit to the Supreme Court and has been found to be dispositive.

Senator CARDIN. And I assume you will get that cite to Senator Risch.

Ms. HILL. And I will.

Senator CARDIN. Mr. Chairman, I would ask unanimous consent that a letter sent to the committee by the Jewish Disability Network representing the views of the Anti-Defamation League, the Association of Jewish Families and Children's Agencies, B'nai B'rith International, Jewish Council for Public Affairs, Jewish Federation of Metropolitan Chicago. I wanted to make sure I got that one into the record for the chairman.

[Laughter.]

The National Council of Jewish Women, the Jewish Federation of North America, the Union of Reformed Judaism, United Synagogues of Conservative Judaism, and UJA Federation of New York, all in support of ratification, that that be made part of our record.

Senator DURBIN. Without objection.

[EDITOR'S NOTE.—The letter mentioned above can be found in Annex II.]

Senator DURBIN. Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

Ms. Heumann, from the cost standpoint, could you explain a little bit about the financial obligations associated with ratifying the Convention? How is the committee funded? How do those things work out?

Ms. HEUMANN. The committee is funded through the general funds of the United Nations. We are not given a separate—the United States is not paying any additional funding for the committee.

Senator BARRASSO. So along those lines, would the United States be required under this Convention to provide monetary support for, say, disability programs to other nations that may not be able to afford them?

Ms. HEUMANN. No.

Senator BARRASSO. OK. I want to ask you about some private conduct. This is a question I think Senator Durbin got to. Would the Convention impose obligations on individuals, private organizations, or religious groups within the United States?

Ms. HILL. Not beyond the extent to which they are regulated today.

Senator BARRASSO. Ms. Hill, can you describe the amendment process under the Convention? Can the United States be bound by amendments that we don't agree with?

Ms. HILL. Do you have a better handle on that?

Ms. HEUMANN. The answer is "No."

Senator BARRASSO. OK. And Ms. Hill, can the United States be sued before an international tribunal or court under the Convention?

Ms. HILL. There is no international tribunal set up to enforce this Convention.

Senator BARRASSO. OK. Thank you.

Thank you, Mr. Chairman.

Senator DURBIN. Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

And thanks to each of you for coming and joining us today.

I wanted to start with you, Ms. Hill. I appreciate the references you made to federalism in the reservations that the United States has advocated. Can you talk to me for a minute about how those reservations are upheld, how they remain intact, whether or to what extent they are honored, and what impact they would have on a court's interpretation of the treaty were it to be ratified?

Ms. HILL. I don't know of courts that have rejected RUDs, and the most important one is the self-executing declaration, and that has been upheld. So I don't know of any courts that have rejected a RUD and then expanded their jurisdiction to be able to enforce anything contrary to a RUD that was adopted through this process.

Senator LEE. Harold Koh has been at times critical of what he sometimes describes as Swiss cheese ratification, where he says—there was a 2003 Stanford Law Review article in which he wrote that ratification of multilateral treaties with so many reservations, understandings, and declarations, that these conditions substantially limit the U.S. acceptance of these treaties.

Do you share that concern that we sometimes tread into that zone and create a Swiss cheese ratification? And if so, are we approaching that here?

Ms. HILL. I don't believe so. We have recommended three Reservations, five Understandings, and one Declaration, which I don't think in any way make this a Swiss cheese approach to the treaty. That is simply adopting the treaty and identifying the ways that it applies to our system.

Senator LEE. Some have expressed concerns about Article 7 of the Convention, which I am told is patterned somewhat or contains language patterned somewhat after corresponding language in the U.N. Convention on the Rights of the Child. And this language, according to some of the critics, focuses on the best interests of the child standard.

That is a familiar standard to us in some respects here in the United States in that that is a standard that is frequently employed by courts in making custody determinations in the context of a divorce. And in those rare cases involving the invalidation of parental rights with an abusive home environment, it is sometimes a standard that is used to decide where the child goes then if the parental rights are dissolved.

But the critics would say that Article 7 of this Convention would inject the best interests of the child standard into other contexts, contexts in which parents currently enjoy certain rights, certain—the right to make certain decisions unencumbered by the decisions of the State. Can you comment on those?

Ms. HILL. To the extent that that is the concern, that this would reach into the private home and the private decisions of parents about how to raise their children, that would be protected by the private action reservation. So that would keep, under the U.N. Disability Convention, anything that might be read to interfere with the private decisions of parents about their children would be protected. That private action would be protected by the private action reservation.

Senator LEE. Meaning that because no one has a private right of action to enforce the terms of the Convention itself, that that would take care of this concern?

Ms. HILL. No, no. This would be that we interpret, we interpret the application of the U.N. Disabilities Convention to respect the distinctions between what we as a Federal Government can regulate in terms of private action and what we cannot. And so, in these cases, the home and family determinations of parents, unless they reach a level of State law, are within private action and would not be regulated under the Convention.

If they do reach a level of State law, and State law has most jurisdiction over things like neglect and so forth, then you would get into the federalism reservation that would also say that State law would continue to apply in the way that it currently does.

Senator LEE. OK. So the reservation, as you understand it, particularly the federalism reservation makes sure that we don't have a creep of Federal law into areas currently covered by State law——

Ms. HILL. Correct.

Senator LEE [continuing]. Which would include most custody determinations, most determinations regarding eligibility for educational programs, and things like that. Is that correct?

Ms. HILL. Correct. Things that are beyond the Congress' power to regulate now.

Senator LEE. OK. There are some critics who have pointed to provisions of the IDEA and pointed out that parents have certain rights under the IDEA and that that aspect of Federal law would be modified by Article 7 of this Convention. Can you comment on that?

Ms. HILL. Those are interpreted through our nondiscrimination Understanding, that those would be read as nondiscrimination obligations rather than as any affirmative obligations. Those would not inhibit parents' ability to both participate in the IEP process and make their positions known, or to make their decisions to reject special education services that were being proposed by a school.

Senator LEE. So you would agree that without those reservations, that might be a change to existing law? It might be a change to the existing law under the IDEA, but with the reservations, there is not a change.

Ms. HILL. I actually don't believe. I was accepting for the purposes of the argument that that would be the case.

Senator LEE. OK.

Ms. HILL. But I actually don't believe that this changes the basic approach of the IDEA, which already includes the best interests of the child and already includes the participation of the child, as appropriate, in the decisionmaking.

Senator LEE. OK. There is a Professor Geraldine Van Bueren, who apparently assisted in the drafting of the corresponding language in the Convention on the Rights of the Child, who, in reference to the corresponding language in the Convention on the Rights of the Child, said that the best interests standard provides decision and policymakers with the authority to substitute their own decision for either the child's or the parents', providing it is based on considerations of the best interests of the child.

Do you disagree with Professor Van Bueren?

Ms. HILL. She is talking about the Convention on the Rights of Children, and I am not an expert in the Convention on the Rights of Children. But the difference—at least one of the differences between that Convention and this one—is that this one has a nondiscrimination provision. So this does not add laws, add benefits, add requirements regarding individuals with disabilities that are not equal and the same as those added for children without disabilities.

So if we had adopted the CRC, then those rights would carry on to children with disabilities. But not having pursued that, the rights provided to children with disabilities under this would be nondiscrimination rights.

Senator LEE. So the different context in which similar language was used in the CRC gives it a different application there than it would have here since this is in the context of nondiscrimination?

Ms. HILL. Correct. And then reemphasized by our interpretation of all economic, social, and cultural rights as nondiscrimination rights.

Senator LEE. OK. Thank you.

I see my time has expired.

Senator DURBIN. Senator Risch, did you want to make a point before I recognize Senator Shaheen?

Senator RISCH. Please. Actually, I wanted to ask a question.

Ms. Hill, since 1966, can you tell me how many treaties that we have had where the language, the non-self-executing declaration has been included in the treaty?

Ms. HILL. I am not sure I know all of them. The ones that I referred to in my testimony, including the Convention on Civil and Political Rights and the Convention against Torture, I believe are——

Senator RISCH. Do you think there is more than two? Is it possible there is more?

Ms. HILL. Three. I think the racial discrimination one as well included it.

Senator RISCH. And is the language precisely the same, close to the same in each of these treaties? Is it different? Is it modified for each treaty, or is there boilerplate language for this particular provision?

Ms. HILL. It is certainly based on the same concept. I can't swear that, line by line, every word is the same.

Ms. HEUMANN. We can get back to you with that.

Senator RISCH. Would you, please? And also if you could check and see if there are other treaties than these three that have such a provision, I would sincerely appreciate it.

And thank you, Mr. Chairman.

Senator DURBIN. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

And thank you all very much to the panelists for being here. I apologize for missing your testimony.

Ms. Heumann, I think I am pronouncing your name correctly?

Ms. HEUMANN. Yes.

Senator SHAHEEN. In your testimony, you stated that ratification of the treaty would give the United States legitimacy and a platform from which to push for the adoption among other countries internationally. Can you talk a little bit about how foreign countries and foreign governments currently perceive the fact that the United States has not ratified the treaty and what our failure to ratify the Convention has meant on our leadership on issues around disabilities throughout the world?

Ms. HEUMANN. Thank you very much for the question.

I think people are perplexed, quite frankly, because this area is one that the United States has led on for so many decades. And so, there is a real question from disabled people, why is the United States abandoning us? That word may not be used, but it is really something that people are concerned about.

We have got all this expertise. Why are we not freely sharing it? Why are we not being able to participate at relevant tables?

I think governments are also questioning why we are not more actively participating. We go to various fora, but because we haven't ratified, we are not able to participate.

So last year, for example, we were going to be asked to speak on a plenary panel in the U.N. when the Conference of State Parties

convenes, which is the body that gets together every year to discuss the Convention. But we were not allowed to participate because we hadn't ratified.

It meant that, in my view, the country that has got the most experience in really grappling with critical issues on inclusion of disabled children in education, work in universities, teacher training, we were not allowed to participate. These are all very missed opportunities from a foreign diplomacy perspective.

It is something that the President and the Secretary obviously feel strongly about that we need to ratify so that we, in fact, can freely be able to participate and advance the tremendous work that we have done in the United States in an incredibly bipartisan way.

And I think this is something that is also very important. What I am hearing from colleagues of mine who are working in the field around the world is what they are really struck by is how governments are so sincerely interested in making changes.

I think the adoption of the treaty in 2006 was an amazing effort which brought hundreds of disabled people from around the world from some of the poorest countries, who sat side-by-side with members of their foreign delegations and for the first time were really able to explain the kinds of problems that people are facing.

The United States played an important role in those discussions.

Concepts like reasonable accommodation, which are in the Convention, are because of the great efforts of the team of U.S. people who participated.

So our standing in the world, I think, will be enhanced. We will more freely be able to demonstrate the great work that we have done. There will be ranges of opportunities where we can discuss this. And most importantly, at the diplomatic level, I think we will really be elevating our knowledge and expertise to be able to advance and elevate the rights of disabled people.

Senator SHAHEEN. I don't know which of you would like to address this question. But as you all know, there is widespread support for the Convention from a variety of stakeholders. Over 165 disability organizations and 21 major veterans and military service organizations have supported ratification.

Can you all talk about why this support has been so widespread?

Ms. HEUMANN. I think there are a number of reasons. One of those is that our laws have enabled disabled people in the United States to achieve a level of success, certainly not yet for all disabled people, so that people are aspiring to do more. They are aspiring to participate in the global scene.

Disabled veterans who wish to get jobs overseas or just to vacation overseas or veterans who have a family member with a disability or civilians, they are being thwarted. We see that with Foreign Service officers who cannot take a position overseas unless they are separated from their families because they don't have the same services in those countries as we have here.

I think people see it as the right thing to do. I think many people in the United States understand the importance of being able to participate in the global market. We see it as an opportunity from a business perspective to be able to sell products that we have designed in the United States—wheelchairs, information technology, et cetera. These are all very critical things.

And I think, quite frankly, you know, you look at the religious community. We have met with many religious organizations that are doing work in developing countries that are very much understanding the benefit of taking what we have been learning here and are taking it overseas to work in very small rural communities to be able to help advance the rights of families and children with disabilities.

Senator SHAHEEN. And can you elaborate a little bit on the economic benefits? Because you alluded to that just now and in your testimony, but can you talk about why there would be real economic benefits to us as a country in ratifying the treaty?

Ms. HEUMANN. So I think there are a number of ways to look at economic benefit. From the U.S. perspective, economic benefit of our being able to take products that we have developed and look at markets overseas to sell those products I think is very important. We also see a growing number of disabled people, as I have been saying, who wish to work overseas. So it is an economic impact for them.

We know that disabled people around the world are the poorest of the poor. We know that education is one of the critical reasons why people are poor, whether they are disabled or not. We see that as women become educated, and we should, therefore, believe that if disabled girls are part of that, they will also be able to become meaningful players in the economic market.

Families that can earn their own money are less dependent on other kinds of supports. Many of the countries that we all work in, in fact, disabled people have no economic supports they can get from government. So they are a drag on their families. Family members who don't have disabilities cannot go to work because they are staying home taking care of people.

There are so many economic reasons from the U.S. perspective to not only advance from our perspective in the United States, but to help other countries learn what we have done to be able to help people with disabilities get the tools they need to be able to work.

Senator SHAHEEN. Thank you.

Thank you, Mr. Chairman.

Senator DURBIN. Senator DeMint?

Senator DEMINT. Thank you, Mr. Chairman.

I want to thank our witnesses as well. Respecting and recognizing the rights of disabled persons is an important issue, and the goals of this Convention are admirable.

But I have concerns about how we achieve those goals. The idea that the United States must join the U.N. Convention to give ourselves more legitimacy in the world given our extensive work, which has been pointed out by our witnesses, to protect the rights of disabled is demeaning to those who have succeeded in working for the high standards we have in the United States.

Joining this Convention will not enhance the rights of the disabled in the United States. There is also little evidence to suggest that joining the Convention will coerce other countries to improve their protection of disabled people. We can see this through examples of other U.N. Conventions.

China routinely flouts the Law of the Sea Convention in South China Sea. Adherence to the Convention on the Elimination of All

Forms of Discrimination against Women, such as Saudi Arabia, shows slow improvement in guaranteeing basic rights for women. Furthermore, the Department of State, USAID, and the Department of Justice are already resources for countries that are seeking help in improving the treatment of disabled people.

More worrisome, convention committees have a track record of overstepping their authority and advocating positions that are contrary to American laws and values. As one of our witnesses will point out in his testimony, a 2008 report from the Committee on the Elimination of Racial Discrimination called on the United States to, among other things, place a moratorium on the death penalty, restore voting rights to convicted felons, and ensure that enemy combatants at Guantanamo Bay have the right to judicial review.

The committee that oversees the Convention on the Elimination of All Forms of Discrimination against Women, of which the United States is not a party, has a long record of promoting abortion, the decriminalization of prostitution, gender quotas, and reducing parental authority. These committees have acted far beyond their authority in their recommendations and by doing so promote polarization and mistrust among the member nations.

Portions of this Convention also concern reproductive health and the rights of children. These issues should be addressed by individual U.S. States and local governments. We should never cede the authority of these matters to an international organization.

Our Founding Fathers cautioned us long ago against foreign entanglements. Many of us know President Washington's warning in his farewell address where he stated, "The great rule of conduct for us in regard to foreign nations is in extending our commercial relations to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop."

In Thomas Jefferson's inaugural speech, the author of the Declaration of Independence, stated, "Peace, commerce, and honest friendships with all nations, entangling alliances with none."

I believe that we have distanced ourselves from the words of our Founders. Despite the best intentions of the international agreements we find ourselves considering, these warnings should resonate today as loud as they did at the genesis of our country.

Before I get to my questions, I have some concerns with the timing and process for vetting this treaty that I would like to address. This Convention was submitted to the Senate less than 2 months ago, and Senators were only informed of the chairman's desire for consideration before the July 4th recess.

Senators on this committee have already been asked to consider and debate a highly complicated and controversial treaty, the Convention on the Law of the Sea, this summer, and we are continuing to monitor and deal with several issues of urgency in the Middle East and elsewhere.

I appreciate the chairman's willingness to hold this hearing and invite witnesses representing a variety of opinions. But I caution against expediting this Convention and ask that Senators are allowed to have ample time and opportunity to review and discuss its merits.

I am going to read directly from Article 25, Section 8 of the Convention. It says that, "State parties shall provide persons with disabilities with the same range, quality, and other standards of free or affordable health care and programs as provided to other persons, including the area of sexual and reproductive health and population-based public health."

I understand that when the U.N. General Assembly adopted final text in 2006, the United States issued a statement stating that reproductive health did not include abortion. However, this administration has a different understanding of reproductive health than the previous one. Secretary Clinton stated in 2009 that we think or, "We happen to think that family planning is an important part of women's health, and reproductive health includes access to abortion that I believe should be safe, legal, and rare."

I would just like to ask the panel how does the United States define reproductive health in this Convention, and does this administration stand by Secretary Clinton's statement about reproductive health when it comes to this Convention?

I would also just like you to reflect on why it is that the United States, who has really set the gold standard for how we deal with disabilities, why should we submit ourselves to other nations who have been far less effective and committed to this cause?

We can certainly be the model. We can be the example. We can be the light on the hill for the whole world. We can provide resources. But why should we present ourselves to the study of those who would scrutinize our work under criteria that, clearly, they overstep on all of the areas we have been involved with the United Nations? Why should we submit instead of lead?

So I will go back to my first question of reproductive health and then ask any just comments you might have on why the United States should submit rather than lead.

Ms. HILL. Sure. Thank you for the question.

First of all, the Convention doesn't discuss abortion.

And to the extent that it discusses health services and reproductive health services, those are nondiscrimination requirements. So they neither obligate the United States to increase abortion availability or other reproductive health service availability.

Senator DEMINT. So you disagree with Secretary Clinton that reproductive health includes abortion?

Ms. HILL. No, I don't disagree with that, with the interpretation that reproductive health could include abortion. But the reproductive health provisions of this Convention are nondiscrimination requirements.

So if reproductive health services are provided to people in general, all the reproductive health provisions say is that they also have to be made available to people with disabilities. They do not create new reproductive health obligations. They do not create new obligations to fund abortion or anything else that might be considered reproductive health.

Senator DEMINT. And do you think that our country submitting ourselves to the scrutiny and criticism of this international body made up of countries who are far less effective as we are is going to improve our treatment of the disabled in this country?

Ms. HILL. Quite simply, we don't submit ourselves to an international body. The international body has a limited set of powers laid out in the articles that address those powers. And they do not have the power to bind us. We do not have any obligation to follow their recommendations.

We report to them periodically and not that frequently, and they may give suggestions and recommendations, which we do not have to adopt in any way.

Senator DEMINT. And neither does any other country.

Ms. HILL. And neither does any other country. And so, for us, the goal of our participation is to be able to influence by being at the table, other countries incorporation of what we believe are the gold standards that we have adopted so that our people can be consistently accommodated and consistently guaranteed access overseas.

Ms. HEUMANN. And Senator, I would like to also say that what we have seen in this country in relationship to the advancement of the rights of disabled people being done in a consistent, nonpartisan way is what we are seeing around the world. So I think in some way this treaty may be different than some other treaties.

Because, as I have stated throughout my discussions today, we are seeing governments with various political persuasions, who frequently we have difficulty speaking with, being willing to talk with the State Department and others, giving us opportunities because we are discussing an issue that affects so many people, regardless of their economic background and regardless of their political background.

So we have seen this in numerous countries.

Senator DEMINT. Well, I agree. I agree. Clearly, good things are happening. The United States has made tremendous amounts of progress. The world is copying us in a lot of respects. As you said, the world is talking to our State Department.

There is no other table that we need a seat at than the one we already have, which is a seat at the top where people come for the gold standard. And it seems like you are basically contradicting yourself, saying that we are making huge progress here and around the world. We are interacting with the rest of the world. They are copying our gold standard, but somehow we need to submit ourselves to this.

And we are submitting to really a multimillion dollar study every 4 years, where we will get the basically criticism—and we have seen it from other conventions—of what we are doing, instead of what we are doing now, which is setting the example and creating a process of continuous improvement that benefits Americans with disabilities, as well as people all over the world.

Ms. HEUMANN. I believe, Senator, that our failure to ratify, in fact, does not give us the prominence that we should have. The United States has done such fantastic work in this area. I believe not ratifying, now that 116 countries have ratified and we know that more countries will be ratifying, we are being denied opportunities at international fora where disabled people and governments are sitting down to have genuine discussions about how to move this issue forward.

I don't think we have anything to hide. Our laws are good. We have good ways of monitoring. We find problems. We correct the

problems. We can afford to hear from others where they believe we are not doing something the right way.

We have no obligation under this treaty to take recommendations that we think are inappropriate. But there may be recommendations that come forward that, in fact, may be fine, that we can learn from, that we can decide whether or not we want to utilize.

I think in the area of disability, our expertise will be enabled to be distributed in a more—a more effective way if, in fact, we take the good work that we have done with pride and say the U.S. is willing to sit down and be at the table through ratification.

It will give us an opportunity also to be able to speak to governments more critically when, in fact, we believe, they are not appropriately implementing their laws, when they are not doing budgeting in their own budgets to ensure that disability be taken into consideration, when they are not, in fact, looking at how they can educate disabled children when we know they may be able to do more than they are doing.

It gives us a different opportunity and one which I really have repeatedly said, our Congresses over many, many years have continued to reinforce the work that we have done. We use that issue when we travel overseas. We talk about the bipartisan work that our Congress is able to achieve, coming together on this issue of disability.

So I just want to say we don't believe we are submitting. We believe it would be a very positive effort, and it would be one which really would, I think, allow benefits both for Americans here in the United States and would advance the rights of disabled people around the world.

Senator DEMINT. Well, I admire your work and your goals, and I have the same goals. I just think the history, if we look at what the United Nations has done with an incredible amount of U.S. money, I think there is reason to question that they could actually improve the process we have already begun. But we clearly disagree on that, but we agree on your goals.

Thank you very much for being here.

Mr. Chairman, thank you for the courtesy of some extra time.

The CHAIRMAN [presiding]. I am delighted to use the extra time. I think it is important to be able to vet all of this as adequately as possible.

I would just say to the Senator if he could convince me that an extra 3 weeks or a month was going to open his mind to supporting the treaty, I might consider it.

[Laughter.]

The CHAIRMAN. I might also add that in all the years I have been here, never has this Congress been doing as little as it is doing today. And I have ceased to be sympathetic after 6 months on the super committee of trying to reach an agreement in a nonnegotiating atmosphere. I am not very sympathetic to the notion that we all need a lot more time to do things.

Only the United States Congress takes the kind of time it does to "consider things." And I think the American public and a lot of people expect us to do our work and do it faster, do it better. And I hope we are going to do that.

Senator Coons. I have some questions, but Senator Coons was here. And then I will come back to him.

Senator COONS. Thank you, Chairman Kerry. And thank you for convening this hearing.

I, with you, believe that the American people expect us to continue our work and to be diligent and thorough and engaged in considering important opportunities for us to expand American leadership at home and abroad, and particularly on an important and bipartisan issue of civil rights and civil liberties such as the rights of persons with disabilities.

And I want to thank Senator Durbin for his leadership on this particular Convention and topic and Senators McCain and Harkin, who testified earlier. I was honored to join them, as well as Senators Udall, Barrasso, and Moran, in advocating that the committee take up the consideration of ratification of this treaty.

As Senators McCain and Harkin emphasized in their testimony, bipartisanship has long been the hallmark of American leadership on protecting the rights of citizens with disabilities. And today, I believe we need to continue that proud tradition and extend that leadership globally with the ratification of the CRPD.

I was particularly moved by Senator McCain's reading of Senator Dole's letter and think it is important for us to recognize the very real positive opportunities embedded in ratification. So if I might first, Ms. Heumann, what would be the impact of ratification on our veteran community?

I was struck at just how broad and nearly unanimous amongst the veterans community support was for ratification. How would ratification specifically help promote access for our wounded warriors traveling overseas?

Ms. HEUMANN. First, it would allow our wounded warriors to be a part of discussions that may take place overseas. They may be part of businesses that are going overseas to look at issues of implementation of accessibility standards, possibly selling products like ramps and other kinds of technology—wheelchairs, et cetera—that could be used by veterans overseas, non-U.S. veterans overseas, as well as by others.

I think veterans play a very critical role in those efforts because a disabled veteran who is then wanting to go out and work and actively participate in society demonstrates a very strong message that in the United States, regardless of disability, we believe people are able to continue with their life, make advancements, and make major contributions to society. And veterans really stand in a unique position in that regard.

So that is one thing that I would say about veterans. Veterans and civilians also are wishing to study overseas. The ability to be able to take our knowledge and experience about what we have done with universities here, great disabled student services offices that have removed barriers that over the last 40 years have resulted in people with psychiatric disabilities, physical disabilities, intellectual disabilities, blindness, deafness, et cetera, who are now attending community colleges and universities.

Where in many other countries, I mean, I meet—I visit countries, and I am astonished by some of the barriers. Blind people in certain countries not being able to study in the field of technology. No-

body knows why, but they are not allowed to study in the field of technology.

A disabled veteran who happens to be blind, who may, in fact, have studied, being able to go overseas and being able to show what our universities have been able to do for them and how they are now in a position of leadership. Those are all very important areas that we can lead on.

Senator COONS. You mentioned in your previous testimony that upward of 90 percent of disabled children in the developing world do not attend school. What might ratification do to strengthen the efforts of the U.S. Government overseas either through multilateral institutions or directly or through bilateral effort or in partnership with NGOs, how might ratification help strengthen our current efforts to improve the opportunities for disabled children to fully participate in education overseas?

Ms. HEUMANN. It allows us to use our expertise, both for agencies like the Department of Education and then international organizations that are doing work overseas in the area of education, to be more inclusive of taking the knowledge that we have learned on how to educate disabled children effectively. It allows USAID and the State Department to do more than just be looked at as grantmaking agencies, but really also to be able to sit down and use our expertise.

When I was recently in Ethiopia, we had some very productive discussions with the Ministry of Education that is really seriously grappling with many of the issues about how to educate disabled children, both in urban and rural areas where they have additional challenges, and some fantastic staff who have very good experience. But they really want to know the nuts and bolts.

And we have people in the United States, for example, from universities who are traveling overseas. In some cases, courses are being set up that they are teaching. They are working with universities on some very pragmatic issues that we have learned about.

For example, universities, when they set up schools of education, including that issue of education for disabled children be a part of the general training for teachers in general, that they can get basic training on how to work with children who have different types of disabilities. I think these are some of the very basic mechanisms that we can utilize to advance the knowledge and expertise that we have here and to share it with other countries overseas.

Senator COONS. And if I might, last, what sort of—do you have any quantification of the sort of market opportunities there might be for the sale of technologies, of equipment and materials? If we are one of the world leaders in helping with adaptive technologies and helping with building modifications and retrofits, with supportive services, what sorts of market opportunities are there that we might be missing out on because we are simply observers rather than advocates, supporters, ratifiers of this important Convention?

Ms. HEUMANN. I believe that there can be significant markets that can be developed and are developed. In areas like information technology, we are seeing—I read in one of the reports that had come in the other day about how a company, in fact, is now selling cell phones in Africa that will be accessible for blind people.

These are things that are happening whether or not U.S. companies—some of the U.S. companies are obviously taking advantage of this now. But I think one of the big issues, especially in business, is that as people see there is a growing market, business people understand they want to gravitate to that market.

And one of the issues with the CRPD and 116 countries having ratified is that disabled people in those countries are also demanding more. Our ability to demonstrate and show the products that we can sell to them and, in many cases, also go into those countries and help learn how to make their own products. So there are organizations, for example, in this country, that have been working in Africa and Asia and others, going in and helping people learn how to make wheelchairs that can be maintained very simply, training people so that bicycle makers can also repair wheelchairs.

There are many different ways that we can look at the business market, but I think we have great opportunities. And we have great creativity in the business community.

Senator COONS. Well, thank you.

I think this is an opportunity for us to show values leadership, but also an opportunity for us to explore and develop both opportunities for education in the developing world, opportunities for our own veterans to travel and to represent us, and opportunities for us to fully participate in the expansion of opportunities for people with disabilities worldwide.

Thank you for your testimony today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Coons. And thank you also for your willingness to chair a little bit as we balance schedules here.

Let me just ask a couple of questions. We have two other panels, and everybody is being very patient, and each of the panels are extraordinarily important. So we will wrap up here momentarily and seamlessly transition right away into the second panel.

I just want to ask you very quickly. I want to come back to Senator DeMint's question a moment ago. I just want to clarify for the record that Article 25 of the Convention could not be more clear about the requirements and powers that parties have with respect to this question of nondiscrimination abortion or obligation.

And it is with respect to health issues, there is only a nondiscrimination obligation. There is no requirement to do something extra or to not do something.

Ms. HEUMANN. Correct.

The CHAIRMAN. And that is correct, is it not?

Ms. HEUMANN. Yes.

The CHAIRMAN. I just want to make that crystal clear on the record here that Article 25 could not be more clear with respect to that.

Second, the issue has been asked, and appropriately, by a number of Senators why—so why do we need it? What are we really going to get? I don't think that is clear enough for the record yet, and I want you to really try to bear down on it a little bit.

If we join the Convention, some people say we can get this progress no matter what, and the United States will continue to lead, et cetera. So I really want you to try to give us some exam-

ples, tell us why we need to join the multilateral Convention, and show us perhaps some specific examples of where our absence or where our presence on the disabilities committee would actually improve the performance. Could you do that, please?

Ms. HEUMANN. Sure. Our failure thus far to ratify means that at the upcoming meeting in September, where there will be a new slate of people running for office, we will not be able to vote. That means that we will really not be able to also affect the votes of other individuals.

I think it is important for us at this particular meeting where these discussions will be going on, that we are able to critically look at those people who will be on the committee. Look for the best people. Not only be able to vote for the best people, but also to be able to help influence those people who will be serving on the committee.

The committee, we believe, is an important one. It needs to be a knowledgeable one because it is going to be giving advice and recommendations to governments around the world. So that is one critical issue.

I think other opportunities where we can be able to discuss things like accessible transportation, accessible standards in general. Elections, a very important issue. Our ability to really help participate in discussions, to be able to advance work in the area of elections is also important.

The CHAIRMAN. But somebody might sit there and say, well, you know, that world is going to go on anyway. They can see what we have done. What do we really gain by being part of that?

Ms. HILL. I would suggest that there are going to be discussions at the states parties meetings where we cannot participate as states parties where individual countries are deciding what standards and what policies they should be using going forward.

By not ratifying, we are getting a cloud of questions.

Is there really something wrong with your law that keeps you from not ratifying? Are you really not committed to this that keeps you from not ratifying?

That may make countries turn to other countries who have ratified to say, well, maybe your approach is actually better. And in those cases, it is very important that our approaches are in the mix.

So, for example, a veteran comes home with an injury and receives his or her rehabilitation here and learns how to use a wheelchair in the situations that we set up here—what a 5-foot turning radius looks like, a 36-inch ramp, a ramp with a certain slope—and is prepared to deal with those things. And then will be expected to go to other countries, and they may have adopted, because of our absence from the table, other standards——

The CHAIRMAN. So the bottom line is we may not be protecting our veterans and our people with disabilities rights as effectively and significantly as we would want to.

Ms. HILL. That is correct.

The CHAIRMAN. Is that correct?

Ms. HILL. That is correct.

Ms. HEUMANN. Absolutely. That is correct.

The CHAIRMAN. I would assume also that we are not necessarily finding best practices put into place because we have been dealing with this for longer, and we are not at the table with the kind of credibility that allows us to be able to affect an outcome that could be either less costly, more effective, or a number of other positive benefits.

Ms. HEUMANN. And it also, I think, denies us opportunities to learn about new ways that we may be working with things like development of accessibility regulations that other governments may need to use in places like rural communities.

The CHAIRMAN. Now with respect to the federalism reservation that you are proposing, Ms. Hill, I think this has been touched on a little bit. But again, I think it is critical to clarify, and I want the record to be crystal clear on it.

States will not be required to change their laws in any way in order to comply with the Convention. Is that accurate?

Ms. HILL. States are not covered by the Convention. The Federal Government is covered by the Convention. And to the extent that the Federal Government does not have authority under our Federal system to regulate States or to the extent that particular issues are left to the States, those States retain the ability to maintain those issues without changing our Federal balance between Federal and State power.

The CHAIRMAN. So the Convention would not give the Federal Government any new authority to somehow force a State government to change their law or regulation with respect to disabled?

Ms. HILL. That is correct.

The CHAIRMAN. And would joining the Convention in any way shift the balance of power between the Federal Government and the States——

Ms. HILL. No.

The CHAIRMAN [continuing]. With regard to any disabilities issues?

Ms. HILL. No.

The CHAIRMAN. Are there any further questions of this panel?

Senator DEMINT. Mr. Chairman.

The CHAIRMAN. Senator DeMint.

Senator DEMINT. Just a final comment. Again, I appreciate the questions. I appreciate the panel. But I think, as we often do up here, we are confusing our goals with the means to those goals.

There is no reason that we can't join with other countries and organizations around the world to develop best practices and share information on disabilities. But a treaty has a high standard in a three-quarters vote in the Senate for a very particular reason. It is something that goes beyond voluntary cooperation.

And while we are saying this is a treaty with no authority, can't force us to do anything. In that case, it doesn't need to be a treaty. It needs to be an association, an organization, a working group that gets together.

We can accomplish these goals without another entanglement in a sense that involves some standardization, which I found in my work in the private sector, when you centralize control, you standardize certain quality aspects, you generally limit long-term continuous improvement.

So I don't deny that the goals are good. The cooperation is good. The best practice is good. But the centralization of control here, even though we are saying there is no authority behind it, I think could very well limit our ability to continuously improve a process that the more I listen to the witnesses, the more I hear it is already happening.

That the commercial aspect of this is getting involved as demand around the world improves. Now with the Internet and people able to find out about these things, it is likely to move ahead. But a treaty like this is more likely to standardize certain technologies and protocols that are likely to limit the innovation and improvement in the future.

That has been my experience not just with the United Nations, but every effort by major large groups of centralized control when really the power is going to come from the bottom up.

Thank you.

The CHAIRMAN. Well, with all due respect, Senator, the power is coming from the bottom up, and it is not centralizing control. It is, in fact, control lies still within each country that applies the law. It is applying a broader standard. And we have applied those broader standards in any number of ways.

With all due respect, when the Senator says we deny long-term improvement when you standardize, every experience of the Voting Rights Act, the Civil Rights Act, of the expansion of rights for people in this country, and the ADA itself, I mean, you can look at the examples of the numbers of people with disabilities who are in the workforce today who are educated and teaching and doing things productively who never would have been, and they are doing so under a standardized aspiration, if you will.

And the aspiration is equality of opportunity, which is at the core of what this country is all about. So I would just deeply disagree with the Senator's conclusion with respect to what is being sought here. Not one power of the United States is given up. Not one power of the United States is given up, and in fact, to some degree, we wind up handicapping ourselves by not being party because other folks will set other kinds of standards and other things which we may not have met or may not have agreed to or could have affected.

I think Attorney General Thornburgh and others who have had long experience with this can testify. I am not here to testify, but I do think that since the Senator didn't ask a question and made a statement, I wanted to equally make a statement in disagreement with that.

And I would just ask you both, as you sat there and listened to the Senator, I mean, he is basically saying we can do this without it. I mean, that is the bottom line. Can we do this without it? Can we be as effective? Can we achieve our goal without this?

Ms. HEUMANN. I think we have repeatedly stated this morning that we don't believe that is true. I think we have tried to lay out this morning the arguments of why it is critically important that we be at the multiple fora that are available to us.

But most importantly, I think it is not appropriate to look at the CRPD as anything which is centralized because as you have said, Senator, the work that is going to be done to make changes in the

lives of disabled people is done at the country level. It is done at the village level. It is done at the level where people are living.

Our ultimate work will be successful when we have been able, working with the CRPD and the bilateral and multilaterals, to make the significant changes. That will take many, many years. This is when we will see opportunities that will be afforded to many people.

We know that in many of the countries we are dealing in, these are not simple fixes. But our ability to share our technical knowledge is critically important and cannot be done in as meaningful a way when we are not ratified.

The CHAIRMAN. And I might remind folks, in the 1980s when I first came here, I can remember there were still buildings where people with disabilities couldn't punch an elevator button, couldn't get to a second floor. Couldn't access a telephone. Couldn't do fundamental kinds of things.

And the reason they can do those things today is because we set an aspirational standard, and people sought to achieve it. So I would urge Senators to look at this very, very carefully.

And it is not complicated. It is not hard to read it. It is not that big, long, and complicated a thing. And I urge Senators to look at the de minimis, de minimis, the nonexistent give-up of any State of any rights, of any current capacity in our country. And that is why I said in the outset in my opening comments that I only see the upside. But that is for others to determine each for themselves.

I want to thank you on this panel very, very much. We really appreciate your testimony. We will leave the record open for a week for the submission of questions in writing and really appreciate you being here today.

The CHAIRMAN. If I could ask everybody to sit quietly and the second panel will just come up and immediately take their places? We would like to begin their testimony right away, if we can.

And we have still a third panel, too. So we are going to continue right through, folks, and we are not going to truncate anybody. Oh, it is? So we have everybody consolidated on the one panel, which is great.

Attorney General, if you would? Thank you.

So on this panel, we have the Honorable—who do we have here? The Honorable Richard Thornburgh, former Attorney General of the United States, who will lead off. Mr. John Wodatch, the former Chief of the Disability Rights Section, Civil Rights. Mr. Steven Groves of the Heritage Foundation and Michael Farris of Patrick Henry College and Mr. John Lancaster, first lieutenant in the United States Marine Corps, retired.

So, General, would you lead off, please? Do you mind?

We are delighted to welcome you back here.

Thank you for your patience and thanks for your willingness to come and testify. And thank you also for your many hats you have worn in public service. We greatly appreciate your presence.

STATEMENT OF HON. RICHARD THORNBURGH, FORMER ATTORNEY GENERAL OF THE UNITED STATES, OF COUNSEL, K&L GATES, LLP, WASHINGTON, DC

Mr. THORNBURGH. Good morning to you all.

Chairman Kerry, Ranking Member Lugar, members of the committee, as a veteran of almost 50 years in the disability rights movement and perhaps more importantly as a proud parent of a son with extreme intellectual and physical disabilities who has become in this great society of ours a contributing member, I am delighted to be here this morning to testify in favor of the ratification of the Convention on the Rights of Persons with Disabilities.

This is an important component of the worldwide effort to advance disability rights. Ratification by the United States Senate would mark a major step forward in the effort to end discrimination and to promote the rights of as many as 1 billion men, women, and children with disabilities around the world who seek vindication of their preeminent human rights in an ever-challenging world.

As you have heard, a total of 153 countries, including the United States, have signed the Convention, and 116 have ratified its terms. We literally stand today at the very cusp of a new era of worldwide recognition of disability rights. A major leap forward in this effort would be accomplished by timely U.S. Senate ratification of this Convention.

It is obvious that the world community has chosen to take an important and long overdue step toward bringing people with disabilities all over the world into the mainstream of the human rights movement by adopting this Convention. I must applaud the disability community for its tireless efforts in what must have seemed at times to be an uphill battle for international recognition of these important rights.

The Convention represents important principles that as Americans we hold dear—basic recognition and equal protection of every person under the law, nondiscrimination, the fundamental importance of independent living, and the right to make basic choices about our lives. We pioneered these principles under American law through passage of the Americans with Disabilities Act in 1990.

We in the United States are demonstrating daily that people with disabilities can participate fully in our democracy. We are demonstrating that society as a whole is richer and better off when people with disabilities are included in every aspect of our lives.

It is my hope and expectation that the United States will assume an equally important leadership role in helping to promote these basic principles worldwide by the ratification of this Convention.

Over 20 years ago while serving as Attorney General, I testified before House and Senate committees of this Congress in support of the ADA. During those hearings, I acknowledged that no piece of legislation could alone change the longstanding misperceptions that many people have about disability, misperceptions based largely on stereotype, ignorance, and fear of what is different.

Any reshaping of attitudes would have to be the gradual result not of words or ideas in the laws, but of bringing people with disabilities from the margins of society into the mainstream of American life. In our schools, in our workplaces, on buses and trains, in our courthouses, restaurants, theaters, and congregations where they not only have an absolute right to be, but where we have an obligation as fellow human beings to welcome them as equals.

In the years following 1990, we have made remarkable progress not only celebrated here at home, but recognized abroad. Because of our adoption of the ADA and other disability rights legislation, the United States is viewed internationally as a pioneering role model for disability rights.

Despite progress already made, disability as a global issue remains near the bottom of the list in many governments when it comes to setting their priorities. People with disabilities remain among the poorest, least education, the most abused and excluded people on earth. We must recognize that the challenges we face are intimately linked with the very circumstances of economic, social, and political marginalization that affect people with disabilities around the world.

It is important to note that ratification of the Convention will require no new domestic legislation and will impose no new cost upon U.S. taxpayers. As done in our own ADA, the Convention simply ensures nondiscrimination on the basis of disability, guaranteeing that persons with disabilities enjoy the same rights as other persons.

Some said that because of America's comprehensive domestic protections a treaty on disability would have no relevance in our own country. But let us hold on a minute. We are, indeed, at this time the most progressive country in the world when it comes to the domestic protection of disability rights.

The universality of rights and fundamental freedoms as expressed in our own Declaration of Independence is the foundation on which our entire society is based. Respect for human rights is also a stated principle of our foreign policy, precisely because we recognize that stability, security, and economic opportunity in any society presupposes social order based on respect for the rights of its citizens.

Given this history and these values, it would seem natural for the United States to assume a leading role, not a passive one, in the effort to recognize and enforce an international treaty of this kind. As you have heard, misgivings expressed by critics of the Convention have already been addressed in reservations, understandings, and declarations contained in the package submitted by the administration.

Ratification of the Disability Rights Convention is an opportunity for us to export to the world the very best we have to offer. This is a chance to use our rich national experience in disability rights, which has gained us the respect of the world community, to extend the principles embodied in the ADA to people with disabilities worldwide who today have no domestic protection.

This is worthy of our leadership. We have everything to gain and nothing to lose by playing the role the world expects of us. We must ratify this Convention so that we can fulfill that role.

