Frequently Asked Questions—ADA Restoration

- **Q: Why did the name change?**

  A: Since originally introduced in 2006, we'd all grown used to and fond of calling this legislation the “ADA Restoration Act.” The important point is that the effort can still be referred to as restoration of the ADA – a return to original Congressional intent. The legislation's name was changed to the ADA Amendments Act of 2008 to avoid confusion by signaling that the language as negotiated by the employer and disability communities was different from the legislation as introduced in July 2007. Particularly for Members who either did not support or had misgivings about the previous legislation, the name change was helpful in demonstrating that this was something other than the bill with which they had previously held concerns.

- **Q: Why are we trying so hard for this Congress? Why not wait?**

  A: Optimistic of the effect of a new Congress and administration on ADA restoration efforts, some advocates have wondered why we don't wait for the next Congress to revisit this legislation and get it passed. First, there are no guarantees of a more favorable outcome in a future Congress. Most importantly, however, because there are scores of people with disabilities all across this country who have been told by the courts for nearly a decade that they do not have civil rights in the workplace, we cannot wait to act. Tabling efforts for a future Congress asks these individuals to continue waiting for their civil rights and can promise them nothing for it.

  Practically and politically speaking, there are many conservative Democrats in the House especially who will be reluctant to vote for a civil rights bill that affects employers in their home districts and that is opposed by the major groups representing employers at the national and local levels. We recognize that support at least neutrality from the employer community is necessary to get a bill through both the House and the Senate in future Congresses (which is consistent with the experience of the passage of the original ADA).

- **Q: What is the “deal”?**

  A: The negotiation reached between the disability and employer communities is both legislative language (discussed below) and the promise to one another that we will uphold the balance struck by defending the bill against amendments to the language unless they are mutually agreed upon.

The negotiated language overturns three Supreme Court decisions that came down in 1999 (called the "Sutton trilogy" because the lead case was Sutton v. United Airlines and all three dealt with a similar issue and were decided on the same day) which decided for the first time that a person cannot use the ADA to challenge discrimination if they are able to manage the symptoms associated with their disability by using medication, prosthetics, or other means of diminishing their level of impairment. Under the negotiated language, courts would evaluate whether a person qualifies as “disabled” under the ADA without considering these measures (what courts call “mitigating measures”). This is a HUGE improvement for people with conditions like epilepsy, diabetes, depression, bipolar disorder, cancer, and many others who will have a much easier time establishing that they fall within the ADA's protected class.

The legislation would also overturn a 2003 Supreme Court decision called Toyota v. Williams. In that case, the court ruled for the first time that the standard for establishing the existence of a disability under the ADA is a demanding standard that should be interpreted narrowly. The court said in that unanimous decision that the term "substantially limited in a major life activity" means "prevented or severely restricted in an activity that is of central importance to most people's daily lives." The negotiated language makes clear that Congress wants the ADA definition to be interpreted broadly in a manner that protects the full range of individuals who experience discrimination on the basis of disability. It clarifies that "substantially limits" does not mean "prevents or severely restricts" but instead means "materially restricts," which is a new term defined in the report language as "more than moderate but less than severe". The negotiated language also includes for the first time in the statute a non-exhaustive list of major life activities and major bodily functions that is designed to restore protections for many people who have had difficulty establishing coverage in the wake of Toyota v. Williams and the Sutton trilogy.

The bill would also make it clear that when you are evaluating whether a person with an episodic condition like epilepsy or depression is substantially limited or materially restricted, you evaluate them when their condition is presenting symptoms.

Finally, the bill includes a broad "regarded as" prong of the definition that makes clear that you are protected by the ADA if you experience an adverse action based on a physical or mental impairment (whether it is real or it is simply perceived by the employer), regardless of whether that impairment actually substantially limits a major life activity. To get that substantial improvement, the disability negotiators had to relenquish the argument that had worked in a a small amount of federal appellate courts that people who come into the protection of the ADA solely under the

"regarded as" prong are still entitled to a reasonable accommodation. Under the deal language, in order to get an accommodation, you must establish protection under the first prong of the definition and be actually materially restricted in a major life activity.

