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# Mikenzi Bushue

## The Americans with Disabilities Act: A Step Towards Equality

### Introduction

The United States of America is a country founded on the idea of personal freedoms where people have the right to candidly participate in social, political, and economic activities. The philosophical idea of the “American Dream,” where anyone who worked hard could be successful in life, was thought to be available to everyone—at least on the surface. People who used wheelchairs or had been diagnosed with a mental or chronic illness were met with adversity in the forms of harmful stereotypes, discrimination, and sometimes pure hate. People with disabilities—one of the largest minority groups in the United States dating back to the early 1990s—had historically been discriminated against and shut out of society.<sup>1</sup> The disability community was a unique minority group because a person’s age, gender, and socioeconomic status are not substantial reasons for ailments. However, the community included a vast amount of people from every walk of life, race, gender, and class. A complex paradigm, an even more complex resolution, seemed unattainable. Equality did not seem achievable until thirty-two years ago, with the passage of what was considered the pinnacle of the disability rights movement: The Americans with Disabilities Act of 1990 (ADA).<sup>2</sup> Legislation passed at the height of change for disability rights; there was an expectation and hope for tremendous results. The progression of the movement and the statutory language of the ADA exposed a goal that fell short of intention.

The disability rights movement stood on the legacy of the Civil Rights Movement of the 1960s, which created effective methods to achieve equality.<sup>3</sup> In 2000, the movement rose to a level of national awareness at the beginning of 1970 but faded into the background thirty years later.<sup>4</sup> Policymakers

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1 *Cong. Rec.*, 102nd Cong., 2nd sess., 1992, vol. 136: S614.

2 Paul Wehman, ed., *The ADA Mandate for Social Change* (Grand Rapids, MI: Brookes Publishing Co., 1993), 5.

3 National Council on Disability, *Equality of Opportunity: The Making of the Americans with Disabilities Act* (Washington, DC: U.S. Government Printing Office, 1997), 11.

4 Duane Stroman, *The Disability Rights Movement: From Deinstitutionalization to Self-Determination* (Lanham, MD: University Press of America, 2003), 75.

intended to draft legislation to lay out clear definitions, rules, guidelines, and prohibitions for public entities to prevent discrimination. The purpose of creating legislation such as this was to aid a unique, diverse, and vulnerable group of people and allow them to participate in society. The legislation developed into the form of sections that dealt with prominent areas of discrimination: employment, public services, public accommodations, and telecommunications.

This paper will examine the disability rights movement, mainly drawing attention to the process of creating the ADA and an in-depth analysis of the legislation. The discussion will begin with a historical account of the disability rights movement until the creation of the ADA. A focus on the creation process of the legislation, including specific influential members of Congress like Senator Weicker or Representative Coelho or the timeline of events from the Senate to the House of Representatives, will highlight the motives and opposition behind the statute. A comprehensive reading of the statute will also tie together the historical and legislative significance. Analyzing the unique interrelationship between the effort put into the legislation and the realities of accommodations will display the underlying downfalls of the ADA.

### **Disability History and the Disability Rights Movement**

The disability rights movement began around 1970 and continued until a few years after the enactment of the ADA. However, the presence of discrimination towards the community existed before colonial America. People with disabilities were treated with ridicule and were often rejected by society, resulting in being outcasts. In the 1830s, asylums were created to place people deemed “less desirable” members of American society. Later, around 1883, documentation found that these institutions started to promote the eugenics movement with the “logic” that people with impairments were the reasons behind poverty and crime. To remedy the “problem,” it was argued that forced sterilizations, institutionalizations in asylums, and even restricted immigration were methods to eliminate the possibility of disability.<sup>5</sup> The practices of forced institutionalization and sterilization were standard practices until the 1930s. Treatment began to change with the end of World War I.

The war resulted in a plethora of soldiers permanently injured coming back to the U.S., and a boost to the disability community demographic. Advocacy for veterans post-WW II led to different practices and aid in the form of legislation. President Franklin D. Roosevelt led the country into the 1930s through the early 1940s with a huge secret: he was a person with a disability.

