

ACT, Inc.
Association of American Medical Colleges
Federation of State Medical Boards of the United States, Inc.
Graduate Management Admission Council
Law School Admission Council
National Board of Medical Examiners
National Conference of Bar Examiners
National Council of Examiners for Engineering and Surveying

July 14, 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
United States House of Representatives
Washington, D.C. 20515

The Honorable James L. Oberstar
Chairman
Committee on Transportation and
Infrastructure
United States House of Representatives
Washington, D.C. 20515

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Re: H.R. 3195/The ADA Restoration Act of 2007 and the ADA Amendments Act of 2008

Dear Chairmen:

As the leaders of eight organizations involved in standardized testing and higher education, we write to express our strong concern regarding H.R. 3195, the "ADA Restoration Act of 2007" (the "ADARA"), which the House of Representatives recently passed as the "ADA Amendments Act of 2008" (the "ADAMA").

H.R. 3195 is a proposed legislative response to decisions of the United States Supreme Court that were viewed as interpreting the Americans with Disabilities Act ("ADA") too narrowly. We understand that the Supreme Court decisions in question all arose in the employment context and involved Title I of the ADA; as a result, discussions regarding the proposed legislation focused on its likely impact on employers and employees. There was very little consideration of the proposed legislation's impact relative to Titles II and III of the ADA. Title II applies to services provided by state and local governments. Title III applies to public accommodations such as hotels, restaurants, and "places of education," and to organizations that administer certain types of examinations.

The ADAMA resulted from informal "compromise negotiations" between representatives of certain employer advocacy groups on the one hand, and disability advocacy groups on the

other. Entities that are covered by other Titles of the ADA, such as state governments (Title II), colleges and universities (Titles II and III), testing organizations (Titles II and III), and public accommodations (Title III) were not included in those negotiations—even though they, too, would be directly affected by the changes contemplated in the proposed legislation. Representatives of the testing and higher education communities were able to provide only limited input when they learned about the ongoing negotiations between employer and disability representatives, and the concerns raised by these communities were not addressed in the language of the ADAMA.

We are writing to alert your Committees to the unintended and negative consequences the proposed legislation would have on entities that administer or rely upon standardized tests; on higher education institutions and the students who attend those institutions; and on the public that is served by the physicians, lawyers, engineers, and other professionals whose certification and licensing depends, in part, on the results achieved on such examinations.

Our concerns arise in large part because, unlike other discrimination laws, the ADA imposes affirmative obligations on covered entities to provide accommodations to individuals who fall within the statute's reach. Because of the ADA's accommodation requirements, testing entities, colleges, and universities have to deal with ADA issues on a daily basis. They routinely have departments and personnel dedicated to handling ADA matters, and they incur significant monetary and programmatic costs in complying with the ADA. In contrast, some employers may never have to deal with an ADA issue, and most employers will do so only episodically. The ADAMA is thus of particular interest and concern to the testing and higher education communities.

The ADAMA and Standardized Testing

Millions of standardized examinations are administered every year in a variety of contexts, including admission to colleges, universities, and professional schools; professional licensure; and skills certification. In each context, the standardized examinations provide an objective means of comparing candidates or evaluating the competency of an individual.

Under Titles II and III of the ADA, testing organizations and public entities that administer standardized examinations must make the exams accessible to all examinees. The Department of Justice ("DOJ") has interpreted this statutory obligation to require not just physical access, but also exam modifications or auxiliary aids in certain situations. As a result, many individuals who take standardized exams request testing accommodations under the ADA. The number of individuals requesting accommodations would increase even further if the ADAMA were enacted.

Testing accommodations raise three main areas of concern: score comparability, fairness, and issues of public health and welfare. When examinees request accommodations, they are asking to take an exam under conditions that are different from the conditions under which all other examinees must test. This has important implications beyond just the substantial

costs incurred by testing organizations to provide such accommodations. These requests often involve, in some way, the very cognitive skills (such as thinking and concentrating) that a standardized exam is attempting to measure. The provision of such accommodations—especially extra testing time—can affect the comparability of the resulting scores and scores achieved under standard testing conditions. Research has shown that scores from nonstandard administrations often do not have the same meaning as scores from a standard administration. Accommodations can thus undermine the very purpose of a “standardized” examination. Compromising the standardized nature of these exams raises fairness issues for individuals who test without accommodations and compromises the ability of entities that rely upon test scores to assess an individual’s achievement, competency, or aptitude. It can also affect the interests of the general public if the exams in question are licensing exams or exams that are taken to gain access to professional schools such as medical school or law school.

The ADAMA and Higher Education

The ADAMA would also have negative financial and programmatic impacts on the higher education community. First, by increasing the number of students who qualify as “disabled” under the ADA, the ADAMA would result in more requests for services from the schools’ disability support offices, with attendant financial costs. Colleges and universities already find themselves unable to provide special programs and services to every student requesting those services. This situation would inevitably be exacerbated if the ADAMA were enacted. A broader definition of “disability,” with the attendant obligation to provide and pay for more accommodations, would tax the finite monies, energies, and services that are available on campuses to support disabled students.

In addition, the ADAMA would lead to more requests for academic modifications and waivers, resulting in additional changes to a school’s normal academic curriculum and more instances of students challenging unfavorable academic results or adverse academic decisions on the basis of a claimed disability. Colleges, universities, and professional schools already confront frequent instances of after-the-fact claims of learning disabilities, Attention Deficit/Hyperactivity Disorder, or other cognitive impairments by students who have not met applicable academic requirements.

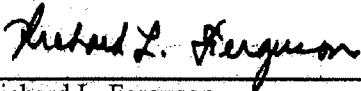
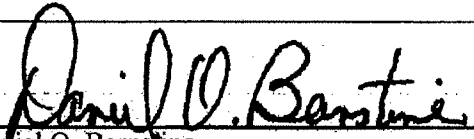

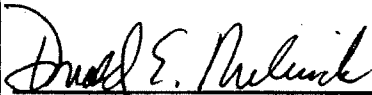
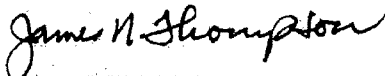

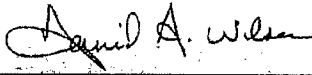

Finally, the ADAMA would cause the higher education community to divert even more of its scarce resources from education to defending costly and disruptive legal challenges. Most of these challenges involve a refusal to provide requested accommodations, rather than actions that are alleged to result from a discriminatory animus.

If the proposed legislation moves forward following consideration in the Senate, it should be amended and supplemented to address the concerns noted in this letter. We would welcome the opportunity to work with your Committees to achieve that goal.

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Respectfully yours,

 <hr/> <p>Richard L. Ferguson Chief Executive Officer and Chairman <i>ACT, Inc.</i></p>	 <hr/> <p>Daniel O. Bernstein President <i>Law School Admission Council</i></p>
 <hr/> <p>Dr. Darrell G. Kirch President <i>Association of American Medical Colleges</i></p>	 <hr/> <p>Dr. Donald E. Melnick President <i>National Board of Medical Examiners</i></p>
 <hr/> <p>Dr. James N. Thompson President and Chief Executive Officer <i>Federation of State Medical Boards of the United States, Inc.</i></p>	 <hr/> <p>Erica Moeser President <i>National Conference of Bar Examiners</i></p>
 <hr/> <p>David A. Wilson President and Chief Executive Officer <i>Graduate Management Admission Council</i></p>	 <hr/> <p>W. Gene Corley President <i>National Council of Examiners for Engineering and Surveying</i></p>