

Testimony of Andrew J. Imparato
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Hearing On:

**U.S. Equal Employment Opportunity Commission's
Final Rule on the Treatment of Retiree Health Benefits under the
Age Discrimination in Employment Act**

Before the
Special Committee on Aging
United States Senate
Washington, D.C.

May 17, 2004

Chairman Craig, Ranking Member Breaux, and Members of the Special Committee on Aging:

Thank you for the opportunity to provide testimony regarding the United States Equal Employment Opportunity Commission's (EEOC's) recently released final rule on the treatment of retiree health benefits under the Age Discrimination in Employment Act (ADEA). I am honored to have this opportunity. My name is Andrew J. Imparato and I am the President and Chief Executive Officer of the American Association of People with Disabilities (AAPD), a national non-profit, non-partisan membership organization promoting political and economic empowerment for the more than 56 million children and adults with disabilities of all ages in the U.S. With more than 80,000 members, AAPD is the nation's largest and most diverse cross-disability membership organization. Our members include individuals with all types of disabilities, their family members, and others who support our mission. As AAPD's President, I am proud to be a member of the Executive Committee of the Leadership Conference on Civil Rights (LCCR), and an active participant on LCCR's task force dealing with equal employment opportunity issues.

As a former attorney adviser to EEOC Commissioner Paul Steven Miller, I follow closely the work of the EEOC, and have great admiration and respect for the Commission's capable Chairperson Cari Dominguez, her colleagues on the Commission, and its talented

and committed staff. Also, as a relatively new member of the Ticket to Work and Work Incentives Advisory Panel to the Social Security Administration (I was appointed to this position last year by Senator Daschle, in consultation with Senator Kennedy), I believe it is critical that disabled people of all ages have adequate health care and long-term services and supports so that they may remain active and contributing members of society throughout their lives.

I am here today because I am concerned that the EEOC has taken an action that will unnecessarily imperil retiree health benefits for the retirees who are the oldest and most disabled—in short, the individuals most in need of quality health coverage. I believe the EEOC's final rule exempting retiree health benefits from the ADEA is not consistent with the Commission's mission to protect and enforce the civil rights of all workers, and places older retirees in danger of losing critical health coverage—coverage that they trusted would be available to them as they grew old and needed it. I am hopeful that the members of this Committee, working with your colleagues on the Finance Committee and the Committee on Health, Education, Labor and Pensions will look for ways to remedy the problem that EEOC's final rule has created for retirees.

In 1993, I came to Washington, D.C. to join the staff of the Disability Policy Subcommittee of the U.S. Senate Committee on Labor and Human Resources, when it was beginning the process of taking up national health care reform. Although we have made important improvements in health policy since the early 1990s, I believe that today

we continue to face a growing crisis that prevents too many average Americans from accessing the quality, affordable health care they deserve.

My testimony today is based on my assessment of the likely impact of the EEOC's final rule on retiree benefits. This assessment must take into account the other benefits that accrue as individuals reach retirement age. I would like to begin by making the point that the most important public health care program for retirees, the Medicare program, is generally ill-equipped to address adequately the acute and long-term care needs of retirees with disabling and chronic health conditions. Medicare is a program that was designed at a time when people with disabilities and chronic health conditions were, to a great extent, not expected to work or be active participants in the lives of their communities. To this day, the Medicare program is reluctant to pay for things like wheeled mobility and other forms of durable medical equipment, attendant care services, assistive technology, mental health care, and other supports that many disabled people of all ages require if they want to keep active and engaged in the life of their families, workplaces, communities, and places of worship.

We have learned from the disability rights movement that disability is a natural part of the human experience. A disability need not and should not limit a person's ability to make choices, pursue meaningful careers, and participate fully in all aspects of community life. As a person living with bipolar disorder, I can tell you that my work and my home life with my wife, two boys, our extended family and our friends and neighbors sustain me through my frequent bouts of depression. If I were to allow myself to get isolated or, worse yet, be institutionalized, I am confident that my capacity to fight the

depression would be greatly diminished. Yet, when I look at the employment rates, home ownership rates, and other key indicators for disabled people in the U.S., I must conclude that I am the exception rather than the rule when it comes to living with a disability in America. Fourteen years after passage of the Americans with Disabilities Act (ADA), far too many disabled Americans continue to be trapped in poverty or subsistence wages, social isolation, and insecurity about their future.

Until we modernize both the Medicare and the Medicaid programs so that they consistently support disabled people of all ages to maximize their independence; until we provide real choices in integrated community settings for people with disabilities and seniors who require long-term services and supports; we will continue to rob millions of disabled people and seniors of their freedom, their dignity, and their ability to pursue their dreams.

Turning back to the topic of today's hearing, I believe Commissioner Stuart J. Ishimaru articulated very well the concerns that led him to cast the sole vote opposing the EEOC's final rule exempting retiree health benefits from the requirements of the ADEA. I encourage you to read his statement on the EEOC website at www.eeoc.gov/abouteeoc/meetings/4-22-04/ishimaru.html. As he noted at the Commission's meeting on April 22, 2004, the final rule "will allow [an employer] to discriminate against older retirees in the type of health care benefits it provides." I concur. Moreover, I would argue that the older retirees who are most likely to lose key benefits as employers take advantage of the new loophole that EEOC has created are

retirees with disabilities and chronic health conditions. This vulnerable population deserves to grow old with dignity, surrounded by family and friends. Yet, if we allow employers to shift benefits away from the oldest and sickest retirees and toward the youngest and healthiest, we are forcing the older individuals to rely on Medicare and Medicaid to pick up the slack. For the reasons stated above, under current law, Medicare is very ill-equipped to safeguard the dignity of disabled beneficiaries. Moreover, even when a person is willing to impoverish herself and her family to become eligible for Medicaid, the Medicaid program remains an inadequate safeguard because it continues to suffer from a bias toward institutional care that unfairly isolates and warehouses hundreds of thousands of disabled recipients of all ages.

Chairman Craig, Ranking Member Breaux, and members of the committee, if we are truly committed to the goals of the ADA and the ADEA, let us recognize that retirees of all ages need quality health care and a system of long-term services and supports that will safeguard their dignity and independence as they acquire disabling conditions. Retiree health benefits currently address health needs that the Medicare program, even with new prescription drug benefits, is not well-equipped to address. Retiree health benefits are important building blocks supporting a comprehensive system of benefits. Certainly, retiree health benefits are only part of the solution. We need better quality disability and long-term care insurance products that will pay to keep individuals at home and independent as long as possible. We need incentives for younger workers to buy such policies and/or for employers to provide them. We need a Medicare program that recognizes the critical role that assistive technology and long-term supports and services

can play in keeping people independent and active as we age. We need a Medicaid program that gives people real choice in where to receive the long-term services and supports they need to survive. In other words, we need elected officials like the members of this Committee to re-engineer our country's public and private safety net so that the onset of a disability will not mean separation, isolation and poverty for our nation's retirees.

EEOC's final rule exempting retiree health benefits from the ADEA, I fear, is a step in the wrong direction. I commend you for holding today's hearing, and I urge you to work with the senior community and the disability community to restore security and peace of mind to the millions of retirees whose health and well-being have been placed in jeopardy.

Thank you again for the opportunity to testify. I would be happy to answer any questions that you may have.