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5 Rhonda Neuhaus, Cindy Smith, and Molly Burgdorf “Equality for People with Disabilities, Then and Now,” *GPSolo*, 31, no. 6 (November-December 2014): 46-48.

The most powerful man in America suffered from polio and used a wheelchair. However, Roosevelt tried to hide this fact by always having security surround and carry him to create the illusion of walking. Once revealed to the public, historians and the disability community credit President Roosevelt as one of the only people to reach such a high-status career as a person with a disability.<sup>6</sup> Nevertheless, the President tried to hide his disability, as many did, afraid of what Americans would perceive about the leader. Roosevelt's actions indicated how negatively society viewed people with disabilities and the perception that they were unable to have high-power careers.

The 1950s and 1960s brought the Civil Rights Movement to the forefront of everyone's lives and eventually became the crusade that led to the formal protest of the disability rights movement. The Civil Rights Act of 1964 was instituted to protect the general public from discrimination based on race, gender, or national origin through federally funded programs. This necessary and progressive legislation left out one large group of people: the disability community. Many activists who advocated for civil and disability rights were ineffective because they argued that adding too much to the Civil Rights Act of 1964 could have diluted its purpose. The disability community was considered a different class than African Americans, other ethnic minorities, or women.<sup>7</sup> This reasoning explained that race and gender were close enough to combine into one piece of legislation but adding language to prevent discrimination against people with disabilities was too much for one document. As a result, people with disabilities were not protected by this legislation, so advocates for people with disabilities decided to fight for their rights.<sup>8</sup> Ultimately, the Civil Rights Act of 1964 became a key in opening the door for discussion about disability rights and, later, the ADA.

During Richard Nixon's presidency, a session of Congress created the Rehabilitation Act of 1973. This document established protection from discrimination and proposed rehabilitation programs.<sup>9</sup> Section 504 of the statute explicitly prohibited discrimination in any program that received federal funding. The remarkable aspect of this law was that it passed through Congress, and President Nixon signed it into law with little to no press or publicity.<sup>10</sup> The act incited the disability community to think more carefully about their needs and how to achieve them. The Rehabilitation Act and the Civil Rights Act of 1964 were the foundations of what became the ADA. They

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6 Joseph Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement* (New York: Times Books, 1994), 62.

7 National Council on Disability, *Equality of Opportunity*, 12.

8 Shapiro, *No Pity*, 106.

9 Jacqueline Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, DC: Georgetown University Press, 2003), 59.

10 National Council on Disability, *Equality of Opportunity*, 14.

laid the groundwork for the initial ideas and parameters of the legislation, yet it took fifteen more years for Congress to pass the ADA.

President Ronald Reagan came into the White House with the reputation of not giving much attention to civil rights, let alone disability rights. Initially, he created the Task Force on Regulatory Relief, which posed a threat to disability rights. The task force evaluated the need for education provisions, especially for children with disabilities.<sup>11</sup> Reagan and the Task Force received almost immediate backlash from parents of these potentially affected children. The President's stance on disability rights was set as one of cutting corners and reallocating money for programs aiding the disability community to other entities. Afterward, Reagan disbanded the National Council of the Handicapped (NCH).

Moreover, he appointed new members aligned more with his political views to the recreated National Council on Disability (NCD).<sup>12</sup> In 1986, the NCD released a thorough document titled *Towards Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities – With Legislative Recommendations*.<sup>13</sup> The document called attention to the federal government's need to improve laws against disability discrimination. The report comprised nine essays or topics that discussed everything from employment, equal opportunity, to suggestions on policy implementation.

The last paper, "J: Coordination," considered the implementation of the policy by Congress and the most effective method of going about it. Specifically, it stated, "After a careful study and review of the current service delivery structure, we have determined that the Council itself has a unique mandate from the Congress to facilitate the implementation of a coordinated disability policy at the national level."<sup>14</sup> The shocking recommendation that the Council (NCD), Congress, and the President would all have to work together to create an effective plan was not a conclusion expected by the Reagan administration. In fact, Reagan and other legislators ignored the report, and no action was taken during his administration. Factors like reelection campaigns and the Iran-Contra polemic were deemed more important than much of any domestic policy.<sup>15</sup> President Reagan's actions, mentioned above, showed his utter disregard for disability rights. The task force Reagan created wrote the revolutionary analysis in *Towards Independence*, yet not promoting more progressive legislation indicated the President's low level of

11 National Council on Disability, *Equality of Opportunity*, 33.

12 Shapiro, *No Pity*, 108.

13 National Council on the Handicapped, *Towards Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities – With Legislation Recommendation* (Washington, DC: U.S. Government Printing Office, 1986).

