

“We are not asking for pity. We are not even asking for your sympathy. All we ask is that you make real the promises and opportunities that America strives to offer everyone: the respect and dignity we deserve as free and responsible citizens.”

—Denise Karuth¹

HOW THE ADA WAS PASSED

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“Within a few weeks the ADA will become the law of the land because of the vision of the disability community. You knew in your hearts what we now write into law—that discrimination based on fear, ignorance, prejudice, and indifference is wrong. ... The ADA is first and foremost the outcome of the extraordinary efforts of the disability community. This is your bill, and you earned it.”

—Senator Tom Harkin (D-Iowa)²



This year marks the 25th anniversary of the Americans with Disabilities Act (ADA) of 1990.³ The ADA created critical legal protections and opened up new possibilities for individuals with disabilities in education, employment, housing, and public accommodations. In the years since the ADA was passed, its application has evolved through case law and regulatory changes. And more recently, the ADA was amended to make it easier for individuals with disabilities to seek its protection.⁴ Although the ADA is widely known as the primary law prohibiting discrimination based on disability, relatively few people are aware of the ADA's origins or the extensive grassroots advocacy effort that went into achieving comprehensive civil rights protections for individuals with disabilities.

Today, it might be easy, particularly for younger readers, to take for granted many of the changes brought about by the ADA. And at first glance, it may seem as though the ADA's passage in Congress was noncontroversial because the final bill passed the Senate by a 91–6 vote margin⁵ and the House by a 377–28 vote margin.⁶ But in reality, the passage of the ADA was the result of decades of tireless effort by members of the disability community who asked only for the opportunity to do things many of us take for granted—get an education, work, live in the community with friends and family, and access public places. Although some of their initial efforts stalled, disability rights advocates eventually achieved a piece of landmark legislation that has made it possible for individuals with disabilities to participate fully in their communities.

Early Efforts To Achieve Legal Protections for Individuals With Disabilities

Before the 1960s, most legislation directed toward individuals with disabilities was aimed at vocational rehabilitation and income support. These social-welfare-style programs did little to address the physical and societal barriers to the pursuit of opportunities and inclusion by individuals with disabilities. In 1968, Congress passed the Architectural Barriers Act, which required buildings constructed with federal funds to be accessible to individuals with disabilities. But the Architectural Barriers Act's effects were limited because many existing buildings were not modified for accessibility, and it did not require privately owned facilities to accommodate individuals with disabilities.⁷

The first attempt to create broad civil rights protections for individuals with disabilities occurred in 1972. Sen. Hubert H. Humphrey Jr. (D-Minn.), and Rep. Charles Vanik (D-Ohio) each introduced bills that would have amended the Civil Rights Act to add disability as a protected class. But neither proposal was seriously considered—no hearings were held, nor were the bills ever brought to a committee or floor vote.⁸

In 1973, Congress adopted the Rehabilitation Act, which replaced the Vocational Rehabilitation Act and was the first successful piece of legislation designed to make wide-ranging improvements in the lives of individuals with disabilities. Title V of the Rehabilitation Act included provisions aimed at improving access to employment, housing, and transportation for individuals with disabilities.⁹ In addition, Section 504 of the Rehabilitation Act contained a provision prohibiting federally funded programs from discriminating against individuals with disabilities:

No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.¹⁰

The importance of Section 504 was not fully appreciated when the Rehabilitation Act was passed. Section 504 was not part of the original draft of the bill; it was added late in the legislative process by Senate staff members rather than at the behest of disability rights advocates. The legislative history is silent regarding the intent behind Section 504, and its inclusion was not controversial.¹¹ Only after the Rehabilitation Act had been signed into law did one activist refer to Section 504 as “the single most important civil rights provision ever enacted on behalf of disabled citizens in this country.”¹²

The inclusion of Section 504 in the Rehabilitation Act turned out to be significant for two reasons. First, Section 504 marked the first time American law recognized the exclusion of individuals with disabilities as discrimination. Individuals with disabilities had long been thought of as deserving of government assistance, but the notion of access as a civil right suggested a new way of thinking about the relationship between individuals with disabilities and the government.¹³ With the enactment of Section 504, individuals with disabil-



ities had a new legal mechanism by which to assert their own rights to participate in American society.

