Resolution of Advice and Consent to Ratification of the Convention on the Rights of Persons with Disabilities

Resolved, (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO RESERVATIONS, UNDERSTANDINGS, AND DECLARATIONS.


SEC. 2. RESERVATIONS.

The advice and consent of the Senate to the ratification of the Convention is subject to the following reservations, which shall be included in the instrument of ratification:

(1) The Convention shall be implemented by the Federal Government of the United States of America to the extent that it exercises legislative and ju-
dicial jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the obligations of the United States of America under the Convention are limited to the Federal Government’s taking measures appropriate to the Federal system, which may include enforcement action against State and local actions that are inconsistent with the Constitution, the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), or other Federal laws, with the ultimate objective of fully implementing the Convention.

(2) The Constitution and laws of the United States of America establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in certain private conduct are also recognized as among the fundamental values of our free and democratic society. The United States of America understands that by its terms the Convention can be read to require broad regulation of private conduct. To the extent it does, the United States of America does not accept any obligation under the Convention to enact legisla-
tion or take other measures with respect to private
conduct except as mandated by the Constitution and
laws of the United States of America.

(3) Article 15 of the Convention memorializes
existing prohibitions on torture and other cruel, in-
human, or degrading treatment or punishment con-
tained in Articles 2 and 16 of the United Nations
Convention Against Torture and other Cruel, Inhu-
man or Degrading Treatment or Punishment, adopt-
ed by the United Nations General Assembly Decem-
ber 10, 1984, and entered into force June 26, 1987
(the “CAT”) and in Article 7 of the International
Covenant on Civil and Political Rights, adopted by
the United Nations General Assembly December 16,
1966, and entered into force March 23, 1976 (the
“ICCPR”), and further provides that such protec-
tions shall be extended on an equal basis with re-
spect to persons with disabilities. To ensure consist-
ency of application, the obligations of the United
States of America under Article 15 of the Conven-
tion shall be subject to the same reservations and
understandings that apply for the United States of
America with respect to Articles 1 and 16 of the
CAT and Article 7 of the ICCPR.
SEC. 3. UNDERSTANDINGS.

The advice and consent of the Senate to the ratification of the Convention is subject to the following understandings, which shall be included in the instrument of ratification:

(1) The United States of America understands that this Convention, including Article 8 thereof, does not authorize or require legislation or other action that would restrict the right of free speech, expression, and association protected by the Constitution and laws of the United States of America.

(2) Given that under Article 1 of the Convention “[t]he purpose of the present Convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities,” with respect to the application of the Convention to matters related to economic, social, and cultural rights, including in Articles 4(2), 24, 25, 27, 28, and 30, the United States of America understands that its obligations in this respect are to prevent discrimination on the basis of disability in the provision of any such rights insofar as they are recognized and implemented under United States law.

(3) Current United States law provides strong protections for persons with disabilities against un-
equal pay, including the right to equal pay for equal work. The United States of America understands the Convention to require the protection of rights of individuals with disabilities on an equal basis with others, including individuals in other protected groups, and does not require adoption of a comparable worth framework for persons with disabilities.

(4) Article 27 of the Convention provides that States Parties shall take appropriate steps to afford to individuals with disabilities the right to equal access to equal work, including nondiscrimination in hiring and promotion of employment of persons with disabilities in the public sector. Current interpretation of Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) exempts United States military departments charged with defense of the national security from liability with regard to members of the uniformed services. The United States of America understands the obligations of Article 27 to take appropriate steps as not affecting hiring, promotion, or other terms or conditions of employment of uniformed employees in the United States military departments, and that Article 27 does not recognize rights in this regard that exceed those rights available under United States law.
(5) The United States of America understands that the terms “disability”, “persons with disabilities”, and “undue burden” (terms that are not defined in the Convention), “discrimination on the basis of disability”, and “reasonable accommodation” are defined for the United States of America coextensively with the definitions of such terms pursuant to relevant United States law.

(6) The United States of America understands that the Committee on the Rights of Persons with Disabilities, established under Article 34 of the Convention, is authorized under Article 36 to “consider” State Party Reports and to “make such suggestions and general recommendations on the report as it may consider appropriate.” Under Article 37, the Committee “shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention”. The United States of America understands that the Committee on the Rights of Persons with Disabilities has no authority to compel actions by states parties, and the United States of America does not consider conclusions, recommendations, or general comments issued by the Committee as constituting
customary international law or to be legally binding on the United States in any manner.

(7) The United States of America understands that the Convention is a nondiscrimination instrument. Therefore, nothing in the Convention, including Article 25, addresses the provision of any particular health program or procedure. Rather, the Convention requires that health programs and procedures are provided to individuals with disabilities on a nondiscriminatory basis.

(8) The United States of America understands that, for the United States of America, the term or principle of the “best interests of the child” as used in Article 7(2), will be applied and interpreted to be coextensive with its application and interpretation under United States law. Consistent with this understanding, nothing in Article 7 requires a change to existing United States law.

SEC. 4. DECLARATIONS.

The advice and consent of the Senate to the ratification of the Convention is subject to the following declarations:

(1) The United States of America declares that the provisions of the Convention are not self-executing.
(2) The Senate declares that, in view of the reservations to be included in the instrument of ratification, current United States law fulfills or exceeds the obligations of the Convention for the United States of America.