14 National Council on the Handicapped, *Towards Independence*, J-13.

15 Shapiro, *No Pity*, 114.

concern.<sup>16</sup> Reagan's conservative agenda, which focused on areas other than funding social programs, provided insights into understanding the sense of hopelessness among the disabled community.

Reagan's presidency exposed the power one had while in office and the control over policies at the top of the political agenda. The outset of the Reagan administration brought forth the most influential person in the creation of the ADA: Vice President George H.W. Bush. His presidential campaign for the 1988 election was the first time a candidate spoke out on the advocacy of rights for people with disabilities, making it a heated debate in the race for the presidency. His acceptance speech for the Republican nomination had a tone of empathy and concern, especially when he described himself as a protector of the people's rights. The language used in the speech differed significantly from any of his predecessors. At one point, Bush stated, "I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long, they've been left out. But they're not going to be left out anymore."<sup>17</sup> The care and attention in these three sentences were something many thought they would never hear: someone of power was on their side.

The new perspective on disability rights in Bush's speech was not lost among some Senators. They began collaborating with disability advocates, Congresspeople, and potential administration officials to create a draft of what would be known as the ADA. The credit for this process went to Republican Senator Lowell Weicker, from Connecticut, who strategically started drafting a bill supported by every group before it hit the Congress floors. Weicker's mission was a complex, strategic, and carefully executed process to get the best outcome possible: The Americans with Disabilities Act.

### **The Creation of the Americans with Disabilities Act of 1990**

In 1988, Weicker began to draft his bill with the assistance of disability advocates such as Evan Kemp and Justin Dart<sup>18</sup>, among other Congresspeople, and representatives from the business sector to create an agreeable draft. However, Weicker did not bring it to the Senate floor in the one-hundredth session of Congress. Instead, he had the idea to wait and have as many co-sponsors as possible to avoid conflict or serious debate that could potentially

16 National Council on Disability, *Equality of Opportunity*, 51.

17 "Address Accepting the Presidential Nomination at the Republican National Convention in New Orleans," The American Presidency Project, UC Santa Barbara, accessed October 10, 2021, <https://www.presidency.uscb.edu/documents/address-accepting-the-presidential-nomination-the-republican-national-convention-new>.

18 Evan Kemp suffered from a neuromuscular disorder, became a lawyer, and ran the Disability Rights Center (DCR) before moving onto other projects. Justin Dart started advocacy work after contracting polio and would become a member of the NCH.

kill the bill. Though influential, Senator Weicker's work ended after losing his re-election campaign in November 1988.<sup>19</sup> Subsequently, Iowan Democratic Senator Tom Harkin teamed up with Massachusetts Democratic Senator Edward Kennedy to carry on the mission. From November 1988 through March 1989, these politicians deliberated, debated, and drafted several copies of the ADA.<sup>20</sup> The final draft of the proposed Americans with Disabilities Act was completed on March 15, 1989—a day of relief and joy for many. A couple of months later, Senator Harkin and Representative Coelho introduced the respective bills simultaneously to both chambers of Congress.

On May 9, 1989, the proposed ADA (S. 933) was introduced to the Senate. Hearings, deliberations, and markups happened continued until September 7 of the same year. On September 7, the Senate passed its version of the ADA with a vote of 76 to 8.<sup>21</sup> After going through the Senate, the bill went to the House of Representatives, where it took nine months of meetings and debates to agree on the language of the bill. Once in the House, the bill had a majority of co-sponsors with 185 Democrats but only 25 Republicans.

