



Department of Justice

**STATEMENT OF
EVE HILL
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FOR CIVIL RIGHTS
DEPARTMENT OF JUSTICE**

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

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

JULY 12, 2012

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Eve Hill
Senior Counselor to the Assistant Attorney General for Civil Rights
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**Before the
Committee on Foreign Relations
United States Senate
Regarding the United Nations Convention on the Rights of Persons with Disabilities**

**Presented
July 12, 2012**

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

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

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

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

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

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

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

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

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

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

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

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