Section 504 acquired additional significance after the reluctance of the Department of Health, Education, and Welfare (HEW) to issue regulations, which sparked a firestorm of protests and galvanized a cross-disability movement for civil rights. Prior to the mid-1970s, disability advocacy organizations had not built cross-disability coalitions to influence policy. Cross-disability coalitions began to emerge around the same time the Section 504 regulations were being considered, and those coalitions were strengthened by the effort to get HEW to issue regulations.

At the start of President Jimmy Carter's administration, and after years of delay by HEW in issuing the Section 504 regulations, disability advocates orchestrated peaceful protests at each of HEW's regional offices to demand that the regulations be signed. The largest demonstrations were planned for San Francisco and Washington, D.C. In San Francisco, protesters occupied the regional HEW office for 25 days. In Washington, D.C., about 300 protesters occupied the office of Joseph Califano, the newly appointed HEW Secretary. Many of the protesters stayed overnight. Califano eventually acquiesced and signed the regulations without changes. These protests also cultivated personal friendships between individuals with different disabilities and strengthened cross-disability coalitions.¹⁴

Preserving Hard-Fought Gains

Disability rights advocates found themselves defending the Section 504 regulations only a few years after they succeeded in getting the regulations issued. After President Ronald Reagan took office in 1981, one of his early initiatives involved eliminating regulations that were perceived to be unduly burdensome on American businesses. To accomplish this objective, Reagan formed the Task Force on Regulatory Relief (Task Force), which was led by Vice President George H.W. Bush. The Task Force was charged with reviewing federal regulations and making recommendations for the reduction of unnecessary regulations.¹⁵

The regulations for two key disability rights laws—Section 504 of the Rehabilitation Act and the Education for All Handicapped Children Act—were among the first targeted by the Task Force. Changes to the Section 504 regulations, for which the disability community had fought so hard, would have been a significant setback, and deregulation of the Education Act would have threatened educational and employment opportunities for individuals with disabilities. But drafts of the proposed changes to the Section 504 regulations were leaked to disability rights advocacy groups, who coordinated a nationwide letter-writing campaign to oppose the changes. Thousands of disability rights advocates, many of them parents of children with disabilities, also attended hearings that were held throughout the country as part of the regulatory review process. Those advocates testified about the harms the proposed changes would cause.¹⁶

Ultimately, no changes were made to the regulations affecting individuals with disabilities. This was a significant victory for the disability community both because the substance of the regulations was left unchanged and because the community had successfully united to protect their rights. If, as some disability rights advocates believed, the Reagan administration had targeted the disability rights regulations out of a belief that the community was poorly organized, that strategy had backfired.¹⁷

Seeking More Comprehensive Legal Protection

Even after their success preserving the Section 504 regulations, the disability community still did not have full civil rights protection. The proposal for comprehensive legislation addressing civil rights for individuals with disabilities arose from a series of reports published by a little-known government agency called the National Council on Disability (NCD). In 1982, the NCD was tasked with issuing an annual report, which the NCD decided should set forth a proposal for a national disability policy. To build the first report, NCD member Justin Dart traveled to every state and held public forums to collect information. Dart met with individuals with disabilities, their parents, government officials, and disability professionals. The consensus from these conversations was that existing law was insufficient to protect individuals with disabilities from discrimination.¹⁸

Based on those public forums, the NCD published its first report, "National Policy for Persons with Disabilities," in 1982. That report recommended that "Congress should act forthwith to include persons with disabilities in the Civil Rights Act of 1964 and other civil and voting rights legislation and regulations."¹⁹ The NCD later decided to advocate for a separate civil rights law, however, in light of its conclusion that discrimination based on disability is distinctive.²⁰

Despite the fact that the idea of a disability rights law failed to gain traction in the federal government in the early 1980s, state and local governments were beginning to include individuals with disabilities in their civil rights laws, and people in the disability community were talking about the possibility of a comprehensive federal disability rights law.²¹ In 1986, the NCD published another report, "Toward Independence," which would serve as the basis for the first draft of the ADA.²² In "Toward Independence," the NCD recommended that "Congress should enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."²³ By late 1987, NCD staff member Robert Burgdorf had a finished draft of a comprehensive disability rights law. Although many NCD members were concerned that it was not a good time to introduce new civil rights legislation, the NCD decided to move forward and try to advance the ADA in Congress.²⁴

