THE DAILY CALLER

A bad disabled-rights treaty

By: Walter Olson – December 4th, 2012

Sen. Majority Leader Harry Reid (D-Nev.) is expected to bring to the Senate floor today the United Nations-drafted Convention on the Rights of Persons with Disabilities, sometimes labeled the "international ADA," despite 36 conservative senators' warning that the lame-duck session is not a suitable time to take up a controversial measure that lawmakers had previously shown no rush about ratifying. In response, treaty advocates have mounted a campaign to depict it as not really controversial at all, among sophisticates at least. According to the Associated Press, supporters of the measure "stressed that it was modeled after the 1990 Americans with Disabilities Act and required no changes in U.S. law." Per Washington Post writer Dana Milbank, the treaty is an "innocuous" measure that "requires virtually nothing of the United States." Milbank charges that critics led by Sen. Mike Lee (R-Utah) have been drawn into a stance of "opposing the disabled" (and that certainly does sound awful, doesn't it?) via the "dark world of U.N. conspiracy theories."

An editorial urging ratification in the Washington Post takes much the same line, claiming the measure "would not require the United States to change its laws" and blaming opposition on the "far right." Sure, let's sign away our national sovereignty on questions of how best to accommodate the disabled. What could go wrong?

Plenty, actually. Anyone who claims the CRPD merely codifies existing U.S. disabled-rights law, as distinct from prescribing major new extensions of it, cannot have read its text with care. Beyond that, the treaty would if taken seriously bid to wrest from the control of elected U.S. lawmakers the future course of many important domestic policy issues, from the structuring of Social Security disability benefits to the question of whether prospective law and medical students should have a right to extra time in taking exams to accommodate their learning disabilities. When it's pointed out that the convention by its own text requires radical revamping of many existing policies, advocates respond with the peculiar argument that, after all, we shouldn't take its provisions all that seriously; other ratifying countries are already blithely ignoring their obligations under it, and the United States will be free to do so too, especially as the mechanisms for enforcing it are (for the moment) fairly toothless. It is at best a cynical argument that deserves senators' rejection.

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The convention consists of a preamble and 50 (!) articles. Under Article 4 (1)(b), ratifying states pledge to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities," and under 4 (1)(d), to "refrain from engaging in any

act or practice that is inconsistent” with the convention. Who gets to define whether an existing law, regulation, custom, or practice “constitute[s] discrimination against” the deaf, blind, epileptic, diabetic, or paraplegic? Or — to name a few of the other groups currently deemed disabled — persons afflicted with psychosis, cancer, emotional dysfunction, narcolepsy, learning disability, past alcohol or drug abuse if in rehab, or serious contagious disease? Your guess is as good as the Post editorialists’, except that they seem to have spent no time guessing or so much as thinking about the matter.

Will states and localities have to change their laws, or just the federal government? Glad you asked: Article 4, Section 5 says “The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.”