

**Testimony of
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Before the Senate Committee on Health, Education, Labor & Pensions
United States Senate
Hearing on
Protecting Against Genetic Discrimination: The Limits of Existing Laws
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Mr. Chairman, Senator Gregg, Members of the Committee:

My name is Cari Dominguez, and I am Chair of the Equal Employment Opportunity Commission, the EEOC. On behalf of the Commission, I would like to thank you for the opportunity to address the Committee this afternoon, and thank you for convening this hearing on this important subject.

For more than 35 years, the EEOC has led the federal government's effort to combat employment discrimination and protect workers' rights. When I was appointed to head the Commission, I noted that the "EEOC has a unique and rich history" and that our "mission captures the promise of America and the mandate of our times: that no worker be left behind for reasons as wasteful and abhorrent as prejudice and discrimination." I further pledged to work closely with President Bush, with Congress, and with all those "committed to [EEOC's] mandate . . . to end discrimination in the workplace once and for all."

On June 23, 2001, President Bush, noting the recent mapping of the human genome, observed that "as with any other power, this knowledge of the code of life has the potential to be abused. Employers could be tempted to deny a job based on a person's genetic profile.... Genetic discrimination is unfair to workers and their families. It is unjustified - among other reasons, because it involves little more than medical speculation. A genetic predisposition toward cancer or heart disease does not mean the condition will develop. To deny employment or insurance to a healthy person based only on a predisposition violates our country's belief in equal treatment and individual merit."

I share President Bush's concern and strongly support the principle that discrimination based on genetic information should be prohibited through legislation that is "fair, reasonable, and consistent with existing discrimination statutes."

Some have suggested that Title I of the Americans with Disabilities Act (ADA) already prohibits such discrimination. Last year, the EEOC filed its first ADA lawsuit challenging an employer's administration of a genetic test. Although the genetic testing at issue in that particular instance was addressed by the ADA, the application of the ADA to other genetic information issues is not clear.

We believe that both individuals and employers need understandable rules as we enter this brave new world of genetics. For applicants and employees, a genetic nondiscrimination bill would assure that their qualifications and abilities - and not information about a genetic predisposition to some condition they might never develop - would be used in employment decisions. It would also help ensure that fear of misuse does not deter individuals from participating in genetic research -- and the valuable promise it holds for all of us. For employers and insurers, a genetic nondiscrimination law would clearly outline what conduct constitutes prohibited invidious discrimination in employment and insurance based on genetic information.

As we move forward to legislate in this area, we should be mindful of several important principles.

First and foremost, employers should not be permitted to discriminate based on protected genetic information. Employment decisions should be based on merit, not on speculative information about medical conditions that may or may not ever develop.

Second, we should remember that this is an evolving field. Over the past several years the advances in this area of science and medicine have come fast and furious. We are still only beginning to understand the beneficial uses this information might provide. As we provide important protection against misuse of this information, we need to be careful that we do not create overly inflexible restrictions that inhibit beneficial uses of this information.

Third, a genetic nondiscrimination bill should be consistent with existing nondiscrimination statutes. I note that the President stated in his Radio Address of June 23rd that the Administration is working to shape legislation that makes genetic discrimination illegal, and that is fair, reasonable, and consistent with existing discrimination statutes. The EEOC looks forward to working with the Committee to advance such legislation.

We at the EEOC feel that the EEOC has an established and familiar administrative procedure, including a well-received mediation program, which has proven successful in resolving discrimination charges swiftly, to the satisfaction of all parties, and without litigation (see, e.g., Dr. E. Patrick McDermott, Dr. Ruth Obar, Dr. Anita Jose, and Dr. Mollie Bowers, An Evaluation of the Equal Employment Opportunity Commission Mediation Program (September 20, 2000)). Where the EEOC finds cause to believe that discrimination has occurred, we have a conciliation procedure through which many charges are also resolved. Because it provides incentives and opportunities for settlement, the administrative process is much less costly and burdensome, both to those involved and to the judicial system, than a process that would permit immediate access to the courts. Moreover, during the past several years, the Commission has made changes to charge processing, enabling us to keep up with our current caseload as well as reduce our charge backlog. EEOC also has expertise in the development of employment nondiscrimination enforcement policies that shield workers from unlawful discrimination and ensure that legitimate business needs are met.

We feel that in providing protection from genetic discrimination, we should take advantage of the expertise and process of the EEOC -- just as Congress did in passing Title VII of the Civil Rights Act of 1964 and Title I of the ADA.

Finally, we should avoid creating inequities in the law by ensuring that the remedies for genetic discrimination are consistent with remedies in existing nondiscrimination statutes. It would be manifestly unfair to provide lesser or greater relief to an otherwise healthy individual based on a genetic marker that may or may not develop into a disease or disorder than an individual who actually has the disease or disorder. There is simply no legal justification for different treatment of victims of genetic discrimination.

As the President explained, "Just as we have addressed discrimination based on race, gender and age, we must now prevent discrimination based on genetic information.... We will all gain much from the continuing advances in genetic science. But those advances should never come at the cost of basic fairness and equality under law."

Thank you for the opportunity to testify. The Commission stands ready to assist the Committee as it develops legislation on this important issue.