Thank you for the opportunity to be with you this morning.

[The prepared statement of Mr. Thornburgh follows:]

PREPARED STATEMENT OF RICHARD THORNBURGH

It is a distinct pleasure for to me to testify in favor of the ratification of the Convention on the Rights of Persons with Disabilities (the Convention or CRPD) as an important component of the worldwide effort to advance disability rights. Ratification by this body would mark a major step forward in the effort to end discrimina-

tion and to promote the rights of as many as 1 billion men, women, and children with disabilities around the world who seek vindication of their preeminent human rights in an ever-challenging world.

To date, as I last looked, a total of 153 countries (including the United States) have signed the Convention and 116 have ratified its terms. We literally stand today at the very cusp of a new era of worldwide recognition of disability rights. A major leap forward in this effort would be accomplished by timely U.S. Senate ratification of the Convention.

I.

The road to this point has been a lengthy one and I think it may be useful to review how we have gotten to where we are as a means of aiding the process of further progress. In another context, a great American jurist, Supreme Court Justice Oliver Wendell Holmes, Jr., once observed, "A page of history is worth a volume of logic," and in this movement as well I suggest that some history is an appropriate starting point.

As many of you may know, I have been involved in the disability movement for many years. I was a founding director of the National Organization on Disability back in 1982 and later served as Vice Chairman of its international arm, the World Committee on Disability. I am also the father of a man with intellectual and physical disability—my son, Peter, who was seriously brain-injured at the age of 4 months in a 1960 automobile accident which tragically took the life of his mother, my first wife.

As Governor of Pennsylvania and Attorney General of the United States, I have had the privilege to work in official capacities for the inclusion of people with disabilities in all aspects of life. Indeed, it was my special privilege to serve as the point person for the administration of President George H.W. Bush in the bipartisan effort to secure the passage of the Americans with Disabilities Act (ADA) in 1990. This work has become a bit of a family affair, as my present wife, Ginny, whom I married in 1963, founded the Religion and Disability Program of the National Organization on Disability, designed to insure spiritual and religious access to persons with physical, mental, and intellectual disability. She is now the Director of the Interfaith Initiative at the American Association of People with Disabilities coordinating efforts by leaders of all faiths to advance the cause of disability rights. In her responsibility as Convener of the Interfaith Disability Advocacy Coalition (IDAC), she enlisted 26 religious or religiously affiliated organizations to send a letter of support for the Convention to members of this committee. We have thus had the great privilege of merging our personal and career objectives in this worthy cause.

It is obvious that the world community has taken an important—and long overdue—step toward bringing people with disabilities all over the world into the mainstream of the human rights movement by adopting this Convention. I must applaud the disability community for its tireless efforts in what must have seemed at times to be an uphill battle for international recognition of this important principle.

I know firsthand from my service as an Under Secretary General at the United Nations in the immediate post-cold-war era of the long struggle to obtain passage of this Convention. The effort had its genesis in the 1981 Year of Disabled Persons, followed by the Decade of Disabled Persons and the promulgation of the World Programme of Action Concerning Disabled Persons, all providing focal points for efforts to internationalize concerns about disability rights. I particularly recall attending the historic gathering in Montreal in October 1992 of the very first International Conference of Ministers Responsible for the Status of Persons With Disabilities where 73 leaders of governments throughout the world met for the first time to exchange ideas and fashion strategies which ultimately led to the adoption of the Convention.

The Convention represents important principles that as Americans we hold dear—basic recognition and equal protection of every person under the law, nondiscrimination, the fundamental importance of independent living, and the right to make basic choices about our lives. We pioneered these basic principles under American law through passage of the ADA. We in the United States are demonstrating that people with disabilities can participate fully in our democracy. We are demonstrating that society, as a whole, is richer and better off when people with disabilities are included fully in every aspect of life. It is my hope and expectation that the United States will assume an equally important leadership role in helping to promote these basic principles worldwide by the ratification of this Convention.

Over 20 years ago, while serving as U.S. Attorney General, I testified before House and Senate committees of the U.S. Congress in support of the ADA. During

those hearings I acknowledged that no piece of legislation could alone change the longstanding misperceptions that many people have about disability—misperceptions based largely on stereotype, ignorance, and fear of what is different. Any reshaping of attitudes would have to be the gradual result not of the words or ideas in the laws, but of bringing people with disabilities from the margins of society into the mainstream of American life—in our schools and workplaces, on busses and trains, and in our courthouses, restaurants, theaters and congregations—where they not only have an absolute right to be but where we have an obligation as fellow human beings to welcome them as equals.

The effort to secure passage of the ADA was difficult. Those of us who wanted to see it happen were given countless reasons why it couldn't be done. We were told that the climate in Congress wasn't right, it would be too expensive, too complicated, ineffective, impossible to enforce—even that the country in general just wasn't ready for it. So we discussed, debated, argued, researched, analyzed, negotiated, pleaded, convinced and, ultimately, drafted and passed the most progressive disability rights legislation the world had ever seen. This legislation, with its innovative concepts such as the need for "reasonable accommodation," is changing America. It has truly made us more representative, more democratic, and more empowering by ending the unchecked exclusion of 54 million Americans from our daily lives.

Of course we still have a long way to go in our own country. The ADA isn't perfect and people with disabilities in America continue to face serious challenges. Court decisions have sometimes hindered the full implementation of the ADA and required legislative responses such as the 2008 ADA Amendments Act. Still, in the years following 1990, we've made remarkable progress that is not only celebrated here at home but also recognized abroad. Because of our adoption of the ADA and other disability rights legislation, the United States is viewed internationally as a pioneering role model for disability rights. Disability activists from other countries have taken the ADA to their governments and said, "This is how it should be done. We need to do this here in our country." And governments around the world have responded. As one who worked hard to gain protection of these rights in the United States, I am very proud to see how these basic principles are now on the way to being established as a part of international law through the adoption of the CRPD. As we overcame so many barriers to the enactment and implementation of the ADA, I am confident that we can be part of an even greater coalition to bring about worldwide support for this Convention as well.

Despite progress already made, disability as a global issue remains near the bottom of the list of priorities in many governments and societies. People with disabilities remain among the poorest, least educated, and most abused and excluded people on earth. We must recognize that the challenges we face are intimately linked with the very circumstances of economic, social, and political marginalization that affect people with disabilities around the world.

While the adoption of the CPRD represents a truly significant accomplishment for the international community and a great source of hope for people with disabilities everywhere, it will obviously not be enough. Between the adoption of the Convention and the actual securing of the important rights it seeks to guarantee will no doubt lie a long and tortuous path which will test the commitment, tenacity, and political will of the international community—from national leaders to grassroots advocacy organizations to individual citizens bent upon justice for all.

However, we must also keep in mind that the Convention can be a strong tool—as well as an inspiration—for civil society around the world. NGOs and advocates will have a new legal framework within which to push for reforms based on legal obligations.

II.

Let me address for a moment the painful and, I must admit, somewhat puzzling question of the seeming reluctance of some in our own Nation to continue our lead role in this international effort. Let's look at some of the questions and concerns that have been raised about this Convention as it has reached this body for ratification.

To begin with, it has been argued that disability rights are more appropriately addressed a solely a domestic concern, given the complexity of the issues involved. In other words, this really isn't an appropriate subject for international protection. Certainly, good domestic legislation in every country would be the ideal solution. But since many countries don't have such protections, it does not seem reasonable to expect that this will change dramatically without international pressure. The fact

is, for many countries, international conventions have already served as a catalyst for the development of important domestic protections in many other areas.

As a practical matter, the United States will have much more authority to speak out about these and other forms of discrimination against people with disabilities worldwide if we agree to abide by the same international scrutiny at home. We already have laws in place that are consistent with the CRPD. But, it is correctly noted that by ratifying the Convention, the United States agrees to report regularly to an international advisory body. We have nothing to hide. We can only gain from participating in the process of international review. Moreover, we should not be so proud as to think that we cannot learn from other countries about how to meet the challenge of providing even better opportunities for people with disabilities.

Some have looked at the final text of the Convention and found it lacking in strict, enforceable protections. Some say that it lacks the kind of detail that we fought so hard to include in the ADA and that we have found so essential for the enforcement of basic rights in the United States. We must keep in mind that a human rights convention is a legal instrument that must apply consistently around the world—in countries rich and poor, in countries with widely varying legal systems, in many countries where the idea of full participation for people with disabilities may be radically new and untested. The flexibility of this Convention is its strength—not its weakness. It lays down the core values and principles that are essential to ending discrimination against people with disabilities in any society. It provides governments with guidance and direction now lacking under the general provisions of international law. Article 9, for example, requires governments to "take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications . . . and to other facilities and services open or provided to the public, both in urban and in rural areas." Article 24 recognizes the rights of persons with disabilities to education and requires governments to provide "an inclusive education system at all levels . . . [e]nabling persons with disabilities to participate effectively in a free society."

The Convention provides governments with core, minimum standards needed to make essential reforms without locking different countries into one particular approach or another. As noted, the Convention creates a Committee on the Rights of Persons with Disabilities that will review reports of governments and will issue general recommendations about how to bring about full compliance with the Convention. Through this process of interpretation, governments at every level of economic and social development can receive guidance about steps they can take to bring about enforcement of the Convention.

At the same time, it is important to note that ratification of the Convention will require no new domestic legislation and will impose no new costs upon U.S. taxpayers. As does our own ADA, the Convention simply ensures nondiscrimination on the basis of disability, guaranteeing that persons with disabilities enjoy the same rights as other persons.

Finally, some have said that, because of America's comprehensive domestic protections, a treaty on disability would have no relevance in our own country. But, let's hold on a minute. We are indeed at this time the most progressive country in the world when it comes to the domestic protection of disability rights. The universality of rights and fundamental freedoms—as expressed in our Declaration of Independence—is the foundation on which our entire society is based. Respect for human rights is also a stated principle of our foreign policy—precisely because we recognize that stability, security, and economic opportunity in any society presuppose a social order based on respect for the rights of its citizens. Given this history and these values, it would seem natural for the United States to assume a leading role—not a passive one—in the effort to recognize and enforce an international treaty of this kind.

Misgivings expressed by critics of the Convention have already been addressed in reservations, understandings and declarations (RUDs) contained in the package submitted by the administration. By addressing federalism, providing a zone of private action protected by the Constitution and declaring the Convention to be non-self-executing, these RUDs protect U.S. sovereignty and recognize the Convention as a nondiscrimination instrument, similar to our own ADA.

Ratification of the Disability Rights Convention is an opportunity to export to the world the very best we have to offer. This is a chance to use our rich national experience in disability rights—which has gained us the respect of the world community—to extend the principles embodied in the ADA to the hundreds of millions of people with disabilities worldwide who today have no domestic protection. This is worthy of our leadership. We have everything to gain and nothing to lose by playing

the role the world expects of us. We must ratify the Convention so that we can fulfill that role.

III.

Just as in the case of the ADA, we must recognize that the Convention will not provide instant legal solutions which can effect immediate changes in attitudes and cultural perceptions; nor will it dispel the ignorance that leads to discrimination and human rights abuses of people with disabilities. What it will do is create a permanent place for disability within the human rights framework. It will put disability issues on the radar screen of governments and societies as a legitimate human rights concern to which they must pay heed. It will provide guidance and standards and create legal obligations for governments to respect the rights of this sizable population. It can serve as a powerful advocacy tool for the global disability movement to promote inclusion and equality of opportunity.

Before closing let me say a word, in particular, about the developing nations of the world wherein, it is estimated, some 80 percent of the world's disabled population lives. Most of these persons are at the margin of their respective societies. Priority concerns of just surviving—combating hunger, securing shelter, and eking out a daily existence—unfortunately take present precedence over concerns for people with disabilities.

It is sometimes said that, in nations struggling with a full agenda of political and economic problems and the effort to achieve basic human rights for all their citizens, the interests of persons with disabilities are likely to be set to one side for "future consideration," i.e., when these other more important matters have been addressed.

On the contrary, I would suggest that what responsible leaders of developing nations need to realize is the unique opportunity they have to embed disability rights in their emerging institutions as part of their development efforts, to build an infrastructure of government, economy, and human rights that includes and respects the interests of persons with disabilities from the very beginning. For it is no exaggeration to say that the way a society treats its citizens with disabilities is a valid measure of the quality of life and respect for human dignity in that society.

Even after ratification and implementation of the Convention, change will be gradual—and perhaps painfully slow, to be sure, but these represent important first steps we can take toward promoting change on a global scale. This Convention can help all of us to focus world attention on those millions of people worldwide whose rights have been ignored for far too long. Let's be about the business of seeing that those rights are honored, and implemented, now and forever more, by providing timely ratification of this important Convention.

Senator COONS [presiding]. Thank you, Mr. Thornburgh.

Mr. Wodatch.

STATEMENT OF JOHN WODATCH, FORMER CHIEF OF THE DISABILITY RIGHTS SECTION, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. WODATCH. Good morning, Mr. Chairman and members of the committee.

Thank you for your invitation to present my views this morning, and I ask that my full statement be submitted for the record.

Senator COONS. Without objection.

Mr. WODATCH. I come before you this morning to urge you to support ratification of the Convention on the Rights of Persons with Disabilities. During my 42-year tenure with the Federal Government, I worked on disability rights issues for both Republican and Democratic administrations. I witnessed firsthand the strong bipartisan support for disability rights that is our Nation's tradition.

I authored the first comprehensive disability rights regulations, served as a member of the White House team under President George H.W. Bush that negotiated the ADA, and then, with the help of Attorney General Thornburgh, led the enforcement of the ADA at the Department of Justice, and then recently served as a

member of the U.S. delegation that negotiated this very disabilities Convention.

The disabilities Convention is modeled on the disability rights laws of the United States. It adopts the successful and balanced approach of U.S. Federal disability rights law dating back to 1973, and it embodies the core principles of nondiscrimination and equality of opportunity.

The treaty seeks to empower persons with disabilities to be independent, to claim responsibility for their lives, and to be able to make their own choices.

In 2001, the George W. Bush administration charged the U.S. delegation that was going to the U.N. to deal with the ad hoc committee that was considering the formulation of this treaty with two main tasks—to provide assistance in the development of the new treaty and to ensure that the treaty reflects the basic concepts of American disability law. We successfully followed President Bush's directions. The disabilities Convention follows U.S. principles, ensuring that citizens and persons with disabilities have the same rights as other citizens.

The package of three reservations, five understandings, and a declaration proposed by the administration are appropriate and necessary. These RUDs will ensure that the treaty will require no new Federal laws and no new or revised State laws. The compliance with our own disability laws, including the definition of "disability," will constitute compliance with the treaty, and the treaty will give rise to no new individual rights.

These RUDs also ensure that ratification will have no impact on the Federal budget and will maintain the sovereignty of the United States and the prerogatives of our States. Nothing in the treaty undermines U.S. sovereignty. By the terms of the treaty itself, the disabilities committee, which has been much debated this morning, is advisory only. Its suggestions, observations, and opinions are not binding and cannot compel any action in the United States.

And if the treaty should be amended, any new amendments will not apply to the United States unless the United States specifically and formally consents to the changes. Nothing in the treaty itself also changes or undermines parental rights in the United States. In fact, the treaty recognizes the primacy of the family.

It calls the family, and this is a quote from the treaty, "the natural and fundamental group unit of society" and says that "it is entitled to protection and assistance."

The reservations on federalism and private conduct ensure that parental rights in this country, which are established mostly at the State and local level, remain unchanged. These reservations are eminently reasonable and are compatible with the object and purpose of the treaty. And once included in the Senate resolution of advice and consent, these reservations will themselves become law.

I also strongly believe that the U.S. ratification of the disability treaty is in the best interests of the United States. The result of our ratification over time will be a benefit to all Americans with disabilities and their families, including veterans, who work, study, travel, serve, retire, or live abroad.

Ratification of the treaty will also enable the United States to provide leadership on disability issues, ensuring that international

implementation hews closely to the balanced approach of American disability rights law. Our failure to ratify the Disability Convention, which so clearly follows the pattern of our own disability rights laws and programs, has hampered the position of the United States as a world leader on disability rights issues. Ratification will enable the United States to share our experiences with other ratifying nations as they shape emerging disability rights policies and laws in their own countries.

Further, the United States will seek a place on the U.N. disabilities committee, which is only open to experts from ratifying countries, and give us the potential to play a valuable role in shaping the work of that committee. The disabilities Convention has been ratified by 116 nations and the European Union. The time for Senate action to ratify the treaty is now.

When he signed the ADA on July 26, 1990, President George Bush said, "Let the shameful wall of exclusion finally come tumbling down." The words and concepts that he signed into law that day now form the basis of the disabilities treaty. It is time for the United States to reposition itself as a world leader to help bring down these walls of exclusion for all nations around the globe and help make the world an accessible place for Americans with disabilities, including our veterans.

I thank you for the opportunity to participate with you today.

[The prepared statement of Mr. Wodatch follows:]

PREPARED STATEMENT OF JOHN L. WODATCH

Mr. Chairman and members of the committee, thank you for your invitation to present my views to the committee. I come before you this morning to urge you to support ratification of the Convention on the Rights of Persons with Disabilities.

I have a long history of work on disability rights issues. I have witnessed firsthand the strong bipartisan support for disability rights that is out Nation's tradition. I retired last July from service in the Federal executive branch after 42 years of service. During that time I was the author of the Federal Government's first comprehensive disability rights regulations, regulations implementing Section 504 of the Rehabilitation Act, first issued in 1977. I was fortunate to work for Attorney General Dick Thornburgh during our Nation's consideration of the Americans with Disabilities Act and served as a member of the White House team under President George H.W. Bush that negotiated the ADA. I then oversaw development of the ADA regulations and served as the head of the new unit at the Department of Justice that was created to implement the ADA. I also served as a member of the U.S. delegation that negotiated the Convention on the Rights of Persons with Disabilities.

I. THE DISABILITIES CONVENTION AND U.S. DISABILITY RIGHTS LAW

The Disabilities Convention is modeled on the disability rights laws of the United States and adopts the successful and balanced approach of U.S. Federal disability rights law dating back to 1977. It embodies the traditional American ideals that form the basis of the Americans with Disabilities Act and other U.S. disability rights laws. These include the core principles of nondiscrimination and equality of opportunity. The treaty seeks to empower persons with disabilities to be independent, to claim personal responsibility for their own lives, and to be able to make their own choices.

The Americans with Disabilities Act, or ADA, is a comprehensive civil rights law protecting the rights of persons with disabilities in the United States. Since it was signed into law in 1990 by President George H.W. Bush, it has literally changed the landscape of this country, opening up everyday American life to persons with disabilities.

The ADA is, however, just one part of a rich and varied series of Federal protections of the rights of person with disabilities. The Architectural Barriers Act of 1968 ensures that Federal buildings will be accessible according to strict Federal design standards. The Individuals with Disabilities Education Act ensures that children

with disabilities will receive a free, appropriate education. The Fair Housing Act ensures that people with disabilities will have accessible housing. The Air Carrier Access Act opens air travel to persons with disabilities. The Help America Vote Act, as well as the Voting Accessibility for the Elderly and Handicapped Act of 1984, provide for an accessible electoral process, including accessible polling places. The ADA and Title V of the Rehabilitation Act provide a comprehensive framework, covering employment, transportation, public accommodations, telephone service, and all the activities of State and local governments to persons with disabilities.

These laws have proven to be a success because they are grounded in nondiscrimination principles, and they provide a balanced approach to accessibility. Each requirement is tempered by limitations that reflect the difficulty and costs of achieving accessibility. Thus the obligation to make reasonable accommodation to employees is limited by undue hardship. Businesses do not have to make changes to their programs and services if they are too costly or would fundamentally change the nature of the program or service. Small employers (under 15 employees) are exempted from all requirements as are churches, other religious entities, and purely private clubs.

I was fortunate to be a member of the U.S. delegation to the U.N. Ad Hoc Committee that was considering the formulation of a disabilities Convention. The committee deliberated from 2001 to 2006, when the treaty was adopted by the U.N. The Bush administration charged us with two main tasks—to provide assistance in the development of the new treaty and to ensure that the treaty reflect the core concepts of American disability law. We successfully followed President Bush's directions: the Disabilities Convention follows our U.S. principles. Its focus is nondiscrimination, ensuring that persons with disabilities enjoy the same rights as other citizens. Like the ADA, its rights are tempered by limitations. Reasonable accommodation is required but only if the modification is necessary and appropriate and only if it does not impose a disproportionate or undue burden. While the treaty does not itself contain a definition of disability, its guidelines for what constitutes a person with a disability conform closely to the definitions found in U.S law. In fact, the revised ADA definition of a person with a disability, adopted in 2008 in the Americans with Disabilities Act Amendments Act, and signed into law by President Bush, fully comply with the concepts of the treaty.

And the comprehensive nature of the treaty mirrors the U.S. approach to disability rights. Both recognize that persons with disabilities will not be able to enjoy equal opportunity unless there is broad coverage. Having an education loses its meaning if jobs are foreclosed to students with disabilities. Nondiscrimination in employment will not be meaningful unless persons can get to work on accessible transportation. Having a job will lose its meaning if persons are unable to enjoy the fruits of their labor, from dining at a restaurant, going to a movie, or traveling across the country. Thus, then, like U.S. law, the Disabilities Convention is comprehensive in its approach. It addresses access to facilities, political participation, access to justice, access to education, employment, health care, participation in public and cultural life, recreation, leisure activities, and sports. It upholds freedom of expression, access to information, the ability to live independently in one's own community, and freedom from torture and other cruel, inhuman, or degrading treatment.

In sum, the Disabilities Convention is an embodiment of the nondiscrimination principles developed in the United States. Its principles and, indeed, its language, come directly from U.S. law.

II. RESERVATIONS, UNDERSTANDINGS, AND DECLARATIONS

The administration's submission of the Disabilities Convention, which includes the President's letter of transmittal and the Secretary of State's report, makes clear that the Convention is exclusively a nondiscrimination treaty, i.e., the Disabilities Convention seeks to ensure that persons with disabilities enjoy the same rights as everyone else and are given the same opportunities to live productive lives. The Secretary's report includes reservations, understandings, and a declaration (RUDs) recommended for inclusion in the Senate's resolution of advice and consent. Inclusion of these RUDs will facilitate ratification. Under the RUDs, U.S. obligations under the Convention will go no further than existing U.S. law.

The package of three reservations, five understandings, and one declaration, contained in the Secretary's report, maintains U.S. sovereignty and makes clear the extent of our obligations under the treaty and are thus an essential element of ratification. With the inclusion of this RUD package:

No new Federal laws will be required to comply with the treaty;
No State laws will have to be revised;

Compliance with our existing, rich panoply of disability laws will constitute compliance with the treaty;

Our definitions of disability will continue in force; and

No new individual rights and no individually enforceable rights will be created. These RUDs also ensure that ratification will have no impact on the Federal budget. Thus, I recommend that the Senate Resolution of Advice and Consent to Ratification contain the nine RUDs proposed in the Secretary's Report.

Perhaps the two most important reservations are those recommended on federalism and on private conduct. A number of treaty provisions cover matters that are the province of State law. For example, education, the exercise of legal capacity, civil commitment, birth registration, living in the community, and marriage and family relationships are areas that are governed in the United States under State law. While many State and local laws and regulations clearly comply with the provisions of the Disabilities Convention on these issues, some state and local standards can be interpreted as less rigorous than the treaty would require. Thus, a reservation that would preserve the existing balance between Federal and State jurisdiction over these matters is appropriate and necessary.

The federalism reservation ensures that the obligations undertaken by the United States upon ratification would be implemented in a manner consistent with the existing allocation of authority between the Federal Government and the 50 states. The federalism reservation would limit our obligations under the treaty to areas covered by Federal law and would require no changes to State and local law because of the Convention's provisions.

The proposed reservation on certain private conduct is also important. A number of Federal disability rights laws contain exemptions in their coverage. Title I of the ADA applies to all employers with 15 or more employees. Title III of the ADA does not apply to churches and other religious entities and certain private clubs. The Fair Housing Act does not apply to most individuals' homes or private home construction. Similarly, the U.S. Constitution and Federal law recognize areas of private activity that are not governed by the laws of the United States. It is thus necessary and appropriate to include a reservation that limits coverage of the treaty and excludes those areas of private conduct that are protected by the U.S. Constitution.

Similarly significant is the declaration that the Convention on the Rights of Persons with Disabilities is non-self-executing. This declaration ensures that the treaty itself does not give rise to individually enforceable rights and cannot be directly enforced in the U.S. courts. It ensures the primacy of U.S. domestic law and remedies on disability issues.

In the last several weeks, the treaty has been criticized for undermining U.S. sovereignty and for harming the rights of parents of children with disabilities. These concerns can be fully addressed by the terms of the treaty, by the RUDs proposed by the administration, and by the clarifications contained in the Secretary's report.

Some have raised alarms over the existence of the Disabilities Committee created by the treaty. This committee, a group of 18 experts elected by the nation's that have ratified the treaty, meets twice each year to review the reports submitted by those countries that have ratified the treaty. By the terms of the treaty itself this committee is advisory only. The committee is authorized only to respond to reports with "suggestions and general recommendations." The committee's suggestions, observations, and opinions are not binding and cannot compel any action in the United States.

The criticism that the treaty will undermine parental decisionmaking is misplaced. In fact, the treaty places great value on the role of the family. The Preamble to the treaty is particularly eloquent on this issue. It states: "(T)he family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute toward the full and equal enjoyment of the rights of persons with disabilities."

The treaty specifically requires ratifying nations to provide early and comprehensive information, services, and support to children with disabilities and their families. It seeks to maintain the sanctity of the family unit by requiring that children should not be separated from their parents on the basis of the disability of either the parents or the children.

Most importantly, the overarching requirement of Article 23 of the treaty is one of nondiscrimination. The Convention, like Title II of the ADA, prohibits discrimination against persons with disabilities in matters of family and parenthood. Further, the proposed reservation on federalism ensures that parental responsibility and authority, which are matters of State and local law, will remain governed by domestic law in the United States. Also, the reservation on private conduct ensures that pri-

vacy in family matters, which is protected by the U.S. Constitution, will not be encumbered by the treaty. The Secretary's report specifically addresses family rights in its discussion of Article 23 (at p. 53) and notes that freedom from governmental interference in certain private conduct is among the fundamental values of our free and democratic society.

One other concern that has been raised warns of a threat of a national registry of children with disabilities. The treaty does not require a national registry of births in the United States. Birth registration is handled by the States, which are subject to the disability nondiscrimination requirements of Title II of the ADA and Section 504 of the Rehabilitation Act. State laws on birth registration require that each child be given a birth certificate at birth—thus they are recognized as a person, protected by law. The treaty does not require a separate registration of children with disabilities, something the United States has consistently refused to support. Therefore, the treaty will not result in any change in U.S. or State law or practice. However, the treaty will provide much-needed protection in other countries where there is no provision for birth certificates or birth registration for children with disabilities. In particular, it will help protect against the horrible practice of infanticide of children born with disabilities (a practice that can be facilitated through the denial of birth certificates or registration to disabled babies), and it will require equal access to immunizations, education, food, and other essential needs for these children.

These reservations are eminently reasonable and are compatible with the object and purpose of the treaty. And once included in the Senate Resolution of Advice and Consent, these reservations become the law. While other ratifying nations may seek to object to a reservation, no nation nor any international body has the ability or power to sever, amend, or overturn such a reservation.

One other issue that has raised concerns about the Disabilities Convention is how it may apply to the issue of family planning and abortion. The treaty affirms the inherent right to life and recognizes the "dignity and worth" of persons with disabilities. It establishes for the first time internationally that ratifying nations cannot discriminatorily deny health care, health services, or food and fluids on the basis of disability. During the debate at the Ad Hoc Committee of the U.N., the treaty chairman, Ambassador Don McKay of New Zealand, stated that the treaty does not create a right to abortion. The Secretary's report confirms this interpretation at p. 61 and makes clear that Article 25 does not address the matter of abortion and does not affect United States law with regard to abortion.

III. BENEFITS OF RATIFICATION

So why ratify? I strongly believe that ratification of the Disabilities Convention is in the best interests of the United States, provides protections for Americans with disabilities, and promotes U.S. business interests.

Our failure to ratify the Disabilities Convention, which so clearly follows the pattern of disability rights laws and programs pioneered in the United States, has hampered the position of the United States as a world leader on disability rights issues. While the ADA will continue to be the linchpin of U.S. domestic nondiscrimination policy, the international community uses the treaty as the basis for legal and policy approaches to disability policy. Ratification will enable the United States to have an official place at the table and share our experience with other ratifying nations as they shape emerging disability rights policies and laws in their countries. It will enable us to seek a place on the Disabilities Committee (which is only open to experts from countries that have ratified) and focus the efforts of the committee on fundamental and important issues.

Ratification will also allow the United States to take a more proactive role in the protection of U.S citizens abroad. Persons with disabilities, including our veterans, now work, study, travel, serve, and retire across the world. But our citizens still face limited opportunities and architectural barriers. An active U.S presence on implementation of the Disabilities Convention will help ensure that our citizens and servicemembers will encounter fewer architectural barriers and a more welcoming environment.

Ratification of the treaty will also help U.S. businesses take advantage of the potential benefits of the treaty. Estimates of the number of persons with disabilities across the world now reach 1 billion persons. As these persons receive opportunities in their countries, they will need accessible devices, from wheelchairs and other mobility aids and services to new technologies, including smart phones and accessible software for their computers. Many of these products are engineered, made, or sold by U.S. corporations, who will benefit from an active U.S. presence to reach this emerging new source of revenue.

Ratification and the concomitant reemergence of U.S. leadership will also help American multinational corporations level the playing field. For the past 22 years American companies have followed a number of domestic requirements, including reasonable accommodation for their workers and accessible facilities for their customers. Unfortunately, their foreign counterparts did not have to follow such a regimen. Ratification of the Convention will enable the U.S. more actively to ensure that other nations that have ratified the Convention actually take the steps to enforce the treaty's accessibility and employment provisions and provide a level playing field for American companies.

Additionally, ratification and an active American presence can result in economies of scale for U.S. companies. Many U.S. multinational companies, including quick service restaurants and hotel chains, create and implement standard design plans for their U.S. facilities, but face different requirements for their building in other countries. Ratification will enable the United States to push for consistent accessible standards for buildings and create the ability for U.S. multinational companies to follow one template for their accessibility requirements worldwide, resulting in cost savings.

Ratification of the Convention presents an opportunity for the Senate and the President to reaffirm the traditional American values of the treaty, nondiscrimination and equality of opportunity, and provides a forum to advance these values worldwide. The package of RUDs sent forward by the administration and the specific interpretations found in the Secretary's report address the concerns that have been identified by outside observers regarding safeguarding American sovereignty and U.S. law.

The Disabilities Convention has been ratified by 115 nations. The time for Senate action to ratify this treaty is now. When he signed the ADA on July 26, 1990, President George H.W. Bush said: "Let the shameful wall of exclusion finally come tumbling down." The words and concepts that he signed into law are now in the laws and constitutions of countries around the world and form the basis for the Disabilities Convention. It is time for the United States to reposition itself as a world leader to help bring down these walls of exclusion for all nations around the globe and help make the world accessible for Americans with disabilities, including our veterans, and for American multinational businesses.

Senator COONS. Thank you, Mr. Wodatch.

Dr. Farris. Dr. Farris. Forgive me.

STATEMENT OF MICHAEL FARRIS, CHANCELLOR, PATRICK HENRY COLLEGE, PURCELLVILLE, VA

Dr. FARRIS. Oh, that is OK. Thank you for the honor of being invited to testify before this committee.

I would ask that my full remarks be submitted for the record.

Senator COONS. Without objection.

Dr. FARRIS. I am the chancellor of Patrick Henry College, where I teach constitutional law. And recently, after finishing an LLM in public international law with the University of London, I started teaching public international law as well.

There is no doubt about the appropriateness of the aspirations of this treaty. My mother has multiple sclerosis, has been in a wheelchair on a growing basis for about 40 years. I have pushed her around buildings here in this city and in France, Switzerland, and Austria, and there is no doubt on a practical level about the United States leadership on the access for persons with disabilities.

But the question is whether or not a treaty is being fairly examined as a treaty here today, as opposed to an aspirational statement. This is not like the Universal Declaration of Human Rights, which was an aspirational statement by the U.N. in the 1940s. This is a binding treaty.

We don't have to worry necessarily about this committee forcing American law to change. We ought to worry about Americans forcing us to comply with the terms of the treaty because when we rat-

ify a treaty, we undertake a binding legal obligation to live up to its terms.

The thing that the United States should lead on in this area is we ought to be the leading nation in the world in compliance with treaties—fully, fairly, completely. And if we don't intend to comply with a treaty in full, we ought not to ratify it in the first place. If all we are going to do is king's X and say the only thing we are going to do with this treaty is follow existing law, we are doing what Professor Henkin, who is one of the leading experts in the world on this subject, has said.

And I quote, "Reservations designed to reject any obligation to rise above existing law and practice are of dubious propriety. If states generally entered such reservations, the Convention would be futile."

In fact, one nation has entered a reservation to this treaty that says exactly that. The Islamic Republic of Iran declares that it does not consider itself bound by any provisions of the Convention which may be incompatible with its applicable rules.

Eight nations in the world have objected to that reservation—Austria, Belgium, Czech Republic, France, Germany, Latvia, Mexico, and Portugal—precisely because that approach to treaty laws, "we are only going to obey what we want to obey," is incompatible with the object and purposes of the treaty.

Contrary to what the person from the Department of Justice said, Article 7 will, in fact, require a change of our law if we are going to live up to the treaty. If we don't have any intention of living up to a treaty, let us just put a reservation in and say we don't have any intention of changing any of our laws.

We have no such reservation, and until we do, we have to look and see what the treaty says and what do the words mean. Article 7 changes the law, and we would have a duty to amend the IDEA to live up to its standards.

And that means today under the IDEA, parents have the final say for their kids, not the Government. Under Article 7 of this treaty, the Government has the final say for kids.

The reason the IDEA works to protect children is because the Government that is often stingy and stubborn and slow in complying with the needs of special needs kids is because they know they have got parents with real rights coming after them.

And if they don't like what—the parents don't like what the Government is suggesting, the parents have real authority. Article 7 robs them of their real authority. Again, unless we are just simply going to cross our fingers and say king's X, we really don't mean what the words of this treaty says.

Article 7, clearly, it is not a nondiscrimination provision, as claimed by the person from the Department of Justice. That is just simply not what it says. We ought to read the language of Article 7. It requires the best interests of the child standard to be implemented in every decision. What that means is the Government, rather than parents, get to decide what is best for children.

And if we think that that is good for children with special needs and disabilities in this country, we don't understand what is appropriate for American children. We need parents as the empowered advocates, and this treaty will take away that empowerment.

Nothing is going to happen in any other country until those countries' domestic law incorporates the aspirations of this treaty. Treaties do not build wheelchair ramps. They won't help any American traveling. What will help those Americans is when those other nations implement the provisions in their domestic law and practice.

Until that happens, this is all a very expensive and very dangerous exercise in celebrating our aspirations. We will not do anything of substance, and we will do dangerous things instead.

Thank you, Your Honor.

[The prepared statement of Dr. Farris follows:]

PREPARED STATEMENT OF MICHAEL FARRIS

Mr. Chairman, thank you for the honor of being invited to testify before this committee.

My name is Michael Farris. I am the Chancellor of Patrick Henry College where I teach Constitutional Law, Public International Law, and coach our six-time national champion moot court team. I earned my Juris Doctorate from Gonzaga University back in 1976 and my LL.M. in Public International Law just last year from the University of London. I am also the Chairman and Founder of the Home School Legal Defense Association—the largest homeschooling advocacy group in the world.

There are three categories of arguments that I bring in support of the view that the United States Senate should not ratify the U.N. Convention on the Rights of Persons With Disabilities.

1. The promises made by the supporters of the treaty concerning the impact both on Americans and on disabled persons in other countries are clearly false and callously misleading.

2. The changes to American law that will be required to comply with the provisions of this treaty are profound and utterly unacceptable. Specifically, the changes regarding the rights of parents who have children with disabilities—which includes thousands of homeschooling families—are absolutely inconsistent with the IDEA and the basic constitutional principles of parental rights.

3. The ratification of this treaty would constitute the most dangerous departure from the principles of American sovereignty and personal liberty in the history of the United States Senate.

THE PROPONENTS OF THIS TREATY MAKE FALSE AND MISLEADING PROMISES

The advocates of this U.N. treaty promise two kinds of alluring benefits that will supposedly result from Senate ratification. First, it will help disabled Americans traveling abroad. Second, it will give the United States greater moral authority to coax unwilling states into appropriate treatment of disabled persons within such states.

Neither of these claims have any foundation in law or in fact.

Let me explain why I take these false and misleading claims quite personally.

My mother has had multiple sclerosis for over 40 years. I have had the honor of pushing my mother's wheel chair through the Halls of Congress as well as through museums, castles, and cathedrals in Switzerland, Austria, and France. There is no doubt that the United States leads the whole world in providing appropriate access to persons with disabilities.

We lead—not because international law has required us to do so—rather; we lead because in the United States we believe that every single person is endowed by our Creator with certain inalienable rights. And it is that belief system, and not international law, which will continue to provide Americans with disabilities with any necessary changes to the law in the years ahead.

I deeply resent the attempt by the advocates of this treaty to mislead members of the disabled community with the false promise that the U.S. ratification of this treaty will lead to material improvements when Americans with disabilities travel to other nations.

U.S. ratification of this treaty creates absolutely no rights for Americans with disabilities when they travel abroad. It is an utterly false contention. If the United States becomes party to a treaty, all of the legal consequences which flow from this act of ratification will be limited to the territory of the United States. There are no extraterritorial rights created for American travelers, businessmen, servicemembers, or veterans.

This is the nature of this kind of treaty. See, Article 29, Vienna Convention on the Law of Treaties. It is a promise from the state party to change its own laws and practices so that disabled persons will have greater access and equality.

If an American were traveling in Portugal, for example, he or she would receive no claim whatsoever to improved access from Portugal by virtue of American ratification of this treaty. Portugal's obligation to disabled persons arises from Portugal's own ratification of this treaty—assuming that it lives up to its obligation to enact compliant domestic law.

It is equally disingenuous to claim that U.S. ratification will lead to improved treatment for disabled persons from other countries. This is especially true in light of the package of reservations that the State Department proposes.

The proponents of this treaty, together with the proposed reservations, are attempting to lead the Senate to believe that the United States is already fully compliant with this Convention. Professor Louis Henkin writing in the American Journal of International Law criticizes this approach:

> Reservations designed to reject any obligation to rise above existing law and practice are of dubious propriety: if states generally entered such reservations, the Convention would be futile. The object and purpose of the human rights conventions, it would seem, are to promote respect for human rights by having countries—mutually—assume legal obligations to respect and ensure recognized rights in accordance with international standards. Even friends of the United States have objected that its reservations are incompatible with that object and purpose and are therefore invalid.
>
> . . . By adhering to human rights conventions subject to these reservations, the United States, it is charged, is pretending to assume international obligations but in fact is undertaking nothing.[1]

In light of this approach, the United States will not be sending any kind of signal worth sending. The message will not be that other nations need to match our comprehensive package of state and federal laws concerning the proper treatment of disabled persons. Rather, the message will be that treaties are for show and have no more impact than you want them to have.

The United States should lead the world in only ratifying treaties with which we intend to fully, faithfully, and vigorously comply. We should not lead the world in cheap and compromised promises.

The fact that no sensible person would dare to suggest that we ratify this treaty without this class of reservations is proof that this treaty is simply too dangerous to ratify.

The way for the United States to continue to lead the world in this area is to ensure that American law and practice live up to the promises of the Declaration of Independence rather than the amorphous standards of a committee of 18 experts in Geneva.

International law that is not translated into domestic law and practice is nearly worthless.

If International Law actually led to greater rights for the citizens of other nations, then why are North Koreans still deprived of any semblance of any human right? That nation has ratified five major human rights treaties and enforces none of them.

Why do Germany and Sweden ban homeschooling and persecute and harass homeschooling parents despite their ratification of human rights treaties which promise that the rights of parents to choose alternatives to public education are prior to the claims of the state?

How has American leadership and example in ratifying human rights instruments led to any help for German or Swedish homeschoolers? In fact, this administration is seeking to deport a German homeschooling family that was awarded asylum by an administrative law judge. What has America done of any substance to help those in the concentration camps of North Korea?

Leadership comes not from ratification of treaties—it comes from effective action. Human rights treaties are empty promises that do little more than guarantee the right of a professional class of international bureaucrats to full employment and their right to travel to conferences where they shake their heads and ultimately write a report in diplomatic code that does little good for anyone at all.

U.S. ratification of this treaty has no extraterritorial application for our citizens whatsoever. It is a fraudulent charade to claim otherwise.

THIS TREATY REQUIRES RADICAL CHANGES TO AMERICAN LAW

The most basic rule of international law is pacta sunt servanda—agreements must be kept. Ratification of the UNCRPD requires the United States to act in good faith—and to conform our law to the standards set forth in this U.N. treaty.

The proposed declaration that this treaty is non-self-executing does not change this duty in any way. Such a declaration simply removes the possibility of direct judicial imposition of the provisions of the treaty. The United States has made a solemn promise that we will change our statutory law to conform to the requirements of the treaty. If we fail to do so, we are in breach of our international legal obligations.

I want to focus on one area of the required changes in American law—the impact that the UNCRPD would have on the rights of parents concerning the education of their disabled and special needs children.

The UNCRPD follows the trend of the second generation of human rights treaties which promote the idea that government, not parents, have the ultimate voice in decisions concerning their children.

Early human rights instruments were very supportive of the rights of parents to direct the education and upbringing of their children.

It is beyond dispute that the Universal Declaration of Human Rights, adopted in 1948 by the unanimous vote of the U.N. General Assembly arose "out of the desire to respond forcefully to the evils perpetrated by Nazi Germany."[2] The UDHR's view regarding parents and children is no exception to this rule. Article 26(3) of the UDHR proclaims: "Parents have a prior right to choose the kind of education that shall be given to their children." Numerous human rights instruments have been drafted in reaction to "the intrusion of the fascist state into the family. . . ."[3]

The rejection of the Nazi view of parents and children was translated from the aspirational articles of the UDHR into the binding provisions of the two core human rights treaties of our era—the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966). Article 18(4) of the ICCPR provides:

> The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 13(3) of the ICESCR repeats and expands on this same theme:

> The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

This pro-parent view of human rights has given way to a decidedly different view in the U.N. Convention on the Rights of the Child (UNCRC) and now in the U.N. Convention on the Rights of Persons with Disabilities.

