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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 our 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 UN 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 UN. 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 non-discrimination 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 fifty 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 decision-making 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 privacy 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 U.S. 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 UN, 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 US 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 service members 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 one 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 twenty-two 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.

Thank you for your attention.