

April 21, 2017

MEMORANDUM IN SUPPORT
S.1522 (Avella) / A.2546 (Lifton)

The New York Association on Independent Living (NYAIL) is a statewide membership organization composed of Independent Living Centers, community-based not-for-profit providers of advocacy, services and supports for New Yorkers with disabilities of all ages, which are controlled by people with disabilities. NYAIL strongly supports S.1522 (Avella) / A.2546 (Lifton), which would amend the State's civil rights law in relation to waiving the State's sovereign immunity to claims under the Americans with Disabilities Act of 1990 (ADA), the Fair Labor Standards Act (FLSA) of 1938, the Age Discrimination in Employment Act (ADEA) of 1967, and the Family and Medical Leave Act (FMLA).

NYAIL strongly supports S.1522/A.2546 as it will restore the original protections to employees with disabilities under the ADA, which barred states from discriminating against employees with disabilities. In the case of *University of Alabama v. Garrett* (2001), the United States Supreme Court ruled that suits in federal court by state employees to recover money damages under Title I of the ADA were barred by the Eleventh Amendment, although employees could still sue for injunctive relief. This creates an unfair and unjust disparity between states and any other type of employer. Businesses, schools, counties, towns and villages cannot violate the employment provisions of the ADA without the prospect of being held responsible in a court of law. State governments should be held to the same standards of conduct.

New York was one of 13 states that signed on to Minnesota's Amicus Curiae brief in 2001 in support of the plaintiffs in the *University of Alabama v. Garrett* case before the U.S. Supreme Court. This showed a commitment on the State's part that it should be held to the same compliance standards as other employers with regard to the ADA. S.1522/A.2546 cements that commitment by waiving the State's sovereign immunity and assuring that State employees with disabilities enjoy the same protections as those offered by any other employer. This bill would ensure that all employees, including those employed by the State, have the same protections as they have had under the ADA since 1990 and under ADEA and FLSA since they were amended in 1974 to include states.

The Supreme Court's decision in *University of Alabama v. Garrett* was a grievous misinterpretation of the ADA that denies essential rights to a segment of the population with disabilities. The Supreme Court has similarly barred individuals from suing the State under FLSA, ADEA, and FMLA. S.1522/A.2546 corrects this denial for citizens of New York State, and we strongly urge that it become law.

Thus far, three other states (Minnesota and North Carolina, 2001, and Illinois, 2004) have passed similar legislation. These states have reported no increase in costs to, or litigation against the state because of such laws.

NYAIL urges prompt passage of S.1522/A.2546.

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