November 5, 2013

The Honorable Robert Menendez
Chairman
Committee on Foreign Relations
United State Senate
Washington, D.C. 20510

The Honorable Bob Corker
Ranking Member
Committee on Foreign Relations
United State Senate
Washington, D.C. 20510

Dear Chairman Menendez and Ranking Member Corker:

On behalf of the American Bar Association (ABA) and its nearly 400,000 members, I write to express our strong support for the Convention on the Rights of Persons with Disabilities (CRPD). We urge that the Committee on Foreign Relations favorably report the CRPD and that the Senate pass a resolution of advice and consent to ratification as soon as possible.

The CRPD sets forth globally accepted standards on disability rights and clarifies the application of human rights principles to persons with disabilities. Approximately 10% of the global population is living with disabilities, a vast majority of whom face discrimination in education, employment, housing, health care and other areas. As the world’s historic leader in disability policy, the United States has a responsibility to join the international effort to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by persons with disabilities around the world.

Ratification of the CRPD will not require changes in domestic law or create opportunities for new lawsuits. In 2008, the United States Supreme Court held in *Medellin v. Texas* that a treaty is not binding as a matter of domestic law unless Congress has enacted statutes implementing it or the treaty itself conveys an intention that it be “self-executing” and is ratified on that basis. As with other human rights treaties ratified by the Senate, the proposed resolution of ratification for the CRPD includes a package of “reservations, understandings and declarations” (“RUD”), among which is a declaration that the provisions of the CRPD are “non-self-executing.” Accordingly, the treaty will not be judicially enforceable and will not create a private right of action in U.S. courts.
Ratification of the CRPD will not change the definition of “disability” under U.S. law. The CRPD does not contain an explicit definition of the term “disability,” instead allowing countries to apply their own definitions through domestic law and policy. In addition, as transmitted to the Senate, the proposed RUD package includes an understanding that the terms “disability” and “persons with disabilities” are to be defined under U.S. law. These terms have already been defined in a robust body of existing U.S. law, and ratification of the CRPD would neither alter nor supersede those definitions.

Ratification of the CRPD will not infringe upon U.S. sovereignty. Articles 34-39 of the CRPD establish a UN Committee on the Rights of Persons with Disabilities, the purpose of which is to collect reports from parties to the treaty and make “suggestions and general recommendations” to those parties. However, as is made clear in the text of the treaty, the Committee’s recommendations would not be binding, and it would have no authority to require or compel action by the United States under the CRPD. As is the case with other treaties, the United States would be required only to submit periodic reports, which would not affect U.S. sovereignty or require any changes to existing U.S. law, including parental rights law.

A detailed legal discussion of the enforceability of reservations, understandings and declarations adopted by the Senate when providing its advice and consent to the ratification of treaties is set out in the November 4th memorandum to this Committee from Patton Boggs LLP. The conclusions of that memorandum are clear: “There is no authority in the text of the Constitution or the decisions of the Supreme Court for the proposition that the CRPD can restrict existing Constitutional rights and freedoms of citizens, and the proposed RUDs effectively conform the government’s international obligations under the Convention to its Constitutional obligations.” The American Bar Association agrees with this conclusion.

The CRPD clarifies the application of human rights principles to persons with disabilities, and serves as an authoritative reference point for the development and refinement of relevant disability law and policy. Global implementation of the CRPD would benefit not only citizens of countries that have not previously ensured protection of these rights, but also Americans with disabilities and their families traveling to or working within those countries. Ratification would send a clear message to the world of our support for the human rights principles of the treaty, as well as our role as a world leader for the rights of people with disabilities. The treaty enjoys broad bipartisan support and has been endorsed by a broad coalition of human rights organizations, religious groups, professional associations, military and veterans organizations, and the business community.

For all of these reasons, the ABA strongly urges you to support prompt ratification of the CRPD.

Sincerely,

James R. Silkenat