The procedure for a bill of this measure meant going through four committees and six subcommittees.<sup>22</sup> The House of Representatives version took almost nine months to clear the floor, from September 12, 1989, to May 22, 1990. One reason for the long process illustrates how Congresspeople of each committee met with concerned Americans and businesspeople opposed to the idea of the ADA. The business sector avoided clashes with Senate members, and instead, it focused on the House of Representatives to express its disapproval. Many advocates, such as James Brady, spoke out in public against rumors spread by the business sector. Brady was the former Reagan Press Secretary who was shot and paralyzed in the assassination attempt on Reagan. Like many other advocates, he tried to explain to a cautious public that passing the ADA would lead to less taxpayer money going towards disability payments, reducing the money needed for the program.<sup>23</sup> The disagreements between the disability community and the business sector were over the specific language and rules drafted in the ADA. Though the language was one of the obstacles the ADA faced, it passed in the House of Representatives on May 22, 1990.

19 National Council on Disability, *Equality of Opportunity*, 96.

20 National Council on Disability, *Equality of Opportunity*, 97.

21 National Council on Disability, *Equality of Opportunity*, 122.

22 The four committees were: Education and Labor; Public Works and Transportation; Energy and Commerce; and Judiciary. The six subcommittees consisted of: Select Education; Employment Opportunities; Surface Transportation; Telecommunications and Finance; Transportation, Tourism, and Hazardous Materials; and the Civil and Constitutional Rights.

23 James S. Brady, "Save Money: Help the Disabled," *New York Times*, August 29, 1989, <https://nytimes.com/1989/08/29/opinion/save-money-help-the-disabled.html>.

At that point, the politicians who worked tirelessly on the bill felt like they could see the finish line. Two months after further deliberations and final touches, the ADA passed the House of Representatives and Senate on July 12 and 13, respectively. Thirteen days later, on July 26, 1990, President George H.W. Bush signed the act into law on the South Lawn of the White House with three thousand guests watching. When the President spoke about the ADA, he thanked disability advocates Evan Kemp and Justin Dart, members of Congress, and his administration.<sup>24</sup> However, he left out most of the Democratic members of Congress who were essential to the creation of the bill. Some speculated that this move was intentional because it would play in the Republican Party's favor for the ADA to be perceived as a bill backed by the party.<sup>25</sup> Indeed, this was a maneuver to show a unified Republican Party. However, as noted above, most of the Republican party was more concerned with pleasing the business sector rather than focusing on the rights of an oppressed group of people.

Further into the speech, Bush used analogies that resonated with how proud the country should be, regardless of political affiliation. At one point, Bush compared the barriers torn down by the new law to those that had torn down the Berlin Wall. He passionately proclaimed in the speech:

Last year, we celebrated a victory of international freedom. Even the strongest person couldn't scale the Berlin Wall to gain the elusive promise of independence that lay just beyond. And so together we rejoiced when that barrier fell. And now I sign legislation which takes a sledgehammer to another wall, one which has for too many generations, separated Americans with disabilities from the freedom they could glimpse, but not grasp.<sup>26</sup>

The ADA's significance and expected idea of liberation were palpable. The bill was signed into law with the hope of promises to turn into reality for this previously excluded group of Americans. The statute proved helpful and constructive on paper with specific language created. Included in the language were stipulated definitions, clarifications on time allowance, and studies to understand better accessibility modifications in public locales. However, the law and action taken in litigation broadly showed the difference between the law theoretically and its practice.

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24 Office of the Press Secretary, *Remarks by the President During Ceremony for the Signing of the Americans with Disabilities Act of 1990* (Washington, DC, July 26, 1990), 1.

25 Edward Berkowitz, "George Bush and the Americans with Disabilities Act," Social Welfare History Project, VCU Libraries. Accessed October 10, 2021. <https://www.socialwelfare.library/vcu.edu/reollections/george-bush-and-the-americans-with-disabilities-act/>.