Moving the Bill Through Congress

The NCD approached Sen. Lowell Weicker (R-Conn.) to sponsor its version of the ADA. Weicker, whose son had Down Syndrome, was one of the disability community's strongest allies in the Senate. Rep. Tony Coelho (D-Calif.), who had epilepsy, became the chief sponsor of the ADA in the House. Weicker and Coelho introduced the NCD's draft of the ADA in their respective chambers in the 100th Congress in 1988.²⁵ But the 1988 version of the ADA included stricter provisions and a broader definition of disability than the version that was eventually passed, and some activists have suggested that the 1988 version was proposed mainly to gain endorsements during an election year.²⁶

After Weicker lost his re-election bid, a revised version of the ADA was introduced in the 101st Congress by Sen. Tom Harkin (D-Iowa). Harkin was a first-term senator who had little experience with disability policy, but he also had a personal connection to the disability community because he has a brother who is deaf. There

was some concern that opposition to the ADA might jeopardize his career, but Harkin reportedly told a committee staff member, “I didn’t get elected to get re-elected. My brother is deaf. I understand discrimination. I understand what it means and what this country can look like in 30 years. We are doing this legislation.”²⁷

Coelho continued to sponsor the ADA until he left Congress, after which Rep. Steny Hoyer (D-Md.) became the chief sponsor in the House.²⁸

The 1988 version of the ADA was considered too ambitious to pass and needed to be redrafted. Harkin worked with Sen. Edward Kennedy (D-Mass.), who chaired the committee that would control whether the bill reached the Senate floor, to craft a new version of the ADA that would get through Congress but also provide meaningful civil rights protections for individuals with disabilities. Some of the most important changes included narrowing the definition of disability and limiting the cost of compliance for businesses by eliminating the requirement that all public accommodations be accessible within five years.²⁹

The House and the Senate each held multiple hearings on the ADA, and many individuals with disabilities and parents of individuals with disabilities testified about the discrimination they faced. Among those who testified included former Sen. Weicker. Weicker described the ADA as the culmination of the progress that had been made since the passage of the Rehabilitation Act to secure rights for individuals with disabilities.³⁰ A young woman named Lisa Carl famously testified that she had been refused entry to her neighborhood movie theater because she had cerebral palsy and used a wheelchair. She told the committee, “I was not crying outside, but I was crying inside. I just wanted to be able to watch the movie like everybody else.”³¹ Carl later attended the signing ceremony, where now-President Bush remarked that she now would always be admitted to her hometown movie theater.³²

Some powerful lobbies that opposed the bill also testified at the hearings. For example, the National Federation of Independent Business, which represents the interests of small-business owners, was concerned about the cost of compliance and what it believed were excessive penalties for failing to comply. Other business groups, including the American Hotel and Motel Association and the International Mass Retail Association, were concerned about the cost of making their existing facilities accessible.³³

Ultimately, the ADA passed over the objections of these groups. Based on the final votes on the bill in each chamber, it may seem that the bill was noncontroversial and sure to pass. But the floor debates were lengthy, and a controversial amendment in the House threatened to derail the bill. Despite those efforts to undermine the bill, the House and Senate each passed their own version of the ADA. The bill went to conference committee, where the controversial amendment from the House version was fiercely debated but ultimately rejected. Each chamber then passed the conference committee’s version of the bill.³⁴ The fact that the ADA had strong advocates on both sides of the aisle—particularly Senate Democrats Harkin and Kennedy and Republicans Orrin Hatch (Utah), David Durenberger (Minn.), and Robert Dole (Kan.)—was critical to its success.³⁵

Many disability rights advocates share the credit for the ADA’s passage—thousands of people wrote letters to their members of Congress, testified at hearings, and participated in demonstrations, among other things. But a few activists played critical roles in the

ADA’s passage. Among them was Patrisha Wright of the Disability Rights Education and Defense Fund. Wright is known as “the General” for her efforts coordinating the campaign for passage of the ADA. Wright’s work as a strategist for the disability civil rights community also included leading the campaign opposing deregulation of Section 504 during the administration of President Ronald Reagan.³⁶ Justin Dart is another activist who deserves a great deal of credit for the ADA’s passage. Sometimes referred to as “the father of the ADA,” Dart’s efforts to encourage individuals with disabilities to share their stories of discrimination gave a voice to the disability community and inspired others to support the objectives of the ADA.³⁷ And Evan Kemp, a disability activist who was a long-time friend of Bush and his counsel C. Boyden Gray, had helped convince the Bush administration to make disability rights a priority.³⁸ The ADA likely would not have passed if not for their efforts and the efforts of many others.

