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From: Tom Zampieri

To: 'Paul Kaminsky'

Sent: Tuesday, September 16, 2008 12:55 PM

Subject: FW: [BVALAG#180] American Disability Restoration Act of 2008 Passed Senate

Paul

Want to make sure people in Florida understand that BVA was part of this effort, we went to meetings, signed letters, and worked with all the other organizations to make this happen. Other organizations were unable to move this until the various VSO's became involved last March on the Hill.

Tom Zampieri

From: Tom Zampieri [mailto:tzampieri@bva.org]

Sent: Tuesday, September 16, 2008 12:52 PM

To: bva-lag@googlegroup s.com

Subject: [BVALAG#180] American Disability Restoration Act of 2008 Passed Senate

September 16, 2008

For all BVA membership and key contacts, early this spring when some thought that the attempt at passage of a new American Disabilities Restoration Act would fail, several of the veteran service organizations had meetings with other disability organizations, and added our collective efforts to passage of this legislation. The House version of the bill passed last summer (H.R. 3195), and then we put forth efforts on the Senate side, with Senator Harkin and Senator Hatch who introduced S 3406. Again, with the efforts of the various veteran service organizations along with the disability community at large, the ADA bill passed last week. Many of the other disability groups credit the work of the veteran service organizations in bringing this bill quickly to the floor on both the house and senate side, especially after it had initially stalled for most of last year in the first session of 110th Congress.

Below is copy of letter that was signed and sent to the two members of the senate who worked on this issue all year and the Blinded Veterans Association was on board from the start of this effort last March.

Re: Support for new ADA Amendments Act of 2008. S. 3604

Dear Senators Harkin and Hatch:

When a disabled veteran recovers enough to return to the workforce, it's a slap in the face to run into employment discrimination. That is why we salute you for your leadership in sponsoring S. 3406 to restore the protections of the Americans with Disabilities Act (ADA) that have been eroded by the courts.

As leaders of organizations that represent men and women who have served honorably in our nation's military, we are proud to support the Senate version of the ADA Amendments Act of 2008 (S. 3406).

This revised ADA bill has broad bipartisan support and the support of an unusual coalition of business, disabilities, civil rights and veterans/military groups who are working together to reverse narrow court interpretations of the ADA that had deprived people with many kinds of disabilities from ADA protection.

It confirms that veterans and other people with disabilities should not lose their civil rights because their conditions can be managed with mitigating measures such as medication, prosthetics and therapy, and assistive technology.

The honorable men and women who have become disabled in the service of our country deserve our support in every way. Often the best healing agent for both mind and body is to return to the workforce with a decent job at a living wage. This bill will help make sure they are protected from unlawful discrimination.

**Air Force Association Air Force Sergeants Association Air Force Women Officers Associated
American Federation of Government Employees American GI Forum of the U.S. AMVETS Blinded Veterans
Association Disabled American Veterans Enlisted Association of the National Guard of the United States
Iraq & Afghanistan Veterans of America Jewish War Veterans of the USA Military Officers Association of America
Military Order of the Purple Heart National Association for Black Veterans National Association for Uniformed
Services Naval Reserve Association Non-Commissioned Officers Association Paralyzed Veterans of America
Reserve Enlisted Association United Spinal Association
Veterans of Foreign Wars Vietnam Veterans of America Veterans of Modern Warfare**

For those interested in tracking the original house bill, below is the bill number and the two members who introduced the house bill last year.

Re: Support for new ADA Amendments Act of 2008, H.R. 3195

Dear Majority Leader Hoyer and Congressman Sensenbrenner:

The veteran service organizations commend you for your leadership in sponsoring H.R. 3195 to restore the protections of the Americans with Disabilities Act (ADA) that have been eroded by the courts and we appreciate your joint efforts at having this bill pass in the House of Representatives.

There were some differences between the house version and senate version that have been corrected, but will require final vote on house side.

United Spinal Association believes that both H.R. 3195 and S. 3406 are a sufficient improvement over existing law to merit our strong support.

Both bills clearly state that courts have too narrowly interpreted the definition of disability under the ADA.

Both also clarify the definition of disability by including a useful list of major life activities and major bodily functions that will make it easier for people to show that they have a disability that merits ADA protection.

Without these bills, people who use prosthetics or medication to help deal with their disabilities are often shut out of ADA protection. With these bills, they should be protected by the ADA. For example, in one case, an employee with diabetes was fired because he needed to take a 30 minute lunch at the same time every day in order to take his medication and control his blood sugar by eating at a regular time. The court held that he could be fired because of his diabetes but because he could control his condition with medication and diet, he was not disabled under the ADA and had no remedy.

Without these bills, people with conditions that are recurring or episodic are often shut of out ADA protection. With these bills, they should be protected by the ADA. For example, a court held that because a person with epilepsy had grand mal seizures that only lasted a couple of minutes a week, he was not disabled and the employer was free to fire him because of his epilepsy. Under these bills, the court must determine whether a person has a disability when the condition is active – such as during a seizure. This provision should help the many veterans who develop epilepsy in connection with traumatic brain injuries. This provision should also help people with multiple sclerosis which has periods when it is not active.

Below is information sent out from a further analysis of the ADA Restoration Act by American Foundation for the Blind AFB here in Washington DC with how this will affect blind or visually impaired.

Last week, the U.S. Senate surprised disability and business community advocates by passing S. 3406, the ADA Amendments Act of 2008, with little notice under unanimous consent. While favorable action by the Senate was always deemed likely, the move to advance the legislation with dispatch means that the House can and will act on the measure before Congress adjourns. The House is likely to act any day, and the President is expected to sign the legislation.

The ADA amendments are intended to remedy the harmful effects of Supreme Court decisions that have eroded the civil rights protections of the law by imposing illogical and far-too-rigorous conditions on its application. For example, decisions by the Court have left in doubt whether an individual with a disability who may use assistive technology or medications to mitigate the effects of their disability can in fact bring a successful claim under the ADA for employment discrimination.

In addition to restoring the original intent of Congress, the ADA amendments also include two important features of particular interest to the vision loss community.

First, while the amendments are designed to clarify that use of ordinary eye glasses or contacts is to be considered a mitigating measure when determining whether an individual can bring an ADA claim, the amendments are careful to distinguish glasses and contacts from low vision devices. This means that an individual's use of low vision devices cannot be taken into account when determining whether an individual has a disability that in fact substantially limits that individual in a major life activity such as seeing or reading.

Secondly, in making the important distinction between glasses/contacts and low vision devices, the amendments should help to pave the way for greater coverage of low vision devices under Medicare and Medicaid. Currently, the Medicare administering agency intends to permanently blur this distinction and categorically exclude reimbursement for any device that uses a lens. While the ADA amendments will not have the legal effect of changing reimbursement policy per se, these amendments should serve as valuable precedent for future advocacy in this area. The definitions of these terms found in the ADA amendments are as follows--

(I) the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
(II) the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.'

The array of vision loss provisions in the ADA amendments were prepared and advocated by AFB with the support of leading ophthalmologists and other professionals and consumers. For the full text of the Senate-passed ADA amendments go to <http://thomas.loc.gov/cgi-bin/query/z?c110:S.3406.ES:>

ADA Amendments on Fast Track for Presidential Signature--Changes Will Add Protections for People with Vision Loss

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