- **Q: How does this differ from H.R. 3195 as introduced last July?**

  A: H.R. 3195, as introduced last July, would have extended civil rights to any individual with a “physical or mental impairment,” without qualification. The new language continues to rely on the original ADA's phrasing - “"substantially limited in a major life activity” – while defining it differently and adding explicit direction that courts are to interpret the legislation broadly for robust protections.

- **Q: Why did we negotiate?**

  A: With over 200 co-sponsors on the original bill, many have wondered why we negotiated at all. The original ADA enjoyed broad bipartisan support. This support was garnered through the protracted negotiations and compromises between the business and disability communities. It was at the request of key leadership and disability champions in the House who understood how vital the employers' role was in the passage of this legislation that the disability and employer communities sat down in good faith to talk about the bill language and come up with a compromise that would overturn the problematic Supreme Court decisions and thus restore Congress's intent in passing the original ADA.

- **Q: Who was at the table?**

  A: From the disability community, the groups represented at the negotiating table were the Epilepsy Foundation, the National Council on Independent Living (NCIL), National Disability Rights Network (NDRN), Bazelon Center for Mental Health Law, and the American Association of People with Disabilities (AAPD). The Disability Rights Education and Defense Fund (DREDF) was invited to participate but elected not to join the negotiation process. DREDF and many other groups provided key advice to the negotiators throughout the process. The groups representing the employers in the negotiations were the U.S. Chamber of Commerce, the Society for Human Resource Management (SHRM), the HR Policy Association, and the National Association of Manufacturers.

- **Q: Who was involved in the vetting process for what became the ADAAA?**

  A: The negotiated language was widely vetted on both the disability and employer sides. In fact, AAPD sent the proposed deal language to thousands of grassroots disability advocates on its Justice For All email

listerv, asking for feedback before AAPD signed off on the deal. AAPD received well over a hundred email responses back, some with questions, which were answered, a few with concerns, which were discussed, but overwhelmingly, from those indicating their strong support of the negotiated language.

The National Council on Independent Living (NCIL) followed a similar process with their own grassroots communications. Leaders from all groups comprising the Consortium for Citizens with Disabilities (CCD) were also involved in the vetting process, suggesting tweaks and revisions that were often incorporated into final bill language.

- **Q: Who supports this?**

  A: ADAAA enjoys extremely broad support from disability, civil rights, faith-based, veterans, and employer groups. AAPD has been collecting the names of supporting organizations for several weeks now, and at last count, there were 183 national and 157 state, local, and other groups indicating their support.

- **Q: We got it passed in the House, now what in the Senate?**

  A: With the solid victory in the House (402 to 17), we are working to build the same kind of overwhelming bipartisan support in the Senate that the bill enjoyed in the House and that the original ADA also had in both houses. We anticipate Senate action on the bill either this month or (more likely) in September when the Senate returns from their August recess.

- **Q: Does the President support this?**

  A: President Bush supports and understands the need to overturn the problematic Supreme Court decisions and seems ready to sign the bill. He did express some “concerns” and some ideas for how to improve the language the day before the House vote, and those concerns are being considered during the Senate process.

- **Q: What happens if we don't get it done this year?**

  A: We try, try again. The good news is that through the tireless efforts of grassroots advocates across the country, Members of Congress and their staff are far more educated on the need for restoration than ever before, so we'll be starting from a stronger place in terms of education and awareness.

  If the bill isn't passed in this Congress, we come back in the next Congress and try hard to get it passed as quickly as possible. Before beginning that effort, we will likely reevaluate the bill language to

determine if there are things that we want to change in light of a potentially different political environment, although no major changes to the bill are expected in the next Congress.