The UNCRPD incorporates several key elements from the UNCRC that, as I will demonstrate, lead to the conclusion that parental rights in the education of disabled children are supplanted by a new theory of governmental oversight and superiority. In short, government agents, and not parents, are being given the authority to decide all educational and treatment issues for disabled children. All of the rights that parents have under both traditional American law and the Individuals with Disabilities Education Act will be undermined by this treaty.

Article 7 is the key. Sections 2 and 3 directly parallel provisions of the UNCRC.

> 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
>
> 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Section 2 directly parallels Article 2(1) of the CRC. Section 3 closely follows Article 12(1) of the CRC.

The "best interest of the child" standard is a familiar one to anyone who has ever participated in family or juvenile law in American courts. However, in that context it is a dispositional standard. This means that after a parent has been convicted

of abusing or neglecting their child, then and only then can the government substitute its view of what is best for the child or for that of the parent. Or in the divorce context, once a judge determines the family unit is broken, the judge must settle the contest between the competing parents and decide for herself what she thinks is in the best interest of the child.

In an intact family, where there is no proof of abuse or neglect, government agents—whether school officials, social workers, or judges—cannot substitute their judgment of what is best for a child over the objection of the parents.

This legal principle is firmly imbedded into the Individuals with Disabilities Education Act. Parents have a great deal of authority concerning the education and treatment of their children under this act.

The National Dissemination Center for Children with Disabilities lists eight particular rights of parents contained in the IDEA[4]:

> The right of parents to receive a complete explanation of all the procedural safeguards available under IDEA and the procedures in the state for presenting complaints
>
> Confidentiality and the right of parents to inspect and review the educational records of their child
>
> The right of parents to participate in meetings related to the identification, evaluation, and placement of their child, and the provision of FAPE (a free appropriate public education) to their child
>
> The right of parents to obtain an independent educational evaluation (IEE) of their child
>
> The right of parents to receive "prior written notice" on matters relating to the identification, evaluation, or placement of their child, and the provision of FAPE to their child
>
> The right of parents to give or deny their consent before the school may take certain action with respect to their child
>
> The right of parents to disagree with decisions made by the school system on those issues
>
> The right of parents and schools to use IDEA's mechanisms for resolving disputes, including the right to appeal determinations

I have litigated an additional right of parents under the IDEA—the right to pursue private and home education at one's own expense.

For example, in the Eighth Circuit case of *Fitzgerald* v. *Camdenton R–III School Dist*., 439 F.3d 773 (8th Cir. 2006), the court reinforced important parental rights concepts. "[The IDEA allows parents to decline services and waive all benefits under the IDEA. See 20 U.S.C. § 1414(a)(1)(D)(ii)(II). When parents waive their child's right to services, school districts may not override their wishes. See id." Id. at 775.

In that case, we contended that parents did not even have to agree to allow the school district to force the child to go through the initial IDEA evaluation. The evidence showed that this homeschooling family had already had their child independently evaluated and the child was receiving private special needs services at the parents' own expense. The school district wanted to force the family to undergo its special needs evaluation even though the school recognized that it could not force this family to accept the recommended services at the end of the process.

The Eighth Circuit ruled for the family saying that the school could not compel this IDEA evaluation under these circumstances.

All of these parental rights will be eviscerated by the mandatory application of the "best interest of the child" standard which is set forth in Article 7 of the UNCRPD.

Geraldine van Bueren, who is one of the world's leading experts on the international rights of the child and helped to draft the UNCRC (and was one of my professors at the University of London), clearly explains the meaning and application of this best interests standard in her course material.

> Best interests provides decision and policy makers with the authority to substitute their own decisions for either the child's or the parents', providing it is based on considerations of the best interests of the child.[5]

Section 7 of the UNCRPD uses the exact same legal terms as those contained in the UNCRC.

Accordingly, today, under the IDEA parents get to decide what they think is best for their child—including the right to walk away from government services and pro-

vide private or home education. Under the UNCRPD, that right is supplanted with the rule announced by Professor van Bueren. Government officials have the authority to substitute their views for the views of parents as well as the views of the child as to what is best. If parents think that private schools are best for their child, the UNCRPD gives the government the authority and the legal duty to override that judgment and keep the child in the government-approved program that the officials think is best for the child.

Ask virtually any parent who has dealt with school officials in the IDEA context: Are you willing to give the government the final say on what it thinks is best for your child's special needs or disability?

School districts have a powerful motivation to do better for disabled and special needs children precisely because they know that parents with real rights are looking over their every move and have the ability to fight for what that parent knows to be best for their child. Remove parental authority and institutional lethargy will take over in many cases.

Children are treated much, much better in the special needs setting whenever their parents have real and certain rights.

Those rights are gone if this Senate ratifies this treaty. There are two reasons this is true.

First, virtually every state has state law provisions which also give parents a number of rights in the educational setting. Article VI of the U.S. Constitution contains our Supremacy Clause which explicitly states that a ratified treaty is the Supreme Law of the land and all state law provisions which conflict with the treaty are overridden by the treaty.

Any and all parental rights provisions in state education laws will be void by the direct application of Article 7 of this treaty. Government—not parents—has the authority to decide what is best for children.

Second, we must analyze the impact of the ratification of this treaty based on the presumption that we are going to comply with the treaty in good faith. Accordingly, even with the presumption of the non-self-executing nature of the treaty, if the Senate ratifies this treaty, Congress will have the duty to revise the IDEA to comply with the provisions of the UNCRPD. Therefore, unless we intend to breach our international legal obligations, Congress will be required to modify the IDEA to ensure that government decisionmakers, and not parents, have the final say as to what they believe is best for a child.

Thousands of homeschooling parents have children with special needs and disabilities. The ratification of this treaty is considered by our community to be the equivalent of an act of utter betrayal.

As other parents of special needs children come to understand the meaning of these phrases in the UNCRPD, they too will be aghast to learn that this Senate is giving serious consideration to a legally binding international agreement that would undermine their rights as American parents.

No proposed reservation can cure this problem. And unless we adopt a reservation that explicitly says: "We are not serious about any duty to comply with this treaty and are ratifying only for PR purposes"—I can think of no means of drafting a reservation that cures this huge defect.

Here is the plain fact. American law and international law are not compatible when it comes to parental rights. I can think of no good reason why we should even try. Americans should make the law for America—we do not need a committee of experts in Geneva to look over our shoulders to help us determine what kind of policy we need to best protect Americans with special needs and disabilities.

Although there are a great number of other difficulties that are latent in this treaty, I want to focus just on one other issue. This treaty appears to take sides on the public policy issues concerning abortion.

Article 25(a) of the UNCRPD requires state parties to:

> Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

This provision has led the nations of Poland, Malta, and Monaco to adopt reservations or declarations that proclaim that these states do not recognize any right to an abortion or mandatory state-funding for the same.

Under *Roe* v. *Wade,* of course, we live under a regime where it is proclaimed that women have the constitutional right to abortion. There is great controversy over that decision—and Congress has generally avoided federal funding for abortion. It would reasonably appear that Article 25(a) commits the United States to providing

free abortion services to persons with disabilities. A vote for this treaty is a vote for abortion funding.

Of course, our State Department has not proposed anything like the reservations from Poland, Malta, or Monaco. And I doubt that the omission was a mere oversight.

THIS TREATY WOULD VIOLATE THE PRINCIPLES OF AMERICAN SOVEREIGNTY AND LIBERTY

The Founders of this Republic understood treaties to be exclusively devoted to the subject matter of how nations treat other nations. The idea that international law would be used to dictate the policies that our Nation would follow concerning the rights of our own citizens would, frankly, astonish and bewilder the founding generation.

In the most basic terms, American sovereignty means that Americans should make the law for America. No foreign power should have the ability to lay claim to a power to dictate what our internal domestic law should be.

This treaty would alter that balance. I return to Professor van Bueren for an explanation of the impact on sovereignty by the ratification of this kind of treaty. Although her comments were directed toward the ratification of the UNCRC, they are fully applicable here.

> Underpinning this approach are the legal consequences of states becoming party to the Convention on the Rights of the Child. The United Nations Convention on the Rights of the Child moves the borders for the state of what is political and what can be subject to a legal challenge in courts, particularly in resource allocation and budgetary matters. The Convention and other international laws in effect narrows what were previously unfettered discretionary powers of governments. Before governments become party to human rights treaty they are obliged to ensure that there are the resources, either to implement the Convention on becoming party or shortly thereafter, in accordance with international law. Hence, there is no interference with national sovereignty, the nationally sovereign decisions on how resources on children's rights to be expended have already been taken. In essence, the government has exercised its political powers, and it has to live with the legal consequences.[6]

There is a once for all decision that effectively exhausts our sovereignty. If we ratify this treaty, our ability to have absolute freedom of choice concerning our public policy on this subject has been extinguished. It is akin to the States being under a Federal mandate. Sure, the States have a bit of discretion in how the Federal mandate will be implemented, but their range of policy choices are circumscribed by the duty to implement the will of Congress. In a similar fashion, if the Senate ratifies this treaty—the nationally sovereign decisions will be made once for all. Generations of Americans will be forced to live with this decision—under a permanent duty to live under U.N. supervision for compliance with our international legal obligations.

There is a second, more specific problem with this particular treaty.

Human rights treaties in general seek to guarantee five sectors of rights—political, civil, economic, social, and cultural rights. The Universal Declaration of Human Rights (which was a statement of altruism and not binding international law) encompassed all five of these components of international law.

However, in the years that followed, there was a great division between two sectors of human rights. Political and civil rights are called negative rights. These rights are what government cannot do to us or take from us. The United States Bill of Rights is the world's greatest collection of negative rights.

However, economic, social, and cultural rights are called positive rights. These rights encompass services that the government must provide its citizens—the right to health care, the right to food, the right to employment.

When the U.N. attempted to translate the UDHR into formal treaty language—this divide between civil and political rights vs. economic, social, and cultural rights took center stage. The west, led by the United States, supported the creation and ratification of civil and political rights. The Soviet Union and its allies, however, opposed civil and political rights and instead urged the creation of economic, social, and cultural rights.

The attempt to create a single treaty encompassing all of the principles of the UDHR failed. Instead, the U.N. promulgated two separate treaties—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

The United States ratified the ICCPR. The Soviet Union ratified the ICESCR.

To this very day, the United States has never ratified a U.N. human rights treaty that has economic, social, and cultural rights at the core of the treaty.

Why is this? Professor van Bueren explains:

> The essence of economic and social, and to an extent, cultural rights is that they involve redistribution, a task with which, despite the vision of human rights, most constitutional courts and regional and international tribunals are distinctively uncomfortable.[7]

Like these courts, the United States Senate—up until this present time—has shared this concern about committing our Nation to the task of redistribution.

This treaty would break all precedent of this body. It would be the first time in the history of the Senate that the United States commits itself to a treaty that requires the redistribution of the resources of Americans. We must take resources from some Americans and give them to other Americans.

There is little wonder that the Union of Soviet Socialist Republics favored this kind of redistributive right. But, up until today, the United States Senate has never ratified a treaty embracing these so-called positive rights which are nothing more than the international entitlement to the redistribution of resources.

You may call it what you will. I see such treaties as a dramatic loss of American freedom in favor of coercive international socialism.

CONCLUSION

It was American self-government and not international law that led to the significant advancements that this nation has seen in the appropriate law and policies concerning persons with disabilities.

International law has no track record of success that could lead any reasonable person to believe that international law would have any claim of superiority over American self-government.

We should pass whatever laws we need to ensure proper policies and practices for Americans with disabilities. But we should not give away our policy prerogatives to the superintendence of a committee of UN experts sitting in Geneva.

End Notes

[1] Louis Henkin, "U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker," The American Journal of International Law, Vol 89 No 2, 343–344 (Apr. 1995).

[2] Kathleen Renee Cronin-Furman, "60 Years of the Universal Declaration of Human Rights: Towards an Individual Responsibility to Protect," 25 Am. U. Int'l L. Rev. 175, 176 (2009).

[3] Marleen Eijkholt, "The Right to Found a Family as a Stillborn Right to Procreate?" 18 Med. L. Rev. 127, 134 (2010).

[4] http://nichcy.org/schoolage/parental-rights.

[5] Geraldine Van Bueren, "International Rights of the Child, Section D," University of London, 46 (2006).

[6] Geraldine Van Bueren, "International Rights of the Child, Section D," University of London, 36 (2006).

[7] Geraldine Van Bueren, "Combating Child Poverty—Human Rights Approaches," Human Rights Quarterly, Vol. 21, p. 680, 680–681 (1999).

Senator COONS. Thank you, Dr. Farris.

Mr. Groves.

STATEMENT OF STEVEN GROVES, BERNARD AND BARBARA LOMAS FELLOW, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mr. GROVES. Thank you, Senator Coons, Ranking Member Lugar, for giving me the opportunity to testify today regarding whether the United States should ratify the Convention on the Rights of Persons with Disabilities.

I had the opportunity to testify before the committee about a month ago on another treaty, the U.N. Convention on the Law of the Sea. And while there are no similarities between the two in terms of scope or subject matter, the central question that we are dealing with here remains the same, and that is the question regarding the propriety of U.S. ratification. And that question is

whether membership in the Convention protects and preserves U.S. national interests.

The Obama administration recognizes that ratification will not advance the rights of Americans with disabilities here in the United States. The President's letter of transmittal makes it clear. It states that Americans with disabilities already enjoy the Convention's rights at home.

As such, ratifying the Convention merely makes an international commitment to continue the status quo here in the United States, which does not seem to be a compelling national interest since the rights of Americans with disabilities are well protected in the United States. Disabled Americans are protected by disability rights laws, such as the historic Rehabilitation Act of 1973, the Americans with Disabilities Act, and many more State and Federal laws.

These laws are enforced in American courtrooms nationwide by a panoply of Federal agencies, led by the Civil Rights Division of the Department of Justice and by men and women who have dedicated their lives to the advancement of Americans with disabilities, men and women like Judy Heumann and John Wodatch. But U.S. membership in the Convention will not affect the rights or improve the conditions of Americans with disabilities.

As such, this committee should question exactly what U.S. national interest would be met by ratifying because there are real costs associated with ratification of the Convention. Every 4 years, the United States Government will be required to produce a comprehensive report in an effort to prove its compliance with the provisions of the Convention.

That report must be presented to the 18-member Committee on the Rights of Persons with Disabilities in Geneva by a large team of U.S. officials. The actual cost of this reporting process is not insignificant. But more important are the potential political costs that come with ratification, and that is because the United States has endured mixed results, to say the least, in its interactions with other human rights treaty committees over the years for the treaties that we are a party to.

For example, in 2008, the United States presented a 100-page report to a treaty committee regarding the U.S. record on implementation of the Convention on the Elimination of All Forms of Racial Discrimination. That committee gave short shrift to the U.S. report and instead adopted a damning appraisal of the U.S. record that was only tangentially related or utterly unrelated to issues regarding racial discrimination.

Among some of the demands that that committee made, and you heard Senator DeMint refer to some of these earlier, are to ensure that enemy combatants held in Guantanamo Bay have the right to judicial review, to challenge the conditions of their detention, to prevent U.S. corporations from negatively affecting the rights of indigenous people living outside of the United States, to place a moratorium on the imposition of the death penalty, and to restore voting rights to all convicted felons, regardless of the heinousness of their crime.

If the United States ratifies the disabilities Convention, it may be exposed to the same experience that it had with that committee.

That committee and other human rights treaty bodies, such as the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, have established over the years a pattern of directing states parties to change their laws in ways that conflict with those states parties' legal, social, and cultural norms. There is little reason to believe that the Committee on the Rights of Persons with Disabilities will act any differently.

In conclusion, as with any other treaty, this committee should weigh the costs and benefits entailed with ratifying the disabilities Convention. Neither the United States nor Americans with disabilities will benefit from a quadrennial chastisement by a committee of international disability experts sitting in Geneva.

Instead, the United States should continue to lead by the example it has set for protecting the rights of Americans with disabilities through comprehensive legislation and enforcement.

Again, I would like to thank the committee for inviting me to testify, and I look forward to any questions.

[The prepared statement of Mr. Groves follows:]

PREPARED STATEMENT OF STEVEN GROVES

Mr. Chairman and members of the committee, thank you for inviting me to testify before you today regarding the Convention on the Rights of Persons with Disabilities (CRPD or Convention).

I had the opportunity to testify before this committee a month ago regarding U.S. accession to the United Nations Convention on the Law of the Sea. While there are no similarities between the two conventions in terms of scope or subject matter, the central question regarding the propriety of U.S. ratification remains the same—whether membership in the Convention protects, preserves, or advances U.S. national interests.

The United States should not ratify the CRPD if membership would not advance U.S. national interests at home or abroad. The administration concedes that U.S. membership in the Convention would not advance the cause of persons with disabilities living in the United States since the United States already has in place comprehensive statutory, regulatory, and enforcement mechanisms regarding disability rights.

The question remains whether membership in the Convention would advance national interests in the international sphere. Joining the Convention is unlikely to advance U.S. national interests abroad, but instead would obligate the United States to answer to a committee of "disability experts" in violation of principles of U.S. sovereignty. The United States need not become party to the Convention to demonstrate its strong commitment to disability rights to the international community. Nor is there any evidence that U.S. ratification would enhance the ability of the U.S. Government or nongovernmental organizations to promote disability rights in foreign countries.

THE CONVENTION

On December 13, 2006, the United Nations General Assembly adopted the CRPD "to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."[1]

The terms of the Convention are meant to protect the rights of persons with disabilities in the civil, political, economic, social and cultural spheres. It recognizes traditional civil and political rights that are guaranteed under the U.S. Constitution—such as the right to life and liberty, equality before the law, and the freedom of expression and opinion[2]—alongside certain economic, social, and cultural "positive rights," such as the right to education, health, and "an adequate standard of living for [persons with disabilities] and their families, including adequate food, clothing, and housing, and to the continuous improvement of living conditions."[3]

The Convention entered into force on May 3, 2008, after 20 nations had deposited their instruments of ratification. The Convention currently has 117 parties, and an additional 36 nations, including the United States, have signed but not ratified the

treaty.[4] U.S. Ambassador to the United Nations Susan Rice signed the Convention on July 30, 2009.[5] President Obama transmitted the Convention, an article-by-article analysis, and a set of recommended reservations, declarations, and understandings to the Senate for its advice and consent on or about May 17, 2012 (Transmittal Package).[6]

If the Senate gives its advice and consent and the Convention is ratified, it would become the "Supreme Law of the Land" on par with Federal statutes, including statutes relating to disability rights.[7] When the United States becomes party to a human rights treaty it obligates itself to the other treaty parties that it will comply with the terms of the treaty within U.S. territory. Therefore, the United States needs to take great care when deciding whether to ratify such a treaty when its terms—or the interpretation of those terms by a treaty committee—may not conform to existing State and Federal law or to prevalent American social, cultural, and economic norms.

AMERICA'S LEADERSHIP ON DISABILITY RIGHTS

The United States should become party to a treaty only if it advances U.S. national interests. The U.S. should be especially wary of international conventions that require domestic enforcement by the Federal Government. U.S. national interests in the context of the Convention may be characterized in both foreign and domestic terms: Would becoming a party to the Convention serve U.S. interests within the international community or would joining advance the cause of Americans with disabilities?

From a purely public diplomacy calculus, one can argue that the United States will enhance its reputation within the international community by holding itself to a high standard of human rights. However, in the case of the CRPD, the United States already has effective legislative measures in place to protect the rights of the disabled. Those who say that ratification would allow the United States to claim the moral high ground within the international community—at least in regard to disability rights—imply that the United States is deficient in protecting the rights of the disabled. In truth, the United States has been a leader in protecting the rights of the disabled. It already holds the moral high ground. Signing a treaty merely to "score points" overseas is not a sound basis for making policy.

Ratification of the CRPD is unnecessary to end discrimination against persons with disabilities in the United States. As is made clear throughout the Transmittal Package, the United States already has in place a wide range of Federal laws to protect and advance the cause of Americans with disabilities.[8] Major pieces of legislation include the Rehabilitation Act of 1973,[9] the Americans with Disabilities Act (ADA),[10] the Individuals with Disabilities Education Act, Part B,[11] and the Fair Housing Act.[12] Other Federal laws that protect persons with disabilities include the Telecommunications Act of 1996, the Air Carrier Access Act of 1986, the Voting Accessibility for the Elderly and Handicapped Act of 1984, the Civil Rights of Institutionalized Persons Act, and the Architectural Barriers Act of 1968.[13]

These Federal laws, unlike the broad provisions of the CRPD, were crafted to address the situation of disabled persons living in the United States, not to address the general opinions of the international community. As a whole, the legislation is a firm foundation that can be modified or expanded as necessary through the legislative or regulatory process.

In addition, U.S. disabilities laws are enforced by a panoply of Federal agencies, most notably the Civil Rights Division of the Department of Justice.[14] Other elements of the Federal Government have responsibilities under the ADA and other Federal disability legislation. In addition to Federal law, all 50 States and the District of Columbia have enacted a wide range of laws to prevent discrimination against the disabled and provide an array of resources to persons with disabilities.[15]

In short, the U.S. Government treats disability discrimination in a comprehensive and exhaustive manner that makes membership in an international covenant purporting to set standards for the treatment of the disabled superfluous at best. To allow an international committee of disability experts to scrutinize the U.S. record every 4 years would yield little or no benefit in realizing disability rights for Americans. Any public diplomacy or other possible marginal benefits, if any, that could arise from ratifying the Convention should be weighed against the negative consequences of ratification.

CEDING AUTHORITY TO AN INTERNATIONAL COMMITTEE

To monitor implementation, human rights treaties usually establish a "committee of experts" to review reports from states parties on their compliance. States parties are required to submit periodic reports (usually every 4 years) to the committee de-

tailing their compliance with the particular treaty. The CRPD established the Committee on the Rights of Persons with Disabilities (CRPD Committee), which is charged with reviewing periodic reports and making "such suggestions and general recommendations on the report as it may consider appropriate."[16]

Since the Convention entered into force in May 2008, the CRPD Committee has conducted reviews of a small number of states parties and has issued final conclusions and recommendations regarding Tunisia, Spain, and Peru.[17]

Abuses by Treaty Committees. Human rights treaty committees have been known to make demands of states parties that fall well outside the scope of the subject matter of the treaty that conflict with the legal, social, economic, and cultural traditions and norms of states parties. This has especially been the case with the United States.

For instance, in February 2008, the Committee on the Elimination of Racial Discrimination reviewed the U.S. record on racial discrimination and issued a report directing the United States to change its policies on a series of political causes completely divorced from the issues of race and racial discrimination. Specifically, the committee urged the United States to guarantee effective judicial review to the foreign unlawful enemy combatants held at the Guantanamo Bay detention facility, prevent U.S. corporations from abusing the rights of indigenous populations in other countries, place a moratorium on the death penalty, restore voting rights to convicted felons, and other matters completely unrelated or only tangentially related to racial discrimination.[18]

The committees overseeing the enforcement of other human rights treaties to which the United States is not a party often recommend changes in policies that are outside of traditional American norms. For example, the committee that oversees the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) regularly advocates that states decriminalize prostitution, expand access to abortion, devalue the role of women as mothers, reduce parental authority, and implement strict numerical gender quotas in the government and private sectors.[19]

The U.S. has reason to expect that the experts on the CRPD Committee will give short shrift to U.S. sovereignty, laws, regulations, and norms, and embark on similar forays in pursuit of a broader agenda of social engineering unrelated to disability rights.

Defining the CRPD Committee's Role. Any debate over U.S. ratification of the Convention should make it clear through reservations, understandings, and declarations that the CRPD Committee has no power—either through its recommendations or by the issuance of general comments—to provide authoritative or legally enforceable interpretations of the Convention.

The administrations of Presidents Bill Clinton and George W. Bush held that position regarding human rights treaty committees. For example, in 1994 the Human Rights Committee adopted a general comment which claimed that its "role under the [International] Covenant [on Civil and Political Rights] . . . necessarily entails interpreting the provisions of the Covenant and the development of a jurisprudence."[20] The Clinton administration reacted strongly to this claim of authority by issuing a lengthy critique, which stated:

> [The Committee's] rather surprising assertion . . . would be a rather significant departure from the Covenant scheme, which does not impose on States Parties an obligation to give effect to the Committee's interpretations or confer on the Committee the power to render definitive or binding interpretations of the Covenant. The drafters of the Covenant could have given the committee this role but deliberately chose not to do so.[21]

The Bush administration similarly responded to a fact sheet titled "The Right to Health" produced by the Office of the U.N. High Commissioner for Human Rights and the World Health Organization. The fact sheet asserted that the general comments and recommendations adopted by human rights treaty committees "provide an authoritative and detailed interpretation of the provisions found in the treaties."[22] The U.S. response was unequivocal:

> General comments and other documents issued by treaty monitoring bodies express the opinions of individuals acting in their expert capacities; such documents are not the result of deliberations among States. While the views of treaty monitoring bodies are entitled to respect and should be considered carefully by States Parties, they do not create legal obligations or "requirements."[23]

This committee should be equally clear in reaffirming that the CRPD Committee has no authority to create new international norms or customary international law

that the states themselves have not deliberated and approved, particularly any that would arguably bind the U.S. domestically. Such a clarification would reinforce the traditional understanding of customary international law as the "law of nations" that "results from a general and consistent practice of states followed by them from a sense of legal obligation," not from the recommendations of a treaty committee.[24] It would also reaffirm U.S. sovereignty by demonstrating that the Federal Government will actively work to prevent the improper imposition of norms to which it has not given its democratic consent.[25]

The committee should also make clear that the CRPD Committee does not possess the authority to dictate the meaning of the Convention to states parties. Its interpretation of the terms of the Convention, the obligations it imposes, and any recommendations and general comments are entitled only to respect and consideration by the member states. The committee should serve a technical, administrative role as opposed to a substantive, adjudicatory, or quasi-lawmaking role. The United States, not a committee of international disability experts, retains the final authority to interpret the terms of the Convention and determine its international obligations.

This committee has in the past proposed an understanding regarding the authority of a human rights expert committee. Specifically, a committee report in 2002 proposed the following understanding as a condition to ratification of CEDAW: "Accordingly, the United States understands that the Committee on the Elimination of Discrimination Against Women has no authority to compel actions by States Parties."[26]

NON-SELF-EXECUTION

U.S. ratification of the Convention would make it "the Supreme Law of the Land" under the supremacy clause of the Constitution.[27] Although ratification would constitute a commitment under international law, the text of the Convention gives no indication that its drafters intended its provisions to be automatically enforceable under the domestic law of the states parties.[28]

Nevertheless, to protect against any assertion to the contrary and as recommended in the Transmittal Package, this committee should submit a declaration that the Convention is not self-executing, meaning that its provisions would not be enforceable in U.S. courts. Private causes of action or other new avenues of litigation would thus require passage of Federal legislation specifically implementing the Convention's terms.[29]

"Non-self-executing" declarations are common. In fact, the United States has entered such declarations as a condition for ratifying the three major human rights treaties to which it is a party: the International Covenant on Civil and Political Rights (ICCPR),[30] the International Covenant on the Elimination of Racial Discrimination (ICERD),[31] and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[32] The non-self-executing declaration has also been proposed as a condition for CEDAW ratification.[33]

Of course, the United States would be fully justified in entering such a declaration. Existing State and Federal legislation already provide private causes of action for the disabled in the United States, including for instances of discrimination in employment, public accommodations, transportation, telecommunications, housing and other areas.[34]

The Transmittal Package recommends the inclusion of a non-self-executing declaration, but for some reason includes a proviso that "it is not necessary that such Declaration be included in the instrument of ratification deposited by the President."[35] Excluding the declaration would be a departure from U.S. past practice, as the non-self-execution declaration has been included in the U.S. instrument of ratification in connection with the ICCPR, ICERD, and CAT.

"REPRODUCTIVE HEALTH"

For many years there has been a heated debate within the U.N. system regarding abortion "rights."[36] Apparently unwilling to use the term "abortion" in the debate, the proponents of establishing abortion as a human right use phrases such as "reproductive rights" and "sexual and reproductive health" as euphemisms for "abortion rights." The use of one such euphemism in the text of the Convention has extended the abortion debate into the realm of disability rights. Specifically, Article 25 of the Convention requires states parties to "[p]rovide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, *including in the area of sexual and reproductive health* and population-based public health programmes."[37]

Within the context of the debate over abortion rights, Article 25 of the Convention could be interpreted as ensuring that persons with disabilities are provided access to free or affordable abortions, assuming such access is provided to nondisabled persons by the state party.

When the U.N. General Assembly approved the final text of the Convention on December 13, 2006, more than one dozen nations, including the United States, made official statements regarding their interpretation of the phrase "reproductive health."[38] The pertinent part of the U.S. statement reads:

> In that regard, the United States understands that the phrase "reproductive health" in subparagraph (a) of article 25 of the draft Convention does not include abortion, and that its use in that article does not create any abortion rights and cannot be interpreted to constitute support, endorsement or promotion of abortion. We stated that understanding at the time of adoption of the Convention in the Ad Hoc Committee, and note that no other delegation suggested a different understanding of that term.[39]

However, that statement conflicts with the opinion of Secretary of State Hillary Clinton regarding the meaning of "reproductive health." On April 22, 2009, Secretary Clinton testified before the House Foreign Affairs Committee, "We happen to think that family planning is an important part of women's health, and *reproductive health includes access to abortion,* that I believe should be safe, legal, and rare."[40]

Due to this apparent conflict in the interpretation of "reproductive health," this committee should clarify the nature of the Convention regarding that phrase and its relationship to abortion.[41]

Similar issues arose in this committee in 1994 and 2002 in the context of CEDAW. In these instances, Senators raised the question of whether abortion rights were to be inferred from certain language in CEDAW that related to "family planning." This committee issued two reports (in 1994 and 2002) submitting understandings that the U.S. will "determine which health care services are appropriate in connection with family planning, pregnancy, confinement and the post-natal period. . . ." Moreover, in the 2002 report the committee required as a condition to the Senate's advice and consent an understanding explicitly stating that nothing in CEDAW "shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning."[42]

Abortion remains one of the most heated social issues being debated in the United States among activist groups, State and Federal legislatures, and courts at all levels, including the U.S. Supreme Court. Introducing an "international" opinion on the matter from a group of disability experts ensconced in Geneva is unlikely to resolve or advance the debate in the United States.

DEFINING THE CONVENTION'S TERMS

It stands to reason that an international treaty designed to end discrimination on the basis of "disability" should provide a working definition of that term, yet the Convention provides none.[43] In fact, the treaty clouds any legally workable definition of disability by stating in its opening paragraphs that "disability is an evolving concept."[44] Such ambiguity invites abuse by persons or groups who do not suffer from a recognized medical disability, yet seek resources and protection under the authority of the Convention. This would also complicate implementation of the Convention in the United States, in which the definition of "disability" is still regularly contested by activists, litigants, and judges.

Under the Americans with Disabilities Act, a person is considered disabled if he has "a physical or mental impairment that substantially limits one or more . . . major life activities," has "a record of such an impairment," or has been "regarded as having such an impairment."[45] Recent amendments to the ADA further clarified that definition by defining "major life activities" to include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working" and "[m]ajor bodily functions."[46]

Absent a definition or an "evolving" definition, ratification may result in conflict between U.S. law and the Convention. The administration has recognized the potential for conflict between the definitions (or lack thereof) of "disability" and "persons with disabilities" and has recommended an understanding to address the issue.[47]

But that understanding falls short. To ensure that the United States is not seen to consent to other key definitions the understanding should be broadened to include the terms "discrimination based on disability," "reasonable accommodation," and "major life activity." The CRPD Committee may interpret these terms differently than Congress or U.S. courts would interpret them. For instance, a committee of

experts recently questioned the United States on whether the definition of "racial discrimination" under U.S. law comported with the terms of the ICERD.[48]

The United States has similarly qualified terminology in previous treaties. For example, when the United States ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it entered an understanding that substituted its own definition of "torture," which differed from the Convention's definition.[49] The United States also entered a reservation that limited the treaty's definition of "cruel, inhuman, or degrading treatment or punishment" to prohibit only those acts considered cruel, inhuman, or degrading treatment or punishment under the U.S. Constitution.[50]

U.S. membership in the Convention would produce, at best, an intangible, incalculable, and marginal public diplomacy benefit in the international community. The United States need not become party to the Convention to demonstrate its commitment to the rights of persons with disabilities or to advance the cause of the disabled in other nations. Any nation that questions U.S. dedication to protecting Americans with disabilities need only review the architecture of State and Federal laws and the network of State and Federal agencies that enforce those laws.

On the domestic front, persons with disabilities in the United States would be better served by a continual review of the implementation of existing State and Federal laws. The U.S. Congress, American civil society, and special interest groups are far better positioned to conduct such reviews than a committee of disability experts from Bangladesh, China, Qatar, and Tunisia, which are current members of the CRPD Committee.

In addition to the reservations, understandings, and declarations (RUDs) included in the President's Transmittal Package, this committee should include additional RUDs in its resolution of advice and consent to ratification. At a minimum, the following RUDs should be made:

- Definitions. The Transmittal Package recommends an understanding in regard to the definition of "disability" and "persons with disabilities," but there are several other crucial definitions, including some that are defined by the Convention, that should be addressed. An understanding along the following general lines would make clear that the United States is not obligated to accept the CRPD Committee's interpretation of these terms:

  The United States would consider itself bound by the obligations of the Convention only insofar as the terms "disability," "persons with disabilities," "discrimination based on disability," "reasonable accommodation," and "major life activity" are defined coextensively with the definitions of such terms pursuant to the relevant laws in the United States.

- The Authority of the CRPD Committee. An understanding along the following general lines would make clear that the United States considers the role of the Committee on the Rights of Persons with Disabilities to be technical and advisory, as opposed to authoritative or adjudicatory:

  The United States understands that the Committee on the Rights of Persons with Disabilities has no authority to compel actions by states parties, and the United States does not consider conclusions, recommendations, or general comments issued by the committee as constituting customary international law or legally binding on it in any manner.

- "Reproductive Health." To remain consistent with the U.S. understanding of the term "reproductive health" at the time that the Convention was adopted in 2006, an understanding along the following lines should be included in the resolution of advice and consent:

  The United States understands that the phrase "sexual and reproductive health" in Article 25(a) of the Convention does not include abortion, and its use in that Article does not create any abortion rights, and cannot be interpreted to constitute support, endorsement, or promotion of abortion, and in no case should abortion be promoted as a method of family planning.

These RUDs, in addition to those recommended in the Transmittal Package, could limit, although not eliminate, the danger that the Convention would pose to U.S. law and American sovereignty. Regardless, even with the inclusion of the aforementioned RUDs, U.S. ratification will not advance its national interests. Nor will it advance the cause of Americans with disabilities.

Current U.S. law meets or exceeds the provisions of the Convention, and mere membership in the Convention will not convince the international community that America protects the rights of its disabled citizens. Moreover, ratification of the Convention may harm U.S. national interests because human rights treaty committees

increasingly view themselves as the legislators of binding international norms, instead of as experts fulfilling the technical roles they were intended to perform.

End Notes

[1] Convention on the Rights of Persons with Disabilities, art. 1.
[2] Ibid., arts. 10, 12, 14, and 21.
[3] Ibid., arts. 24, 25, and 28.
[4] U.N. Office of Legal Affairs, Treaty Section, "Status: Convention on the Rights of Persons with Disabilities," United Nations Treaty Collection," at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en (July 10, 2012).
[5] Edith M. Lederer, "US Signs Disabled Rights Treaty," ABC News, July 30, 2009, at http://abcnews.go.com/US/wireStory?id=8215921 (April 15, 2010).
[6] Message from the President of the United States transmitting the Convention on the Rights of Persons with Disabilities, 112th Cong., 2d Sess., Treaty Doc. 112–7, May 17, 2012, at http://www.gpo.gov/fdsys/pkg/CDOC-112tdoc7/pdf/CDOC-112tdoc7.pdf (July 10, 2012).
[7] U.S. Constitution, art. VI, cl. 2.
[8] Transmittal Package, Tab 1–2, pp. 83–93.
[9] 29 U.S.C. § 791 et seq.
[10] 42 U.S.C. § 12101 et seq., later amended by the ADA Amendments Act of 2008, Public Law 110–325 (enacted on September 25, 2008).
[11] 20 U.S.C. § 1400 et seq. The Education for All Handicapped Children Act, the predecessor legislation to IDEA, was enacted in 1975.
[12] 42 U.S.C. § 3601 et seq.
[13] 42 U.S.C. §§ 255, 251(a)(2); 49 U.S.C. § 41.705; 42 U.S.C. §§ 1973ee et seq.; 42 U.S.C. §§ 1997 et seq.; 42 U.S.C. §§ 4151 et seq. See also U.S. Department of Justice, Civil Rights Division, Disability Rights Section, "A Guide to Disability Rights Laws," September 2005, at http://www.ada.gov/cguide.htm#anchor64984 (April 15, 2010).
[14] U.S. Department of Justice, Civil Rights Division, "Disability Rights Section Home Page," at http://www.justice.gov/crt/drs/drshome.php (April 15, 2010). See also Americans with Disabilities Act, "ADA Home Page," at http://www.ada.gov (April 15, 2010).
[15] For example, see Cancer Legal Line, "State Disability Discrimination Laws,"http://www.marrow.org/PATIENT/Support_Resources/Patient_Teleconferen/PDFs/Aug.6.08.Handout-State_Disability_Laws.pdf (April 15, 2010); Disability.gov, "Information by State," at http://www.disability.gov/state/index (April 15, 2010).
[16] Convention on the Rights of Persons with Disabilities, art. 36(1).
[17] Committee on the Rights of Persons with Disabilities, "Concluding observations," Tunisia, CRPD/C/TUN/CO/1, May 13, 2011, at http://www2.ohchr.org//SPdocs/CRPD/5thsession/CRPD-C-TUN-CO-1_en.doc (July 10, 2012); Spain, CRPD/C/ESP/CO/1, October 19, 2011, at http://www.ohchr.org/Documents/HRBodies/CRPD/6thsession/CRPD.C.ESP.CO.1_en.doc (July 10, 2012); Peru, CRPD/C/PER/CO/1, May 9, 2012, at http://www.ohchr.org/Documents/HRBodies/CRPD/7thsession/CRPD.C.PER.CO.1-ENG.doc (July 10, 2012). The Committee may have completed reports on Argentina, China, and Hungary, but if so the reports are not yet available online.
[18] Steven Groves, "The Inequities of the U.N. Committee on the Elimination of Racial Discrimination," Heritage Foundation Backgrounder No. 2168, August 7, 2008, at http://www.heritage.org/Research/InternationalOrganizations/bg2168.cfm. See also Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America," CERD/C/USA/CO/6, February 2008, at http://www.universalhumanrightsindex.org/documents/824/1310/document/en/text.html (April 15, 2010).
[19] Patrick F. Fagan, "How U.N. Conventions on Women's and Children's Rights Undermine Family, Religion, and Sovereignty," Heritage Foundation Backgrounder No. 1407, February 5, 2001, at http://www.heritage.org/Research/Reports/2001/02/How-UN-Conventions-On-Womens; Grace Melton, "CEDAW: How U.N. Interference Threatens the Rights of American Women," Heritage Foundation Backgrounder No. 2227, January 9, 2009, at http://www.heritage.org/Research/Reports/2009/01/CEDAW-How-UN-Interference-Threatens-the-Rights-of-American-Women; and Wendy Wright, "CEDAW Committee Rulings," Concerned Women for America, August 27, 2002, at http://www.cwfa.org/articledisplay.asp?id=1870 (April 15, 2010).
[20] U.N. Office of the High Commissioner for Human Rights, "General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations Under Article 41 of the Covenant," CCPR/C/21/Rev.1/Add.6, November 4, 1994, at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/69c55b086f72957ec12563ed004ecf7a (April 15, 2010).
[21] Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations, U.N. document A/50/40, p. 1, March 28, 1995, at http://www.iilj.org/courses/documents/USandUKResponses.pdf (April 15, 2010).
[22] Office of the U.N. High Commissioner for Human Rights and World Health Organization, "The Right to Health," Fact Sheet No. 31, June 2008, p. 10, at http://www.ohchr.org/Documents/Publications/Factsheet31.pdf (April 16, 2010).
[23] U.S. Department of State, "Observations by the United States of America on 'The Right to Health, Fact Sheet No. 31,'" October 15, 2008, at http://www.globalgovernancewatch.org/docLib/20081222_Health_USG_Paper.pdf (April 16, 2010).

[24] Restatement (Third) of the Foreign Relations Law of the United States § 102(2) (1987), and Curtis A. Bradley and Jack L. Goldsmith, Foreign Relations Law, 2nd ed. (New York: Aspen Publishers, 2006).

[25] For a critique of the "modern position" that customary international law is applicable or enforceable within the United States, see Curtis A. Bradley and Jack L. Goldsmith, "Customary International Law as Federal Common Law: A Critique of the Modern Position," Harvard Law Review, Vol. 110, No. 4 (February 1997), p. 815.

[26] Convention on the Elimination of All Forms of Discrimination Against Women, Senate Exec. Rept. 107–9, 107th Cong., 2d Sess., September 6, 2002, p. 13. Citing a July 8, 2002, letter from Secretary of State Colin Powell, the report stated, "State Parties have always retained the discretion on whether to implement any recommendations made by the Committee."

[27] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Constitution, art. VI, cl. 2.

[28] "This Court has long recognized the distinction between treaties that automatically have effect as domestic law, and those that—while they constitute international law commitments—do not by themselves function as binding federal law." *Medellin* v. *Texas*, 552 U.S. 491, 504 (2008).

[29] "International agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts." 2 Restatement (Third) of Foreign Relations Law of the United States § 907, Comment a, p. 395 (1986).

