

July 30, 2012

To the United States Senate:

The undersigned organizations object to the insertion of a declaration into the ratification of the Convention on the Rights of Persons with Disabilities that purports to set current U.S. law as the limit of its obligations under the treaty.¹

That declaration states:

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.

The reservations referenced in the declaration address federalism, private conduct and obligations concerning torture and ill treatment.

The federalism reservation states:

Federalism. To the extent that state and local governments exercise jurisdiction over issues covered by the convention, U.S. obligations under the convention are limited to the U.S. government taking measures appropriate to the federal system, such as enforcement under the ADA, with the ultimate objective of full implementation.

This reservation is one of process rather than substance. It acknowledges and accepts the CRPD standards while limiting U.S. obligations to those that the federal government can undertake.

The declaration that “current U.S. law fulfills or exceeds the obligations of the Convention” on the other hand is one of substance. While it may, by incorporating the federalism reservation, admit that state laws may not comply with the standards, it appears to disavow the obligation to take measures appropriate to the federal system with the objective of full implementation.

Furthermore, by asserting broadly that both federal and state law fulfill CRPD obligations, the declaration claims that any actions taken to improve those laws

¹ In addition to the declaration discussed in the letter, we object to the understanding on Article 7 of the CRPD that specifically exempts the U.S. from changing its laws to comply with standards on the rights of children with disabilities, and to the understanding on the definitions of “reasonable accommodation” and “discrimination based on disability” which set U.S. law above core standards of the treaty. We do not agree with the other reservations, understandings or declarations, which all purport to limit U.S. obligations in ways that adversely impact the rights of persons with disabilities. We choose to address the most damaging declaration in this letter in the hope that it will permit a more focused discussion.

would be a matter of political choice rather than legal obligation to comply with CRPD.

We are aware that the United States has consistently taken the position that it only ratifies treaties with which it considers itself to be already in compliance. However, if the ratification of CRPD goes through with this declaration, it would be the first time that such a position was made a formal part of the ratification instrument. In setting domestic law as a whole above the standards of the treaty, this declaration would amount to a reservation incompatible with the treaty's object and purpose, impermissible under international law.² Similar reservations and declarations have met with objections from other states parties to the CRPD³ and from legal experts.⁴

Ratifying a treaty means agreeing to uphold its standards, and not unilaterally making a blanket determination that a country's own law "fulfills or exceeds" those standards.

We urge the Senate to remove the declaration complained of, to modify its understandings accordingly on the rights of children with disabilities and the definitions of discrimination and reasonable accommodation, and to ratify the CRPD with the intention and objective of full implementation. If you have questions or require further information, please contact Tina Minkowitz, info@chrusp.org, telephone number 518-494-0174.

Sincerely,

Center for the Human Rights of Users and Survivors of Psychiatry
Voices of the Heart, Inc.
Law Project for Psychiatric Rights
Intentional Peer Support
IMPAC – Ithaca Mental Patients Advocacy Coalition
Mental Health Empowerment Project
Youth Power
US Human Rights Network
National Law Center on Homelessness & Poverty

² Under customary international law, as codified by the Vienna Convention on the Law of Treaties,

“reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.

³ See <http://www.un.org/disabilities/default.asp?id=475>.

⁴ See Legal Opinion on Article 12 of the CRPD, June 21, 2008, signed by 31 legal experts from 15 countries, http://www.leeds.ac.uk/disability-studies/archiveuk/legal%20opinion/LegalOpinion_Art12_FINAL.pdf.

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