26 Office of Press Secretary, *Remarks by President During Ceremony*, 3.



### The Americans with Disabilities Act of 1990 (S. 933)

A factsheet released by the White House Press Secretary's Office on the date of the ADA's signing stated that around 43 million Americans were considered disabled.<sup>27</sup> To encompass such a large but diverse group of people and protect future generations, the ADA had to ride a line of ambiguity to protect everyone and be specific enough to be usable in litigation. The Americans with Disabilities Act of 1990 was a fifty-two-page document divided into five titles structured around prominent issues of the time: employment, public services, public accommodations, telecommunications, and any miscellaneous provision unable to fit into other categories. The first and second pages of the document gave information on who passed the bill, the Congressional session, and a short table of contents.

A small section before Title One, "Finding and Perspectives," outlined ideas of statistical and historical findings, such as prominent areas of discrimination and ways society cast out people with disabilities. For example, item number Six of the section stated explicitly: "Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally."<sup>28</sup> Basic knowledge to some, this statement was the explicit acknowledgment from a governmental entity that the disability community was disadvantaged in society – a ground-breaking step in legislation.

The action of finding and keeping a job was one of the most challenging tasks for the disability community at the time. Until the ADA, employers could fire or not hire someone because there were few legislative laws to protect them. Due to this, the first section of the ADA pertained to employment. Title One of the law detailed rules and provisions regarding employment in eight different sections. Arguably the most important section was the first, where terms such as a qualified individual with a disability, reasonable accommodation, and undue hardship were defined. A qualified person with a disability was defined as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment positions that such individual holds or desire."<sup>29</sup> The definition clearly stated what was necessary: the ability to perform all required job functions, but tied to the language of reasonable accommodation. Essentially, the person with a disability had a chance to gain access to accommodation, helping them complete required functions, according to the definition placed by the ADA

27 Office of Press Secretary, *Fact Sheet: The Americans with Disabilities Act of 1990*, (Washington, D.C., July 26, 1990), 1.

28 U. S. Congress, *The Americans with Disabilities Act of 1990*, Public Law 101-336, 101st Congress, (July 26, 1990), 329.

29 U. S. Congress, *The Americans with Disabilities Act*, 331.

rather than individual employers. However, two critical words in the law, “reasonable accommodation,” allowed for less leeway on the employers’ side to discriminate and more protection for the person with a disability.

Title Two of the statute called attention to the area of public service. This clause was divided into “Subtitle A – Prohibition Against Discrimination and Other Generally Applicable Provisions” and “Subtitle B – Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory.” The first subtitle highlighted five sections detailing what a public entity was and how certain practices were considered discriminatory. A specific definition for the term public entity was “any state or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; and the National Railroad Passenger Corporation, and any commuter authority (as defined in 103(8) of the Rail Passenger Act).<sup>30</sup> Here, the jargon was clear with encompassing, specific language yet not too narrow. The approach to the language allowed a clear understanding of the parameters with little wiggle room for the business sector to evade rules. The rest of the subtitle determined the effective date for accommodations and described discrimination practices, enforcement, and regulations. For this subsection, entities had 18 months after the date of enactment to make accommodations.

The second subtitle further divided into two public transportation other than aircraft (Part One) and public transportation of intercity commuter systems (Part Two). Part One laid out that transportation operations such as buses or trains must provide accommodation for people with disabilities, specifically those using wheelchairs. Additionally, ten sections detailed the guidelines, alternative paratransit methods, and enactment dates. Part Two was explicitly designed for intercity rail commute methods with definitive rules for more accessible transportation for people using wheelchairs. The rule for single-passenger coaches, for example, had language which stated:

- I) Be able to be entered by an individual who uses a wheelchair
- II) Have space to park and secure a wheelchair
- III) Have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such a passenger’s wheelchair.<sup>31</sup>

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30 U. S. Congress, *The Americans with Disabilities Act*, 337.

31 U. S. Congress, *The Americans with Disabilities Act*, 347.

This common language underscores respectful and common courtesy actions most people do without thinking. However, thirty-two years ago, lawmakers felt obligated to put into federal law the appropriate and respectful way people using wheelchairs should be treated. This single addition to the law revealed the blatant disrespect and ignorance that non-disabled Americans could legally have toward the disability community. With the implementation of laws such as this, the disability community should have been able to prosper and change perceptions in the minds of non-disabled people.