[30] "That the United States declares that the provisions of articles 1 through 27 of the Covenant are not self-executing." International Covenant on Civil and Political Rights, December 16, 1966, in United Nations, Treaty Series, Vol. 999, p. 171 and Vol. 1057, p. 407, "Declarations and Reservations," United States, Declaration (1), at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (April 16, 2010).

[31] "That the United States declares that the provisions of the Convention are not self-executing." International Covenant on the Elimination of Racial Discrimination, Declarations and Reservations, United States, III, at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en#EndDec (April 19, 2010).

[32] "That the United States declares that the provisions of articles 1 through 16 of the Convention are not self-executing." Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, "Declarations and Reservations," United States, III, at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en (April 19, 2010).

[33] "The United States declares that, for purposes of its domestic law, the provisions of the Convention are non-self-executing." Convention on the Elimination of All Forms of Discrimination Against Women, Senate Exec. Rept. 107–9, p. 13, September 6, 2002.

[34] Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq.; Rehabilitation Act of 1973, 29 U.S.C. § 794; and ADA Amendments Act of 2008, Public Law 110–325.

[35] Transmittal Package, p. 82.

[36] See Douglas Sylva and Susan Yoshihara, "Rights by Stealth: The Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion," International Organizations Research Group White Paper No 8, reprinted 2009, at http://www.c-fam.org/docLib/20100126_IORG_W_Paper_Number8FINAL.pdf (April 16, 2010).

[37] Convention on the Rights of Persons with Disabilities, art. 25(a) (emphasis added).

[38] See Susan Yoshihara, "UN Adopts Disabilities Treaty, Many States Reiterate Rejection of Abortion," Catholic Family & Human Rights Institute Friday Fax, December 14, 2006, at http://www.c-fam.org/publications/id.492/pub_detail.asp (April 16, 2010).

[39] U.N. General Assembly, 61st Session, 76th plenary meeting, U.N. Doc. A/61/PV.76, December 13, 2006, p. 7 (July 10, 2012).

[40] Hearing, New Beginnings: Foreign Policy Priorities in the Obama Administration, Committee on Foreign Affairs, U.S. House of Representatives, 111th Cong., 1st Sess., April 22, 2009, at http://foreignaffairs.house.gov/schedule.asp?showdate=4/22/2009&adj=4/22/2009 (emphasis added) (April 16, 2010).

[41] Article 10 of CRPD, titled "Right to life," requires that "States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others." This provision is seemingly inconsistent with an interpretation of "reproductive health" that requires access to abortion.

[42] Convention on the Elimination of All Forms of Discrimination Against Women, Senate Exec. Rept. 103–38, 103d Cong., 2d Sess., October 3, 1994, and Convention on the Elimination of All Forms of Discrimination Against Women, Senate Exec. Rept. 107–9.

[43] There is no definition of "disability" in the operative definition section of the Convention (Article 2 "Definitions"). The failure to reach consensus on the definition of "disability" was the result of a dispute concerning whether the term "disability" should be a medical concept or a social concept. Language describing disability as an "evolving concept" certainly leans toward a more social definition. See Susan Yoshihara, "The Quest for Happiness," in Brett D. Schaefer, ed., "ConUNdrum: The Limits of the United Nations and the Search for Alternatives" (Lanham, Md.: Rowman & Littlefield Publishers, 2009), p. 182.

[44] Convention on the Rights of Persons with Disabilities, Preamble, ¶(e).

[45] Americans with Disabilities Act, 42 U.S.C. § 12102(2).

[46] Public Law 110–325, § 4(a)(2)(A) (September 25, 2008).

[47] Transmittal Package, p. 8.

[48] The CERD Committee rapporteur questioned the U.S. definition of racial discrimination in regard to the necessity to prove intentional discrimination versus practices that are facially neu-

tral but have an unlawful disparate impact upon members of a protected class. Committee on the Elimination of Racial Discrimination, "Questions Put by the Rapporteur in Connection with the Consideration of the Combined Fourth, Fifth and Sixth Periodic Reports of the United States of America (CERD/C/USA/6)," March 7, 2008, pp. 13–15, at http://www.state.gov/documents/organization/107362.pdf (April 19, 2010).

[49] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, in United Nations, "Treaty Series," Vol. 1465, p. 85, "Declarations and Reservations," United States, II(1), at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg__no=IV9&chapter=4&lang=en (April 19, 2010).

[50] Ibid., I(1).

Senator COONS. Thank you, Mr. Groves.

Mr. Lancaster.

STATEMENT OF JOHN LANCASTER, FIRST LIEUTENANT, U.S. MARINE CORP, RET., RETIRED EXECUTIVE DIRECTOR OF THE NATIONAL COUNCIL ON INDEPENDENT LIVING, WASHINGTON, DC

Mr. LANCASTER. Thank you. Thank you, Senator Coons, Senator Lugar, other members of the distinguished Foreign Relations Committee. Thank you for the opportunity to testify on the Convention on the Rights of Persons with Disabilities.

I, too, ask that my full testimony be entered into the record.

I join 21 veterans organizations and over 165 disability organizations in supporting the CRPD. I request that you support ratification of this treaty and move it to a floor vote in the Senate as soon as possible.

I have served the United States in a variety of capacities, first as a second lieutenant in the Marine Corps during the Vietnam war, and then as a veteran on disability issues both within the Government and private sector. I have focused my entire career on the rights of people with disabilities.

My firsthand experience with disability began east of Hue City in Vietnam. I had been commissioned as second lieutenant United States Marine Corps upon graduation from the University of Notre Dame. In 1968, I had orders to Vietnam. Five months into my service, I was shot and injured in a fire fight.

Although my friends and family welcomed me home as a disabled veteran, society did not receive me so well. While there were tensions around the politics of the Vietnam war, it was the inaccessibility of my environment that made me feel unwelcome. I returned to a country not ready to accept a man who now used a wheelchair.

I experienced denial of the simplest pleasures, such as going to a restaurant with my family. My alma mater even wanted to deny my law school application based on the campus's then inaccessibility.

I struggled with needless environmental obstacles and barriers ever present in my daily life. That is, until the United States enacted our disability laws. I can tell you that today our returning servicemembers with disabilities are welcomed home to a country that will not deny them any opportunity or freedom.

As George H.W. Bush said when signing the ADA, let the shameful walls of exclusion finally come tumbling down. I am so pleased to see that President Bush is an advocate for the CRPD, as we heard earlier, and is able to now see the global impact the ADA is making.

I tell this story of the ADA because it is the disability movement in the United States that has sprouted similar movements abroad and inspired the global treaty that we are here to discuss. In 2001, the drafting of the CRPD answered our call for a global framework on this important issue.

Civil society contributed in an unprecedented way. Drawing from the ADA, the CRPD seeks to ensure that people with disabilities are accepted in society, receive reasonable accommodations, and are guaranteed options for community living and rights to a family life. The adoption of the treaty in 2006 was an incredible accomplishment and has led to the development of disability rights around the world.

If the United States has accomplished so much, then why ratify, you have been asking. For one, I believe that U.S. participation on the treaty implementation will yield even more progress and will offer expertise and technical knowledge that many other countries do not have in the area of disability rights.

From a veteran's perspective, I think we have much to gain from improved accessibility in the world. Accessibility is a major challenge for American athletes—or I want to back up a second.

Today, some disabled soldiers and Marines remain on Active Duty in spite of their disability, continuing to serve. These servicemembers and their families should be afforded the same opportunities outside the United States as they enjoy here.

Many veterans like myself are engaged in international work in some capacity. In 2000, a project funded by the U.S. Agency for International Development on which I worked, I spent 4 years in Hanoi as an adviser to the Vietnamese Government on disability law, policy, and programs. In Hanoi, accessible transportation was rare. So rare that I would have to hold onto a cyclo or bicycle rickshaw to get around.

Following its signing of the CRPD in 2007, Vietnam began planning for an accessible rapid bus system in Hanoi, and that system is now under development. And I submit that Vietnam is waiting to see what we, the United States, do before it ratifies this treaty.

The CRPD is a wonderful tool to help ensure sustainability of U.S. aid dollars spent overseas on disability-related issues, while also expanding access for Americans with disabilities who may choose to work abroad.

Accessibility is also a major challenge for American athletes with disabilities, many who are veterans, who frequently travel internationally to compete. As this committee considers this treaty, the world will be turning their eyes to London for the Paralympics and the Olympics. As we send our teams off to compete, we should do so with a favorable vote on the CRPD.

As the treaty package reveals, the United States has an incomparable set of laws that protect the rights of people with disabilities. Looking around the room today, you can see prosthetics, wheelchairs, software, and communications technologies developed by the United States. Many of these products are engineered, manufactured, or sold by U.S. corporations that can meet the new demands of parties seeking to implement their own disability legislation.

The United States has valuable information on law and technology to share with the rest of the world, not only for the benefit of the world's 1 billion people with disabilities, but specifically for 54 million Americans who may wish to work, serve, study, and travel abroad.

In 2012, 22 years after the passage of the ADA, it is unacceptable that many Americans with disabilities still cannot leave their own borders without the fear of stigma, barriers, and denial of the opportunity to participate in the place that they are visiting.

Ratifying the CRPD costs nothing. It requires no changes in law, as we have heard today. It provides us the leadership opportunity to advance and sustain disability rights globally.

Not joining this treaty comes with a grave cost—the inability of the United States to participate and lead and the loss of the opportunity to take a stand for what is right. Forty-two years after serving my country in Vietnam, I still believe in the liberty and freedom we enjoy in the United States and, frankly, our responsibility individually and collectively as a nation to serve and participate not only here at home, but globally.

I am proud of this country and our laws, and I urge you, on behalf of 21 veterans organizations and 165 disability organizations, to support ratification of this treaty so that we can contribute and continue to contribute America's noble history of leadership.

Senators, make us proud. Thank you.

[The prepared statement of Mr. Lancaster follows:]

PREPARED STATEMENT OF JOHN LANCASTER

Senator Kerry, Senator Lugar, and members of the Foreign Relations Committee, thank you for the opportunity to testify on behalf of American veterans and civilians with disabilities on an issue extremely important to us, the Convention on the Rights of Persons with Disabilities. As a disabled veteran, I join 21 veterans service organizations and over 165 disability organizations in supporting the CRPD. I respectfully request that you support U.S. ratification of this disability treaty and move it to a floor vote in the Senate.

Let me provide some background on my career and experience. I have served the U.S. in a variety of capacities. First, as a Second Lieutenant in the Marine Corps during the Vietnam war, then as an attorney for the Board of Veterans Appeals, and later as an Executive assistant to the Chairman and then Executive Director of the President's Committee on Employment of People with Disabilities. I am currently a Board Member of the U.S. Institute of Peace. As a private citizen, I have also served as the Executive Director for the National Council on Independent Living, worked with Paralyzed Veterans of America, and sit on the boards of Handicap International, the United States International Council on Disabilities and the World Institute on Disability.

As you can likely surmise, I have focused my entire career on the rights of people with disabilities. My firsthand experience with disability was early in my youth. I was commissioned a Second Lieutenant in the Marine Corps upon graduation from the University of Notre Dame and the Naval ROTC program in June 1967. After additional training, I had orders to Vietnam. I joined the Marine Corps because of a firm belief in the liberty, freedom, and opportunity our United States Constitution ensures. I believed then, as I do now, in our responsibility to serve our great country and what, at its best, we represent to all mankind. In 1968, I arrived in Vietnam during the Tet Offensive, assigned to the 1st Battalion, 27th Marines as an Infantry Platoon Commander. Five months later, I was shot and injured in a firefight. After months of rehabilitation, I arrived back home in western New York a disabled veteran. Although my friends and family welcomed me home, society did not receive me quite as well. While there was certainly tension around the politics of the Vietnam war, it was the inaccessibility of my environment that made me feel the least welcome. I returned to a country not ready to receive me as a man who now used a wheelchair. Let me give you some examples. Buses were not equipped for wheelchair users, neither were trains. Airline companies at the time did not want to deal

with wheelchairs. Most buildings, including government buildings, were not accessible. I experienced denial of the simplest pleasures such as going to a restaurant with my family. Even my own alma mater wanted to deny me the opportunity to advance my education. When I applied for law school at Notre Dame, I was told that although I qualified they could not accept me because the school was inaccessible. It was only when I agreed to make my own arrangements and bring my own chair that they accepted me. I graduated in 1974 with a law degree in spite of these unfortunate barriers. The employment discrimination I experienced as a young attorney was unbelievable. The only ones who would hire me were the VA's Board of Veterans Appeals.

For many years, I struggled with needless environmental obstacles and barriers ever-present in my daily life. That is, until the U.S. enacted, in what I believe one of its proudest moments, the Americans with Disabilities Act under President George H.W. Bush. This law led the way for people with disabilities to be accepted in society. It removed people from isolation and segregation, and allowed us to enjoy the fruits of our country with our family and friends without having to bear the shame and stigma of being born with or having acquired a disability. In 1991, a year after the ADA passed, I had the pleasure to serve as an assistant to Justin Dart, the Chairman of the President's Committee on Employment of People with Disabilities under the George H.W. Bush administration. When President Clinton assumed Presidency, the committee's new Chair, Tony Coelho, appointed me as the Executive Director. In my 9 years with the committee, I traveled to every state in the country several times assisting business and government leaders in the ADA's implementation. I witnessed the historic changes brought about by the ADA. I can tell you that today our returning servicemembers with disabilities are welcomed home to a country that will not deny them any opportunity or freedom. As President George H.W. Bush had intended, this law crumbled the shameful walls of exclusion. I am so pleased to see that that President Bush is an advocate for the CRPD and is able to now see the global impact that this law is making 22 years later.

I tell this story of the ADA in our country because it is the movement of the United States disability community that has sprouted similar movements abroad and has inspired this global treaty that we are here to discuss today. The American disability community as a whole worked tirelessly to see the ADA passed, including veterans, the deaf community, people with developmental disabilities, and parents of people with disabilities. Following its enactment, we saw an incredible rise in the development of disability civil society abroad taking similar action to achieve their rights. As we all began to work together and informally share ideas and experiences, we decided that it was time for a global framework that would pave the way for a world that would protect the dignity and freedom of people with disabilities. The U.S. disability community was eager to participate.

In 2001, the drafting of the Convention on the Rights of Persons with Disabilities began. Civil society contributed in an unprecedented way. Many of those in the room with us today were part of the disability community weighing in on the key principles of this important treaty. Drawing from the ADA, the CRPD seeks to ensure that people with disabilities are accepted in society, receive reasonable accommodations (a concept invented by the United States), and are guaranteed options for community living and rights to a family life. The adoption of the treaty in 2006 was an incredible accomplishment and has led to the development of disability rights around the world. For the record, let me name a few. Kenya, who ratified the treaty in 2008, worked to specifically include the rights of persons with disabilities in their new 2010 Constitution. Nigeria, a country that has a history of serious discrimination against children with albinism, has created a ministerial committee on albinism since their ratification of the treaty in 2010. Moldova, who also ratified in 2010, is currently using the CRPD to develop a roadmap for new methods to approach disability domestically with a particular focus on de-institutionalization. The United Arab Emirates, since ratifying the CRPD, has enacted a new law that focuses on promoting positive attitudes toward disability and improving building codes to provide accessibility. These are just a few examples, but the reality is that the CRPD is beginning to have a significant impact around the world.

If the United States has accomplished so much then why ratify, you might ask. For one, I believe that U.S. participation on treaty implementation will yield even more progress and will offer the expertise and technical knowledge that many of these countries do not have in the area of disability rights. From a veteran perspective, I think we have much to gain from the improved accessibility of the world. Today, some disabled soldiers and Marines remain on Active Duty in spite of their disability, continuing to serve their country. These servicemembers should be afforded the same rights outside the United States as they enjoy here. For a disabled veteran working abroad, the adoption of disability rights and implementation of dis-

ability laws allows them to do their jobs more effectively and reaffirms what they served for: liberty and the opportunity to participate. Let me add, that I speak also for the many servicemembers and veterans abroad who travel with their children with disabilities. A more accessible environment in the countries where they are stationed will no doubt serve these children well. Many veterans, like myself, are engaged in international work in some capacity. From 2000 to 2004, I worked in Hanoi as an advisor to the Vietnamese Government on disability law, policy, and programs. The project was funded by the U.S. Agency for International Development. In Hanoi, accessible transportation was rare so I would hold onto a cyclo, a bicycle rickshaw, to get around. Following their signature of the CRPD in 2007, Vietnam began planning for an accessible rapid bus system in Hanoi. This system is now under development. The CRPD is a wonderful tool to help ensure the sustainability of USAID dollars spent overseas on disability related issues while also expanding access for veterans with disabilities, like myself, who choose to work in these countries.

Veterans with disabilities have contributed to the American disability movement in many ways, including through participation in sport and recreation. This has destroyed stereotypes and created positive messages about equality, dignity, and worth. Accessibility is a major challenge for American athletes with disabilities during these international trips. From being compelled to deal with air travel regulations that force them to sit in the back of an airplane and crawl to the aircraft bathroom, to pilots who refuse to take them or their gear onboard, to hotel accommodations that have limited or no accessibility, to competition facilities with inaccessible bathrooms, showers, and locker rooms—American athletes face countless discriminatory and inaccessible obstacles abroad.

Despite these challenges, the 2012 Paralympic Games later this summer demonstrates the growth and interest in sport for athletes with disabilities. As this committee considers this treaty the world will be turning their eyes to London for both the Olympics and Paralympics. The International Paralympic Committee has confirmed that 165 countries—19 more than in Beijing 4 years ago—will send more than 4,200 competitors to the Games making it the largest Paralympic competition to date. The U.S., a leader in sport for people with disabilities, sends one of the largest teams, and our athletes are some of the best trained and coached in the world. This year's delegation will also feature many new athletes with disabilities—veterans and Active Duty service men and women—who are finding success competing in Paralympic sport. Regrettably they are subjected to the same inhospitable conditions created by the lack of accessibility in the international travel and sporting environments found in other countries. As we send our teams off this summer, and celebrate their success in international competition, we should do so with a favorable vote on the CRPD behind us. Ratification of the CRPD is a must for the U.S. to remain competitive since our athletes must compete in international competitions to obtain and maintain their international rankings.

These are just a few examples of why it is in the United States interest to ratify the CRPD. As the treaty package presented to the Senate reveals, the U.S. has an incomparable set of laws that protect the rights of people with disabilities. Looking around this room today, you can see the prosthetics, wheelchairs, software and communications technologies developed by the United States. As more countries ratify at an unprecedented pace, the need for accessible devices and software steadily increases for people with disabilities around the world. Many of these products are engineered, manufactured, or sold by U.S. corporations that can meet these new demands. Indeed, the CRPD is good for all American businesses. It will level the playing field for foreign businesses. They will now have to comply with the employment rights and the accommodation requirements that U.S. businesses already meet. The United States has valuable information to share with the rest of the world, not only for the benefit of the world's 1 billion people with disabilities, but specifically for the 54 million people with disabilities who may wish to work, serve, study, and travel abroad. In 2012, 22 years after the passage of the Americans with Disabilities Act, it is unacceptable that many Americans with disabilities cannot leave the borders of the United States without the fear of stigma, barriers, and denial of their rights.

Ratifying the CRPD costs nothing, will require no changes in law, and provides us the leadership opportunity to effectively guide a framework for countries to advance and sustain disability rights in their own country. Not joining this treaty, however, comes with a grave cost: the inability of the U.S. to participate and the loss of an opportunity to take a stand for what's right. Forty-two years after I served our country in Vietnam, I still believe in the same principles of why I first enlisted: I stand behind a firm belief in the liberty and freedom we enjoy in the United States and our responsibility to serve and participate. I am proud of this country and our

laws and I urge you, on behalf of 21 veterans service organizations and 165 disability organizations, to support ratification of this treaty so that we can participate and continue America's noble history of leadership.

Senator SHAHEEN [presiding]. Thank you very much, Mr. Lancaster.

As you can see, we have had a little bit of a revolving gavel this morning. I will be, hopefully, chairing until the end of the hearing. I am the person with the most flexible schedule this morning, apparently.

And with that in mind, I would like to ask Senator Durbin to go first with his questions.

Senator DURBIN. Thanks, Senator Shaheen.

I think Senator Kerry saved the best for last in terms of your chairing this hearing.

Senator SHAHEEN. That is very nice. Thank you.

Senator DURBIN. Thank you.

General Thornburgh, thank you for being here, and your testimony I reviewed.

Mr. Wodatch, thank you for your continuing work in this area on disability rights.

And Mr. Lancaster, thank you for serving our country so nobly and for speaking on behalf of the 20-plus veterans organizations that have endorsed this Convention. But thank you for being here and explaining why it is so important from the veterans' point of view.

Dr. Farris, politicians are often accused of saying one thing and then contradicting it with something else. And I am going to give you a chance to clear up something in your testimony which I think is contradictory.

You have bold print here in reference to this treaty, calling it "false" and "misleading." "This treaty requires radical changes to American law," and you go so far as to say this treaty would, "violate the principles of American sovereignty and liberty." That is, I think, almost as strong as I have ever read. It suggests that this treaty is a blockbuster change in terms of law and sovereignty.

But then, then in the same statement, you quote Professor Louis Henkin, who says that when you put reservations on a treaty, you are pretending to assume international obligations but, in fact, undertaking nothing. And then you go on to say the message will be that treaties are for show and have no more impact than you want them to have.

Dr. Farris, you can't have it both ways. This can't be the end of American sovereignty as we know it and still be some pretend effort that has no impact whatsoever. So which is it?

Dr. FARRIS. Senator, I think you misunderstand the nature of my argument from Professor Henkin. What Professor Henkin is addressing is the approach of ratification that says we are not going to do anything more than existing law. He says that is inappropriate.

I don't think that that is what is going on here, but that is what we have heard all day long, that we are doing nothing more than just simply ratifying, recommitting ourselves to obeying existing American law. And if that is what the treaty is about, if that was true, then the treaty does nothing and is callous and misleading.

But it is not what the treaty does because I enter this with the assumption that the United States is going to obey the treaty in good faith. And if we are going to obey the treaty in good faith, then we have the obligation to conform our law to the principles of it.

In legal terms, Senator Durbin, I have argued in the alternative, which often happens. And if one thing is true, then one critique applies. If something else is true, if the other alternative is true, then the other critique applies. I assume that we are going to be complying with the treaty and not doing what Iran has done and said, we are going to obey the treaty when we want to and we are not going to obey the treaty when we don't want to.

Senator DURBIN. Dr. Farris, we have ample testimony that the Americans with Disabilities Act already is in full compliance with the principles of this treaty. Let me address one issue that has arisen several times.

Senator McCain made a point early on that he is proud of his pro-life status when it comes to voting and is also sensitive to the fact that many babies with disabilities overseas are denied life. And if they are allowed to live, are denied access, education, opportunities.

And this may change in other countries. We certainly hope that it does. And now the argument comes in your testimony that, in fact, this is somehow going to promote abortion.

I would like to call your attention to several things. In 2006, the National Right to Life Committee stated, quote, and this is in reference to the same treaty as adopted by the United Nations. And I quote from the National Right to Life committee, "Even though the treaty includes the undefined and controversial term 'reproductive health,' its inclusion cannot legitimately be misinterpreted to include abortion or to create any new rights, such as a right to an abortion."

So said the National Right to Life Committee in 2006. The National Right to Life Committee, the Holy See, and pro-life countries that have signed the treaty all concluded that there is no right to an abortion set forth in this treaty. Isn't it true that the only folks to disagree with these leading pro-life voices are you and Mr. Groves?

Dr. FARRIS. No, Senator. Three nations—Poland, Malta, and one other that I mentioned in my testimony—have taken reservations to Article 25 on the question of abortion. Those nations were convinced that it was necessary, too. They read the treaty the same way that I read the treaty.

And it is not a question of whether they have the right to an abortion. The question is whether they have a right to abortion funding. That would be the nature of Article 25.

Senator DURBIN. Well, let me say, Dr. Farris, that what I think was made clear in earlier testimony from the Department of Justice is that we are ending discrimination. The existing laws of the country will prevail in this circumstance, whatever those laws may be, on controversial issues like this.

But I think that earlier statement raises some serious questions about your conclusion.

Thank you.

Dr. FARRIS. Senator, may I respond briefly to that?

Senator DURBIN. Sure.

Dr. FARRIS. What the Department of Justice was relying on was simply the language of subsection (b) of Article 25. That is not what all is in Article 25.

Article 25 contains other provisions beyond the nondiscrimination provision. And the preamble and other subsections of the treaty require the provision of full health services. And there's no reason to believe that the provision of full health services as defined by the treaty would include——

Senator DURBIN. Dr. Farris, there is an express statement in the reservation that this does not create any personal cause of action or right in the courts of the United States. Now, unless you just reject that out of hand and don't want to read it, I don't think you can take that position.

Thank you very much.

Dr. FARRIS. Senator, I am not taking——

Senator DURBIN. I get the last word. I'm a Senator. Thank you.

Senator SHAHEEN. Senator Lugar.

Senator LUGAR. Without being too repetitious, let me just say that, as I have heard the testimony from both of our panels, essentially, we have had reservations to this treaty. And they are meant to protect our laws, or various aspects that were meant to be protected.

But the administration is advocating that we ratify the treaty, because we would join a committee which serves as a forum for reforms throughout the world, so that we have a place around the table.

And we are able, on behalf of Americans who go to other countries, as well as citizens of those countries, to bring about changes that we believe would be constructive, recognizing that the other countries with whom we are discussing this may have reservations and decide that even though we have very good will, in terms of humanity, they would disagree on certain particulars as to what is going to occur in their countries.

So essentially, the treaty provides for this forum that brings about a worldwide discussion. And our thought is that the example we present, and maybe other countries feel the same way, would lead to humanitarian changes that were constructive, and we would applaud those and feel that is valuable to have.

Now, some are arguing that we could participate in international conversations in any event, and at least profess the things we believe, and other countries might be moved to do those things. And, therefore, that treaty is not necessary for all of this.

My question, I suppose, is to ask the panel, why is the treaty, the committee we have heard discussed today, that we are not around the table with as it stands, important in the form of a treaty, as opposed to our attempting to take the initiative and maybe finding other fora in which our advocacy for change is made and we try to be persuasive?

Would anyone like to volunteer as to why the treaty forum is preferable?

Mr. Thornburgh.

Mr. THORNBURGH. I think, Senator, what we have to recognize as a leader in the area of disability rights is that we must use every opportunity we have to spread the gospel, I guess one might say, and at the same time recognize that this is a very dynamic area.

Disability rights is a work in progress, and we have a lot to contribute to the dialogue that ensues in the discussion of that work in progress. And I am not prepared to say that we couldn't learn from others' experience as time goes on.

The fact that it is a work in progress is evident by your own experience in the Congress. As much as we revere the Americans with Disabilities Act and have praised it rightfully in our discussions today, in 2008, we needed the ADA Amendments Act to adjust to certain court decisions and actions that had taken place, to update, upgrade, if you will, that important legislation.

That kind of dynamic is going to ensue one way or another under this Convention as time goes on. And for us to turn our back on the opportunity to make constructive contributions to that dialogue, and to foster those improvements and changes that might be necessary, would seem to me to be foolhardy in the extreme if our commitment really is to the widest and fullest enjoyment of disability rights.

None of this would involve us, in any of these changes, in any change in our domestic law, necessarily, because, clearly, to the point of exhaustion, I think we have made clear that there is no sanction authority, no real capability on the part of this committee or on the U.N. itself to force the United States to make changes.

It is merely, I think, an important avenue for us to pursue in seeing that our voice is heard and that we listen to others.

Senator LUGAR. In essence, this Convention is an important enough forum, as opposed to other committees or other fora we might find somewhere in the world, this particular one is important enough that it deserves this attention, because the 118 countries are there or because of the prestige now attached to it.

I am trying to find specifically why this route is the preferable one.

Mr. WODATCH. Let me add to the discussion. The disabilities committee is one venue that the Convention sets up. There is also an annual meeting at the U.N., a conference of state parties. It was alluded to earlier by the State Department.

This is the meeting where the countries of the world who have ratified come together to share their best practices, to understand how they should move their laws, what their policies should be, what their regulations should say.

I think if we ratified the treaty, we are able to participate and bring U.S. expertise to those meetings. We can bring discussions of how we have complied with the ADA in this country in a low-cost manner, the importance of having accessibility building codes that are meaningful, the importance of enforcement mechanisms and how they can work in their cultures and their legal systems.

Unless we have ratified the treaty, we don't get a place at the table.

Senator LUGAR. Thank you very much.

Thank you, Madam Chairman.

Senator SHAHEEN. Senator DeMint has requested that, since he has to leave, he could go next.

So, Senator DeMint.

Senator DEMINT. Thank you, Madam Chairman.

And I want to thank Senator Kerry and everyone. It has been a great discussion. I appreciate all our panelists, all the folks who have come today.

I think what we have done with disabilities in America is probably one of those areas that makes us really proud to be an American. We made incredible progress.

And as our panels have said today, we really inspire the world to do better, and we helped to create the global framework for what to do with disabilities. So what we have done with the ADA has basically been codified by the United Nations, and being shared all over the world, is something that we should be proud of.

But one of the things I learned in my years in the private sector, working with continuous quality improvement, is that we can never accept the status quo. The United States can do even better than we are doing.

And all of you know, being involved with veterans and disabilities, that throughout the year, every year, disabilities groups, veterans groups, are meeting. They're talking. They're discovering ways to help the disabled more, using new technologies. They're advocating with local, state, Federal officials.

Some things are being done by governments. More things are being done voluntarily by industry and builders and those who are just trying to be more accommodating.

We cannot accept where we are.

And now, after we have inspired the world, to come in today and say, well, we have to be a part of a legally binding international treaty in order to lead the world, I know what's going to happen after working in quality improvement. All of these agencies and groups that are involved with disabilities are going to be working to be prepared for this 4-year study.

Just like our teachers teach the test, we're going to see our disabilities community preparing for the status quo, rather than continuing what is happening. They have to please this international committee with what we have already codified.

I am just convinced that aspirational goals are important, but standards have to continuously improve. Protocols, technologies, and, folks, there are so many ways, voluntarily, through associations.

I know how qualities improve with peer groups, industry groups around the country, coming together, voluntarily sharing best practices, just continuing to raise those standards.

So I'm not advocating for no standards. I'm just advocating for no status quo, because we need to continue to lead the world.

In submitting to an international treaty, on one hand saying it has no enforcement power and it is not legally binding, and the other hand saying we have to be involved with a legally binding international treaty, it's just completely inconsistent.

We need to lead the world. We need to continue to make progress in this area. But, folks, submitting ourselves—and you can't say it's not submitting; we are signing a legal document to be a part of

something—I think it is going to lock us into a status quo that is far beneath where the United States needs to end up.

So this cause is too important. I want to be much further than where we are 5 years from now, not trying to comply with existing standards that we have today. And that is what is going to happen under an international agreement, because, as Dr. Farris has said, the United States follows the rules. If we sign here that we are going to follow the rules of this treaty, we will adapt our laws to what is in it.

So again, I thank everyone. I think it is important to continue to bring it up.

Mr. Chairman, I appreciate the give-and-take that you have allowed today. You have been very fair with the time.

I hope we can continue to progress with this.

But I hope we will all question whether or not we need to be a part of a legal situation around the world, when what is going on now, that everyone is saying is working, has been because we set the standard for the world and they are following us. We need to continue to raise that standard.

Thanks for allowing me to go out of turn.

Senator SHAHEEN. Senator Kerry.

The CHAIRMAN. Madam Chairman, thank you.

And thanks very much, Senator DeMint. I appreciate your comments of a moment ago.

And I happen to agree with you, Senator.

I guess he is leaving. It's too bad, because I was about to welcome him to the ranks of being the strongest proponent for the rights of those with disabilities and wanting to advance it faster.

But there is something incongruous in the notion that he wants to do that—and I am not diminishing his genuine intent to do it. There's just something fundamentally incongruous if all of the advocates of day-to-day lifetime endeavor are saying they need this treaty in order to best be able to do that.

So if you are talking about not being able to have two things at the same time, he says you can't sign onto a treaty and not accept the notion that there are real obligations there. I happen to agree with him. I don't think anybody should diminish that. I want real obligations there. And I think that is what we are signing onto. And they are clear what they are.

So he is absolutely correct. You can't have it both ways and say it doesn't mean anything, it's not going to have any impact.

What it doesn't mean is that it requires something different of the States or that the Federal Government is going to impose something on the States. I mean, there's a whole series of things that it doesn't mean.

But it does mean, we are trying to establish a standard that is a high standard on a global basis, and the United States happens to be further along in that, and it is not going to require changes in our laws.

Now, I think we have to frame this accurately as we go along here.

But, similarly, you can't say I want to advance the cause for those with disabilities more than anybody else when everybody in the community believes you have to have this treaty to do it.

So I think the record has to show more clearly why the members of the community specifically have come to that conclusion that differs with someone like Senator DeMint or others who oppose the treaty. What is it that really comes through here?

Now, I have a number of questions to try to flesh that out a little bit.

In your statement, Dr. Farris, you say that you deeply resent the attempts by advocates of the treaty to mislead members of the disabled community with a false promise, that U.S. ratification will lead to material improvements when Americans with disabilities travel to other nations.

Now, I want to give the advocates of the treaty an opportunity to respond to that. I don't know if that happened previously.

But I first want to make sure I understand why you are so resentful of those advocates. Is your point that there is no mechanism by which an American under this treaty could sue Vietnam or the United Kingdom or whatever country they are traveling in?

I mean, what is the point of how they are being misled here?

Dr. FARRIS. The impression is being given by the administration's materials and by the testimony today that if we ratify these treaties, suddenly, when Americans travel to other nations, it is going to be a more accessible environment.

The CHAIRMAN. OK, let me stop you there.

Mr. Wodatch, can you speak to that?

Mr. WODATCH. Certainly.

I believe the State Department testified earlier that ratification, the results of ratification, will bring about changes in the laws of other countries because of our leadership and intervention with them. There will be changes in their laws when we sit down with them and teach them and work with them to develop an accessibility code that has the right slope for a ramp, that has the right width for the door.

The CHAIRMAN. So is it the "suddenly" that you disagree with, Dr. Farris? Or is it what Mr. Wodatch just said? He says there will be changes.

Dr. FARRIS. There will be changes that are effective only when there is domestic law at each level. American ratification—the question is, does American ratification lead to new laws in, let's say, Portugal relative to wheelchair ramp levels and angles and so on.

And it is basically the argument, because we gain a seat at this international table primarily for diplomats, we will suddenly—that will translate into better laws in Portugal.

If that was true, if human rights treaties lead to improved laws in other nations, and there was a track record for that, we'd see it in other areas.

Take, for example, North Korea has ratified the ICCPR. Does anybody in their right mind think that North Korea is living up to international standards?

Sweden has ratified multiple international treaties, including the ICCPR and the ICESCR, both of which have parents' rights and education provisions. Yet Sweden kidnaps kids off of planes who are on their way to another nation, where they are a dual citizen,

because they were homeschooling. They flaunt their international obligations.

The point is, international obligations do not lead to national legislation. What leads to national legislation are political movements within those countries.

The CHAIRMAN. Will you speak to that, Mr. Wodatch?

Mr. WODATCH. I attended the sessions that developed this Convention. And it was clear the United States has a different view toward treaties. We will only ratify a treaty if we know that we can comply with that treaty. The other nations of the world do not follow that.

It became very clear, the countries of South America—Ecuador and Mexico—who were very strong proponents of this treaty, Chili, other countries came to us and said we need—to get domestic law, we need a statement from the U.N. that this is important. They need leadership from the United States to say this is how it works when you ratify it.

The CHAIRMAN. You mean from the United States?

Mr. WODATCH. A statement from the United States, that we will come and work with them.

And that has begun to happen already. If you look at the countries that have ratified, they are making changes to their domestic law.

Spain has brought about a new comprehensive law. Great Britain has, for the first time, attempted to cover its private sector to make it accessible. There are changes that will come about. There will be more. And the ability of the United States to work with those countries and have them develop disability laws that are effective and pragmatic will bring about positive results for not only the people of those countries with disabilities, but for American citizens who travel and work and live in those countries.

The CHAIRMAN. I think, Dr. Farris, one thing I would say to you is, look, I mean, in all of our perfection here in the United States, we have a lot of laws that we fall short on.

I used to be a prosecutor. We spent years and years trying to deal with whether it is drugs or prostitution or gambling or whatever. And we are not as effective as we like to think we are in a lot of things. We fall short, but we are aspirational. We have a standard. And we try to apply it as evenly as possible. That is true among nations also.

And I think you are inevitably going to find one nation or another that may not apply something as well. It doesn't mean that you are not moving upward, ratcheting upward.

But let me just ask you, Mr. Lancaster, in your statement, I don't see anywhere in it that you assert that Americans are going to be given individual and enforceable rights under this treaty when they travel abroad.

I understand that your point, and I have a stack of letters from every conceivable disabilities and veterans advocacy group making the same point, and that is that the Convention will give the United States an additional tool by which we can encourage other governments to adopt their own laws and improve conditions for the disabled.

Now, No. 1, do I understand your point correctly, Mr. Lancaster? And No. 2, do I understand that you have examples of where, when you traveled abroad, you faced disability challenges? And you believe this will, in fact, address some of those?

Mr. LANCASTER. Yes, you do understand me correctly, Senator, and the points that I was making.

And yes, I do know of significant impact that the treaty is already beginning to have on a number of countries. Let me give you some quick examples.

The often-troubled country of Kenya, in 2010, has adopted many of the principles that are contained in the treaty in including people with disabilities in their new Constitution in 2010.

United Arab Emirates is making big moves around architectural barrier standards, so that they can remove those, and new buildings and facilities will be modified and new ones will come online appropriately, so that they are accessible to people with disabilities.

They have also put into law something that is a problem, frankly, in many countries of the world, in many cultures, but a law that is now encouraging the people in the society to look differently at disability and to be accepting of people with disabilities in a variety of walks of life. A very significant move and something that in our culture we may not totally understand but in their culture has huge impact.

Moldova is making significant change in their laws to make sure that they aren't going the route of institutionalizing people and putting kids away in special schools.

I know from the work that I have done in Vietnam and from the years that I lived over there and continuing to follow it, that since this treaty was passed, Vietnam is starting to make moves in a variety of areas—transportation, the removal of architectural barriers.

They are, frankly, looking to see how the United States is going to do with this treaty. And I am not going to speak for the Government of Vietnam, but I bet you they are waiting to see whether we ratify before they ratify and really embrace this movement. And they have done a lot of work, including starting to refine their own disability law so that it does comply with all the aspects of the Convention.

The CHAIRMAN. Let me just interrupt you there, if I can, because I have gone over my time.

I have one more question. And I ask for indulgence to do it, and then I will stop.

As I said, the record will remain open for a week.

But one other thing I would like to just get on the record, if I can, and leave this question out there.

Dr. Farris, in your written statement, you say that the treaty is going to require radical changes in American law. I would like you to say what those radical changes would be and particularly given the testimony to the effect that there would be no changes required.

We can't have it both ways. It just can't require radical changes and at the same time not require any, which is what we have been

told. And so I would like both Mr. Wodatch and Attorney General Thornburgh to bear down on this question.

I would like you to answer first, Dr. Farris, and then I would like both of you to bear down on, since the treaty is not self-executing in the United States, it is hard for me to understand, given the reservations and declarations and understandings, there would be a change needed.

I would like Mr. Thornburgh, if you would also, General Thornburgh, if you would point out to us the bottom line as to why it is so critical to ratify this to advance the rights of disabled people measured against what Dr. Farris is saying.

Dr. FARRIS. Senator Kerry, I, frankly, just don't accept the conclusions by the State Department and the Department of Justice concerning the effects of the reservations.

If you examine the details of the reservations, there was a comparison of the federalism reservation in this treaty with what was purported to be a federalism reservation in the ICCPR. It is actually a federalism understanding in the ICCPR. The language is different, and that difference is significant. We have to drill down on specific language.

None of the testimony that has been proffered today—excuse me. Most of the testimony that has been proffered today is at a 35,000-foot level. There's been very little drilling down on the exact meaning of terms and articles. And because I proceed on the premise that the United States will live up to its obligations in good faith for ratifying the treaty, we have a binding international obligation.

That doesn't mean some committee forces us to do it. We force ourselves to live up to the international law that we say we are going to live up to. And so the non-self-executing provisions of the treaty doesn't mean we don't have to change our laws. It only specifies which agency of government is responsible for changing our law.

And the answer is, because of the virtue of that declaration, Congress is responsible. The federalism provision doesn't mean that there is no shifting in power between the States and the Federal Government. That is not what it says. That is not what it means. That is not what it will mean in actual practice.

Congress will gain additional power, because under the necessary and proper clause under the Constitution, Congress has all the authority it needs to implement any duties that it has. Once the United States ratifies a treaty, Congress, the Nation, has the duty to comply with the treaty.

And so any law that is necessary and proper to comply with that treaty is fair game and it is within our constitutional prerogative. And that fits within the federalism reservation.

Basically, Congress will help plenary authority over all these subjects, whereas the States currently have at least some semblance of authority on these things.

The CHAIRMAN. So you believe that President George Herbert Walker Bush and Attorney General Thornburgh and Majority Leader Robert Dole, and a bunch of other people, just don't understand the Constitution or can't read the law?

Dr. FARRIS. I believe they reached incorrect conclusions about the meaning of the reservations.

The CHAIRMAN. You have your opportunity to defend yourselves, gentlemen.

Mr. WODATCH. The treaty, as ratified, that the administration is proposing, would include a series of reservations, understandings, and declarations. But I think we start with the treaty first.

And the treaty first is a nondiscrimination treaty. Its core is equal opportunity. Its core is to give people with disabilities in the country that ratifies the treaty the same rights that people without disabilities have.

We start from that premise. Even Article 7 about children that Dr. Farris talked about, the first Article 7 provision 1 talks about "on an equal basis with others." It, by its own terms, is a nondiscrimination provision.

But the administration's very careful package of reservations, understandings, and declarations takes the treaty further. And once they are included in the treaty, they become the treaty.

Therefore, the reservation on federalism talks about the allocation of responsibility between State and local government and Federal Government, and says that the United States is undertaking its obligations under this treaty with an understanding that it will follow the laws of the Federal Government and not change the laws of the State or local governments. That becomes part of the treaty.

