December 17, 2007

To All Members of the United States Senate and House of Representatives:

As Congress nears the end of the calendar year, we are writing regarding the “ADA Restoration Act” (H.R. 3195/S. 1881). As a group, we strongly believe that the Americans with Disabilities Act (ADA) provides important and necessary protections for employees and applicants. However, we urge you not to cosponsor this legislation as it would not “restore” the ADA, but would dramatically expand it to cover even the most minor impairments, such as bad eyesight, the flu or a small scar. In short, the bill is inconsistent with Congressional intent expressed when the law was passed in 1990, would trivialize the concept of disability and inappropriately divert employer resources from those who need them most.

As you examine H.R. 3195/S. 1881, it is critical to note the key distinction between “disability” and “impairment” under the law. Under the ADA, an individual is “disabled” if he or she has a physical or mental impairment that substantially limits a major life activity. The law defines “impairment” broadly to cover virtually any physical or mental condition. An impairment is considered a covered disability only if it substantially limits activities that are central to daily life, such as seeing, reading or breathing. If an individual is found to be disabled and qualified to perform the essential functions of the job, he or she may request an accommodation from the employer. The individual and employer then engage in an interactive process to reach a reasonable accommodation so the employee can perform his or her job. This process has worked well under the law and is structured to respond to the individual needs of employees.

H.R. 3195/S. 1881 drastically expands the definition of “disability,” by eliminating the requirements that an individual’s impairment substantially limit a major life activity. Thus, the bill’s concept of “disabled” would be expanded to cover any impairment, regardless of how temporary, intermittent, occasional, mild or minor it is, including health conditions such as the flu. The change would result in the law covering conditions that Congress never intended to be covered by the ADA, exponentially increasing the number of persons who can bring a disability discrimination claim. For example, a person with a minor finger cut requiring stitches would be considered just as disabled as a veteran returning home having lost his or her arm in combat, and an individual with occasional headaches would receive the same protection as an individual with a serious brain damage. In essence, H.R. 3195/S. 1881 would create an environment where anything less than perfect health would cause an individual to be covered under the ADA. The resulting increase in requests for accommodation would overwhelm employers and make it more difficult for them to assist the severely disabled.
These bills make many other unworkable changes to the ADA including a dramatic expansion of employers' reasonable accommodation obligations and a reversal of a long-established rule found in all federal antidiscrimination laws that a person must show that he or she is qualified to perform the job. Instead, the bills would shift this responsibility to employers.

For all of these reasons, we urge you not to cosponsor H.R. 3195/S. 1881.

Thank you for your consideration.

Sincerely,

Associated Builders & Contractors
Food Marketing Institute
HR Policy Association
International Foodservice Distributors Association
International Franchise Association
National Association of Convenience Stores
National Association of Manufacturers
National Council of Chain Restaurants
National Federation of Independent Business
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
Retail Industry Leaders Association
Society for Human Resource Management
U.S. Chamber of Commerce