Wright, Dart, Kemp, and many other disability rights advocates were on hand for Bush’s signing of the ADA on July 26, 1990. Kemp, who had served as a speech writer for Bush on disability issues, introduced the president and thanked the members of Congress, the Bush administration, and the disability rights activists who worked to make the ADA a reality.³⁹ In his remarks at the signing ceremony, Bush said, “[T]oday, America welcomes into the mainstream of life all of our fellow citizens with disabilities. We embrace you for your abilities and for your disabilities, for our similarities and indeed for our differences, for your past courage and your future dreams.”⁴⁰

Conclusion

Over the last 25 years, the ADA has proved to be a significant civil rights achievement. For decades, activists have passionately advocated for the removal of barriers and the recognition that individuals with disabilities can participate fully in society. The changes brought about by the ADA have addressed many injustices directed toward individuals with disabilities and have increased opportunities for education, employment, and independent living, as well as provided greater physical access to facilities for individuals with disabilities. Despite these important changes, more must be done to improve the quality of life for individuals with disabilities in the United States.

Future progress hinges on broad public support of the core principle of the ADA—to integrate individuals with disabilities into the mainstream of American life. The most important question we must ask ourselves is this: How can the legal profession help to eliminate the historical segregation of individuals with disabilities? At a minimum, we must insist on more consistent and effective enforcement of the ADA to prevent discrimination in employment, public services, and public accommodations. We must also work together to educate one another so that we are aware of negative stereotypes that we may harbor unknowingly.

As lawyers and judges, we take an oath to uphold the central constitutional tenants of providing equal justice to all. On the 25th anniversary of the ADA, we are reminded of our constitutional promise to provide equal justice to all, including individuals with disabilities, a once forgotten minority. As Dr. Martin Luther King Jr., powerfully remarked: “In the end, we will remember not the words of our enemies but the silence of our friends.” There will be no silence on this 25th anniversary of the ADA. We must strive to rigorously enforce and expand upon the safeguards of the ADA and continue our nation’s journey toward equal justice under the law for individuals with disabilities. ☉



Hon. Donovan W. Frank was appointed to the federal bench by President William Clinton and took the oath of office on Nov. 2, 1998. Judge Frank was the 31st federal judge selected for Minnesota, succeeding Judge David S. Doty. Throughout his career, Judge Frank has vigorously advocated for the rights of persons with disabilities. In recognition of such advocacy,

Judge Frank has received numerous prestigious awards, such as the Paul G. Hearne Award for Disability Rights from the American Bar Association and the Luther Granquist Systems Change Award from The Arc of Minnesota. Judge Frank also serves on numerous boards and committees, both at the federal and state level, which seek dignified and equal treatment for people with disabilities. Further, Judge Frank frequently presents CLEs and appears on public television to speak about the importance of diverse workforces, disability discrimination, and the right to equal justice for people with disabilities.



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Endnotes

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¹⁴JOSEPH P. SHAPIRO, *NO PITY: INDIVIDUALS WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT* 64-70 (1993).

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¹⁸*Id.* at 40-41.

¹⁹DORIS ZAMES FLEISCHER & FRIEDA ZAMES, *THE DISABILITY RIGHTS MOVEMENT: FROM CHARITY TO CONFRONTATION* 89 (2001).

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²⁴NCD, *Equality of Opportunity*, *supra* note 9, at 51-52.

²⁵*Id.* at 52, 54-55.

²⁶FLEISCHER & ZAMES, *supra* note 20, at 90.

²⁷NCD, *Equality of Opportunity*, *supra* note 9, at 77-78.

²⁸*Id.* at 102-03.

²⁹*Id.* at 78-79, 80-82.

³⁰*Americans with Disabilities Act of 1989: Hearing on S. 933 Before the Comm. on Labor and Human Res. and the Subcomm. on the Handicapped*, 101st Cong. 214-15 (1989) (statement of Lowell Weicker).

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