Therefore, the State law on civil commitment, on guardianship, on parental rights, will remain unchanged by this treaty.

The same thing with the reservation on private conduct is very important, because it will exclude that zone of private activity that is protected by the United States Constitution, as well as give meaning to the U.S. laws that we enforce.

For example, Title I of the ADA applies to employers, but it applies to employers with 15 or more employees. What the private conduct reservation says is, our understanding of our obligation under this treaty will be to follow the laws that we have.

Therefore, the treaty will not by its operation change the U.S. law or the exemptions in the U.S. law for covering churches, for covering private homes, or for covering small businesses.

The understanding that talks about economic, social, and cultural rights, that is a very important understanding, says that there will be no new rights. You can read some of the provisions of this treaty as creating rights that we have not recognized. That understanding is very important. It says that our understanding of how we will comply with this treaty is by looking at the laws of the United States. And the package the administration sent forward includes a very comprehensive list of those laws that I think we have all agreed are the gold standard for the world to follow on what are disability rights for people with disabilities.

And then the non-self-executing declaration makes clear that no one—there are no individually enforceable rights, and no one can take this treaty and enforce it in the United States.

The CHAIRMAN. In the interest of time, if I could ask you to give a quick answer, and then we can get the full answer.

Mr. THORNBURGH. I will give you a very quick answer, because I am not as good a lawyer as John Wodatch is.

[Laughter.]

Mr. THORNBURGH. I see nothing in this proposed treaty and its reservations, understandings, and declarations as part of the administration package that would oblige the Government of the United States at the Federal, State, or local level to undertake any action whatsoever. Nor do I see any limitations upon what the governments of the United States at the Federal, State, or local level can do in the ordinary pursuit of their constitutional responsibilities.

The CHAIRMAN. Well, I thank you for that very much. When I hear the former Attorney General of the United States, who I know is a terrific lawyer, saying you are not as good a lawyer, it is that old, "I'm just a country lawyer" routine.

[Laughter.]

We've heard that before a few juries in our lifetime.

Thank you very much, all of you. I really appreciate you being here very, very much.

Madam Chairman, thank you.

Senator SHAHEEN. Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

And thanks to each of you for joining us today. I am honored by your presence and appreciate your insight into these matters.

Mr. Groves, I wanted to start with you. And I would like to turn, if we can, to Article 46 of the Convention, with regard to reservations.

It says that reservations incompatible with the object and purpose of the present convention shall not be permitted. I don't know whether you can answer this for me or not, but I am curious as to who is the arbiter of this? Who decides whether or not there is a compatibility problem with the reservation, between a reservation and the Convention itself?

Mr. GROVES. Thank you, Mr. Lee.

I mean, the Committee on the Rights of Persons with Disabilities will certainly and definitively believe that they are the arbiter of what is and what is not the object and purpose of the Convention.

This would be just the latest in a continuing pattern of treaty rights bodies over in Geneva who have said, over the objections of U.S. officials in both the Clinton and Bush administrations, that they are the final say on what the terms of a treaty mean. They are the ones who have the final say on how the treaty shall be applied and whether your domestic laws are in compliance or in violation of the norms and values that the committee has interpreted.

So make no mistake about it. And the United States is regularly requested by treaty body committees to remove reservations and understandings and declarations that we have submitted when we have ratified these treaties.

So my view is that the committee would believe themselves to be the definitive judge on that.

Senator LEE. OK, OK.

One of the reasons that that provision, Article 46, caught my attention was because I started noticing some interesting language throughout the Convention that Dr. Farris referred to in his written remarks.

Dr. Farris, I was wondering if you could just tell us briefly about the dichotomy between what you referred to in your written state-

ment—on the one hand, civil and political rights, as they're recognized under the rubric of international conventions, and on the other hand, economic, cultural, and social rights?

Dr. FARRIS. Yes, Senator Lee, thank you for the chance to explain that.

In human rights laws, they are basically five segments of human rights—civil, political, economic, social, and cultural rights. That division is most celebrated in the two treaties, the ICCPR, the International Covenant on Civil and Political Rights, and the ICESCR, the International Covenant on Economic, Social, and Cultural Rights.

Nondiscrimination is a civil or political right. It is what government cannot do to you. It cannot discriminate against you. It cannot deny you freedom of speech. It cannot deny you the freedom of religion.

The American constitutional rights that we know, including the equal protection clause, including the Bill of Rights, are all negative rights in terms of the rubric of international human rights laws.

Positive rights—economic, social, and cultural rights—are what the government must to do for you. If you just think of the word "entitlements," you understand the nature of an economic, social, and cultural rights.

And the reason the United States has never joined the International Covenant on Economic, Social, and Cultural Rights is because of a longtime understanding in international law that commits us, essentially, to a program of socialism.

Senator LEE. And do we have any treaty currently enforced that the United States has ratified that embraces economic, social, and cultural rights?

Dr. FARRIS. There is no treaty that the United States is a party to today where economic, social, and cultural rights are a chief feature. There may be some stray references here or there in other treaties.

But as a core feature, treaties like CEDA or the CRC, the Convention of Rights for Children, and other economic, social, and cultural rights treaties, we have not ratified them precisely because it commits our Nation to a program of internationally monitored socialism, what the government must furnish the people.

This would be the first treaty in U.S. history where we—and that's the reason I said it was so radical, is that it would be the first treaty to commit us to international government programs of socialism through the ESC, or the economic, social, and cultural rights provisions.

And I don't believe that the understanding—first of all, I don't place too much weight in understandings. I'd rather have reservations. The understanding the United States has written in this regard doesn't say we're not going to do this. It just says we are going to do it pursuant to Federal law, which on the one hand, the treaty creates the obligation to engage in these economic, social, and cultural rights. And the ESCR understanding just says we are going to do it according to Federal law.

It doesn't say insofar as such rights are recognized and implemented under existing U.S. Federal law. If it said that, then OK. Then it means what everybody has been purporting it to mean.

But it doesn't say existing Federal law. It just means Federal law has got to comply with the treaty relative to these matters.

Senator LEE. So you don't see that understanding with respect to economic, social, and cultural rights as an opt-out by the United States of an effort by this Convention to embrace economic, social, and cultural rights?

Dr. FARRIS. I read that understanding to assign jurisdiction to Congress to comply with it. That's it. It doesn't give that responsibility to States. It gives that responsibility to Congress.

It is an assignment of jurisdiction. It is not a denial of any duties of the United States to comply with the rights created under the ESC rubric of the treaty.

Senator LEE. And there are some affirmative duties under that, as far as I can tell. Unless I am reading it incorrectly, I see Article 4 of the Convention, which deals with general obligation of states' parties to the Convention.

Article 4, Section 2 says with regard to economic, social, and cultural rights, each state party undertakes to take such measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of those rights.

So you would interpret that there to say of those rights, meaning those economic, social, and cultural rights.

Dr. FARRIS. There is no doubt that that is what that means. If you would write any other answer on an exam in my class in public international law, I would fail you for failing to understand the meaning of a treaty.

You absolutely correctly said, if we are going to comply with the treaty—now, all of my testimony is presumed that America is going to comply with the treaty. If we are not going to comply, then all my concerns go away.

But if we're going to comply with the treaty, we have a duty to comply with the provisions relative to economic, social, and cultural rights. And under the rubric of the understanding, all it does is assign jurisdiction to Congress to do the complying.

And so, yes, there are lots of things. The private action provision in that same Article 4 says that no person shall discriminate against any person on the basis of disability, which, setting aside the RUDs for a second, and just taking the treaty on its face, that means the traveling salesman comes to my front door and wants to get into my house and he is in a wheelchair and I don't have accessibility for him, then I am in violation of the treaty.

The United States has a responsibility to pass laws to make me make my house and every homeowner in America make their house accessible, because no person can discriminate on the basis of disability. "No person" is very broad. It means everybody. It is every business, every home, everybody.

Now, the question is——

Senator SHAHEEN. Dr. Farris and Senator Lee, I am going to cut you off at this point, because, Senator Lee, your time has expired.

And I would still like to ask some questions, so given that we're at the end of this hearing, I am going to reserve the right to do that.

Senator LEE. Thank you, Chair.

Senator SHAHEEN. Thank you.

Mr. Lancaster, I want to go back to you, because I think your effort to address the question about traveling and the challenges that we face, and the difference that this treaty might make for Americans in that respect got cut a little short. So I want to go back and ask you, as the only person on this panel who has personally had to experience the challenges that members of our disabilities community face when they travel here in America or abroad, if you could, again, address why you think this treaty would make a difference for people with disabilities?

Mr. LANCASTER. Thank you, Senator.

I do think it will make a huge difference for us. And it is not going to do it immediately. It takes a long time to change attitudes and infrastructure. But it is already happening in a number of areas in the world.

If you look at the European Union, they are making great advances in terms of transportation, architectural barriers, inclusive education, many things that we have been advocating for years.

And it is the impotence of this Convention that has them really stepping up. Countries like—I keep referring to Vietnam, but it is a country that I have much experience with. Vietnam, I know Thailand, are places where they have already made significant changes to mass transit systems and are working on making more and the build environment.

Again, inclusive education is another area where certain countries in Southeast Asia are now starting to make steps, because of this CRPD. And I think that that's a major, major reason why we should join in ratification of that, is to give further impetus to these changes, not only for our benefit, but for the rest of the world.

And frankly, if I could just take a second here, Senator, to tell you, I am appalled with some of the conversation that has been going on here today, as a veteran, and as someone who volunteered, laid my life on the line for freedom, rights, dignity. And now to have this whole debate that we are not willing to espouse that to the rest of the world, that we are not willing to walk the talk in international circles, to step up in a forum to advocate these things and to say we are not afraid to sign this thing.

We aspire to what is in this Convention. This is what we are about as a nation, including people, giving them freedom, giving them rights, giving them the opportunity to work, to learn, to participate.

Isn't that what we're about? Isn't that what we want the rest of the world to be about? Well, if we aren't willing to say this is a good thing, and to say it formally, what are we about, really?

Senator SHAHEEN. I couldn't agree more fully. Thank you very much, Mr. Lancaster.

Thank you all for testifying. This hearing is closed.

[Applause.]

[Whereupon, at 12:35 p.m., the hearing was adjourned.]

XI. Annex 2.—Material Submitted for the Record During Testimony

Letter From the Jewish Disability Network

Members of the Foreign Relations Committee
United States Senate
Washington, DC 20510

July 12, 2012

Dear Senators,

We, the undersigned members of the Jewish Disability Network, express our unequivocal support for the ratification of the United Nations Convention on the Rights of Persons with Disabilities.

The Convention realizes an international effort to achieve global goals of economic self-sufficiency, equality of opportunity, full participation, and independent living for people with disabilities. These noble goals are enshrined in our own Americans with Disabilities Act, a model for the Convention. The Convention will enable Americans with disabilities who work or travel abroad, such as veterans or members of military families with disabilities, to access the same protections abroad as they enjoy in America.

No new legislation will be required by U.S. ratification of the Convention on the Rights of Persons with Disabilities, nor does the Convention impose any new costs. In fact, as noted, much of the treaty is grounded in American laws already on the books.

Judaism has long supported the rights of people with disabilities, for as we read in Leviticus 19:14, "You shall not insult the deaf, or place a stumbling block before the blind." This teaching inspires us to be proactive in lowering barriers placed by society, whether intended or not, before people with disabilities. Only by doing this can we ensure that people with disabilities around the world are included as full members of society.

We must move quickly to ratify the treaty. The disability rights community has united behind this issue that is so critical for persons with disabilities the world over. We cannot allow this window of opportunity to close and fail to help meet the needs of millions of people with disabilities worldwide. Moreover, the Convention on the Rights of Persons with Disabilities has a Committee which guides implementation of the treaty. Only those countries that have ratified the Convention can nominate members to serve on the Committee, and American leadership in this arena is critical to the ultimate success of the treaty. With the next elections for the Committee approaching in September, it is vital that the U.S. ratifies this treaty and lends its expertise to the global disability movement.

We know you stand with us in wanting to ensure full participation and access for people with disabilities the world over. We urge you and your Senate colleagues to ratify the Convention on the Rights of Persons with Disabilities with all due speed.

Sincerely,

The Jewish Disability Network

Anti-Defamation League
Association of Jewish Family & Children's Agencies
B'nai B'rith International
Jewish Council for Public Affairs
Jewish Federation of Metropolitan Chicago
National Council of Jewish Women
The Jewish Federations of North America
Union of Reform Judaism
United Synagogue of Conservative Judaism
UJA-Federation of New York

LETTER FROM THE NATIONAL ASSOCIATION OF COUNCILS ON DEVELOPMENTAL DISABILITIES

July 12, 2012

The Honorable John Kerry
Chairman
Senate Foreign Relations Committee
United States Senate
Washington, DC 20510

The Honorable Richard Lugar
Ranking Member
Senate Foreign Relations Committee
United States Senate
Washington, DC 20510

Statement for the Record: Senate Foreign Relations Committee
Hearing: Convention on the Rights of Persons with Disabilities (Treaty Doc. 112-7)

Dear Senators Kerry and Lugar:

The National Association of Councils on Developmental Disabilities (NACDD) urges all Senators to support U.S. ratification of the U.N. Convention on the Rights of Persons with Disabilities (UN-CRPD).

This treaty represents an international commitment to accord people with disabilities the full and equal enjoyment of rights and fundamental freedoms accorded to people without disabilities. The UN-CRPD's provisions are patterned after protections the USA has already enacted domestically, and the treaty's spirit reflects the respect for individual dignity that is ingrained in American laws and values.

Ratification of this treaty would not supersede or modify existing U.S. laws or require new appropriations from Congress. Internationally, ratification of this treaty is the only way to guarantee that the U.S. can participate in official conferences to discuss interpretation and implementation of the CRPD and have its say in how U.S. Citizens with disabilities are treated when they travel internationally study abroad, or serve in the armed forces outside of our borders.

We hope that the Senate Foreign Relations Committee and the full body of the U.S. Senate come together and act quickly to ratify the CRPD so that the United States may continue to serve as a global leader in promoting equality, defending freedom, and protecting the rights people with disabilities, including US citizens abroad.

Sincerely yours,

Wanda Willis
President

NACDD serves as the national voice of State and Territorial Councils on Developmental Disabilities. Appointed by Governors in every state and territory, DD Councils are a federal-state partnership with and for people with developmental disabilities and their families.

1825 K Street, NW, Suite 600 * Washington, DC 20006 * Phone: 202.506.5813 * Fax: 202.506.5846 * www.nacdd.org

LETTER FROM PRESIDENT GEORGE HERBERT WALKER BUSH

GEORGE BUSH

January 20, 2012

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Harry and Mitch,

On July 26, 1990, I signed the Americans with Disabilities Act (ADA) into law. It extended fuller access to the American Dream to 43 million Americans with disabilities who previously had been effectively barred from buildings, transportation, and other means to opportunity. The ADA fulfilled a 1986 recommendation from the National Council on Disability titled "Toward Independence," which I personally accepted and committed to implement.

As I noted in my statement that accompanied the signing of that historic bill, previous disability laws and regulations "left broad areas of American life untouched or inadequately addressed." The ADA's universal acceptance today, including Senate passage of the 2008 ADA Amendments Act by unanimous consent, is a tribute to its vision and wisdom.

The United States has the opportunity to take the next step, continue its leadership in disability rights and open the doors of exclusion that shut out people with disabilities around the world by joining the 106 countries

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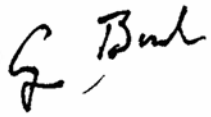
that have ratified the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD is the first international treaty to address disability rights globally. It was inspired in part by the United States' lead in recognizing the rights of individuals with disabilities.

Ratification of CRPD would not require any changes to U.S. law. It would have no impact on the federal budget. It would promote U.S. business interests by creating a level playing field for U.S. corporations by requiring businesses abroad to meet accessibility requirements similar to the ADA. It would benefit all Americans with disabilities (including veterans) and their families living, working, or traveling abroad. It would enable the United States to contribute formally its leadership on disability issues to the rest of the world.

Disability rights issues have always enjoyed strong bipartisan support in Congress and by Presidents of both parties. I urge you to continue this proud tradition by supporting prompt U.S. ratification of the CRPD. Let us transform these shameful walls of exclusion into a culture of inclusion.

Sincerely,



cc: The President
The Vice President
Secretary of State Hillary Rodham Clinton
Senator John Kerry
Senator Richard G. Lugar

SUPPLEMENTAL LIST PROVIDED BY EVE HILL IN ANSWER TO A QUESTION FROM SENATOR JAMES RISCH DURING HER TESTIMONY

U.S. Treaties for which the Senate Resolution of Advice & Consent Contains a Non-Self-Executing Declaration

* * * * * * *

This list surveys recent examples of the use of declarations in Senate resolutions of advice and consent regarding the non-self-executing status of treaties. It is not intended to be exhaustive, but to provide a useful survey of recent practice.

* * * * * * *

Investment Treaty with Rwanda, Treaty Doc. 110-23 (Date transmitted to Senate 11/20/2008; Date of Senate resolution 9/26/2011)

> Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: Articles 3 through 10 and other provisions that qualify or create exceptions to these Articles are self-executing. With the exception of these Articles, the Treaty is not self-executing."

Hague Convention on International Recovery of Child Support and Family Maintenance, Treaty Doc. 110-21 (Date transmitted to Senate 9/8/2008; Date of Senate resolution 9/29/2010)

> Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declarations: … (2) This Convention is not self-executing."

Amendments to the Constitution and Convention of the International Telecommunication Union (Geneva, 1992), Treaty Doc. 110-16 (Date transmitted to Senate 4/8/2008; Date of Senate resolution 9/25/2008)

> Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: This Treaty is not self-executing."

International Convention on Control of Harmful Anti-Fouling Systems on Ships, 2001, Treaty Doc. 110-13 (Date transmitted to Senate 1/22/2008; Date of Senate resolution 9/26/2008)

> Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: This Convention is not self-executing."

Treaty with Australia Concerning Defense Trade Cooperation, Treaty Doc. 110-10 (Date transmitted to Senate 12/3/2007; Date of Senate resolution 9/29/2010)

> Text of Declaration in Senate Resolution – "The Senate's advice and consent to the ratification of the Treaty with Australia Concerning Defense Trade Cooperation is subject to the following declarations: This Treaty is not self-executing in the United States, notwithstanding the statement in the preamble to the contrary."

Protocols of 2005 to the Convention concerning Safety of Maritime Navigation and to the Protocol concerning Safety of Fixed Platforms on the Continental Shelf, Treaty Doc. 110-8 (Date transmitted to Senate 10/1/2007; Date of Senate resolution 9/25/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: With the exception of the provisions that obligate the United States to criminalize certain offenses, make those offenses punishable by appropriate penalties, and authorize the assertion of jurisdiction over such offenses, the 2005 SUA Protocol is self-executing. Included among the self-executing provisions are those provisions obligating the United States to treat certain offenses as extraditable offenses for purposes of bilateral extradition treaties. None of the provisions of the 2005 SUA Protocol, including Article 9, confer private rights enforceable in United States courts."

Treaty with United Kingdom Concerning Defense Trade Cooperation, Treaty Doc. 110-7 (Date transmitted to Senate 9/20/2007; Date of Senate resolution 9/29/2010)

Text of Declaration in Senate Resolution – "The Senate's advice and consent to the ratification of the Treaty with the United Kingdom Concerning Defense Trade Cooperation is subject to the following declarations: This Treaty is not self-executing in the United States, notwithstanding the statement in the preamble to the contrary."

Amendment to Convention on Physical Protection of Nuclear Material, Treaty Doc. 110-6 (Date transmitted to Senate 9/4/2007; Date of Senate resolution 9/25/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: With the exception of the provisions that obligate the United States to criminalize certain offenses, make those offenses punishable by appropriate penalties, and authorize the assertion of jurisdiction over such offenses, this Amendment is self-executing. Included among the self-executing provisions are those provisions obligating the United States to treat certain offenses as extraditable offenses for purposes of bilateral extradition treaties. This Amendment does not confer private rights enforceable in United States courts."

International Convention for Suppression of Acts of Nuclear Terrorism, Treaty Doc. 110-4 (Date transmitted to Senate 7/12/2007; Date of Senate resolution 9/25/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: With the exception of the provisions that obligate the United States to criminalize certain offenses, make those offenses punishable by appropriate penalties, and authorize the assertion of jurisdiction over such offenses, this Convention is self-executing. Included among the self-executing provisions are those provisions obligating the United States to treat certain offenses as extraditable offenses for purposes of bilateral extradition treaties. None of the provisions in the Convention, including Articles 10 and 12, confer private rights enforceable in United States courts."

Land-Based Sources Protocol to Cartagena Convention, Treaty Doc. 110-1 (Date transmitted to Senate 2/16/2007; Date of Senate resolution 9/25/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: This Protocol is not self-executing."

2002 Amendments to the ITU Constitution and Convention, Treaty Doc. 109-11 (Date transmitted to Senate 7/10/2006; Date of Senate resolution 9/25/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: This Treaty is not self-executing."

CCW Protocol on Explosive Remnants of War, Treaty Doc. 109-10(C) (Date transmitted to Senate 6/20/2006; Date of Senate resolution 9/26/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: With the exception of Articles 7 and 8, this Protocol is self-executing. This Protocol does not confer private rights enforceable in United States courts."

United Nations Convention Against Corruption, Treaty Doc. 109-6 (Date transmitted to Senate 10/27/2005; Date of Senate resolution 9/15/2006)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declarations, which shall be included in the United States instrument of ratification: … (2) The United States declares that the provisions of the Convention (with the exception of Articles 44 and 46) are non self-executing. None of the provisions of the Convention creates a private right of action."

1995 Revision of Radio Regulations, Treaty Doc. 108-28 (Date transmitted to Senate 12/7/2004; Date of Senate resolution 9/23/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: This Treaty is not self-executing."

2006 Amendment to Constitution and Convention of International Telecommunication Union (ITU), Treaty Doc. 108-5 (Date transmitted to Senate 4/30/2003; Date of Senate resolution 9/25/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: This Treaty is not self-executing."

1992 Partial Revision of Radio Regulations, Treaty Doc. 107-17 (Date transmitted to Senate 9/30/2002; Date of Senate resolution 9/23/2008)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: This Treaty is not self-executing."

Protocol Relating to the Madrid Agreement, Treaty Doc. 106-41 (Date transmitted to Senate 9/5/2000; Date of Senate resolution 10/17/2002)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declarations. (1) NOT SELF-EXECUTING.—The United States declares that the Protocol is not self-executing."

Optional Protocol No. 2 to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Treaty Doc. 106-37(b) (Date transmitted to Senate 7/25/2000; Date of Senate resolution 6/18/2002)

Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the declaration that—(1)(A) the provisions of the Protocol (other than Article 5) are non-self-executing …"

Convention (No. 176) Concerning Safety and Health in Mines, Treaty Doc. 106-8 (Date transmitted to Senate 9/9/99; Date of Senate resolution 9/20/2000)

> Text of Declaration in Senate Resolution – "The Senate's advice and consent is subject to the following declarations, which shall be binding on the President: NOT SELF-EXECUTING.—The United States understands that the Convention is not self-executing."

The Hague Convention for the Protection of Cultural Property in Event of Armed Conflict, Treaty Doc. 106-1(A) (Date transmitted to Senate 1/6/1999; Date of Senate resolution 9/25/2008)

> Text of Declaration in Senate Resolution – "The advice and consent of the Senate under section 1 is subject to the following declaration: With the exception of the provisions that obligate the United States to impose sanctions on persons who commit or order to be committed a breach of the Convention, this Convention is self-executing. This Convention does not confer private rights enforceable in United States courts."

Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, Treaty Doc. 105-51 (Date transmitted to Senate 6/11/1998; Date of Senate resolution 9/20/2000)

> Text of Declaration in Senate Resolution – "The Senate's advice and consent is subject to the following declarations, which shall be included in the instrument of ratification: (1) NON-SELF EXECUTING CONVENTION.—The United States declares that the provisions of Articles 1 through 39 of the Convention are not self-executing."

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Treaty Doc. 100-20 (Date transmitted to Senate 5/20/1988; Date of Senate resolution 10/27/1990)

> Text of Declaration in Senate Resolution – "The advise and consent of the Senate subject to the following declarations: (1) that the United States declares that the provisions of Articles 1 through 16 of the Convention are not self executing."

International Covenant on Civil and Political Rights, Treaty Doc. 95-20 (Date transmitted to Senate 2/23/1978; Date of Senate resolution 4/2/1992)

> Text of Declaration in Senate Resolution – "The Senate's advice and consent is subject to the following declarations: (1) that the United States declares that the provisions of Articles 1 through 27 of the Covenant are not self executing."

International Convention on the Elimination of all Forms of Racial Discrimination, Treaty Doc. 95-18 (Date transmitted to Senate 2/23/1978; Date of Senate resolution 6/24/1994)

> Text of Declaration in Senate Resolution – "The Senate's advice and consent is subject to the following declaration: That the United States declares that the provisions of the Convention are not self executing."

Disability Rights Education & Defense Fund DREDF

June 19, 2012

Foreign Relations Committee
United States Senate
446 Dirksen Senate Office Building
Washington, D.C. 20520

Re: Ratification of the Convention on the Rights of Persons with Disabilities

Dear Senator:

The Disability Rights Education and Defense Fund (DREDF) works to advance the civil and human rights of people with disabilities through legal advocacy, training, education and public policy and legislative development. As you know, on May 17th the Obama Administration submitted the Convention on the Rights of Persons with Disabilities (CRPD) to the United States Senate for its advice and consent, and a week later a bipartisan group of seven Senators came out in support of the treaty. We are writing to support ratification of the CRPD.

The CRPD is a non-discrimination treaty seeking to achieve the same goals as the Americans with Disabilities Act (ADA) and other existing disability laws in United States: to empower individuals with disabilities to achieve economic self-sufficiency, independent living, inclusion and integration into all aspects of society. The CRPD is important to all people with disabilities, including our veterans and service members with disabilities as it embodies equal treatment and non-discrimination in access to rehabilitation, employment and educational opportunities.

The United States has always been a leader in setting the standards for ensuring the human rights of individuals with disabilities. The ADA was the first major piece of domestic legislation in the world to address the discrimination, legal challenges and physical and systemic barriers faced by individuals with disabilities, and to this day serves as a model for legislative development around the world. The US also has led the efforts in education through the 1975 Individuals with Disabilities Education Act (IDEA) and other legislations. These laws have always been enacted in a bi-partisan fashion and the CRPD will further that goal for guaranteeing such protections for US citizens, corporations and organizations throughout the world. The Convention reflects core American values such as the dignity of the individual, access to justice, the importance of family decision-making and access to appropriate healthcare.

One hundred and fourteen nations have ratified the CRPD as of June 2012, including important allies of the United States, as well as the European Union. Ratification will allow U.S. participation on the CRPD Conference of States Parties, create U.S. eligibility to serve on the Committee on the Rights of Persons with Disabilities, and thus

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allow the U.S. to provide input into the implementation of the treaty and the development of disability rights globally. Such participation will not only further our nation's vision for global human rights, but assist the millions of people with disabilities from the United States such as military veterans, students, scientists, tourists and business leaders, and their families who live, do business, and travel abroad. American citizens with disabilities should have the same opportunity to benefit from a world economy that is fully accessible to all people.

The Disability Rights Education and Defense Fund (DREDF) is committed to our country's leadership for the rights and empowerment of the 1 billion people with disabilities worldwide. We believe the ratification of the CRPD will allow the U.S. continue in our global leadership in this area, therefore urge the Senate to quickly consider and ratify the Convention on the Rights of Persons with Disabilities. We appreciate your leadership on this issue and urge swift ratification of the CRPD to ensure global disability rights.

Sincerely,

Susan R. Henderson

Susan Henderson
Executive Director

LETTER TO SENATOR JOHN KERRY AND ALSO SENT TO RICHARD LUGAR FROM VETERANS AND MILITARY ORGANIZATIONS

MAY 30, 2012.

Hon. JOHN KERRY,
Chairman, Senate Committee on Foreign Relations,
Washington, DC.

DEAR CHAIRMAN KERRY: We the undersigned veterans and military organizations are writing to urge the Senate Foreign Relations Committee to favorably report the Convention on the Rights of Persons with Disabilities (CRPD).

The CRPD is important to veterans and servicemembers with disabilities because it embodies the principles of the Americans with Disabilities Act (ADA). Like the ADA, the CRPD supports equal treatment and non-discrimination in access to rehabilitation, employment and educational opportunities. We support the principles of the ADA because it promotes empowerment of our nation's veterans and servicemembers with disabilities by providing the opportunity to achieve independent living and inclusion into all aspects of society.

As organizations that represent veterans and servicemembers and their families, we believe that the CRPD would remove barriers and allow American servicemembers and veterans with disabilities to work, serve, study, and live abroad. In part, barriers will be diminished due to changing attitudes around the world regarding people with disabilities. As a result of the changes occurring through the CRPD, servicemembers and veterans with disabilities will be able to continue leading active lives within the global community.

The United States must ratify the CRPD to reinforce our leadership in the promotion of opportunities for veterans and servicemembers with disabilities in the world community. Our nation established its leadership on disability rights through the passage of the ADA. In order to continue that leadership, the United States must once again act to promote the rights of people with disabilities.

We appreciate your leadership on this issue and urge swift ratification of the CRPD to ensure global disability rights. If you have any questions, please contact Heather Ansley, Vice President of Veterans Policy for VetsFirst, a program of United Spinal Association, at (202) 556–2076, ext. 7702 or by e-mail at hansley@vetsfirst.org.

Sincerely,

AMVETS; Air Force Sergeants Association; Air Force Women Officers Associated; American GI Forum; Association of the United States Navy; Blinded Veterans Association; Disabled American Veterans; Iraq and Afghanistan Veterans of America; Jewish War Veterans;

Military Officers Association of America; National Association for Black Veterans; National Guard Association of the United States; National Military Family Association; Paralyzed Veterans of America; The American Legion; Veterans for Common Sense; Veterans of Foreign Wars; Veterans of Modern Warfare; VetsFirst, a program of United Spinal Association; Vietnam Veterans of America; Wounded Warrior Project.

XII ANNEX 3.—ADDITIONAL QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD

RESPONSES OF JUDITH HEUMANN TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. Article 46, paragraph 1 of the Convention states that "[r]eservations incompatible with the object and purpose of the present Convention shall not be permitted." Does the administration believe that the three reservations it has proposed are compatible with the object and purpose of the Disabilities Convention?

Answer. Yes. The United States has a comprehensive network of existing Federal and State disability laws and enforcement mechanisms. In the majority of cases, existing Federal and State law meet or exceed the requirements of the Convention. The proposed reservations make it clear that, in the narrow circumstances that federalism or private conduct concerns are implicated, the United States has limited its obligations on the international plane to those that can be implemented under existing law appropriate to our Federal structure.

Question. The administration has proposed three reservations to the Convention. Article 46, paragraph 1 of the Convention states that "[r]eservations incompatible with the object and purpose of the present Convention shall not be permitted."

- Have any Parties to the Convention joined the Convention subject to reservations similar to those that the administration has proposed? If so, please describe them.
- Have other Parties to the Convention lodged objections to those reservations? If so, please describe how, if at all, this impacts the legality under international law of the reservation that the administration has proposed.

Answer. Other States Parties have not taken reservations similar to those proposed by the administration.

RESPONSES OF EVE HILL TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that if the United States were to become party to the Disabilities Convention, it would "require[ ] radical changes to American law." Does the administration agree with this assertion?

Answer. No. With the proposed reservations, understandings, and declaration, the United States would be able to implement its obligations under the Disabilities Convention using the existing laws, regulations, and Federal enforcement mechanisms that afford protection and guarantees of nondiscrimination to persons with disabilities. Therefore, no new legislation, regulation, or enforcement mechanisms would be required to ratify and implement the Disabilities Convention.

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that, "[t]oday, under the IDEA parents get to decide what they think is best for their child—including the right to walk away from government services and provide private or home education. Under the UNCRPD, that right is supplanted with the rule announced by Professor van Buren. Government officials have the authority to substitute their views for the views of parents as well as the views of the child as to what is best. If the parents think that private schools are best for their child, the UNCRPD gives the government the authority and the legal duty to override that judgment and keep the child in the government-approved program that the officials think is best for the child." Does the administration agree with this interpretation of the Convention?

Answer. No. In light of the federalism and private conduct reservations and the nondiscrimination understanding, no changes to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise and educate their children would be required as a result of ratification. Furthermore, the recommended understanding on economic, social, and cultural rights

makes clear that in the context of the education of a disabled child, the obligation of the United States under the Convention with regard to consideration of the principle of "best interests" is limited to nondiscrimination.

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that, "[a]ny and all parental rights provisions in state education laws will be void by the direct application of Article 7 of this treaty. Government—not parents—has the authority to decide what is best for children." Does the administration agree with this assertion?

Answer. No. Parental rights provisions in Federal and State education laws will not be voided by Article 7 of the Disabilities Convention. In light of the federalism and private conduct reservations and the nondiscrimination understanding, no changes to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise and educate their children would be required as a result of ratification.

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that, "[e]ven with the presumption of the non-self-executing nature of the treaty, if the Senate ratifies this treaty, Congress will have the duty to revise the IDEA to comply with the provisions of the UNCRPD. Therefore, unless we intend to breach our international legal obligations, Congress will be required to modify the IDEA to ensure that government decisionmakers, and not parents, have the final say as to what they believe is best for a child." Does the administration agree with this assertion?

Answer. No. Ratification of the Disabilities Convention will not require Congress to modify existing law to provide that government decisionmakers, and not parents, have the final say regarding the best interests of a child. With the proposed package of reservations, understandings, and a declaration, ratification of the Disabilities Convention will not require any revision of the Individuals with Disabilities Education Act or any other U.S. law or regulation. In light of the federalism and private conduct reservations and the nondiscrimination understanding, no changes to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise and educate their children would be required as a result of ratification.

In addition, the non-self-executing declaration is not a "presumption" but, as stated in the Secretary's Report (Treaty Doc. 112–7, pp. 3 and 82), provides that the Convention would not be directly enforceable by U.S. courts or itself give rise to individually enforceable rights. The Supreme Court treated a non-self-executing declaration as dispositive in the case of *Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 728, 735 (2004).

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that, "Article 25(a) [of the Convention] commits the United States to providing free abortion services to persons with disabilities." Does the administration agree with this interpretation of the Convention?

Answer. No. The Convention is a nondiscrimination instrument that simply provides what the Americans with Disabilities Act already requires in the United States: that any health care programs and benefits that are provided under domestic law, including those related to "sexual and reproductive health," also be afforded to persons with disabilities on a nondiscriminatory basis. As the Secretary's report makes clear (Treaty Doc. 112–7 page 59–61), the Convention does not make any statement about abortion, does not create a right to abortion, and does not promote abortion as a method of family planning. The Convention leaves the matter to domestic law. Furthermore, the United States is not bound to implement the Convention through any particular program or funding mechanism.

RESPONSES AND SUPPLEMENTAL RESPONSES OF JUDITH HEUMANN AND EVE HILL TO QUESTIONS SUBMITTED BY SENATOR RICHARD G. LUGAR

Question #1. If the United States became party to the Convention, would the Convention's obligations apply to conduct of the United States that occurs outside the territory of the United States?

Answer. We do not read the Convention's obligations to apply to U.S. conduct outside the United States, except insofar as the Convention reaffirms such existing extraterritorial obligations as in Article 11. The Convention additionally envisions international cooperation measures under Article 32 (which addresses international cooperation programs intended to assist foreign governments and individuals with disabilities abroad, which the United States has already established through USAID

and the State Department). U.S. ratification, moreover, would have positive effects outside the United States. For example, it would give the United States a critical tool in its bilateral and multilateral work to promote the rights of persons with disabilities around the world, and it would enable the United States to use treaty mechanisms (such as the Conference of States Parties) to exchange best practices and to guide other States Parties in their adoption of laws, policies, and practices to implement the Convention.

Question #2. Apart from the provisions of Article 27 of the Convention, with respect to which the administration has proposed an understanding, would any aspect of the convention apply to military operations conducted by the United States? What is the assessment of the Department of Defense of the impact of any such application of the convention's provisions?

Answer. Article 11 simply reaffirms existing obligations under international law to protect persons with disabilities.

(Clarification): This is not a sufficient answer to Question 2. Please provide more detail including an assessment from the Department of Defense.

(Supplemental Response): The Department of Defense concurs that application of the Convention's provisions, including Article 11, would not have an effect on the Department's military operations conducted outside the United States. Article 11 reaffirms existing obligations under international law to protect persons with disabilities.

Question #3. Subsection (w) of the convention's preamble states "Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights."

- What is the "International Bill of Human Rights" referred to in this subsection?
- Does the administration believe that States have a legal obligation to recognize the rights contained in the "International Bill of Human Rights?" If so, what is the source of this obligation?
- Does the administration interpret the convention to impose legal obligations on individuals to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights?
- Does the administration interpret any other body of international law, including customary international law, to impose legal obligations on individuals to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights?

Answer. The International Bill of Rights refers to the Universal Declaration of Human Rights (from which the quoted language in Question 3 is drawn in part), which is not a legally binding instrument; the International Covenant on Civil and Political Rights, to which the United States is a party; and the International Covenant on Economic, Social and Cultural Rights, which the United States has signed but not ratified. States Parties to the legally binding instruments have an obligation to recognize the rights contained in such instruments, as ratified by them. Neither the Disabilities Convention nor any other body of international law imposes legal obligations on individuals to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights.

Question #4. What function do the "General Principles" contained in Article 3 of the convention serve? Do the provisions of Article 3 give rise to any legal obligations independent of the convention's more specific provisions directed to the conduct of States Parties?

Answer. As stated in the Secretary of State's Report (page 9 of Treaty Doc. 112–7), the General Principles in Article 3 set forth the overarching and animating objectives of the convention. Article 3 does not give rise to any legal obligations independent of the convention's more specific provisions directed to the conduct of States Parties.

Question #5. Article 4 provides that "States parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability." What are the particular "human rights and fundamental freedoms" to which the obligations in this article apply?

Answer. Article 4 imposes an obligation of nondiscrimination on the basis of disability with respect to the human rights and fundamental freedoms set out in human rights treaties ratified by the United States. These include the International Covenant on Civil and Political Rights, the Convention for the Elimination of All

Forms of Racial Discrimination, and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Question #6. The Message from the President transmitting the convention describes a number of existing U.S. Government programs that promote the development and dissemination of mobility aids, devices, and assistive technologies. The Message indicates that these programs are consistent with the obligations contained in Articles 4(1)(f), (g), and (h) of the convention. Would the convention obligate the United States to continue these programs in their current form or prohibit the United States from eliminating or reducing funding for them?

Answer. No. The United States is not bound to implement the convention through any particular program or funding mechanism.

(Clarification): The above response was given for each of the listed questions (#s 6, 15, 22, 24, 27). More explanation is required for each of these questions.

(Supplemental Response): As stated in the Secretary of State's Report (page 12 of Treaty Doc. 112–7), Article 4(1)(f), (g) and (h) are implemented through a variety of programs and mechanisms. Ratification of the Convention would not bind the United States to implement through these or any other particular program or funding mechanism. For example, a wide variety of U.S. programs provide funding for the acquisition of assistive devices. These programs include the Department of Health and Human Services' (HHS) Medicare and Medicaid programs, ED's Centers for Independent Living programs, and the Social Security Administration's SSI/SSDI programs, as well as vocational rehabilitation programs, educational programs under IDEA, and programs offered by the Department of Veterans Affairs (VA). In addition, the HHS-backed Protection and Advocacy (P&A) Assistive Technology program provides support and advocacy services to individuals with disabilities on assistive technology issues. Other key Federal agencies, including the EEOC and DOT, conduct extensive training efforts to diverse audiences. ED's NIDRR relies on its Disability and Business Technical Assistance Centers network to conduct technical assistance and operates the ADA National Network, a national network of 10 regional ADA Centers, to provide training, referrals, and resources to businesses, employers, government entities, and individuals with disabilities, as well as media and news reporters.

Question #7. Under Article 4(2), States undertake to take measures "to the maximum extent of [their] available resources . . . with a view to achieving progressively the full realization of" economic, social and cultural rights. Other articles of the convention address specific economic and social rights, including with respect to education, health, work and employment, adequate standard of living and social protection, and participation in cultural life, recreation, leisure and sport.

The administration has proposed an understanding regarding these articles to the effect that the obligations of the United States in respect of such economic, social, and cultural rights "are to prevent discrimination on the basis of disability in the provision of any such rights insofar as they are recognized and implemented under U.S. Federal Law."

- What particular economic, social, and cultural rights does the administration understand to be recognized and implemented under U.S. Federal Law such that the United States would encounter treaty obligations in relation to them if the convention were ratified subject to the proposed understanding?
- To the extent that the United States does not recognize or implement particular economic, social, or cultural rights referred to in the convention, would the United States be obligated to report to the Committee on the Rights of Persons with Disabilities on its policies or practices with respect to such nonrecognized rights?

Answer. The obligations of the United States under the convention with respect to these rights would be limited to nondiscrimination, similar to the obligation already undertaken by the United States in Article 5(e) of the Convention for the Elimination of All Forms of Racial Discrimination (CERD). CERD Article 5(e) provides that States Parties undertake to "eliminate racial discrimination . . . in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular
(i) The right to work, to free choice of employment . . . ;
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;
(v) The right to education and training;

(vi) The right to equal participation in cultural activities;"

The Disabilities Convention would create no new rights in the United States nor would it require the United States to recognize any new rights. Under the recommended nondiscrimination Understanding, ratification would not require any changes in the provision of, or access to, education, housing, health care, employment, social security and other social benefits, and cultural activities in the United States.

With regard to reporting, Article 35 obliges a State Party to submit a comprehensive report on measures taken to give effect to its obligations under the convention. The United States would address its implementation of the convention's nondiscrimniation obligation in its report.

Question #8. The Message from the President transmitting the convention states that "the United States has not yet become a party to the [Covenant on Economic, Social, and Cultural Rights]." Does the administration support U.S. accession to the Covenant on Economic, Social, and Cultural Rights?

