

**AMERICANS WITH DISABILITIES
ACT RESTORATION ACT**

Mr. LEAHY. Mr. President, this past weekend marked the 19th anniversary of the passage of the Americans with Disabilities Act, ADA, one of the Nation's most critical and effective civil rights laws. It is fitting that as we celebrate its passage, we reflect on the progress we have made in expanding possibilities for Americans with disabilities and the challenges that still remain.

We passed the ADA in recognition that the bedrock principles of human dignity and equal opportunity require all Americans to be judged on their individual merits and not on the prejudices of others. This law promised generations of Americans the opportunity to leave their mark on a country that had only years before denied them full participation. I, like many of my colleagues, supported this historic act. I hoped it would serve as a vital tool against the barriers that had long excluded persons with disabilities from fully participating in society.

By any reasonable measure, the ADA has been a success. Today, persons with disabilities enjoy rights many of us have long taken for granted. Now they have access to public transportation built to accommodate people in wheelchairs. They have the ability to stay in hotels, travel, and enter schools and places of entertainment equipped for their needs. Indeed, almost every office building in America is fully accessible to them. Thus, the enactment of the ADA transformed our country and we are a better Nation because of it.

Despite these significant advances, recent decisions from the Supreme Court and lower courts attempt to erode the ADA's protections and threaten to turn back the clock on our progress. I am particularly disturbed by rulings that have narrowed the ADA in ways we never intended. Rather than broadly interpreting the ADA's mandate, as we intended, courts have repeatedly interpreted that law to embody a "strict and demanding" standard for determining who qualifies as an individual with a disability. These narrow rulings ensure that the persons we intended to shield, including those with severe illnesses, like epilepsy and multiple sclerosis, are no longer protected. As a consequence, millions of Americans who suffer discrimination are now excluded from ADA protection.

A few years ago, a Federal judge in Vermont's neighboring State of New Hampshire ruled that a woman with breast cancer was not sufficiently disabled to be protected by the ADA. Court rulings contrary to Congress's intent for the ADA are not limited to the New England States. Last year, a panel of judges on the U.S. Court of Appeals for the Eleventh Circuit unanimously ruled that even mental retardation did not constitute a sufficient disability under the ADA.

The message sent by these rulings is as unfortunate as it is undeniable: the courts no longer consider certain persons "disabled enough" to be protected. That means an employer could fire or refuse to hire a qualified worker on the basis of his or her disability, and defend that action in court on the grounds that the worker was not "disabled enough" to be protected under law.

In addition, the legislative history is crystal clear. Congress intended the ADA to protect all persons without regard to mitigating circumstances. Indeed, the Senate committee report on the ADA expressly stated "[w]hether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids." Despite this clear intent, courts have ruled that people with disabilities who take medication or use assistive devices should not be considered disabled.

I am particularly concerned that these rulings will undermine the rights of thousands of veterans with disabilities who, upon returning from the war, will enter the civilian workforce to support their families. Many of these veterans have disabilities, including post-traumatic stress syndrome, that may be controlled with medication. If any of them suffer job discrimination, we must make sure they will have a remedy.

Equally disturbing is that many of these cases can lead all Americans into what Senator HARKIN has aptly described as a legal catch-22:

People with serious health conditions [] who are fortunate to find treatments that make them more capable and independent and, thus, more able to work may find that they are no longer protected by the ADA . . . On the other hand, if they stop their medication or stop using an assistive device, they will be considered a person with a disability under the ADA but they won't be qualified for the job.

We must act to remedy these erroneous court decisions. Last month, the House overwhelmingly passed the Americans with Disabilities Act Restoration Act. Now it is the Senate's turn to respond. This legislation would reverse these flawed decisions and restore the original congressional intent of the ADA. First, the bill would clarify Congress's purpose to reinstate a broad scope of protection for a range of persons with disabilities under the ADA. Second, the legislation would modify findings in the ADA that have been used by courts to narrowly interpret what constitutes a "disability." Third, the bill would lower the burden of proving that one is "disabled enough" to qualify for coverage.

This long overdue legislation has ample support from both disability groups and business interests. I hope this bipartisan bill does not fall victim to the petty partisan obstruction that

has prevented passage of other civil rights measures in this Congress that had broad bipartisan support, like the Lilly Ledbetter Fair Pay Act. While unprecedented obstruction tactics have led Senate Republicans to stall one bill after another on the Senate floor, it is well past time for us to turn the page on partisan tactics designed to thwart critical civil rights bills.

Indeed, our heritage of freedom and our continued march towards perfecting our Union, should remind us all that civil rights legislation holds a unique place in this institution. These bills bring us closer to fulfilling the promises engrained in our founding charters of establishing freedom and equality for all Americans. Thus, they should be held to a higher standard than other bills.

Time has shown the ADA to have been one of our Nation's most effective tools in combating discrimination. Its continued effectiveness is important to ensure that the great progress we have made in widening the doors of opportunity for all Americans continues in the future.

We have before us a historic opportunity to restore the ADA's original intent and reclaim the basic rights it extended to persons with disabilities. I was proud to support the ADA in the 101st Congress, and I am pleased to support this year's bill as it moves forward. I hope this bill will be promptly passed by the Senate and signed into law by the President.

**THE WAR POWERS CONSULTATION
ACT OF 2009**

Mr. WARNER. Mr. President, today I recognize the members of the National War Powers Commission, particularly the cochairs and my dear friends—former Secretaries of State James A. Baker and Warren Christopher—for their distinguished and valuable work in bringing forward this critical legislation to address this important issue to our Nation.

Few would dispute that the most important, and perhaps the most fateful, decisions our leaders make involve the decision of whether to go to war. Yet after more than 200 years of constitutional history, the extent of the powers the respective branches of government possess in making such decisions is still heavily debated.

Let me first outline some points regarding the legislative history of the War Powers Resolution. On November 7, 1973, Congress passed the War Powers Resolution over President Nixon's veto, by a vote of 284 to 135 in the House, and a vote of 75 to 18 in the Senate. The legislation was passed purportedly to restore a congressional role in authorizing the use of force that was thought by many to have been lost in the Cold War and Vietnam war. The War Powers Resolution was intended to