



October 31, 2007

The Honorable Barney Frank
2252 Rayburn House Office Building
Washington, DC 20515

Dear Representative Frank:

As the Executive Director of the National Disability Rights Network (NDRN) I write you today to express NDRN's, and the 57 Protection and Advocacy systems we represent, strong opposition to your legislation H.R. 3995.

Rather than protecting the interests of individuals with developmental disabilities as the bill's title states, this legislation will harm their interests by ignoring their desires and allowing those that would prefer to speak on their behalf to have the final say on the important life decision of living in the community rather than an institution. In this way, your legislation restricts the civil and human rights of individuals with developmental disabilities. In addition, H.R. 3995 opens up class action law to potential attack, as well as making it more difficult for the House Leadership to enact the ADA Restoration Act.

Disability rights have made huge strides forward in the past 30 years. Federal legislation has been enacted that ensures children with disabilities access to a free, appropriate, public education. States, Congress, and the federal government have developed family support programs that allow individuals with a developmental disability, and their families, access to the supports needed to live in the community which they did not have in the past. Medicaid law, which historically has had an institutional bias, has begun to focus more on the cost effective and family-friendly home and community based services. All these changes have provided an individual with a developmental disability, and their family, with a much wider range of options than was available in the 1950s and 1960s.

Even more importantly, the philosophy of the disability community – ranging from consumers to parents and other family members, to advocates and professionals in the field – is now completely focused on people with disabilities living in the community. In fact, the Supreme Court decision in *Olmstead* requires that individuals with disabilities have access to supports and services in the least restrictive alternative – a definition that does not apply to large institutional settings. Your legislation will throw a roadblock in the way of individuals with developmental disabilities which will prevent them from living in the community.

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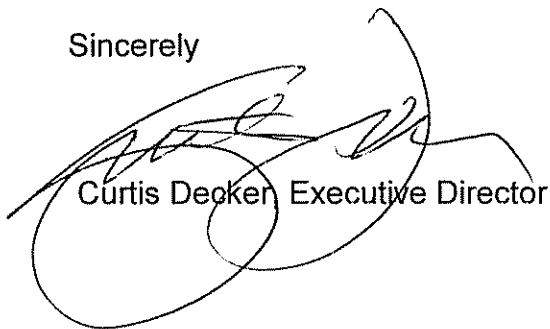
Not only does your legislation fly in the face of disability policy, rights, and philosophy, but it also opens a "Pandora's Box" of issues. First, this legislation provides the perfect opportunity for those that oppose the use of class action lawsuits to impose the requirements in your bill to a variety of other class action lawsuits including race, gender, health and environmental efforts.

Second, this legislation favors the wishes of a legal representative over the wishes of an individual with a developmental disability, by giving those who are legal representatives two opportunities to thwart the desires of an individual with developmental disabilities. After receiving notice of the lawsuit, those that want to speak for an individual with a developmental disability could attempt to intervene in the case and be heard on the merits. If denied that opportunity, the legal representative could chose to opt the person out of the case. As the letter from NDRN on the first version of this legislation H.R. 2839 showed, not all legal representatives have the best interests of the individual with a developmental disability in mind when acting on their behalf.

Finally, by introducing this legislation you have given either overt, or tacit, approval to a notification provision that the disability community has long opposed, and fought against adding to the Americans with Disabilities Act (ADA). A similar notification provision to the one contained in your bill H.R. 3995 has been introduced in prior Congresses and been actively opposed by the entire disability community as a danger to the integrity of the ADA. By introducing this legislation with a notification provision, you have shown a level of support for this provision to be included in other laws that allow a private right of action, including the ADA.

Society, the courts, and the Congress have moved away from institutionalizing individuals with developmental disabilities to creating supports and services which will give these individuals the opportunity to live full and productive lives in the community. Why are you supporting legislation that, if enacted, will set disability rights back decades? For the wants of a few, your bill will step on the rights of many and stop the forward progress that is being made to ensure that individuals with developmental disabilities who want to live in the community can do so.

Sincerely



Curtis Decker, Executive Director