Answer. As indicated in the current Treaty Priority List, the administration does not seek action on the Covenant on Economic, Social and Cultural Rights at this time.

(Clarification): What is the administration's position on the Covenant, and will the administration use the Disabilities Convention to bolster the case for becoming a party to any treaty or agreement referenced therein to which the United States is currently not a party?

(Supplemental Response): The administration does not seek Senate action on the International Covenant on Economic, Social, and Cultural Rights. As to treaties which the United States has not ratified, the administration assesses each treaty on its own merits, and lists in its Treaty Priority List those treaties for which the Department seeks action at this time. Because the administration seeks the Senate's advice and consent to ratification of treaties on a case-by-case basis, ratification of the Disabilities Convention does not bolster the case for ratification of other treaties.

Question #9. Article 4(3) provides that "States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations" in the development and implementation of laws and policies to implement the convention and in other decisionmaking processes concerning issues related to persons with disabilities.

- (9a) Would this provision apply to Congress so as to require it to follow particular procedures when drafting and acting on legislation related to persons with disabilities?

Answer. No. Ratification of the convention will not require Congress to alter its procedures when drafting and acting on legislation related to persons with disabilities. The United States democratic legislative process affords disability rights organizations, family members, concerned citizens and persons with disabilities an opportunity to make their voices heard at the Federal, State, and local levels of government throughout the legislative process.

- (9b) Is the United States currently a party to any treaty that contains similar obligations to consult with specific groups when making laws, policies, or other governmental decisions?

Answer. Yes. The United States has become a party to agreements that require consultations with or participation by stakeholders. For example, the United States is a party to the United Nations Convention to Combat Desertification. Article 5 of this advice and consent treaty provides, in part:

> In addition to their obligations pursuant to article 4, affected country Parties [which include the United States] undertake to:
>
> * * * * *
>
> (d) promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of nongovernmental organizations, in efforts to combat desertification and mitigate the effects of drought. . . .

The International Convention Relating To Intervention On The High Seas In Cases Of Oil Pollution Casualties, which concerns oil spills from ships, provides another example. Article I of this advice and consent treaty provides that States Parties may take necessary measures on the high seas "to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from

pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences." Article III then provides, in part:

> (b) the coastal State shall notify without delay the proposed measures to any persons physical or corporate known to the coastal State, or made known to it during the consultations, to have interests which can reasonably be expected to be affected by those measures. The coastal State shall take into account any views they may submit. . . .

In addition, free trade agreements, which are approved by the Congress, and bilateral investment treaties, which are advice and consent treaties, generally contain transparency provisions that call on States Parties to provide interested persons a reasonable opportunity to comment on proposed laws, regulations, procedures and administrative rulings.

Moreover, as described in the Secretary's report transmitted to the Senate with the convention, the U.S. democratic legislative process, Americans with Disabilities Act requirements on public organizations, and the public notice and comment process for regulations would all provide for U.S. compliance with Article 4(3) of the convention without the need to alter U.S. laws, regulations or practice.

Question #10. The administration has proposed a reservation to the convention indicating that, to the extent that U.S. State and local governments exercise jurisdiction over matters governed by the convention, the obligations of the United States under the convention would be limited to "the Federal Government's taking measures appropriate to the Federal system, which may include enforcement action against State and local actions that are inconsistent with the Constitution, the Americans with Disabilities Act, or other Federal laws, with the objective of fully implementing the convention."

The President's Message transmitting the convention observes that, in some areas covered by the convention that are governed by U.S. State and local law, "some State and local standards are less vigorous than the convention would require."

- (10a) Please describe the particular instances in which the administration believes that relevant State and local standards "are less rigorous than the convention would require."

Answer. This answer responds to Question 10 as well as Questions 18, 20, 23, 25, and 26.

The areas in which State and local standards may be less rigorous than the convention's requirements are narrow. The administration's principal questions regarding State and local standards relate to Articles 12, regarding guardianship, and Article 14, regarding civil commitment. See Treaty Doc. 112.7 at pages 31 through 34 (regarding Article 12) and pages 36 through 39 (regarding Article 14). The Secretary's Report also identifies questions regarding Article 23 on respect for home and the family, including those arising from guardianship determinations. See id., at pages 53 through 55 (regarding Article 23). With respect to Article 19 on living independently and being included in the community and Article 24 on education, the administration did not specify in the Secretary's Report concerns arising regarding State or local laws because the requirements of Federal law on nondiscrimination under the Individuals with Disabilities Education Act and the administration's *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) enforcement largely obviate resort to State law for convention implementation.

- (10b) With respect to the instances identified in response to the question above, please describe the measures the administration would intend to take consistent with the proposed federalism reservation to give effect to the convention's requirements.

Answer. The administration's questions about State and local law being less rigorous than the convention's requirements have arisen with respect to narrow areas of law and in limited circumstances. In most cases, Federal law, which will implement the requirements of the Disabilities Convention if ratified, requires State and local governments to take remedial measure to bring their laws into compliance with Federal law, such as the Federal Government's efforts under Olmstead. The administration proposes a federalism reservation to address the small gaps in implementation at the State and local level that are currently beyond the reach of Federal enforcement. The federalism reservation protects our Federal system, ensuring that the Federal Government is not required to adopt any new laws or engage in any new enforcement efforts to fill these gaps.

Question #11. Upon ratifying the convention, El Salvador made the following reservation: "The Government of the Republic of El Salvador signs the present Conven-

tion on the Rights of Persons with Disabilities and the Optional Protocol thereto, adopted by the United Nations General Assembly on 13 December 2006, to the extent that its provisions do not prejudice or violate the provisions of any of the precepts, principles and norms enshrined in the Constitution of the Republic of El Salvador, particularly in its enumeration of principles."

Several other parties to the convention have objected to El Salvador's reservation as being inconsistent with the object and purpose of the convention.

- (11a) What is El Salvador's status as a party to the convention in light of its reservation and the objections to it?

Answer. El Salvador is a party to the convention and has treaty relations with all of the States Parties to the convention. Although some States Parties to the convention have objected to El Salvador's reservation, none of these States Parties has declined to enter into treaty relations with El Salvador.

- (11b) Does the administration regard El Salvador's reservation as inconsistent with the convention's object and purpose, or with international law regarding reservations to treaties?

Answer. International law provides that States Parties may object to other Parties' reservations to treaties, including on the basis that such reservations are incompatible with the object and purpose of the treaty. The convention itself provides in Article 46(1) that reservations incompatible with the object and purpose of the convention are not permitted. The convention also provides that reservations may be withdrawn at any time. Because the United States is not a party, we have not taken a position on El Salvador's reservation. If the Senate grants its advice and consent to ratification, the United States will have an opportunity to do so upon ratification.

Question #12. Article 6(1) provides that States shall take measures to ensure the full and equal enjoyment by women and girls with disabilities "of all human rights and fundamental freedoms." What are the particular "human rights and fundamental freedoms" to which the obligations in this article apply?

Answer. Article 6(1) prohibits discrimination against women and girls with a disability with respect to the human rights and fundamental freedoms set out in human rights treaties ratified by a State Party. For the United States, these include the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Race Convention.

Question #13. Article 7(2) provides that "In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration."

In discussing the implementation of this provision, the President's Message transmitting the convention observes that "Titles II and III of the ADA protect children with disabilities from discrimination by public entities and public accommodations," and describes enforcement of these laws by the Department of Justice.

- Does the administration interpret the reference in Article 7(2) to "all actions concerning children" as applying only to situations involving discrimination? If not, please indicate in what other contexts Article 7(2)'s requirements have potential application and describe the measures the administration believes would be necessary to give effect to Article 7(2) in such contexts.

Answer. Any United States obligation under Article 7(2) would be limited to nondiscrimination, including with regard to education, where nondiscrimination is guaranteed under U.S. law by the Individuals with Disabilities Education Act and the Americans with Disabilities Act. The recommended Understanding on economic, social, and cultural rights makes clear that in the context of the education of a disabled child, the obligation of the United States under the convention with regard to consideration of the principle of "best interests" is limited to nondiscrimination.

(Clarification): Please provide more information in response to this question.

(Supplemental Response): In light of the proposed federalism and private conduct reservations and the nondiscrimination understanding, no changes to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise and educate their children would be required as a result of ratification. With the proposed RUD package, ratification of the Disabilities Convention will not require any revision of the Individuals with Disabilities Education Act or any other U.S. law or regulation. In particular, ratification will not require Congress to modify existing law to affect consideration of the principle of best interests or to provide that government decisionmakers, and not parents, have the final say regarding the best interests of a child. In short, existing Federal State and local law provide adequate protection to the interest of parents to do what they think is best for their children and the Convention will not disturb that complex of laws.

Question #14. Article 7(3) provides that "States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children."

- What actor or actors are responsible for determining the weight to be given to the views of children with disabilities as described in Article 7(3)?

Answer. In light of the proposed federalism and private conduct reservations, to the extent that under domestic law actors determining the weight of views of children with disabilities include State or local governments or parents, there would be no change to Federal, State or local law as a result of ratification.

Question #15. The Message from the President transmitting the convention describes a number of existing U.S. Government programs that promote the design, development, and distribution of accessible information and communications technologies and systems. The Message indicates that these programs are consistent with the obligations contained in Article 9(2)(h) of the convention. Would the convention obligate the United States to continue these programs in their current form or prohibit the United States from eliminating or reducing funding for them?

Answer. No. The United States is not bound to implement the convention through any particular program or funding mechanism.

(Supplemental Response): As stated in the Secretary of State's Report (page 25 of Treaty Doc. 112–7), Article 9(2)(h) is implemented through a variety of programs and mechanisms. Ratification of the Convention would not bind the United States to implement through these or any other particular program or funding mechanism. For example, with respect to promoting access to, and development of, new information and technologies, Section 508 of the Rehabilitation Act, which requires Federal agencies to make their electronic and information technology accessible to persons with disabilities, has resulted in the development of new technologies for accessible information. The Access Board has issued "Electronic and Information Technology Standards," see 39 C.F.R. § Pt. 1194. The ATA targeted the removal of environmental barriers and increased access to assistive and universally designed technologies. See 29 U.S.C. § 3001(b)(1). Other government initiatives, e.g., the Interagency Council on Disability-Related Statistics, promote public-private partnerships and research opportunities to develop and make available assistive technologies. The Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 251(a)(2) and 255, requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities, if readily achievable. The FCC oversees five programs that help to ensure access to assistive technology, including: closed captioning of video programming; access to emergency information in video programming; Telecommunications Relay Services; access to telecommunications services and equipment; and hearing aid compatibility for telephones.

Question #16. Article 11 provides that "States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict . . . "

- Does the administration interpret the convention to apply to the conduct of U.S. military personnel participating in armed conflict in Afghanistan or elsewhere? If not, why not?

Answer. Article 11 reaffirms existing obligations of States Parties under international law. In this regard, Article 11 is also consistent with DOD Directive 2311.01E, The Department of Defense Law of War Program, which requires that members of DOD components comply with the law of war during all armed conflict, and in all other military operations.

Question #17. Article 12(4) provides that "States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law."

- What are the relevant rules of "international human rights law" referred to in Article 12(4) and what is the source of these rules?

Answer. For the United States, the International Covenant on Civil and Political Rights would be relevant as well as the Convention Against Torture.

Question #18. The Message from the President transmitting the convention states in connection with its discussion of Article 12 that "many State constitutions and statutory provisions continue to limit the full exercise of civil and political rights of persons deemed incompetent."

- (18a) Please identify any State constitution or statutory provisions in this regard that the administration believes would be inconsistent with the obligations contained in the convention.

Answer. The response to Question 10 also applies to Question 18.

The administration closely studied measures of implementation of the Disabilities Convention, and identified that its principal questions regarding State and local compliance relate to Articles 12, regarding guardianship, and Article 14, regarding civil commitment. The Secretary's Report identifies specific concerns regarding State law arising under those Articles, including discussion of particular States. See Treaty Doc. 112.7 at pages 31 through 34 (regarding Article 12) and pages 36 through 39 (regarding Article 14). The Secretary's Report also identifies concerns regarding Article 23 on Respect for home and the family, including those arising from guardianship determinations. See id., at pages 53 through 55 (regarding Article 23). With respect to Article 19 on Living independently and being included in the community and Article 24 on Education, the administration did not specify in the Secretary's Report concerns arising regarding State or local laws because the requirements of Federal law on nondiscrimination under the Individuals with Disabilities Education Act and the administration's *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) enforcement largely obviate resort to State law for convention implementation.

- (18b) With respect to the provisions identified in response to the question above, please describe the measures the administration would intend to take consistent with the proposed federalism reservation to give effect to the convention's requirements.

Answer. The administration's concerns about State and local law being inconsistent with the obligations in the convention's have arisen with respect to narrow areas of law and in limited circumstances. In most cases, Federal law, which will implement the requirements of the Disabilities Convention if ratified, requires State and local governments to take remedial measure to bring their laws into compliance with Federal law, such as the Federal Government's efforts under *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). The administration proposes a federalism reservation to address the small gaps in implementation at the State and local level that are currently beyond the reach of Federal enforcement. The federalism reservation protects our Federal system, ensuring that the Federal Government is not required to adopt any new laws or engage in any new enforcement efforts to fill these gaps.

Question #19. Article 14(2) provides that "States Parties shall ensure that if persons with disabilities are deprived of the liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present convention, including by provision of reasonable accommodation." What are the relevant rules of "international human rights law" referred to in Article 14(2) and what is the source of these rules?

Answer. The relevant rules of international human rights law are contained in the treaties on human rights ratified by the State Party. For the United States, the provisions of the International Covenant on Civil and Political Rights and the Convention Against Torture would be relevant.

Question #20. The Message from the President transmitting the convention states in connection with its discussion of Article 14 that "Although State laws generally have adopted heightened due process protections for persons with disabilities facing deprivations of their liberty, gaps remain."

- (20a) Please identify any State laws in this regard that the administration believes would be inconsistent with the obligations contained in the convention.

Answer. The response to Question 18 also applies to Question 20.

The administration closely studied measures of implementation of the Disabilities Convention, and identified that its principal questions regarding State and local compliance relate to Articles 12, regarding guardianship, and Article 14, regarding civil commitment. The Secretary's Report identifies specific questions regarding State law arising under those Articles, including discussion of particular States. See Treaty Doc. 112.7 at pages 31 through 34 (regarding Article 12) and pages 36 through 39 (regarding Article 14). The Secretary's Report also identifies questions regarding Article 23 on respect for home and the family, including those arising from guardianship determinations. See id., at pages 53 through 55 (regarding Arti-

cle 23). With respect to Article 19 on living independently and being included in the community and Article 24 on education, the administration did not specify in the Secretary's Report questions arising regarding State or local laws because the requirements of Federal law on nondiscrimination under the Individuals with Disabilities Education Act and the Administration's *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) enforcement largely obviate resort to State law for convention implementation.

- (20b) With respect to the laws identified in response to the question above, please describe the measures the administration would intend to take consistent with the proposed federalism reservation to give effect to the convention's requirements.

Answer. The administration's questions about State and local law being inconsistent with the obligations in the convention have arisen with respect to narrow areas of law and in limited circumstances. In most cases, Federal law, which will implement the requirements of the Disabilities Convention if ratified, requires State and local governments to take remedial measure to bring their laws into compliance with Federal law, such as the Federal Government's efforts under *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). The administration proposes a federalism reservation to address the small gaps in implementation at the State and local level that are currently beyond the reach of Federal enforcement. The federalism reservation protects our Federal system, ensuring that the Federal Government is not required to adopt any new laws or engage in any new enforcement efforts to fill these gaps.

Question #21. The Message from the President transmitting the convention proposes a reservation to Article 15, which addresses freedom from torture or cruel, inhuman, or degrading treatment or punishment. The proposed reservation would make the obligations of the United States under Article 15 subject to the same reservations and understandings that apply for the United States with respect to provisions of the Convention Against Torture and the International Covenant on Civil and Political Rights that contain comparable obligations.

- Apart from the substantive obligations under Article 15 addressed by the administration's proposed understanding, will the United States incur obligations to report on its compliance with Article 15 to the Committee on the Rights of Persons with Disabilities separately from reporting it currently makes to committees under the Convention Against Torture and the International Covenant on Civil and Political Rights?

Answer. The United States would address Article 15 in its report submitted under Article 35 of the Disabilities Convention, and would expect that any discussion of Article 15 in that report would rely heavily on relevant sections of any recent reports submitted pursuant to the Convention Against Torture and the International Covenant on Civil and Political Rights.

Question #22. The Message from the President transmitting the convention describes a number of existing U.S. Government programs that monitor facilities and programs designed to serve persons with disabilities with a view to preventing exploitation, violence, or abuse. The Message indicates that these programs are consistent with the obligations contained in Article 16(3) of the convention.

- Would the convention obligate the United States to continue these programs in their current form or prohibit the United States from eliminating or reducing funding for them?

Answer. No. The United States is not bound to implement the convention through any particular program or funding mechanism.

(Supplemental Response): As stated in the Secretary of State's Report (page 42 of Treaty Doc. 112–7), Article 16(3) is implemented through a variety of programs and mechanisms. Ratification of the Convention would not bind the United States to implement through these or any other particular program or funding mechanism. For example, Article 16(3) requires effective monitoring by independent authorities to prevent freedom from exploitation, violence, and abuse. DOJ's enforcement of CRIPA allows it to independently monitor persons with disabilities held in a wide variety of institutional settings, identify any ongoing abuses, and mandate corrective measures to address any abuse, exploitation, or violence. Additionally, Protection and Advocacy (P&A) systems in each state are created by Federal law to monitor, review, and protect rights of individuals to be free from exploitation, violence, and abuse. HHS funds and monitors this comprehensive network of Protection and Advocacy programs in each state that are authorized to investigate incidents of abuse and neglect of persons with disabilities and follow up reports of incidents or investigate if there is probable cause to believe that such incidents have occurred. HHS's Administration on Aging operates a number of Vulnerable Elder Rights Pro-

grams that provide important protections against exploitation and abuse of seniors, including those with disabilities. HHS's Substance Abuse and Mental Health Services Administration (SAMHSA) has initiated efforts to reduce and ultimately eliminate seclusion and restraint procedures in behavioral health care settings through evaluation of effective reduction practices, planning and implementation grants, and policy development.

Question #23. The Message from the President transmitting the convention states in connection with its discussion of Article 19 that "although individual States and localities are in varying degrees of compliance with the array of Federal laws that address Article 19, there continues to be progress and refinement in approaches to achieve full compliance, and DOJ along with other Federal agencies remain vigilant in ensuring such compliance."

- (23a) Please identify any State or local practices in this regard that the administration believes would be inconsistent with the obligations contained in the convention.

Answer. The response to Question 18 also applies to Question 23.

The administration closely studied measures of implementation of the Disabilities Convention, and identified that its principal questions regarding State and local compliance relate to Articles 12, regarding guardianship, and Article 14, regarding civil commitment. The Secretary's Report identifies specific concerns regarding State law arising under those Articles, including discussion of particular States. See Treaty Doc. 112.7 at pages 31 through 34 (regarding Article 12) and pages 36 through 39 (regarding Article 14). The Secretary's Report also identifies questions regarding Article 23 on respect for home and the family, including those arising from guardianship determinations. See id., at pages 53 through 55 (regarding Article 23). With respect to Article 19 on living independently and being included in the community and Article 24 on education, the administration did not specify in the Secretary's Report questions arising regarding State or local laws because the requirements of Federal law on nondiscrimination under the Individuals with Disabilities Education Act and the administration's *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) enforcement largely obviate resort to State law for convention implementation.

- (23b) With respect to the laws identified in response to the question above, please describe the measures the administration would intend to take consistent with the proposed federalism reservation to give effect to the convention's requirements.

Answer. The administration's questions about State and local law being inconsistent with the obligations contained in the convention have arisen with respect to narrow areas of law and in limited circumstances. In most cases, Federal law, which will implement the requirements of the Disabilities Convention if ratified, requires State and local governments to take remedial measure to bring their laws into compliance with Federal law, such as the Federal Government's efforts under *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). The administration proposes a federalism reservation to address the small gaps in implementation at the State and local level that are currently beyond the reach of Federal enforcement. The federalism reservation protects our Federal system, ensuring that the Federal Government is not required to adopt any new laws or engage in any new enforcement efforts to fill these gaps.

Question #24. The Message from the President transmitting the convention describes a number of existing U.S. Government programs that provide funding for the acquisition of assistive devices. The Message indicates that these programs would give effect to the obligations contained in Article 20 of the convention.

- Would the convention obligate the United States to continue these programs in their current form or prohibit the United States from eliminating or reducing funding for them?

Answer. No. The United States is not bound to implement the convention through any particular program or funding mechanism.

(Supplemental Response): As stated in the Secretary of State's Report (page 49 of Treaty Doc. 112–7), Article 20 is implemented through a variety of programs and mechanisms. Ratification of the Convention would not bind the United States to implement through these or any other particular program or funding mechanism. For example, a wide variety of U.S. programs provide funding for the acquisition of assistive devices. These programs include Federal Medicaid, Medicare, and Social Security SSI/SSDI programs, vocational rehabilitation programs, which provide a variety of services and devices for the purpose of assisting adults with disabilities to become independently employed, and programs under IDEA, which require school districts to provide assistive technology in the context of ensuring that a child with

disabilities receives a free appropriate public education, regardless of ability. In addition, the United States has many programs that promote the development and dissemination of mobility aids, devices, and assistive technologies. For example, the National Institute on Disability and Rehabilitation Research (NIDRR), a Federal agency part of ED, was established to generate, disseminate, and promote new knowledge to improve the options available to disabled persons.

Question #25. The Message from the President transmitting the convention observes that many of the issues addressed by Article 23 of the convention (regarding respect for the home and family) are governed by U.S. State law. The message does not clearly indicate, however, whether the administration believes that relevant U.S. State laws are in full compliance with the requirements of Article 23.

- (25a) Please identify any State laws in this regard that the administration believes would be inconsistent with the obligations contained in the convention.

Answer. The response to Question 18 also applies to Question 25.

The administration closely studied measures of implementation of the Disabilities Convention, and identified that its principal questions regarding State and local compliance relate to Articles 12, regarding guardianship, and Article 14, regarding civil commitment. The Secretary's Report identifies specific questions regarding State law arising under those Articles, including discussion of particular States. See Treaty Doc. 112.7 at pages 31 through 34 (regarding Article 12) and pages 36 through 39 (regarding Article 14). The Secretary's Report also identifies questions regarding Article 23 on respect for home and the family, including those arising from guardianship determinations. See id., at pages 53 through 55 (regarding Article 23). With respect to Article 19 on living independently and being included in the community and Article 24 on education, the administration did not specify in the Secretary's Report concerns arising regarding State or local laws because the requirements of Federal law on nondiscrimination under the Individuals with Disabilities Education Act and the administration's *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) enforcement largely obviate resort to State law for convention implementation.

- (25b) With respect to the laws identified in response to the question above, please describe the measures the administration would intend to take consistent with the proposed federalism reservation to give effect to the convention's requirements.

Answer. The administration's questions about State and local law being inconsistent with the obligations contained in the convention have arisen with respect to narrow areas of law and in limited circumstances. In most cases, Federal law, which will implement the requirements of the Disabilities Convention if ratified, requires State and local governments to take remedial measure to bring their laws into compliance with Federal law, such as the Federal Government's efforts under *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). The administration proposes a federalism reservation to address the small gaps in implementation at the State and local level that are currently beyond the reach of Federal enforcement. The federalism reservation protects our Federal system, ensuring that the Federal Government is not required to adopt any new laws or engage in any new enforcement efforts to fill these gaps.

Question #26. The Message from the President transmitting the convention observes that education in the United States is provided largely by State and local governments. The message does not clearly indicate, however, whether the administration believes that relevant U.S. State and local laws and policies are in full compliance with the requirements of Article 24 of the convention, regarding education.

- (26a) Please identify any State or local laws or policies in this regard that the administration believes would be inconsistent with the obligations contained in the convention.

Answer. The response to Question 18 also applies to Question 26.

The administration closely studied measures of implementation of the Disabilities Convention, and identified that its principal questions regarding State and local compliance relate to Articles 12, regarding guardianship, and Article 14, regarding civil commitment. The Secretary's Report identifies specific questions regarding State law arising under those Articles, including discussion of particular States. See Treaty Doc. 112.7 at pages 31 through 34 (regarding Article 12) and pages 36 through 39 (regarding Article 14). The Secretary's Report also identifies questions regarding Article 23 on respect for home and the family, including those arising from guardianship determinations. See id., at pages 53 through 55 (regarding Article 23). With respect to Article 19 on living independently and being included in the community and Article 24 on education, the administration did not specify in the Secretary's Report concerns arising regarding State or local laws because the re-

quirements of federal law on nondiscrimination under the Individuals with Disabilities Education Act and the administration's *Olmstead* v. *L.C.,* 527 U.S. 581 (1999) enforcement largely obviate resort to State law for convention implementation.

- (26b) With respect to the laws identified in response to the question above, please describe the measures the administration would intend to take consistent with the proposed federalism reservation to give effect to the convention's requirements.

Answer. The administration's questions about State and local law being inconsistent with the obligations contained in the convention have arisen with respect to narrow areas of law and in limited circumstances. In most cases, Federal law, which will implement the requirements of the Disabilities Convention if ratified, requires State and local governments to take remedial measure to bring their laws into compliance with Federal law, such as the Federal Government's efforts under *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). The administration proposes a federalism reservation to address the small gaps in implementation at the State and local level that are currently beyond the reach of Federal enforcement. The federalism reservation protects our Federal system, ensuring that the Federal Government is not required to adopt any new laws or engage in any new enforcement efforts to fill these gaps.

Question #27. The Message from the President transmitting the convention describes a number of existing U.S. Government programs that provide funding for habilitation and rehabilitation services and programs for persons with disabilities. The Message indicates that these programs would give effect to the obligations contained in Article 26 of the convention.

- Would the convention obligate the United States to continue these programs in their current form or prohibit the United States from eliminating or reducing funding for them?

Answer. No. The United States is not bound to implement the convention through any particular funding program.

(Supplemental Response): As stated in the Secretary of State's Report (page 63 of Treaty Doc. 112–7), Article 26 is implemented through a variety of programs and mechanisms. Ratification of the Convention would not bind the United States to implement through these or any other particular program or funding mechanism. For example, the United States has a comprehensive set of habilitation and rehabilitation programs, including the Vocational Rehabilitation (VR) State Grants, State Independent Living (IL) Services, Centers for Independent Living (CIL), and Independent Living Services for Older Individuals Who are Blind (OIB) programs, which are authorized under Titles I and VII of the Rehabilitation Act, 29 U.S.C. § 720 et seq., § 796 et seq. The primary purpose of the VR, IL, CIL, and OIB programs is to provide the services necessary to enable individuals with disabilities, especially those with the most significant disabilities, to become self-sufficient and independent in education, employment, and community settings.

Question #28. The Message from the President transmitting the convention states that the "conclusions and recommendations of the Committee [on the Rights of Persons with Disabilities] with regard to a State Party's treaty report, General Comments, Reports, and other documents of the Committee on Disabilities are not binding on the States Parties, and the Committee has no authority to require or compel action by the United States under the convention. The United States may accord to Committee views and reports and to other Committee documents the weight that the United States considers appropriate."

In its 2010 judgment in the Case Concerning Ahmadou Sadio Diallo (*Republic of Guinea* v. *Democratic Republic of the Congo*), the International Court of Justice addressed the weight to be given to the interpretation of a human rights treaty issued by the Committee established pursuant to that treaty.

In explaining its interpretation of the International Covenant on Civil and Political Rights in that case, the Court stated:

> "66. The interpretation above is fully corroborated by the jurisprudence of the Human Rights Committee established by the Covenant to ensure compliance with that instrument by the States parties (see for example, in this respect, *Maroufidou* v. *Sweden,* No. 58/1979, para. 9.3; *Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant*).
>
> Since it was created, the Human Rights Committee has built up a considerable body of interpretative case law, in particular through its findings in response to the individual communications which may be submitted to it in

respect of States Parties to the first Optional Protocol, and in the form of its "General Comments."

Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled."

- (a) Does the administration believe that, as a matter of international law, States Parties to the convention on the Rights of Persons with Disabilities must accord great weight to the interpretations of the convention issued by the Committee on the Rights of Persons with Disabilities in their own interpretation and application of the convention?
- (b) Does the administration believe that, as a matter of international law, States Parties to the convention on the Rights of Persons with Disabilities are obligated to conform their interpretations of the convention to those issued by the Committee on the Rights of Persons with Disabilities?
- (c) Does the administration believe that individuals with rights guaranteed by the Convention on the Rights of Persons with Disabilities are entitled as a matter of international law to "essential consistency" in the convention's application by all States Parties?
- (d) Does the administration believe that States Parties to the Convention on the Rights of Persons with Disabilities are entitled as a matter of international law to "essential consistency" in the convention's application by all other States Parties?

Answer. The administration does not believe that the decision of the International Court of Justice requires the United States to accord "great weight" to the Committee's interpretations and views, or to conform its interpretations of the convention to those of the Committee. The cited decision of the International Court of Justice is not binding on the United States, which was not a party to the proceeding. Nor is the United States subject to the jurisdiction of the Court with regard to interpretation or application of the convention. Further, while consistency in application of a convention may be desirable, the administration does not believe that either States Parties or individuals have a legal right to "essential consistency" in the application of the convention's provisions by other or all States Parties.

Question #29. Article 38(a) of the convention provides that the Committee on the Rights of Persons with Disabilities may invite the specialized agencies of the United Nations and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the convention in areas falling within the scope of their respective mandates. What does the administration consider to be the appropriate scope for participation by U.N. specialized agencies in matters relating to the interpretation and application of the convention by States Parties?

Answer. By the terms of Article 38 of the convention, U.N. specialized agencies and other competent bodies may provide expert advice and submit reports on implementation of the convention in areas falling within the scope of their mandates and activities. As with the Committee on the Rights of Persons with Disabilities, such agencies or bodies have no authority to require or compel action by the United States under the convention. The United States may accord to such advice or reports the weight that the United States considers appropriate.

RESPONSE OF JUDITH HEUMANN TO QUESTION SUBMITTED BY SENATOR ROBERT P. CASEY, JR.

Question. The United States has been a global leader in promoting disability rights, and in sharing our expertise gained over decades of pioneering work in improving the lives of disabled persons. Given our already prominent position in this field, why is it necessary to become a party to the U.N. Convention on the Rights of Persons with Disabilities in order to improve disability rights throughout the world?

Answer. With our extensive domestic experience, the United States is uniquely positioned to help interested countries understand how to effectively comply with their obligations under the Convention and improve their domestic protections for persons with disabilities. However, the fact that we have yet to ratify the Disabil-

ities Convention is frequently raised by foreign officials in bilateral discussions as a reason to question the legitimacy of our guidance. This undermines our efforts to promote disability rights abroad and deflects from what should be center stage: how other nations' records of promoting disability rights could be improved.

Ratification of the Convention is increasingly becoming an important factor in the U.S. Government's ability to have meaningful international engagement to promote the rights of persons with disabilities. At present we are only able to act as observers at the Disabilities Convention Conference of States Parties. This treaty mechanism offers the most effective vehicle to influence the 116 States Parties to improve their protection of disabled people, including disabled Americans abroad. Such an approach is also much more efficient than pursuing 116 or more separate bilateral arrangements. Our inability to participate as a States Party severely curtails our ability to advance U.S. interests.

Additionally, without ratification we cannot participate in the Committee on the Rights of Persons with Disabilities. Although the committee serves in a nonbinding, advisory capacity, it has the potential to provide helpful guidance for States Parties with little experience in these issues. Through a U.S. citizen presence, we would be able to fully leverage expertise in U.S. domestic law and practice, to influence and guide the work of the committee. The next election of committee members occurs at the Conference of States Parties in September, but unless the United States ratifies it will not be able to participate in the selection process.

Ratification would also be good for American business. By encouraging other countries to join and implement the Convention, we would also help level the playing field to the benefit of U.S. companies that already comply with higher disability standards in the United States. Guiding and encouraging improved disability standards abroad would afford U.S. businesses increased opportunities to export innovative products and technologies. As accessibility standards become more harmonized—a business objective that the United States can more credibly support if it becomes a State Party—the competitive edge increases for U.S. companies even further with the opening of new markets that will need accessibility products provided by U.S. suppliers with expertise in the field.

RESPONSES OF EVE HILL TO QUESTIONS SUBMITTED BY SENATOR ROBERT P. CASEY, JR.

Question. As a pro-life Senator, I am aware of concerns regarding the applicability of language in the U.N. Convention on the Rights of Persons with Disabilities to abortion. How would U.S. ratification of this Convention affect issues related to abortion in the United States or abroad?

Answer. The Convention is a nondiscrimination instrument that simply provides what the Americans with Disabilities Act already requires in the United States: that any health care programs and benefits that are provided under domestic law by a State Party, including those related to "sexual and reproductive health," also be afforded to persons with disabilities on a nondiscriminatory basis. As the Secretary's report indicates (Treaty Doc. 112–7 page 59–61), the Convention does not make any statement about abortion, does not create a right to abortion, and does not promote abortion as a method of family planning, leaving the matter to domestic law.

Question. I have become aware of concerns regarding the potential impact of the U.N. Convention on the Rights of Persons with Disabilities on parental decision-making. Would U.S. ratification of the Convention affect the rights and ability of parents in the United States to make decisions about how to raise their children?

Answer. No. In light of the federalism and private conduct reservations, among others, there would be no change to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise or educate their children as a result of ratification.

RESPONSES OF JUDITH HEUMANN AND EVE HILL TO QUESTIONS SUBMITTED BY SENATOR BOB CORKER

Question. Article 7, section 2 states—"In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration." This language closely resembles Article 3, section 1 of the U.N. Convention on the Rights of the Child.

- (a) To better understand the impact of this language in Article 7 of the UNCRPD, has the Committee on the Rights of the Child—the committee established under that Convention—adopted in any way an interpretation or understanding of this parallel language in Article 3 of UNCRC and what is that understanding?

Answer. The United States has not ratified the United Nations Convention on the Rights of the Child (CRC). Even if the United States had ratified the CRC, because it is a different instrument, adopted in a different context, the administration would not treat the CRC or its committee's views as more pertinent as guidance than other views on interpreting or implementing Article 7 of the Disabilities Convention.

- (b) If so, could that understanding of the meaning of Article 3 of the UNCRC be reasonably expected to also apply to Article 7 of the UNCRPD, or is there a substantive distinction to be drawn between the meaning of this similar language in these two conventions?

Answer. As noted above, Article 3 of the CRC is not more pertinent to the administration's interpretation of Article 7 of the Disabilities Convention than other international sources.

Question. Can the conclusions, recommendations, or general comments issued by the Committee on the Rights of Persons with Disabilities become legally binding in any manner through customary international law?

Answer. Customary international law reflects the widespread and general custom and practice of states adhered to out of a sense of legal obligation ("opinio juris et necessitatis"). The committee is not composed of States, and the views of the committee as such, which are nonbinding on States Parties, would not become binding under customary international law. Only if a rule reflects the widespread and general custom and practice of States, adhered to out of a sense of legal obligation, does it become binding on States as a matter of customary law, with the exception of a persistent objector.

Question. If the Patient Protection and Affordable Care Act were repealed, would the United States still meet our obligations under the articles of CRPD or would more legislation be required?

Answer. The United States is not obligated to implement the Convention through any particular program or funding mechanism and the United States would not need to change U.S. legislation to meet the Convention's requirements. The recommended Understanding on Economic, Social, and Cultural Rights, which specifically references the Convention's Article 25 on Health, makes clear that in the context of health care, the obligation of the United States is limited to nondiscrimination on the basis of disability. Even before this act was passed by Congress, the United States was in a position to be in compliance with the Convention, if ratified subject to the Reservations, Understandings, and Declaration in the Secretary's Report.

Question. Does ratification of the CRPD create maintenance of effort for our current health care laws?

Answer. No. The recommended Understanding on Economic Social and Cultural Rights, which specifically references the Convention's Article 25 on Health, makes clear that in the context of health care, the obligation of the United States is limited to nondiscrimination on the basis of disability, and the United States is not obligated to implement the Convention through any particular program or funding mechanism.

Question. With the Supreme Court decision narrowing the Medicaid requirement for States and if some States decide not to expand their Medicaid coverage, will the United States still meet all the requirements under the articles of the Convention or will more legislation be necessary?

Answer. The United States would meet the requirements under the Convention, if ratified subject to the Reservations, Understandings, and a Declaration in the Secretary's Report. No additional legislation is necessary because the United States is not obligated to implement the Convention through any particular program or funding mechanism. The recommended Understanding on Economic, Social, and Cultural Rights underscores that any references in the Convention related to health care and services do not create new rights and simply require nondiscrimination on the basis of disability in health care.

RESPONSE OF DR. MICHAEL FARRIS TO QUESTION SUBMITTED BY SENATOR JIM DEMINT

Question. Why do you believe that it is inaccurate to say that the United States will not have to enact any new laws or engage in any new spending if we ratify this Convention with the administration's recommended RUDs?

Answer. It is important to understand the nature of a treaty obligation to come to a correct answer to this question. If the United States becomes a party to the UNCRPD, it is undertaking a solemn and binding legal obligation to conform its laws and actions to the terms of the treaty. "Every international agreement in force is binding upon the parties to it and must be performed by them in good faith." Restatement (Third) of the Foreign Relations Law of the United States § 321 (American Law Institute 1986).

Article 4(1)(a) of the UNCRPD provides:

> 1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
>
> a. To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention

Thus, it is beyond debate that if the United States becomes a party to the UNCRPD, we will be required to conform our laws to the requirements of this treaty. This fact is true notwithstanding the non-self-executing declaration that has been proposed by the administration. The sole effect of that declaration is to remove the possibility that the judiciary could directly enforce the provisions of the treaty without implementing legislation. It does not in any way relieve the United States from its obligation to live up to the terms of the treaty. See, *Medellin* v. *Texas,* 128 S.Ct. 1346, 1363 (2008). "The point of a non-self-executing treaty is that it 'addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court.'" "The responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress." Id. at 1368.

Medellin makes it clear. The United States (through Congress not the courts) must comply in good faith with its treaty obligations.

Once the United States becomes a party to the treaty, the options for Congress have been constrained. Assuming that we intend to comply with our treaty obligations, Congress will have some range of choices in how we comply with the terms of the treaty but it will no longer have the lawful ability to determine whether we should comply with the terms of the treaty.

As Professor Geraldine van Bueren stated: "The Convention and other international laws in effect narrows what were previously unfettered discretionary powers of governments. Before governments become party to a human rights treaty they are obliged to ensure that there are the resources, either to implement the Convention on becoming party or shortly thereafter, in accordance with international law. Hence, there is no interference with national sovereignty, the nationally sovereign decisions on how resources on children's rights to be expended have already been taken. In essence, the government has exercised its political powers, and it has to live with the legal consequences.[1]

We should not be confused by the relative inability of the United Nations to forcibly enforce a breach of a treaty obligation with our duty of compliance. It is true that the Committee on the Rights of Persons with Disabilities has no compulsory powers which can truly force a member state to comply with its pronouncements. However, all such U.N. tribunals consider their pronouncements to be authoritative interpretations of the meaning of their relevant treaty and any failure to comply with their determinations is considered to be a breach of an international legal obligation.

It should be remembered that the argument for entering into this treaty is so that the United States can be a good example to other nations on how to comply with the treaty. If our attitude is "we comply if and when we want to," then we will show the rest of the world that compliance with the dictates of this treaty is truly optional. If we promise nothing more than we want to do, then the other nations gain the same ability to comply with only so much of the treaty as they wish to obey.

The hearing before the Senate Committee on Foreign Relations paid almost no attention to the detailed requirements of this treaty. The hearing focused on the altruist goals of the treaty—which no one denies are worthy goals. But, virtually no attention was given to the detailed requirements of a 50-article treaty.

Any serious examination of our duty to expend funds would require, for example, an examination of the provisions of Article 32. The multiple requirements of this Article include "international development programmes" and "technical and economic assistance." These obligations are echoed by the provision of Article 4(2) which provides:

> With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law . . .

All of this constitutes a binding international obligation to spend as much money as possible for disability programs in the United States and around the world. It is one thing for us to desire to help other nations in their fulfillment of their obligations, it is quite another to become legally obligated to do so.

Consider this analogy. If Person A has a Neighbor B with hungry children, A may be quite willing to help B with food for his family on occasion. It would be quite a different matter for A to enter into a legally binding contract to feed B's children to the maximum extent of his available resources.

The Committee on the Rights of the Child (a parallel group for a long-established treaty) routinely finds fault with nations for failing to spend enough for the needs of children as required by the UNCRC.[2] That committee specifically criticized Egypt and Indonesia for spending a disproportionate share of its resources on military expenditures as compared to its spending on children's needs.[3]

There was also scant attention paid to the issue of the need to conform our law to the dictates of the treaty. For example, there was no serious effort by any witness to answer my argument that the "best interest" standard contained in Article 7 is contrary to the parental rights provisions of the IDEA. IDEA gives ultimate authority to parents to determine what is in their child's best interest. Article 7 transfers ultimate authority to government.

The presence of the non-self-executing declaration does not answer this concern. That only means that Congress rather than the Court must pass new laws to repeal or modify the parental rights provisions of IDEA. This treaty requires Congress to make such modifications if it is going to act in good faith compliance with its treaty obligations.

At the end of the day, those who argue that the United States undertakes no duty to conform its laws to the dictates of the treaty are relying on the callous observation that the U.N. does not have sufficient raw power to force the United States to do something we do not want to do. That is true enough. But it reveals a great deal about the inability of these kinds of treaties to actually force any nation to comply with its terms.

But, if we are going into this treaty for the purpose of being an example to the rest of the world, we have to start with the full intention to actually obey the treaty ourselves. When we agree to comply with the treaty, we are agreeing that America is giving up its free choice of policy options with regard to disability law. We are promising that we will conform our laws to the dictates of this U.N. treaty.

The Senate has little idea of the full scope of the potential changes we must make to comply with this treaty. Detailed inquiry on an article by article basis is needed. At a minimum, I have demonstrated we will become obligated to modify the IDEA and we will become obligated to spend our resources to the maximum extent possible to aid other nations in their disability programs. No one can offer a serious argument as to why it is necessary for American parents with disabled children to give up their rights in order to encourage other nations to build greater forms of accessibility.