Overall, the two subtitles encompassing Title Two were dense with technical language. The transportation accommodations of this title were sixteen pages long, implying the importance placed on the issue. Transportation has always played a role in areas of life, including employment, societal activities, and even the ability to fulfill basic needs. The inability to get on a bus or in a taxi severely limited the community from contributing to society or meeting daily needs. The careful and comprehensive language demonstrated the acknowledgment of inclusiveness the community had desired for years.

Title Three coincided with Title Two, known as "Public Accommodations and Services Operated by Private Entities." A vital definition included in this title or section was "commercial entities." These entities were "intended for nonresidential use; and whose operations will affect commerce."<sup>32</sup> The language of the definition seemed to be broad enough to include every known place of business without disregarding establishments for being too specific. After defining the term "commercial entities," there were specific methods and means that further protected people with disabilities against discrimination. Protections in public settings included service equal to others, accessibility to locales, and the inability to deny services due to disability.

An exciting addition to Title Three was Section 305, noted as "Study." The Office of Technology Assessment (OTA) created a study overseeing how people with disabilities used particular public transportation and the most cost-effective methods for providing better privileges in certain situations. The OTA was tasked with taking the six prominent business affordability issues regarding accommodation costs and finding solutions. These issues included possible designs that enhanced accessibility and even the impact on areas of struggling economic finances like rural communities.<sup>33</sup> The study illustrated the attention to detail on how businesses could enhance accessibility at a reasonable cost. As mentioned above, the fear of unreachable, expensive

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32 U. S. Congress, *The Americans with Disabilities Act*, 353.

33 U. S. Congress, *The Americans with Disabilities Act*, 360.

accommodation was a significant issue for the business sector.<sup>34</sup> Without plans, businesses could have struggled to meet the standards or even fought the necessary accommodations. Instead, there were clear plans in place for future struggles, including small communities that may have felt left out or unheard in their concerns.

Further into Title Three, Section 307 explained the seemingly harmful boundaries private entities were entitled to regarding accommodations. The section stated, “The provisions of this title shall not apply to private clubs or establishments exempted from coverage under Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.”<sup>35</sup> Based on the statement, any private club—versus a public entity defined in Title Two—was exempted from the ADA. That meant private clubs, churches, or religious gathering places were not required to accommodate people with disabilities. Unfortunately harsh, the authors of the ADA had to comply with other laws. If it pushed the boundaries of laws like The Constitution, it would have been deemed unlawful and not passed. An unfavorable but necessary concession was made here to redirect the future of disability rights hopefully.

The Fourth Title, “Telecommunications,” focused on people who are hard of hearing or deaf. The entire section that pertained to relay services for these people is an amendment to Title II of the Communications Act of 1934. In the section “Telecommunications Services for Hearing-impaired and Speech-impaired Individuals,” there are definitions of similar style to those previously mentioned sections. Section 711 of the Communications Act of 1934 was also amended in the ADA regarding closed captioning. At the passing of the ADA, closed captioning was part of any federally funded announcement.<sup>36</sup> This law title was a massive step for the deaf community, which sparked politicians into drafting legislation for disability rights.<sup>37</sup> Now, there were regulations to assist them.

The most noteworthy and final Title was the Fifth. This section noted “Miscellaneous Provisions” because it was a catch-all for provisions that could not fit in other titles. The title’s main objective was to explain how the ADA complied with other laws and insurance policies. A section described the prohibition against retaliation or coercion on anyone pursuing litigation against another person. There was another study in this title in which the National Council on Disability (NCD) was tasked to analyze and report on

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34 Bill Bolte, “Disabled Act: More Loophole than Law,” *Los Angeles Times*, September 1989.

35 U. S. Congress, *The Americans with Disabilities Act*, 363.

36 U. S. Congress, *The Americans with Disabilities Act*, 369.

37 Shapiro, *No Pity*, 69.

wilderness management practices related to disability inclusivity.<sup>38</sup> The last three sections of the title were the most important because of the security they provided. The three sections included an amendment to the Rehabilitation Act of 1973, proposed alternative dispute methods, and accounted for the question of severability in the future. Section 514, "Severability," stated, "Should any provisions in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act."<sup>39</sup> These statements, as a whole, were the *pièce de résistance* because they ensured a step towards progress that was difficult to take away.