The United States Constitution says that treaties are a part of the highest law of the land. This is no mere set of altruistic promises and goals. We are being asked to give our sacred promise to obey the law of the United Nations concerning the domestic policy of the United States.

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[1] Geraldine van Bueren, "International Rights of the Child, Section D," University of London, 36 (2006). Although Professor van Bueren was discussing the meaning of the UNCRC, she is stating a general legal principle fully applicable to the UNCRPD.

[2] See, e.g., Paragraph 46, Concluding Observations of the Committee on the Rights of the Child: Austria, Committee on the Rights of the Child, 38th sess., U.N. Doc. CRC/C/15/Add.251 (2005); Paragraph 17 and 18, Concluding Observations of the Committee on the Rights of the Child: Australia, Committee on the Rights of the Child, 40th sess., U.N. Doc. CRC/C/15/Add.268 (2005); Paragraphs 18 and 19, Concluding Observations of the Committee on the Rights of the Child: Denmark, Committee on the Rights of the Child, 40th sess., U.N. Doc. CRC/C/DNK/CO/

3 (2005); Paragraph 10, Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child, 31st sess., U.N. Doc. CRC/C/15/Add.188(2002); and Paragraph 24 and 25, Concluding Observations of the Committee on the Rights of the Child: Ireland, Committee on the Rights of the Child, 43rd sess., U.N. Doc. CRC/C/IRL/CO/2 (2006).

[3] Geraldine Van Bueren, "Combating Child Poverty—Human Rights Approaches," 21 HUM.RTS. Q. 680, 694, 705 (1999).

RESPONSES OF JUDITH HEUMANN AND EVE HILL TO QUESTIONS SUBMITTED BY SENATOR JOHNNY ISAKSON

Question. The United States has successfully undertaken a comprehensive effort to protect the rights of persons with disabilities. However, some of the U.S. laws offering these protections contain important nuances and exceptions. For example, Title I of the Americans with Disabilities Act does not apply to employers with fewer than 15 employees. The Convention does not appear to contain a similar exception. It is my understanding that the administration believes that the proposed reservation concerning "non-regulation of certain private conduct" in conjunction with the declaration that the Convention is not self-executing would make it clear that ratification of the treaty would not impose a new mandate on employers exempted by the ADA. Can you confirm this understanding?

Answer. Ratification of the Disabilities Convention will not impose any new requirements on employers exempted by the Americans with Disabilities Act. The proposed reservation on nonregulation of certain private conduct would ensure that the treaty obligations undertaken by the United States with respect to regulating private conduct are coextensive with the requirements of existing U.S. law. The Constitution and laws of the United States recognize a zone of private activity that is not extensively governed by the United States. For example, employers with fewer than 15 employees that are not covered by Federal domestic disability legislation would continue to maintain that status, and ratification of the Convention would impose no additional legal obligations. The non-self-executing declaration would make clear that the Convention cannot be directly enforceable by U.S. courts and thus, would not give rise to individually enforceable rights.

Question. Article 27 of the Convention calls on State Parties to "protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value . . . " (emphasis added). This phrase has raised some concern as it could be construed to imply that the Convention contemplates comparable worth. The administration has recognized this by proposing an Understanding clarifying that ratification of the Convention would not require adoption of a comparable worth framework for persons with disabilities. However, the description of this Understanding in the Executive Summary, is not clear. Can you confirm that the proposed Understanding does not require the adoption of a comparable worth framework?

Answer. Yes. The proposed Understanding (page 67 of Treaty Doc. 112–7) makes it clear that the Convention does not require the adoption of a comparable worth framework for persons with disabilities. Current U.S. law is consistent with the language in Article 27 regarding equal pay for work of equal value because it provides strong protections for persons with disabilities against unequal pay, including the right to equal pay for equal work.

Question. Some have raised concern that the Convention contemplates that employers undertake affirmative action measures with respect to employment of individuals with disabilities. The Rehabilitation Act requires certain Federal contractors and subcontractors to undertake affirmative action efforts, but private sector employers who are not Federal contractors or subcontractors are not subject to such affirmative action requirements. Article 27 of the Convention requires State Parties to "promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives, and other measures." Is it the administration's view that this language does not impose an affirmative action mandate on private sector employers?

Answer. Yes. The Disabilities Convention does not impose an affirmative action mandate on private sector employers. The proposed reservation on nonregulation of certain private conduct would ensure that the treaty obligations undertaken by the United States with respect to regulating private conduct are coextensive with the requirements of existing U.S. law. The Constitution and laws of the United States

recognize a zone of private activity that is not extensively governed by the United States. For example, entities such as private sector employers that are not Federal contractors or subcontractors would not be subject to an affirmative action mandate. The non-self-executing declaration would make clear that the Convention cannot be directly enforceable by U.S. courts and thus, would not give rise to individually enforceable rights.

XIII. Annex 4.—Additional Letters Submitted for the Record in Support of the Convention

INTERFAITH DISABILITY ADVOCACY COALITION

c/o AAPD • 2013 H Street, NW, 5th Floor • Washington, DC 20006

Members of the Foreign Relations Committee
United States Senate
Washington, DC 20510

June 19, 2012

Dear Senator:

We, the undersigned members of the Interfaith Disability Advocacy Coalition (IDAC) and other religious and religiously-affiliated organizations, urge you as a member of the Senate Foreign Relations Committee to hold hearings this month on the ratification of the United Nations Convention on the Rights of Persons with Disabilities.

The Convention realizes an international effort to achieve global goals of economic self-sufficiency, equality of opportunity, full participation, and independent living for people with disabilities. These goals are enshrined in our own Americans with Disabilities Act, a model for the Convention. The Convention will enable Americans with disabilities working or traveling abroad, such as veterans or members of military families with disabilities, to access the same protections abroad as they enjoy in America.

No new legislation will be required by U.S. ratification of the Convention on the Rights of Persons with Disabilities, nor does the Convention impose any new costs. In fact, as noted, much of the treaty is grounded in American laws already on the books.

We must move quickly to ratify the treaty. We urge you to hold hearings this month to build on the momentum created by the announcement of bipartisan support of Senators Durbin, McCain, Barrasso, Udall, Coons, and Moran. Ratifying the treaty during this Congress will enable the US to participate in the Convention on the Rights of Persons with Disabilities Committee. This advisory group is a forum for idea sharing related to disability policy, and represents a valuable opportunity for continued American leadership and influence on this issue. Only those countries that have ratified the Convention can serve on this committee, and American leadership in this arena is critical to the ultimate success of the treaty.

The American disability rights community has united behind ratification of the Convention. We know you stand with us in wanting to ensure full participation and access for people with disabilities the world over. We urge you and your Senate colleagues to hold hearings this month on the Convention on the Rights of Persons with Disabilities, and move toward its ratification with all due speed.

Respectfully,

African Methodist Episcopal Church Connectional Health Commission

American Baptist Home Mission Societies

American Muslim Health Professionals

The mission of the Interfaith Disability Advocacy Coalition (IDAC) is to mobilize the religious community to speak out and take action on disability policy issues with Congress, the President and Administration, and society at large.

Association of Jewish Family & Children's Agencies

Disability Concerns, Christian Reformed Church in North America

Disability Concerns, Reformed Church in America

Disciples Home Missions, Christian Church (Disciples of Christ)

Disciples Justice Action Network

Hindu American Foundation

Islamic Society of North America

Jewish Council for Public Affairs

L'Arche USA

Lutheran Services in America Disability Network

Muslim Public Affairs Council

National Benevolent Association of the Christian Church (Disciples of Christ)

National Council of the Churches of Christ in the USA

National Council of Jewish Women

NETWORK, A National Catholic Social Justice Lobby

Presbyterian Church (U.S.A.) Office of Public Witness

Rabbinical Assembly

The Jewish Federations of North America

Union for Reform Judaism

Unitarian Universalist Association of Congregations

United Church of Christ, Justice Witness Ministries

United Methodist General Board of Church and Society

Women's Rabbinic Network

July 31, 2012

The Honorable John Kerry, Chairman
U.S. Senate Committee on Foreign Relations
444 Dirksen Senate Office Building
Washington, DC 20510-6225

The Honorable Richard Lugar, Ranking Member
U.S. Senate Committee on Foreign Relations
444 Dirksen Senate Office Building
Washington, DC 20510-6225

Dear Senators Kerry and Lugar:

On behalf of the 137,000 members and affiliates of the American Psychological Association (APA), I am writing in support of the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD). As the largest scientific and professional organization representing psychology in the United States, APA works to advance psychology as a science, as a profession, and as a means of promoting health, education, and human welfare.

APA has a long history of initiatives focused on disability rights and the health of individuals with disabilities, including journal publications, public policy statements and federal advocacy. Additionally, APA has adopted resolutions on the Maltreatment of Children with Disabilities and the Americans with Disabilities. A number of APA members are actively engaged in service delivery, research, and policy development regarding disability rights and health equity in the disability community. APA has numerous divisions comprised of researchers, students, and professionals focused on disability-related issues, as well as a Committee on Disability Issues in Psychology (CDIP), and an Interdivisional Task Force that developed the APA Guidelines for Assessment and Treatment of Persons with Disabilities. As such, our work in this area draws on the research, expertise, and writings of the psychologist members of our association.

CRPD seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. APA urges the Senate Foreign Relations Committee to consider holding hearings as soon as possible on the ratification of the Convention. The Convention is already consistent with many U.S. laws such as the Americans with Disabilities Act, the Rehabilitation Act, and the Individuals with Disabilities Education Act, and ratification will better ensure protection of disability rights.

750 First Street, NE
Washington, DC 20002-4242
(202) 336-5500
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Web: www.apa.org

MA, in our Public Interest Government Relations Office, at (202) 336-6061 or sreeves@apa.org.

Sincerely,

Gwendolyn Puryear Keita, Ph.D.
Executive Director
Public Interest Directorate

UNITED STATES
OLYMPIC COMMITTEE
1100 H Street, NW
Suite 600
Washington, DC 20005

July 9, 2012

Dear Senators:

On May 17, 2012 the Senate received a treaty package for their advice and consent to ratify the Convention on the Rights of Persons with Disabilities (CRPD). U.S. ratification of the CRPD will improve access for Americans with disabilities who live, work, or travel abroad, including our Wounded Warrior veterans, and Paralympic Team USA and U.S. National Paralympic team athletes who travel and compete internationally. The CRPD helps level the playing field for U.S. corporations by requiring businesses abroad to create policies on accessibility that meet ADA standards.

Similar to the Americans with Disabilities Act (ADA), the principles of the CRPD include equality, non-discrimination, inclusion in society, accessibility, and respect for inherent dignity. Twenty two years ago on July 26th, President George H.W. Bush signed the ADA, calling for the "walls of discrimination to come tumbling down." Since that time, the ADA has been model legislation for ending discriminatory practices throughout the world and a key inspiration for the CRPD.

One hundred and fourteen nations have ratified the CRPD, including important allies of the U.S. The treaty reflects core American values such as the dignity of the individual, access to justice, respect for the home and family, and the right to education. The CRPD is consistent with not only the ADA, but also with the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, and numerous other U.S. laws.

The CRPD seeks to ensure that countries across the globe provide people with disabilities the same rights as everyone else in order to live full, satisfying and productive lives. To this end, the CRPD will create greater access for Americans serving, working, traveling, studying, and competing abroad. The treaty package submitted to the Senate this May includes reservations, understandings, and a declaration that allow the United States to meet the obligations of the treaty without requiring any costs or changes in law.

The ratification of the CRPD will foster the U.S.'s continued global leadership on disability rights, providing the U.S. an opportunity to participate in substantive policy discussions in an international forum to effect the elimination of disability discrimination worldwide. We therefore urge the Senate to continue the bipartisan tradition of supporting the disability community by uniting in support of ratification of the Convention on the Rights of Persons with Disabilities.

Sincerely,

Desiree Filippone
Managing Director, Government Relations

AHEAD Association on Higher Education And Disability®

107 Commerce Center Drive, Suite 204, Huntersville, NC 28078
v/t 704-947-7779, fax 704-948-7779, www.ahead.org

June 6, 2012

The Honorable John F. Kerry
Chair
Foreign Relations Committee
United States Senate
218 Russell Senate Office Building
Second Floor
Washington, DC 20510

The Honorable Richard G. Lugar
Ranking Member
Foreign Relations Committee
United States Senate
306 Hart Senate Office Building
Washington, DC 20510

Dear Senators Kerry and Lugar:

On behalf of our 2,600 American and international members, 33 Regional Affiliates and the more than 1.6 million college students with disabilities they serve, the Association on Higher Education and Disability (AHEAD) strongly urges you to schedule a hearing on the ratification of the United Nations Convention on the Rights of Persons with Disabilities without haste. By moving forward with ratification of the Convention, the United States has the opportunity to continue significant influence, leadership and voice in this vital area of human rights.

The Convention is a human rights instrument designed to increase the inclusion and participation of individuals with disabilities into all aspects of society by relying on the principles of equality and non-discrimination. As of this date, 113 nation states have ratified the Convention and 90 have ratified the Optional Protocol. With the passage of the Americans with Disabilities Act almost 22 years ago, the United States became a recognized world leader in the fight for equal rights for individuals with disabilities. To continue our status as a world leader in disability rights, it is essential that the United States join the ranks of those countries that have ratified the Convention.

Ratification of the Convention is needed prior to the September 2012 meetings of the Committee on the Rights of Persons with Disabilities (September 17-28, 2012 in Geneva) for several reasons. When the United States ratifies the Convention, we will:

- Have the opportunity for a U.S. disability leader to be elected to the Committee on the Rights of Persons with Disabilities, which guides the implementation of the Convention across the globe (please note this opportunity will not be available again until 2015 if U.S. ratification does not occur prior to the September 2012 meeting);
- Ensure global initiatives on disability rights and related issues will continue to be influenced and guided by our strong disability leaders, building on our experience with the Americans with Disabilities Act;
- Join 113 other nations, including Australia, Canada, France, the European Union, and China, among others, in affirming the rights of the disabled around the world, including wounded warriors and disabled veterans;
- Ensure students with disabilities from the United States and other foreign countries have ample opportunities for accessible, inclusive education from the cradle through their careers, including study abroad opportunities and comprehensive postsecondary education.

AHEAD, as the premier organization for disabled student services in higher and postsecondary education, envisions educational and societal environments that value disability and embody equality of opportunity. With its commitment to human rights, as well as equality and protection from discrimination, the Convention supports our vision and provides the ability for the students we serve to enjoy equitable opportunities to participate just as fully as their non-disabled peers in not only education, but also in employment and civil life.

Thank you for your support and continued work to ensure that all individuals, with or without disabilities, are afforded the basic human rights they deserve.

Sincerely,

Jean Ashmore, President
L. Scott Lissner, President-elect

11 Beacon Street, Suite 925
Boston, Massachusetts 02108
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(800) 872-9992 *Voice*
(617) 227-9464 *TTY*
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Western Mass. Office
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(413) 582-6919 *TTY*
(413) 584-2976 *Fax*
email: mail@dlc-ma.org

June 11, 2012

Senator John Kerry
218 Russell Senate Office Building
Washington DC, 20510

Re: The Convention on the Rights of Persons with Disabilities (CRPD)

Dear Senator Kerry,

On behalf of the Disability Law Center, the designated federally mandated and funded Protection and Advocacy Program for individuals with disabilities in Massachusetts, I am writing to thank you for your ongoing support of the Convention on the Rights of Persons with Disabilities (CRPD). As Chairman of the Senate Foreign Relations Committee, your support and leadership on this treaty is vital to achieving quick consideration and ratification by the United States Senate, and in that capacity I request that you call for a hearing and vote on ratification this summer. Ratification of the CRPD is vital for continued leadership by the United States in protecting the rights of individuals with disabilities which has a history of bipartisan support in the Senate.

Ratification of the CRPD will enhance the ability of the United States to reduce barriers for United States' citizens with disabilities, including veterans with disabilities and active service members with families with disabilities who live, travel, study, conduct business, or serve abroad. Twenty-one veteran service organizations support ratification, including the American Legion, Veterans of Foreign Wars and the Wounded Warrior Project. The CRPD is also consistent with domestic law in the United States that promotes the equal rights and protections of individuals with disabilities to achieve economic self-sufficiency, independent living, and community participation in all aspects of society.

Thank you for your commitment and your ongoing efforts to improve the lives of people with disabilities throughout the Commonwealth.

Sincerely,

Alan Kerzin
Executive Director

DEAF AND HARD OF HEARING ALLIANCE

Alexander Graham Bell Association for the Deaf and Hard of Hearing

American Academy of Audiology

American Society for Deaf Children

American Speech Language-Hearing Association

Conference of Educational Administrators of Schools and Programs for the Deaf

Council of American Instructors of the Deaf

Hands & Voices

Hearing Health Foundation

Hearing Loss Association of America

International Hearing Society

National Association of the Deaf

National Court Reporters Association

National Cued Speech Association

Registry of Interpreters for the Deaf

Telecommunications for the Deaf and Hard of Hearing, Inc.

Consumer Co-Chair:
Barbara Raimondo
Conference of Educational Administrators of Schools and Programs for the Deaf
baraimondo@me.com

Professional Co-Chair:
Janet Bailey, Registry of Interpreters for the Deaf
janetlbailey@gmail.com

July 17, 2012

The Honorable John Kerry
218 Russell Senate Office Building
Washington, DC 20510

Re: Ratification of the Convention on the Rights of Persons with Disabilities

Dear Senator Kerry:

On May 17, 2012 the Senate received a treaty package for their advice and consent to ratify the Convention on the Rights of Persons with Disabilities (CRPD). The Deaf and Hard of Hearing Alliance (DHHA), a Coalition of Consumer and Professional Organizations, supports ratification of CRPD.

DHHA focuses on federal public policy that can improve the quality of life for people who are deaf or hard of hearing. The DHHA's major objective is to provide a forum whereby relevant information can be shared, plans made and actions taken for collaborative and mutually supportive efforts. We ask for your support for U.S. ratification of the CRPD.

Similar to the Americans with Disabilities Act (ADA), the principles of the CRPD include equality, non-discrimination, inclusion in society, accessibility, and respect for inherent dignity. Twenty two years ago on July 26th, President George H.W. Bush signed the ADA, calling for the "walls of discrimination to come tumbling down." Since that time, the ADA has been model legislation for ending discriminatory practices throughout the world and a key inspiration for the CRPD.

One hundred and sixteen nations have ratified the CRPD, including important allies of the U.S. The treaty reflects core American values such as the dignity of the individual, access to justice, respect for the home and family, and the right to education. The CRPD is consistent with not only the ADA, but also with the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, and numerous other U.S. laws.

The CRPD seeks to ensure that countries across the globe provide people with disabilities the same rights as everyone else in order to live full, satisfying and productive lives. To this end, the CRPD will create greater access for Americans serving, working, traveling, and studying abroad. The treaty package submitted to the Senate this May includes reservations, understandings, and a declaration that allow the United States to meet the obligations of the treaty without requiring any costs or changes in law.

We are committed to our country's leadership in promoting the rights and dignity of all people with disabilities. We believe the ratification of the CRPD will allow the U.S. to continue in our global leadership on disability rights. We therefore urge the Senate to continue the bipartisan tradition of supporting the disability community by uniting in support of the ratification of the Convention on the Rights of Persons with Disabilities.

Sincerely,

Barbara Raimondo
Co-Chair

Janet Bailey
Co-Chair

EQUAL RIGHTS FOR PERSONS WITH DISABILITIES INTERNATIONAL

July 9, 2012

TO: The Members of the Senate Foreign Relations Committee

Dear Senator Kerry, Senator Lugar and all other Members of the Senate Foreign Relations Committee,

Re: Ratification of the Convention on the Rights of Persons with Disabilities

On May 17, 2012 the Senate received a treaty package for their advice and consent to ratify the Convention on the Rights of Persons with Disabilities (CRPD). We write again to remind you about our request asking for your support for U.S. ratification of the CRPD.

Similar to the Americans with Disabilities Act (ADA), the principles of the CRPD include equality, non-discrimination, inclusion in society, accessibility, and respect for inherent dignity. Twenty two years ago on July 26th, President George H.W. Bush signed the ADA, calling for the "walls of discrimination to come tumbling down." Since that time, the ADA has been model legislation for ending discriminatory practices throughout the world and a key inspiration for the CRPD.

One hundred and sixteen nations have ratified the CRPD, including important allies of the U.S. The treaty reflects core American values such as the dignity of the individual, access to justice, respect for the home and family, and the right to education. The CRPD is consistent with not only the ADA, but also with the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, and numerous other U.S. laws.

The CRPD seeks to ensure that countries across the globe provide people with disabilities the same rights as everyone else in order to live full, satisfying and productive lives. To this end, the CRPD will create greater access for Americans serving, working, traveling, and studying abroad. The treaty package submitted to the Senate this May includes reservations, understandings, and a declaration that allow the United States to meet the obligations of the treaty without requiring any costs or changes in law.

We, the undersigned, are committed to our country's leadership in promoting the rights and dignity of all people with disabilities. We believe the ratification of the CRPD will allow the U.S. to continue in our global leadership on disability rights. We therefore urge the Senate to continue the bipartisan tradition of supporting the disability community by uniting in support of ratification of the CRPD.

Equal Rights for Persons with Disabilities International, Inc (ERPDI), is a 501 (c) (3) non-profit and non-governmental, **ONLY** African-Immigrants living in the United States anti-discrimination organization, which also promotes and protects the rights and human dignity for people with disability.

P.O. BOX 710251, HOUSTON, TEXAS 77251, P- (832) 758-0612: F-(281) 752-9477l

EQUAL RIGHTS FOR PERSONS WITH DISABILITIES INTERNATIONAL

We fully supported the United States International Council of Disability (USICD) and Disability Rights Education and Defense Fund (DREDF)'s requests for you to vote **YES**, on July 12, 2012, during the Senate Foreign Relations Committee hearing, on U.S. Ratification of the Convention on the Rights for Persons with Disabilities (CRPDI).

Thanks for granting our request.

Sincerely,

Respectfully Submitted,

_____

Chief Eric N. Ufom, President/CEO
Equal Rights for Persons with Disabilities International, Inc
Beatrice Ifeoma Oni-Orisan
FESTAC-USA/ERPDI

Uche Okafor
FESTAC-USA/ERPDI

Grace Boyles
FESTAC-USA/ERPDI

Peace Agbasiele
FESTAC/ERPDI

Caroline Jackson Nwosu
FESTAC-USA/ERPDI

Felicia Chinenye
FESTAC-USA/ERPDI

Adebola Oni-Orisan
FESTAC-USA/ERPDI

CC: David Morrissey, Susan Henderson, Esme Grant, Judy Huemann, Venus Ilegan

P.O. BOX 710251, HOUSTON, TEXAS 77251, P- (832) 758-0612: F-(281) 752-94772

EQUAL RIGHTS FOR PERSONS WITH DISABILITIES INTERNATIONAL

June 3, 2012

Senator John Kerry, Chair
Senator Richard G. Lugar, Ranking Member
United States Senate Committee on Foreign Relations
444 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Kerry and Lugar,

Plea to set a June hearing date for The CRPD's Ratification!

The United States signed the Convention on the Rights of Persons with Disabilities in 2009, on the 19th anniversary of the ADA. In May of this year, the White House heard our voices and moved the treaty package to the Senate for its advice and consent to ratify the treaty and make the United States an official party to the treaty.

In order to get the treaty to a floor vote of the Senate, the Senate Foreign Relations Committee must first hold a hearing and vote the treaty out of Committee. Given the election cycle this year there is little time left in the 112th Congress so we must continue the momentum, confirm a hearing date, and move forward with ratification in this Congress!

- Senator Kerry and Senator Lugar, the disability community is thrilled that the CRPD has been transmitted to the Senate and received with bipartisan support.
- Thank you for your ongoing commitment to Americans with disabilities and support of this important disability treaty.
- **Please set a date for a June hearing on the CRPD and let me know so I might attend.**
- Moving the CRPD in this Congress is vital so that the U.S. may participate in the September elections for the CRPD Committee (*this opportunity will not arise again for two years*).
- Thank you, the disability community is with you!

Respectfully Submitted,

_____
Chief Eric N. Ufom, President/CEO
Equal Rights for Persons with Disabilities International, Inc

CC:
David Morrissey, Executive Director USICD
Judy Huemann, Special Assistant on International Disability issues, U.S. State Dept.
Venus Ilegan, Executive Director, Rehabilitation International (RI)

P.O. BOX 710251, HOUSTON, TEXAS 77251, P- (832) 758-0612: F-(281) 752-9477l

June 18, 2012

Honorable John Kerry
Chairman, Senate Foreign Relations Committee
United States Senate
Washington, DC 20510
Re: Ratification of CRPD

Dear Senator Kerry:

Hearing Loss Association of America (HLAA) supports ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and urges the Senate Foreign Relations Committee and the entire U.S. Senate to act quickly to ratify the CRPD.

HLAA is the nation's leading grassroots organization representing the rights of some 36 million Americans with hearing loss. The HLAA mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and local level. HLAA's national support network includes local chapters nationwide, state organizations and an office in Bethesda, Maryland.

HLAA was honored to be present at the signing ceremony at the UN in July, 2009. We were thrilled to learn of the submission of CRPD by the Obama Administration to the U.S. Senate for ratification. Moreover we applaud the unified statement of bipartisan support for United States ratification of the Convention on the Rights of Persons with Disabilities that has been issued by seven senators. In their statement, Senators McCain (R-AZ), Durbin (D-IL), Moran (R-KS), Harkin (D-IA), Barrasso (R-WY), Coons (D-DE), and Udall (D-NM) affirm that the treaty upholds the American values of non-discrimination and equal access for persons with disabilities in all areas of life.

The U.S. ratification of the CRPD will continue our country's distinguished tradition as a world leader for people with disabilities as evidenced by the Americans with Disabilities Act (ADA). Just as the ADA provides guarantees that all people with disabilities including our wounded returning military personnel will be able to fully participate in the U.S., the ratification of the CRPD treaty will open the doors to the world for the same individuals.

The CRPD is consistent not only with the ADA, but also with the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, and other U.S. disability laws. The treaty reflects core American values such as the dignity of the individual, access to justice, respect for the home and family, and access to education. The CRPD does not establish new human rights. Rather, it affirms the strong history of disability rights laws in the U.S. that promote, protect and ensure the rights of persons with disabilities.

The Nation's Voice for People with Hearing Loss
7910 Woodmont Avenue Suite 1200 Bethesda, MD 20814

RABBINICAL ASSEMBLY כנסת הרבנים

The International Association of Conservative / Masorti Rabbis, established 1901

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Rabbi Joel H. Meyers
Rabbi Wolfe Kelman, ז"ל

Founding Editor
Rabbi Jules E. Harlow

June 27, 2012

Senator John Kerry
United States Senate
218 Russell Senate Office Building
Second Floor
Washington, D.C. 20510

Dear Senator Kerry:

The Rabbinical Assembly, the international organization of Conservative rabbis with 1600 members representing over a million Jews is writing to you as a member of the Interfaith Disability Advocacy Coalition (IDAC) and in cooperation with the Jewish Disabilities Network. We urge you as Chairman of the Senate Foreign Relations Committee to hold hearings this month on the ratification of the United Nations Convention on the Rights of Persons with Disabilities.

The Book of Leviticus states, "You shall not put a stumbling block before the blind." Jewish tradition sees this verse as teaching us that the disabled should not be put at a disadvantage. One of the hallmarks of Jewish law is *k'vod ha'briyot*, the dignity of all of God's creatures. Access and independence should be afforded to all of God's creations. The Conservative Movement's Committee on Jewish Law and Standards has worked diligently over the past several decades to ensure that our members with disabilities have full access to ritual participation in Jewish life.

As Conservative rabbis, we are deeply committed to the U.N. Convention which realizes an international effort to achieve global goals of economic self-sufficiency, equality of opportunity, full participation, and independent living for people with disabilities. These goals are enshrined in our own Americans with Disabilities Act, a model for the Convention. The Convention will enable Americans with disabilities working or traveling abroad, such as veterans or members of military families with disabilities, to access the same protections abroad as they enjoy in America.

RABBINICAL ASSEMBLY כנסת הרבנים

No new legislation will be required by U.S. ratification of the Convention on the Rights of Persons with Disabilities, nor does the Convention impose any new costs. In fact, as noted, much of the treaty is grounded in American laws already on the books.

We must move quickly to ratify the treaty. We urge you to hold hearings this month to build on the momentum created by the announcement of bipartisan support of Senators Durbin, McCain, Barrasso, Udall, Coons, and Moran. Ratifying the treaty during this Congress will enable the US to participate in the Convention on the Rights of Persons with Disabilities Committee. This advisory group is a forum for idea sharing related to disability policy, and represents a valuable opportunity for continued American leadership and influence on this issue. Only those countries that have ratified the Convention can serve on this committee, and American leadership in this arena is critical to the ultimate success of the treaty.

The American disability rights community has united behind ratification of the Convention. We know you stand with us in wanting to ensure full participation and access for people with disabilities the world over. We urge you and your Senate colleagues to hold hearings this month on the Convention on the Rights of Persons with Disabilities, and move toward its ratification with all due speed.

Sincerely,

Rabbi Gerald Skolnik
President

Rabbi Julie Schonfeld
Executive Vice President

a program of United Spinal Association

June 21, 2012

The Honorable John Kerry
Chairman
Senate Committee on Foreign Relations
Washington, D.C. 20510

The Honorable Richard Lugar
Ranking Member
Senate Committee on Foreign Relations
Washington, D.C. 20510

Dear Chairman Kerry and Ranking Member Lugar:

VetsFirst, a program of United Spinal Association, wishes to express our strong support for the Convention on the Rights of Persons with Disabilities (CRPD). We urge swift action by the Senate Foreign Relations Committee in favorably reporting this important treaty to the full Senate.

We are proud that the United States has led the world in creating access for all people with disabilities. The ability of disabled veterans to have equal opportunity of access to rehabilitation, employment, and educational opportunities is critical to their ability to reintegrate into their communities. As a result, we are fierce defenders of the Americans with Disabilities Act (ADA) because of its assurances of equality for people with disabilities.

In order to continue to lead the world in ensuring access for people with disabilities, the United States must ratify the CRPD. The CRPD embodies the protections and opportunities available through the ADA, but on a global scale. Our ratification of the CRPD will ensure that we will be able to continue to influence the development of access for people with disabilities across the world.

Increasing access in the global community for people with disabilities is particularly important because of the increasingly global marketplace in which workers must compete. Without this access, disabled veterans may be unable to travel or live abroad as required by their job responsibilities. United States ratification of the CRPD, which fully compliments American access laws for people with disabilities, sends an important message to the world community regarding inclusion of people with disabilities.

We appreciate your leadership on this issue and urge swift action on the CRPD. If you have any questions, please contact Heather Ansley, Vice President of Veterans Policy for VetsFirst, a program of United Spinal Association, at (202) 556-2076, ext. 7702 or by e-mail at hansley@vetsfirst.org.

Sincerely,

Heather L. Ansley

Heather L. Ansley, Esq., MSW
Vice President of Veterans Policy
VetsFirst, a program of United Spinal Association

VetsFirst ☆ 1660 L St., NW, Suite 504, Washington, D.C. 20036 ☆ www.vetsfirst.org ☆ 202-556-2076

Library for Deaf Action

Deaf Cultural Programming, Networking and Library Friends
2930 Craiglawn Road, Silver Spring, MD 20904
301-563-9062 Office 301-572-5168 Fax

July 14, 2012

The Honorable John Kerry
Chairman
Senate Foreign Relations Committee
United States Senate
Washington, D.C. 20510

The Honorable Richard Lugar
Ranking Member
Senate Foreign Relations Committee
United States Senate
Washington, D.C. 20510

Commentary for the Record: Senate Foreign Relations Committee
Hearing of June 12, 2012: Convention on the Rights of Persons with Disabilities (Treaty Doc. 112-7)

Dear Honorable Senators

On Thursday, July 12th we had the privilege of attending the Senate Foreign Relations Committee Hearings on the **Convention on the Rights of Persons with Disabilities** (CRPD) and we are writing today to affirm our support for the passage of this important Treaty. We also believe that there are some important things that remain to be said in regard to, and support of, this Treaty.

To begin we shall confess some concern and confusion with the matters surrounding the CRPD and some existing laws such as the ADA; we believe that they are beneficial to the people but our confusion stems from the **14th Amendment to the Constitution, Section 1** which states in part "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens... nor deny any person... the equal protection of the laws." Since 1868 this has been the law of the land and we hate to beg the question of you, but what could be simpler than this? And furthermore why do we need to break things down into so many parts? The beauty of the Constitution is in its simplicity and we fail to see where the commas, the asterisks, or exceptions are listed that in any way take away from "the equal protection of the laws". This, alone, should be sufficient grounds for the Senate to pass this Treaty.

Then there is the obvious matter of disabilities and its impact upon "those" or "these" people; 54 million Americans and 1 Billion citizens of the earth. We say that anyone, anywhere, anytime, anyhow could become disabled and --with all due respect-- this is not just about veterans of wars who willingly put life and limb on the line for their country, this is about anybody; an absolute term. To be truly inclusive is to understand that you, the reader, are at just as much risk as anybody else and this is not really about a special class of people but about incidents that are a fact of life in every corner of the globe. Nothing should ever take away from someone's ability to be a productive and contributing citizen of the world.

Many remarks made in the testimonies we saw addressed the matter of cost where supposedly the only costs associated with the requirements of the Treaty are that we make reports every four years. While we cannot speak for the ***American Library Association*** (ALA) we can speak of the power and duty of the library as active members of the ALA; it is the normal and natural function of the library to compile and disseminate information. We have the ***National Library for the Blind and Physically***

Handicapped (NLB) which was created in 1931 and we have personally pushed for the creation of a ***Deaf Cultural Digital Library*** (DCDL) in Maryland where Governor Martin O'Malley signed a law in Maryland on May 22, 2012 creating a task force to create such a library in the state (See: MD HB 390 and MD SB 571). This task force is charged with figuring the *how* of this library, not the question of *whether* this library should exist. We believe that the DCDL should be a national concept as is the NLB and we believe that the libraries in America can put together this report for the country as part of its normal duties. Furthermore we believe that the libraries are one of the best vehicles for delivering the objectives set forth in the CRPD Treaty where, for instance, **Article 3; General Principles** lists terms such as: respect, autonomy, freedom and independence, full and effective participation, acceptance, opportunity, accessibility, and equality.

Where information is power and where the libraries have a clear duty to the nation and where understanding borne of knowledge is what paves the way for the betterment of mankind we strongly urge the Senate to act without haste to ratify the CRPD and to make sure that the most powerful single asset of the United States of America; its libraries, be utilized to help carry out this mission in America and to influence the rest of the world by helping our friends build their own to propagate the knowledge and the benefit to the worlds 7 billion people.

Thank you for your time and consideration.

***

About the authors:
Ms. Alice Hagemeyer is the CEO and Founder of Library for Deaf Action (LDA) and the public service arm of the LDA; Friends of Libraries for Deaf Action (FOLDA). She is an Honorary Member of the ALA who has given 36 years of her life to the issue of libraries and their benefit to the people. Ms. Hagemeyer can be reached at ***alicehagemeyer@aol.com***

Mr. Alec C. McFarlane is the President of the LDA and the Vice-President of the Board of FOLDA. He serves as a member of the ALA and two of its 11 divisions; the ASCLA or the Association of Specialized and Cooperative Library Agencies and ALTAFF or the Association of Library Trustees Friends and Foundations and is the Special Interest Group (SIG) leader under the ASCLA for "Bridging Deaf Cultures @ Your Library". Mr. McFarlane can be reached at ***Alec.McFarlane@gmail.com***

National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Statement for Submission to the Record
Senate Foreign Relations Committee
July 12, 2012

The National Council on Disability Urges Expeditious Senate Approval of the Convention on the Rights of Persons with Disabilities

Today, the Senate Foreign Relations Committee held a hearing regarding ratification of the Convention on the Rights of Persons with Disabilities (CRPD).

The Convention was undertaken with the same goals as America had in enacting the ADA: to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. While the United States (U.S.) has fostered considerable progress through international collaborations, far too many people with disabilities languish under their countries' insufficient governmental frameworks. Ratification of the CRPD will be an enormous step forward in enhancing the lives of people with disabilities around the world.

Ratification of the CRPD will also allow U.S. participation at the CRPD Conference of States Parties and permit the U.S. to appoint a member of the CRPD Committee. Through these mechanisms, the U.S. can influence guidance on the implementation of the treaty and lend its expertise as more countries develop their own disability rights laws.

During the six years of the drafting of the Convention, the Administration provided fundamental and valued technical assistance during the eight sessions of the United Nations Ad Hoc Committee. The U.S. delegation drew on our nation's prolific experience with disability laws and policies in providing guidance on the foundational principles of the Convention. In both our mandated advisory role and that of promoting policy that enhances the lives of people with disabilities, the National Council on Disability (NCD) was pleased to support the efforts of the United States in the Convention development process.

By being a signatory to this historic document, and submitting it to the U.S. Senate for consideration, the current Administration provided its clear support for the principles of the Convention. **NCD urges the Senate to expeditiously approve this historic treaty.** Upon ratification, the United States will join more than 114 other countries in committing themselves to protecting the rights of people with disabilities.

NCD's Press Release upon submission to the United States Senate can be found here: http://www.ncd.gov/newsroom/052512

1331 F Street, NW ■ Suite 850 ■ Washington, DC 20004
202-272-2004 Voice ■ 202-272-2074 TTY ■ 202-272-2022 Fax ■ www.ncd.gov

The Convention on the Rights of Persons with Disabilities
Written Testimony Submitted to the Senate Committee on Foreign Relations
Thursday, July 12, 2012 9:00 am

The National Disability Rights Network (NDRN) and the Protection and Advocacy (P&A) agencies in every state and territory that we represent would like to thank Senator Kerry, Senator Lugar, and the members of the Senate Committee on Foreign Relations for holding a hearing on the Convention on the Rights of Persons with Disabilities (CRPD). Along with this written testimony, through the letter attached below, fifty-six Protection and Advocacy agencies express support for U.S. ratification of the CRPD in order to ensure the leadership of the United States in protecting the civil rights of persons with disabilities.

NDRN is the national membership association for the P&A System, the nationwide network of congressionally-mandated agencies that advocate on behalf of persons with disabilities in every state, the District of Columbia, Puerto Rico, U.S. territories (American Samoa, Guam, U.S. Virgin Islands, and the Northern Marianas Islands), and for Native Americans in the Four Corners region. NDRN promotes a society where people with disabilities enjoy equality of opportunity and are able to participate fully in community life by exercising informed choice and self-determination. For over thirty years, the P&A System has worked to protect the human and civil rights of individuals with disabilities of any age and in any setting. Collectively the P&A agencies are the largest provider of legally-based advocacy services for persons with disabilities in the United States.

Ratified by 115 nations and the European Union as of July 9, 2012, the CRPD represents a significant achievement in the recognition of disability rights as global human rights issue. This anti-discrimination treaty, as with United States laws, requires nations who are party to the treaty to provide individuals with disabilities protections in the areas of education, employment, independent living, participation in the political process, and other rights. The United States in general, and the P&A System in particular, have years of experience in enforcing these rights for persons with disabilities.

The CRPD ratification package submitted by the Administration specifically recognizes the depth and breadth of the P&A System as part of the federal enforcement system for persons with disabilities in the United States. Through legally-based advocacy, P&A agencies protect the civil rights of individuals with disabilities contained in the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Individuals with Disabilities Education Act (IDEA), the Help American Vote Act (HAVA), as well as other federal, state, and local laws. P&A enforcement of these existing civil rights statutes, all of which are consistent with the CRPD, will ensure that the United States adheres to the non-discrimination provisions in the treaty.

P&A agencies are the only federally funded, cross-disability entities that advocate for and protect the rights of all individuals with disabilities across multiple issue areas described below. Most important, the P&As ensure that persons with disabilities are free from abuse, neglect, and exploitation, the role which lead to the creation of the P&A system in 1975. The Administration recognizes this critical role, stating in the CRPD treaty package that:

> "Protection and Advocacy (P&A) systems in each state are created by federal law to monitor, review, and protect rights of individuals to be free from exploitation, violence, and abuse. HHS funds and monitors this comprehensive network of Protection and Advocacy programs in each state that are authorized to investigate incidents of abuse and neglect of persons with disabilities and follow up reports of incidents or investigate if there is probable cause to believe that such incidents have occurred."

The P&A System is also mentioned in the treaty package as devoting "considerable resources to ensuring full access to inclusive educational programs, financial entitlements, healthcare, accessible housing, and productive employment opportunities." Therefore, the P&A System plays a central role in ensuring the enforcement of federal laws protecting the rights of individuals with disabilities, which in-turn allows for United States ratification of the CRPD without the need to develop any new enforcement mechanisms. In addition, with a P&A agency in every state and territory, the P&A agencies will be an important source of information for the development of the report under Article 35 of the CRPD on how United States domestic law gives effect to the rights contained in the treaty.

The P&A System is further referenced in regards to accessibility, with the Administration stating in the treaty package that that the "Protection and Advocacy (P&A) Assistive Technology program provides legally based advocacy services to individuals with disabilities on assistive technology issues." In regards to guardianship, the Administration affirms that "the [P&A] system, advocates and litigates on behalf of persons with disabilities at the state and tribal level to ensure that their due process rights are respected with respect to the appointment and actions of any guardians."

NDRN and the P&A System are committed to United States leadership in establishing the civil rights and empowerment of the 650 million people worldwide with disabilities. Ratification of the CRPD will continue to ensure that the United States is seen as a global leader on disability issues, and provides the United States with the ability to participate in how the treaty is implemented at the global level. Specifically, ratification will allow the United States to participate in the CRPD Conference of States Parties and elections to the Committee on the Rights of Persons with Disabilities, both of which will guide the implementation of the CRPD.

United States participation in the CRPD bodies will not only further our nation's vision for ensuring the human and civil rights of persons with disabilities, but will also allow the United States to better achieve similar protections for the millions of United States citizens with disabilities, including military veterans and their families, who travel abroad for pleasure, education, employment, business, and commerce. Presently, since the United States is not a party to CRPD, we have limited ability to hold other nations accountable to providing the rights contained in the treaty.

If you have any questions, please feel free to contact David Hutt, Senior Staff Attorney at david.hutt@ndrn.org or Cindy Smith, Policy Counsel at cindy.smith@ndrn.org. Thank you for this opportunity to provide this written testimony.

July 10, 2012

Re: Letter of Support from Protection and Advocacy Agencies Convention on the Rights of Persons with Disabilities

Dear Senator:

On July 26, 2012, the United States celebrates twenty-two years since passage of one of the most important civil rights laws in our history – the Americans with Disabilities Act (ADA). This landmark legislation was the first in the world to address the discrimination, and physical and systemic barriers faced by individuals with disabilities. In 2008 by unanimous consent, the Senate passed important amendments to the ADA to further ensure the protection of the rights of persons with disabilities in the United States. It is now critical that the Senate better enable United States citizens with disabilities who work, travel, and conduct business abroad to enjoy similar rights by providing its advice and consent to the Convention on the Rights of Persons with Disabilities (CRPD).

The National Disability Rights Network and the undersigned Protection and Advocacy (P&A) agencies strongly support the CRPD and request that the Senate expeditiously consider and ratify this treaty. P&A agencies are congressionally-mandated to exist in every state, the District of Columbia, Puerto Rico, U.S. territories (American Samoa, Guam, U.S. Virgin Islands, and the Northern Marianas Islands), and for Native Americans in the Four Corners region. The P&A agencies provide legally-based advocacy services to people with any type of disability and across a wide range of social policy issues. For example, P&A agencies investigate allegations of abuse and neglect in facilities, and provide legal representation and other advocacy services within their state or territory. Collectively, the P&A agencies are the largest provider of legally-based advocacy services to persons with disabilities in the United States.

One hundred fifteen nations have ratified the CRPD, including important allies of the United States. The CRPD is consistent with not only the ADA, but also the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act, the Architectural Barriers Act, and numerous other statutes that the P&As work to implement each day. The CRPD establishes international standards regarding the rights and freedoms of people with disabilities, and creates a common basis for greater civic and political participation by people with disabilities similar to what is enjoyed in the United States.

Ratification of this important disability rights treaty will re-establish United States global leadership on disability rights issues, and provide the U.S. with the ability to participate in how the treaty is implemented at the global level. The CRPD seeks the same goals that the United States had twenty-two years ago in enacting the ADA, and more recently the ADA Amendments Act: to prevent discrimination based on disability and empower individuals with disabilities to achieve economic self-sufficiency, independent living, and community participation in all aspects of society. United States' leadership in this vision for our citizens served as a model for the

CRPD. During the six years of discussion and drafting of the treaty, the Department of State and U.S. disability organizations provided fundamental and valued technical assistance to the drafters. Senate ratification of the CRPD will underscore and ensure our global leadership in protecting the civil rights of persons with disabilities.

When the Senate Foreign Relations Committee unanimously approved the resolution of ratification of the International Covenant on Civil and Political Rights (ICCPR) in 1992, the committee remarked "[i]n view of the leading role that the United States plays in the international struggle for human rights, the absence of U.S. ratification of the [ICCPR] is conspicuous . . . . The Committee believes that ratification will . . . . strengthen the impact of U.S. efforts in the human rights field." We look forward to the Senate coming together again in bipartisan fashion, as it did in passing the ADA, the ADA Amendments Act, and in ratifying the ICCPR, to continue our country's distinguished tradition as a world leader for protecting the rights of people with disabilities.

Ratification will also allow the United States to participate in the CRPD Conference of States Parties and elections to the Committee on the Rights or Persons with Disabilities, both of which will guide implementation of the treaty. Such participation will not only further our nation's vision for disability rights, but also allow the United States to better achieve similar protections for the millions of U.S. citizens with disabilities, including military veterans and their families, who travel abroad for pleasure, education, employment, business, and commerce. American citizens with disabilities should have the opportunity to benefit from a new world economy that is fully accessible to all people.

The following undersigned Protection and Advocacy agencies, committed to our country's leadership for the rights and empowerment of the 650 million people with disabilities worldwide, therefore urge the Senate to quickly consider and ratify the Convention on the Rights of Persons with Disabilities.

Sincerely,

Alabama Disabilities Advocacy Program
Disability Law Center of Alaska
Client Assistance Program and Protection & Advocacy (American Samoa)
Arizona Center for Disability Law
Disability Rights Center (Arkansas)
Disability Rights California
The Legal Center (Colorado)
Office of Protection and Advocacy for Persons with Disabilities (Connecticut)
Community Legal Aid Society (Delaware)
University Legal Services (District of Columbia)
Disability Rights Florida
Georgia Advocacy Office
Guam Legal Services Corporation
Hawaii Disability Rights Center
DisAbility Rights Idaho
Equip for Equality (Illinois)
Indiana Protection and Advocacy Services
Disability Rights Iowa
Disability Rights Center of Kansas
Kentucky Protection and Advocacy
Advocacy Center (Louisiana)

Disability Rights Center (Maine)
Maryland Disability Law Center
Disability Law Center (Massachusetts)
Michigan Protection and Advocacy Services
Minnesota Disability Law Center
Disability Rights Mississippi
Missouri Protection and Advocacy Services
Disability Rights Montana
Native American Disability Law Center
Nebraska Advocacy Services
Nevada Disability Advocacy & Law Center
Disability Rights Center (New Hampshire)
Disability Rights New Jersey
Disability Rights New Mexico
New York State Commission on Quality of Care & Advocacy for Persons with Disabilities
Disability Rights North Carolina
North Dakota Protection & Advocacy Project
Northern Marianas Protection & Advocacy Systems
Ohio Legal Rights Service
Oklahoma Disability Law Center
Disability Rights Oregon
Disability Rights Network of Pennsylvania
Office of the Governor/Ombudsman for Persons with Disabilities (Puerto Rico)
Rhode Island Disability Law Center
Protection and Advocacy for People with Disabilities (South Carolina)
South Dakota Advocacy Services
Disability Law & Advocacy Center of Tennessee
Disability Rights Texas
Disability Law Center (Utah)
Disability Rights Vermont
Disability Rights Center of Virgin Islands
Disability Rights Washington
West Virginia Advocates
Disability Rights Wisconsin
Wyoming Protection and Advocacy System

American Council of the Blind

2200 Wilson Blvd., Suite 650 • Arlington, VA 22201 • Tel: (202) 467-5081 • Fax: (703) 465-5085

U.N. Convention on the Rights of Persons with Disabilities

AMERICAN COUNCIL OF THE BLIND
RESOLUTION 2012-14

WHEREAS, President Obama has signed the United Nations Convention on the Rights of Persons with Disabilities; and

WHEREAS, the United States will not be considered a signatory to this important treaty until it is also ratified by the United States Senate; and

WHEREAS, the American Council of the Blind (ACB) has long supported this treaty; and

NOW, THEREFORE, BE IT RESOLVED by the American Council of the Blind in convention assembled at the Galt House Hotel in Louisville, Ky. on the 13th day of July, 2012, that this organization strongly urge the United States Senate to ratify this treaty; and

BE IT FURTHER RESOLVED that this organization direct its staff, and advocates speaking on its behalf, to express the sense of this resolution to members of the United States Senate with all due promptness.

Adopted.

Marlaina Lieberg, Secretary

June 14, 2012

The Honorable John Kerry
Chair, Senate Committee on Foreign Relations
218 Russell Senate Office Building
Washington, DC 20510

Dear Senator Kerry:

In 2009, President Obama signed the Convention on the Rights of Persons with Disabilities (CRPD), the first treaty to address disability rights globally. The CRPD ensures that people with disabilities everywhere enjoy the same rights as everyone else, enabling them to live full, independent, and productive lives. As of today, 110 countries have ratified the CRPD and 153 countries have signed it.

The values of equality and dignity encompassed in the CRPD are American values that know no party line. A bipartisan group of 7 senators has expressed support for the CRPD: Senators Richard Durbin (D-IL), Christopher Coons (D-DE), Tom Udall (D-NM), John McCain (R-AZ), Jerry Moran (R-KS), John Barrasso (R-WY), and Jerry Moran (R-KS). Over 165 disability organizations and 21 veterans service organizations support ratification of the CRPD. The disability community is pleased that the CRPD has been transmitted to the Senate and received with bipartisan support, and we urge you to call a hearing on the CRPD in the Foreign Relations Committee *this month*.

By ratifying the Convention, not only will the U.S. be able to highlight its position as a global leader on disability rights, it will also improve accessibility for U.S. citizens who travel and work outside America's borders, and create opportunity for U.S. businesses abroad that produce accessible goods. This presents an important opportunity for Senators to work together across party lines. In addition, moving the CRPD in this Congress is vital so that the U.S. may participate in the September elections for the CRPD Committee. This opportunity will not arise again for two years.

AAPD thanks you for your support and urges you to hold a hearing right away so that the U.S. can affirm its dedication to the rights and dignity of people with disabilities around the world.

Sincerely,

Mark Perriello
President & CEO

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Steven M. Rothstein
President

June 7, 2012

Honorable John Kerry
United States Senate
218 Russell Senate Building
Washington DC, 20510

Dear Senator Kerry:

On behalf of the Perkins School for the Blind, I am writing to urge you to support the ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and as the Chairman conduct a hearing on this matter in the Senate Foreign Relations Committee as soon as possible. As you may know, the CRPD ratification package was recently sent by the White House to the United States Senate for consideration. As a result, a unified statement of bipartisan support for United States ratification of the CRPD was issued by seven senators: McCain (R-AZ), Durbin (D-IL), Moran (R-KS), Harkin (D-IA), Barrasso (R-WY), Coons (D-DE), and Udall (D-NM). I am writing to ask for your support to the ratification of the CRPD and thus improve the lives of over a billion individuals with disabilities worldwide.

The World Health Organization (WHO) estimates that there are more than 150 million children in the world with disabilities. Eighty percent of these children live in the developing world, and more than 90 percent do not receive a formal education. Founded in 1829, as you are aware, Perkins is a world-renowned center of excellence for the education of people who are blind, with or without additional disabilities. Perkins International was established in 1989 as a global program dedicated to advancing educational opportunities for children who are blind with multiple disabilities around the world. Perkins is committed to ensuring that all children, regardless of disability, receive a quality education so that they may reach their full potential as engaged and active citizens. We are currently working in over 65 countries around the world.

The CRPD recognizes that meeting the needs of persons with disabilities is a human rights issue, a shift away from the long-held paradigm of viewing disability as solely a medical or social welfare concern. This UN Convention also recognizes the right of children with disabilities to access a quality education and the tools of literacy (e.g., accessible technology and assistive devices). These goals reflect Perkins' mission and are carried out through our institution's domestic and international programs every day.

The CRDP reflects core American values we know you share. These include the dignity of the individual, access to justice, respect for the home and family, and access to education. The treaty affirms America's historic leadership in disability rights laws to promote, protect and ensure the rights of persons with disabilities; and is consistent with the American Disability Act (ADA), the

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Steven M. Rothstein
President

Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, and other U.S. disability laws.

Perkins urges you to support ratification of the CRPD and conduct a hearing with the Senate Foreign Relations Committee as soon as possible so that the U.S. can join the other 112 countries that have already ratified the Convention.

Your support will affirm U.S. leadership in the promotion and protection of human rights for all individuals with disabilities, while improving the lives of more than a billion people worldwide.

Sincerely,

Steven M. Rothstein
President

Dear Senator Kerry –
Your leadership on this key issue would be truly appreciated

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Steven M. Rothstein
President

July 9, 2012

Honorable John F. Kerry
Chairman, Foreign Relations Committee
United States Senate
218 Russell Senate office Building
Washington, D.C.

Dear Senator Kerry,

Thank you for your leadership in scheduling the hearing this Thursday, July 12th on the ratification of the Convention of the Rights of persons with Disabilities (CRPD). Your attention to this critical issue is appreciated. As a follow-up to my letter dated June 7, 2012, I wanted to share how important the ratification by the United States would be from our perspective.

Perkins School for the Blind is currently in our 183rd year of service. As the first school for the blind in our country, Perkins has been on the cutting edge of services since we were incorporated in 1829. Both Helen Keller and her teacher, Anne Sullivan both attended Perkins and serve as important role models even today.

Since the 1920's we have informally been working around the world. In the 1980s we expanded more formally internationally. When we started there were very few services for children with multiple disabilities in only a few countries. Today we are working with partners in 67 countries in Africa, Asia, Latin America, Eastern Europe, Russia and the Middle East working with tens of thousands of students, their families and their teachers annually. We are also providing braille equipment in over 170 countries.

Since the CRPD was passed by the United Nations, we have been helping countries to learn about this important document and the underlying values. We have especially focused on Article 24, which ensures the right to education for all children with disabilities. We have participated in conferences, meetings with Ministries of Education and Social Services, workshops with other international non-profit agencies, private sector

companies, families and others. In various discussions around the world we have already seen the impact of the CRPD.

Services for individuals with disabilities are increasing, including in some of the poorest countries. This Convention has already served a critical role to get these issues higher on the national and international development agenda in many parts of the world. There is greater awareness today regarding the rights of persons with disabilities. Among some of the 116 countries that have already ratified the Convention, they have moved forward with increased awareness of and services for individuals with disabilities because of the higher profile of this issue. I and other members of our team have been to international meetings of NGOs, private donors and others where we have been asked when we expect the United States will ratify the CRPD. Individuals and governments are looking to see what the US will be doing on this issue. Having the United States among the countries that have ratified this Convention will send a strong signal of our value of all individuals, including those with disabilities.

There are over 4.5 million children today that do not attend school someplace in the world simply because they are blind or visually impaired. Our goal is to make that number zero. Having the United States join the large and ever growing list of countries would be an important message of hope and inspiration heard around the world.

Thank you again for your leadership.

Sincerely,

Steven M. Rothstein
President

Attachment

June 25, 2012

The Honorable John Kerry, Chairman
The Honorable Richard Lugar, Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Senators Kerry and Lugar:

I write to urge you to bring before the Senate the *Convention on the Rights of Persons with Disabilities (CRPD)*, adopted by the United Nations General Assembly on December 13, 2006, signed by the United States of America on June 30, 2009, and transmitted to the Senate for ratification on May 17, 2012. The Convention establishes international standards regarding the rights and freedoms of people with disabilities and creates a common basis for greater civic and political participation and self-sufficiency. The Convention reflects core American values and core Special Olympics values to the dignity of the individual, equal and fair access to justice, access to health care, and the chance to participate fully in the life of the community and the country.

The CRPD seeks the same goals the United States had in enacting the Americans with Disabilities Act (ADA) twenty-two years ago: to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration in all aspects of society. Our nation's leadership in enacting the ADA served as a beacon of hope to people around the world and offered a strategy other nations could emulate. By signing the CRPD, the United States reaffirmed its leadership position in establishing and protecting the rights and dignity of individuals with disabilities. By providing positive advice and consent for ratification, the Senate will underscore and ensure our global leadership in disability rights, and more importantly, advance the needs and gifts of hundreds of millions of people worldwide.

The United States has an important role to play in contributing to the realization of global human rights and we are uniquely fortunate and well positioned in our leadership on disability rights to ratify this Convention.

Sincerely,

Timothy P. Shriver, Ph.D.
Chairman & CEO

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Created by the Joseph P. Kennedy, Jr. Foundation for the Benefit of Persons with Intellectual Disabilities.

The Arc
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June 27, 2012

Honorable John F. Kerry, Committee Chair
Honorable Richard G. Lugar, Ranking Member
Foreign Relations Committee
United States Senate
446 Dirksen Senate Office Building
Washington, D.C. 20520

Dear Senators Kerry and Lugar:

The Arc urges the Senate to quickly consider and ratify the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD shares the goals of existing disability laws in our country: independence, inclusion, and integration into all aspects of society.

The Arc is the nation's oldest and largest nonprofit organization for people with intellectual and developmental disabilities (I/DD), promoting and protecting their human rights and actively supporting their full inclusion in the community throughout their lifetimes. The Arc's 705 state and local chapters, in 49 states and the District of Columbia, serve more than 1.5 million people with I/DD and immediate family members.

The CRPD establishes international standards regarding the rights and freedoms of people with disabilities, and creates a common basis for greater civic and political participation, self-sufficiency, and independent living. The Convention reflects core American values such as the dignity of the individual, access to justice, the importance of family decision-making, and access to appropriate health care. The Convention is consistent with the ADA, IDEA, the Rehabilitation Act of 1973, and numerous other U.S. laws.

The treaty package submitted by the Administration including the reservations, understandings, and declarations allow the United States to meet the obligations of the treaty while remaining consistent with U.S. domestic law.

The United States is a world leader in ensuring the human rights of individuals with disabilities. We believe the ratification of the CRPD will allow the United States to continue in our global leadership in this area, and therefore urge the Senate to quickly consider and ratify the CRPD.

Sincerely,

Peter V. Berns
CEO

Achieve with us.

The Leadership Conference on Civil and Human Rights

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20006

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Terry O'Neill
National Organization for Women
Jacqueline Johnson Pata
National Congress of American Indians
Mark Perriello
American Association of People with Disabilities
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American Civil Liberties Union
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Religious Action Center of Reform Judaism
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President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

July 10, 2012

Support Ratification of the Convention on the Rights of Persons with Disabilities (CRPD)

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 210 national organizations to promote and protect the civil and human rights of all persons in the United States, we urge you to support U.S. ratification of the Convention on the Rights of Persons with Disabilities (CRPD). The treaty embodies the American ideals that form the basis of the Americans with Disabilities Act (ADA), which has served as model legislation for ending discriminatory practices throughout the world and a key inspiration for the CRPD.

The CRPD seeks to ensure that countries across the globe provide people with disabilities the same rights as everyone else, in order to live full, satisfying and productive lives. To this end, the CRPD will create greater access for Americans serving, working, traveling, and studying abroad. The Leadership Conference believes that ratification is critical to promoting the ADA's and CRPD's shared principles of equality, non-discrimination, inclusion in society, accessibility, and respect for inherent dignity of persons with disabilities in the United States. Furthermore, ratification of the treaty will reflect U.S. commitment to disability rights and core American values such as the dignity of the individual, access to justice, and the right to education.

The Leadership Conference is committed to ensuring that our country maintains its leadership role in promoting the rights and dignity of all people with disabilities. We believe that ratification of the CRPD will allow the U.S. to continue its legacy of global leadership on disability rights. We therefore urge the Senate to continue the bipartisan tradition of supporting human rights, including the rights of persons with disabilities, by uniting in support of ratification of the Convention on the Rights of Persons with Disabilities. If you have any questions, please feel free to contact June Zeitlin at Zeitlin@civilrights.org or 202-263-2852 or Sakira Cook at cook@civilrights.org or 202-263-2894.

Thank you for your consideration of this important issue.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, ROOM 472, BOSTON 02133-1054

TOM SANNICANDRO
STATE REPRESENTATIVE
7TH MIDDLESEX DISTRICT
ASHLAND • FRAMINGHAM

Chair
Joint Committee on
Higher Education

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The Honorable John F. Kerry
Senate Committee on Foreign Relations, Chair
218 Russell Bldg., Second Floor
Washington, D.C. 20510

Dear Chairman Kerry,

I write today to ask for your continued support in ratifying the United Nations Convention on the Rights of Persons with Disabilities (CRPD) when it comes to the Senate floor next week. Already ratified by 117 countries, it represents a critical step in guaranteeing the rights of persons with disabilities all over the world.

Disabled persons represent approximately 10 percent of the world's population. They have suffered discrimination, poverty, and a lack of access to education, independent living, and employment. According to the UN Educational, Scientific, and Cultural Organization, 90% of children with disabilities in developing countries lack access to school. Many lack the ability to make free choices about their own lives.

The UN Convention on the Rights of Persons with Disabilities takes important steps to alleviate these issues. States that opt to sign and ratify the CRPD will be legally bound to provide services and supports to persons with disabilities and will not be allowed to discriminate against them. A fully realized CRPD will enable equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for persons with disabilities. These steps will enable the United States to reassert its global leadership in protecting the rights of persons with disabilities.

Thanks to the sweeping provisions of the 1992 Americans with Disabilities Act, ratifying the CRPD requires no domestic change to laws or additional appropriations within the U.S. It only reinforces existing progress for persons with disabilities in Massachusetts and nationwide.

The July 12th Senate hearing you presided over revealed strong bipartisan support for ratifying the Convention. I urge you to continue your strong leadership on this issue and fight for the rights of disabled persons around the world. Please vote to ratify the UN Convention on the Rights of Persons with Disabilities when it comes before the Senate next week.

Sincerely,

Tom

Tom Sannicandro
State Representative
7th Middlesex District

National
Multiple Sclerosis
Society

June 8, 2012

Honorable John Kerry
Chair
Foreign Relations Committee
218 Russell Senate Building
Washington, DC 20510

Honorable Richard Lugar
Ranking Member
Foreign Relations Committee
306 Hart Senate Building
Washington, DC 20510

RE: The Convention on the Rights of Persons with Disabilities (CRPD)

Chairman Kerry and Ranking Member Lugar:

On behalf of the National Multiple Sclerosis (MS) Society we are writing to urge your support for the ratification of the Convention on the Rights of Persons with Disabilities (CRPD). Ratification of this treaty is a priority for the National MS Society, as well as the Multiple Sclerosis International Federation (MSIF) of which we are a member, along with more than 80 other MS organizations from around the world.

Ratification of the CRPD will ensure the equality of all people with disabilities and extend disability rights globally. These goals are critical to those whose MS has resulted in disability. The CRPD package that the Obama Administration submitted to the U.S. Senate is consistent with U.S. laws and will not require additional appropriations. It is vital to move the CRPD this Congress so that the U.S. may participate in September elections for the CRPD Committee. This opportunity will not arise again for two years.

On behalf of all of those living with MS and other disabilities in the United States, we urge you and Committee members to support ratification of the CRPD. Thank you for your consideration and if you or your staff has any questions, please contact our Vice President of Federal Government Relations, Ted Thompson, at 202-408-9484 or via email at ted.thompson@nmss.org.

Sincerely,

Cyndi Zagieboylo
President/CEO

David Chatel
Executive Vice President, Advocacy

CC: Senate Foreign Relations Committee

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JOIN THE MOVEMENT

Wm. T. (Bill) Robinson III
President

AMERICAN BAR ASSOCIATION

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July 24, 2012

The Honorable John Kerry
Chairman
Committee on Foreign Relations
United State Senate
Washington, D.C. 20510

The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Relations
United State Senate
Washington, D.C. 20510

Dear Chairman Kerry and Ranking Member Lugar:

On behalf of the American Bar Association (ABA) and its nearly 400,000 members, I write to express our full support for the United Nations Convention on the Rights of Persons with Disabilities (CRPD). We urge that your committee favorably report the CRPD to the full Senate and work toward ratification of the convention in this Congress so that the United States can maintain its status as an international human rights leader.

In 2010, the ABA adopted a resolution calling on the United States to ratify and implement the CRPD. Ratification is essential to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. As the world's historic leader in disability policy, the United States has a duty to share its knowledge and protect the interests of American citizens abroad by joining in the international dialogue on civil rights for individuals with disabilities.

Thank you for your unwavering leadership on this issue. If you have any questions, please contact Thomas Susman, Director of the ABA's Governmental Affairs Office, at 202-662-1765 or at Thomas.Susman@americanbar.org.

Sincerely,

Wm. T. (Bill) Robinson III

June 15, 2012

Honorable John F. Kerry, Committee Chair
Honorable Richard G. Lugar, Ranking Member
United States Senate
Foreign Relations Committee
446 Dirksen Senate Office Building
Washington, D.C. 20520

Re: Convention on the Rights of Persons with Disabilities

Dear Chairman Kerry and Ranking Member Lugar,

We are co-chairs of the International Task Force of the Consortium for Citizens with Disabilities (CCD), a coalition of national consumer, advocacy, provider and professional organizations concerned with disability law and policy. As you know, last month after a lengthy review the Administration submitted the Convention on the Rights of Persons with Disabilities (CRPD) to the Senate for its advice and consent. We write to respectfully request that the Senate Foreign Relations Committee, following the history of bipartisan support for disability rights legislation, expeditiously conduct a hearing on the CRPD in order to begin to restore the international leadership position of the United States on disability rights.

Since 2007, the International Task Force of the CCD has worked to gather support for the United States to sign and ultimately ratify the CRPD. This vital international nondiscrimination treaty seeks to achieve the same goals as existing disability laws in United States: to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

With the proposed reservations, understandings, and declarations, ratification of the treaty will require no changes to U.S. laws, and will enable the U.S. to better argue for the protection of the rights of U.S. citizens with disabilities who work, study, and travel abroad. Swift consideration of the treaty will further enable the United States to participate in the September elections for the CRPD Committee, the body of state parties which guides implementation of the treaty.

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Thank you for considering this request to quickly hold a hearing on the CRPD, and please contact any of us of you have any questions.

Sincerely,

Esmé Grant, J.D.
Disability Rights Program Manager
United States International Council on Disabilities
egrant@usicd.org

David T. Hutt, Ph.D.
Senior Staff Attorney
National Disability Rights Network
david.hutt@ndrn.org

Deborah A. Ziegler, Ed.D
Associate Executive Director
Policy and Advocacy Services
Council for Exceptional Children
DEBZ@cec.sped.org

July 23, 2012

The Honorable John Kerry
Chairman
Senate Committee on Foreign Relations
Washington, D.C. 20510

The Honorable Richard Lugar
Ranking Member
Senate Committee on Foreign Relations
Washington, D.C. 20510

Re: The Convention on the Rights of Persons with Disabilities

Dear Chairman Kerry and Ranking Member Lugar,

We write you to reiterate our support for Senate consent to ratify the Convention on the Rights of Persons with Disabilities (CRPD), and also to address a number of erroneous legal claims that have been made regarding the treaty. As you know, the CRPD is the first international treaty to address disability rights globally. It was inspired in part by the United States' long history of recognizing the rights of individuals with disabilities, as embodied in the Americans with Disabilities Act (ADA) and other laws. By ratifying the CRPD, the Senate has the opportunity to take the next step in continuing U.S. leadership in disability rights.

As the Attorney General and White House Counsel during the Administration of President George H.W. Bush, who signed the Americans with Disabilities Act, we have worked hard to ensure that every American is afforded the right to dignity, participation and independence. This week, 22 years after the enactment of the ADA, the United States has the opportunity to acknowledge the accomplishments of our country on disability rights and endorse global adoption of these same principles for the one billion people with disabilities throughout the world. The CRPD was negotiated during President George W. Bush's Administration, and the U.S. stated at its completion in December 2006 that "[t]he United States welcomes the adoption by the General Assembly of the [CRPD]…[t]here is much to be proud of in this Convention. It is based on respect for the inherent dignity and worth of all persons with disabilities."

Ratification of the CRPD will enable the U.S. to benefit those Americans with disabilities, including veterans, and their families who are living, working, or traveling abroad. The U.S. will be able to contribute formally its leadership and expertise on disability issues to the rest of the world.

With the inclusion of the reservations, understandings and a declaration (RUDs) recommended by the Administration to be part of the Senate's resolution, the CRPD will require no changes to U.S. federal or state law, and it will have no impact on the federal budget. A reservation regarding federalism will ensure that the obligations of the U.S. under the CRPD are limited to the authority of the Federal Government and do not reach areas of state and local jurisdiction. A reservation regarding private conduct will ensure that the U.S. does not accept any obligation except as mandated by the Constitution and the laws of the U.S., such as the ADA; thus, as with current law, religious entities, small businesses, and private homes would be exempt. An

understanding regarding economic, social, and cultural rights makes clear that the CRPD prevents discrimination on the basis of disability with respect to such issues, and that the U.S. is not obligating itself to provide any rights; rather, the U.S. is merely agreeing to not discriminate on the basis of disability – as it does under current U.S. law.

Nothing in this treaty prevents parents from homeschooling or making decisions for their children. This treaty embraces IDEA, the ADA, and all of the disability non-discrimination legislation that has made the United States the leader on disability rights. The specific provisions on women and children state that women and children with disabilities cannot be the victims of illegal discrimination – as is the case under U.S. law. Furthermore, the CRPD recognizes and protects the important role of the family and specifically protects children from being separated from their parents on the basis of a disability. We take a back seat to no one in our defense of the rights of parents to raise their children or in our support for our federalist system of government with sovereignty at both the federal and state levels of government.

We understand that some are claiming that changes in U.S. law would be necessary to implement the obligations the U.S. will undertake as a result of ratifying the treaty, or that the RUDs that the Senate will approve will not have the force of law. Such claims are not correct and, quite simply, extraordinary. When the U.S. Senate attaches conditions to its consent to a treaty, they are binding on the President, and the President cannot proceed to ratify a treaty without giving them effect.[1] The Senate has a long tradition of careful consideration and frequent adoption of limited RUDs, as is the case here. Any claims that such limited conditions do not have the force of law, or are inconsistent with the object and purpose of a treaty on disabilities that U.S. laws inspired in the first place, is contrary to the long-held position articulated by the Senate – regardless of which party is in control (and in spite of whatever theories that may momentarily exist in academic circles).

Administrations of both parties have also uniformly held this view. In 1995 the U.S. stated that "reservations are an essential part of a State's consent to be bound. They cannot simply be erased. This reflects the fundamental principle of the law of treaties: obligation is based on consent. A State which does not consent to a treaty is not bound by that treaty. A State which expressly withholds its consent from a provision cannot be presumed, on the basis of some legal fiction, to be bound by it."[2]

Furthermore, the CRPD protects the critical role of the family by specifically recognizing the role of parents in raising children with disabilities, and prohibits the dissolution or separation of families because one or both of the parents are persons with disabilities. Article 23, entitled "Respect for home and family," provides that "children with disabilities have equal rights with respect to family life," that nations ratifying the treaty have an obligation to "undertake to provide early and comprehensive information, services, and support to children with disabilities and their families" and that "(i)n no case shall a child be separated from parents on the basis of a

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[1] See S. Rpt. 106-71, *Treaties and Other International Agreements: the Role of the United States Senate*, a study prepared for the Committee on Foreign Relations, United States Senate, by the Congressional Research Service, January 2001.

[2] "Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations," U.N. document A/50/40, March 28, 1995, p. 1.

disability of either the child or one or both of the parents." Finally, the CRPD will provide much-needed protection in other countries where there is no provision for birth certificates or birth registration for children with disabilities. In particular, it will help protect against the horrible practice of infanticide of children born with disabilities (a practice that can be facilitated through the denial of birth certificates or registration to disabled babies).

The Senate's consideration of this important treaty should be based on the facts and the law. We have now had 22 years to witness Americans with disabilities experiencing the freedom they deserve and the benefits our country has enjoyed from the contributions of human capital and ingenuity that the ADA unlocked. We urge you to support prompt Senate consideration and approval of the CRPD on the strong, bipartisan basis that has long been the hallmark of disability rights legislation in the United States.

Sincerely,

The Honorable Richard Thornburgh
Former Attorney General of the United States
Of Counsel, K&L Gates, LLP

The Honorable C. Boyden Gray
Former White House Counsel to
President George H.W. Bush
Boyden Gray & Associates, LLP

cc:

Senator John Barrasso
Senator Barbara Boxer
Senator Benjamin Cardin
Senator Robert Casey, Jr.
Senator Christopher Coons
Senator Bob Corker
Senator Jim DeMint
Senator Richard Durbin
Senator James Inhofe
Senator Johnny Isakson
Senator Mike Lee
Senator Robert Menendez
Senator James Risch
Senator Marco Rubio
Senator Jeanne Shaheen
Senator Tom Udall
Senator Jim Webb

Alexander Graham Bell
ALEXANDER GRAHAM BELL
ASSOCIATION FOR THE DEAF AND HARD OF HEARING

July 25, 2012

The Honorable John Kerry
United States Senate
218 Russell Senate Office Building
Washington, DC 20510-1903

Dear Senator John Kerry,

I am writing in response to recent communications to elected officials about the position of the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell) on the United Nations Convention on the Rights of Persons with Disabilities (CRPD). AG Bell supports the ratification of CRPD as part of the Deaf and Hard of Hearing Alliance (DHHA). This coalition comprises 15 national organizations representing consumers who are deaf and hard of hearing, educators and educational administrators for children who are deaf and hard of hearing and the professionals that support them.

The CRPD seeks to ensure that countries across the globe provide people with disabilities the same rights as everyone else in order to live full, satisfying and productive lives.

AG Bell recognizes and supports CRPD and recommends that states participating in the convention implement legislative and administrative initiatives to promote early hearing detection and intervention, family-centered intervention and professional development of individuals qualified to provide rehabilitative support in all modalities of language and communications for individuals who are deaf or hard of hearing, including listening and spoken language.

If you or your staff require any additional clarification on our position, please contact me at 202-337-5220 ext. 107.

Sincerely,

Alexander T. Graham
Executive Director/CEO

cc: AG Bell Board of Directors
Barbara Raimondo and Janet Bailey, co-chairs, DHHA

Disability Rights Education

& Defense Fund **DREDF**

July 30, 2012

Re: Ratification of the Convention on the Rights of Persons with Disabilities

Dear Senator:

The Disability Rights Education and Defense Fund (DREDF) works to advance the civil and human rights of people with disabilities through legal advocacy, training, education and public policy and legislative development. As you know, on May 17th the Obama Administration submitted the Convention on the Rights of Persons with Disabilities (CRPD) to the United States Senate for its advice and consent, and a week later a bipartisan group of seven Senators came out in support of the treaty. We are writing to support ratification of the CRPD.

The CRPD is a non-discrimination treaty seeking to achieve the same goals as the Americans with Disabilities Act (ADA) and other existing disability laws in United States: to empower individuals with disabilities to achieve economic self-sufficiency, independent living, inclusion and integration into all aspects of society. The CRPD is important to all people with disabilities, including our veterans and service members with disabilities as it embodies equal treatment and non-discrimination in access to rehabilitation, employment and educational opportunities.

The United States has always been a leader in setting the standards for ensuring the human rights of individuals with disabilities. The ADA was the first major piece of domestic legislation in the world to address the discrimination, legal challenges and physical and systemic barriers faced by individuals with disabilities, and to this day serves as a model for legislative development around the world. The US also has led the efforts in education through the 1975 Individuals with Disabilities Education Act (IDEA) and other legislations. These laws have always been enacted in a bi-partisan fashion and the CRPD will further that goal for guaranteeing such protections for US citizens, corporations and organizations throughout the world. The Convention reflects core American values such as the dignity of the individual, access to justice, the importance of family decision-making and access to appropriate healthcare.

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Doing disability justice

CONSORTIUM FOR CITIZENS WITH DISABILITIES

July 10, 2012

Honorable John F. Kerry, Committee Chair
Honorable Richard G. Lugar, Ranking Member
Foreign Relations Committee
United States Senate
446 Dirksen Senate Office Building
Washington, D.C. 20520

Re: Ratification of the Convention on the Rights of Persons with Disabilities

Dear Senators Kerry and Lugar:

As you know, on May 17th the Obama Administration submitted the Convention on the Rights of Persons with Disabilities (CRPD) to the United States Senate for its advice and consent, and a week later a bipartisan group of seven Senators came out in support of the treaty. The undersigned members of the Consortium for Citizens with Disabilities (CCD), a coalition of national consumer, advocacy, provider and professional organizations, urges the Senate to quickly consider and ratify the CRPD. This vital nondiscrimination treaty seeks to achieve the same goals as existing disability laws in the United States: to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

On July 27, 2010, during the celebration of the twentieth anniversary of the passage of the Americans with Disabilities Act (ADA), CCD members encouraged the Senate to quickly act on the treaty package once submitted by the Administration. We renew this call for swift attention and ratification of the Convention.

With the passage of the landmark ADA in 1990, our nation established itself as a world leader in ensuring the human rights of individuals with disabilities. The ADA was the first major piece of domestic legislation in the world to address the discrimination, legal challenges, and physical and systemic barriers faced by individuals with disabilities. The ADA has served as a beacon to people around the world and a model legislation which other nations have emulated to protect and advance the rights of persons with disabilities. The United States has further led

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efforts in the education of children with disabilities, beginning in 1975 with the passage of the forerunner legislation to today's Individuals with Disabilities Education Act (IDEA). Congress took the critical steps in protecting the rights of citizens with disabilities by enacting in bi-partisan fashion the ADA, IDEA, and other legislation, but the CRPD will further the goal that these protections are guaranteed for United States citizens, corporations, and organizations throughout the world.

The CRPD establishes international standards regarding the rights and freedoms of people with disabilities, and creates a common basis for greater civic and political participation, self-sufficiency, and independent living. The Convention reflects core American values such as the dignity of the individual, access to justice, the importance of family decision-making, and access to appropriate health care. The Convention is furthermore consistent with not only the ADA, but also with IDEA, the Rehabilitation Act of 1973, and numerous other U.S. laws.

One hundred and fourteen nations as well as the European Union have ratified the CRPD as of June 2012, including important allies of the United States. We hope that the Senate again comes together in bipartisan fashion, as it did in passing the ADA and the more recent Americans with Disabilities Act Amendments Act (ADAAA), to ratify the CRPD and ensure our global leadership in disability and human rights.

The treaty package submitted by the Administration furthers the goal of disability laws in the United States of ensuring the equal rights and non-discrimination of persons with disabilities. The reservations, understandings, and declarations offered by the Administration allow the United States to meet the obligations of the treaty while remaining consistent with U.S. domestic law.

The standards in the CRPD carry moral authority, which lend weight and credibility to efforts in all parts of the world to achieve justice, equality and inclusion for individuals with disabilities. The United States' ratification of the treaty will continue our country's distinguished tradition as a world leader for people with disabilities as evidenced by the ADA. Ratification will allow U.S. participation on the CRPD Conference of States Parties, create U.S. eligibility to serve on the Committee on the Rights of Persons with Disabilities, and thus allow the U.S. to provide input into the implementation of the treaty and the development of disability rights. Such participation will not only further our nation's vision for global human rights, but assist the millions of people with disabilities from the United States such as military veterans, students, scientists, tourists and business leaders, and their families who live, do business, and travel abroad. American citizens with disabilities should have the same opportunity to benefit from a world economy that is fully accessible to all people.

We, the undersigned members of the Consortium for Citizens with Disabilities, are committed to our country's leadership for the rights and empowerment of the 650 million people with disabilities worldwide. We believe the ratification of the CRPD will allow the United States to continue in our global leadership in this area, and therefore urge the Senate to quickly consider and ratify the Convention on the Rights of Persons with Disabilities.

Sincerely,

ACCSES
American Association on Health Disability
American Association on Intellectual and Developmental Disabilities
American Association of People with Disabilities
American Council of the Blind
American Counseling Association
American Dance Therapy Association
American Foundation for the Blind
American Music Therapy Association
American Network of Community Options and Resources
American Speech-Language-Hearing Association
American Therapeutic Recreation Association
APSE
Association for Assistive Technology Act Programs
Association of Jewish Family & Children's Agencies
Association of University Centers on Disabilities
Autism National Committee
Autism Speaks
Bazelon Center for Mental Health Law
Brain Injury Association of America
Conference of Educational Administrators of Schools and Programs for the Deaf
Council of Parent Attorneys and Advocates
Council for Exceptional Children
Council of State Administrators of Vocational Rehabilitation
Daniel Jordan Fiddle Foundation
Disability Rights Education and Defense Fund
Division for Early Childhood of the Council for Exceptional Children
Easter Seals
Epilepsy Foundation
Family Voices
Goodwill Industries International
Higher Education Consortium for Special Education
IDEA Infant Toddler Coordinators Association
Mental Health America
National Alliance on Mental Illness
National Association of Councils on Developmental Disabilities
National Association of School Psychologists
National Association of State Directors of Developmental Disabilities Services
National Association of State Directors of Special Education
National Association of State Head Injury Administrators
National Association of States United for Aging and Disabilities
National Center for Learning Disabilities
National Council on Independent Living
National Disability Rights Network
National Down Syndrome Congress

National Down Syndrome Society
National Health Law Program
National Multiple Sclerosis Society
National Rehabilitation Association
Paralyzed Veterans of America
RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America
School Social Work Association of America
Spina Bifida Association
TASH
Teacher Education Division of the Council for Exceptional Children
The Arc of the United States
The Jewish Federations of North America
United Cerebral Palsy
United Spinal Association
United States International Council on Disabilities
VetsFirst, a program of United Spinal Association
Vietnam Veterans of America
World Institute on Disability

cc: Senator John Barrasso
Senator Barbara Boxer
Senator Benjamin Cardin
Senator Robert Casey, Jr.
Senator Christopher Coons
Senator Bob Corker
Senator Jim DeMint
Senator Richard Durbin
Senator James Inhofe
Senator Johnny Isakson
Senator Mike Lee
Senator Robert Menendez
Senator James Risch
Senator Marco Rubio
Senator Jeanne Shaheen
Senator Tom Udall
Senator Jim Webb
Secretary of State Hillary Rodham Clinton
Judith Heumann, Special Advisor for International Disability Rights
Kareem Dale, Special Assistant to the President of the United States

Easter Seals

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May 30, 2012

Dear Senator:

On behalf of Easter Seals, I ask you to please support the ratification of the Convention on the Rights of Persons with Disabilities. Your support is necessary to advance this critical Convention and further the rights of people with disabilities throughout the world.

Ratification of the Convention will mean that the rights provided people with disabilities in the United States through landmark civil rights law like the Americans with Disabilities Act and the Individuals with Disabilities Education Act will be expanded through out the world. In addition, Americans with disabilities who work and travel abroad, including disabled American veterans and military family members, will be protected from discrimination.

Swift ratification of the Convention is necessary. If the Senate is able to ratify the Convention in the next few months, it will allow the United States of America (USA) to participate in the CRPD Conference of States Parties and permit the our country to appoint a member of the CRPD Committee. Through these mechanisms, the USA can provide and influence guidance on the implementation of the treaty and lend its expertise as more countries develop their own disability rights laws.

We look forward to working with you as the Convention advances. Thank you for your consideration.

Sincerely,

Jennifer Dexter

Jennifer Dexter
Assistant Vice President, Government Relations

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