On paper and in theory, the ADA appeared impenetrable against legal challenges. However, there were always downfalls to every law once in place. One vague concept was the idea of punishment or repercussions for people accused of violating the statute. The Fifth Title mentioned alternative dispute methods, but no single repercussion was listed. This huge flaw could have severe consequences if businesses took advantage of this weakness. The statute also primarily focused on discrimination in social settings or civic activities but did not detail any provision on the treatment of the community in the criminal justice system.<sup>40</sup> Nowhere in the statute were there any provisions that dealt with someone incarcerated or guidelines for treatment in prisons or jails.

The ambiguity of definitions such as an individual with a disability, undue hardship, and reasonable accommodation, set in Title One, have been debated for years. For example, those terms were debated at the Conference Report before the enactment because of language differences between the two bodies of Congress.<sup>41</sup> Many argued that the terms had unclear effectiveness in litigation, which could narrow the intended parameters. Finally, a major concession in the Conference Report was casting out people with substance abuse problems.<sup>42</sup> It was determined that this group of individuals was not considered disabled by the current definitions and would not be allowed to reap the benefits that could have aided them.

### Conclusion

The Americans with Disabilities Act of 1990 was concise and thoughtful and projected the purposeful strides toward equality through the legal system needed for the disabled community. People in this minority group were

38 U. S. Congress, *The Americans with Disabilities Act*, 372.

39 U. S. Congress, *The Americans with Disabilities Act*, 378.

40 Wehman, ed., *The ADA Mandate for Social Change*, 16.

41 *Cong. Rec.*, 101st Cong., 2nd Sess., vol. 136: H4582.

42 John Parry, "The Americans with Disabilities Act (ADA)," *Mental and Physical Disability Law Reporter* 14, no. 4 (July-August 1990), 2.

supposed to enjoy more protection than ever before. With the uniformness of the structure layout, each Title had similar requirements that hopefully leveled the playing field. Today, most of these regulations and prohibitions would seem like “normal” or standard treatment towards a disadvantaged group of people. Nevertheless, it is essential to remember that this statute had to be created to protect this vulnerable group of people. The question remained, has the ADA done its intended job?

The short answer is no. The ADA could not effectively protect the community due to numerous factors. The most influential action against the ADA was a Supreme Court ruling, which restrained the legislative piece shortly after enactment. Ten years after the enactment, the Supreme Court narrowed the parameters of the statute with their opinions on how the language of the ADA applies to reality.<sup>43</sup> Supreme Court Justice Sandra Day O'Connor wrote in a majority opinion regarding the ADA: “The sponsors are so eager to get something passed that what passes hasn't been carefully written as what a group of law professors might put together.”<sup>44</sup> Unfortunately, the desperately prized piece of law was shot down by the highest court of the country. To partially fix this step back, Congress had to either re-amend or propose new laws to counter the Supreme Court's rulings. Indeed, this occurred in 2008 when Congress passed the ADA Restoration Act of 2007.<sup>45</sup> Afterward, more accountability and more precise language allowed for a more diverse group of cases.

The Americans with Disabilities Act of 1990 sought equality, protection, and a better quality of life for people then, now, and in the future. Despite the hard work of the disability community, politicians, and advocates, people with disabilities continued to face struggles in an ever-changing society. The future for the disability community was unclear and growing in size every day. There was no perfect next step in this journey of fighting for protection and equality. It would have been impossible to supply every demand or need from the community and enact it into law. However, better programs, more aid, and more attention to the hardships of the community could lead to necessary action. Until every group lacking legal protection under the law has their needs met, there will always be contention, strife, and work to be done.

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43 Neuhaus, Smith, and Burgdorf, “Equality for People with Disabilities,” 51.

44 Switzer, *Disability Rights: American Disability Policy*, 209.

45 American Bar Association, “The ADA Restoration Act of 2007: Why is it Necessary?” *Mental and Physical Disability Law Reporter* 32, no. 2 (March-April 2008), 159.

