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The Americans With Disabilities Act Strikes Again

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One of the statutes that best demonstrates the truth that laws usually bring about a host of unintended consequences is the Americans with Disabilities Act. In the name of helping people who have disabilities, the law often imposes heavy costs on others, while simultaneously failing to do anything for its purported beneficiaries.

The ADA has spawned a hyper-aggressive enforcement bureaucracy that lives to find violations of the law, even if those violations exist purely in their own minds. A recent flap over free online college courses makes the point.

Colleges and universities do a lot of ridiculous and even harmful things, so when they do something that's unquestionably good, we should offer our praise. An example is the way some schools have chosen to make their course material available worldwide and *for free*.

Among the universities that have taken that step is the University of California at Berkeley (UC). For several years, the university has been offering an array of its courses for free on iTunesU, YouTube, and edX. Here is [UC's website](#) for its free online courses and there is much to choose from, including [statistics](#), [electronic interfaces](#), [quantum mechanics](#), [financial decisions](#), and [essay writing](#).

Some poor kid in Mississippi or even Mongolia could get a terrific start on his or her education with nothing more than a computer and ambition, thanks to the availability of courses like those.

What is the problem? The problem is that these online courses don't always perfectly satisfy the Americans with Disabilities Act (ADA), which prohibits any form of "discrimination" against people who have a disability. Some people are deaf, therefore, if a course lacks captions so that spoken material can be read, it violates the ADA. And some people suffer from color blindness, so if a video doesn't have enough color contrast, it could be difficult to learn from.

No, this isn't a law school hypothetical. The U.S. Department of Justice keeps a vigilant eye out for any and all violations of the ADA and has spotted UC's transgressions. Read for yourself the [August 30 letter](#) sent to UC officials by Rebecca Bond, Chief of the Disability Rights Section of the Department of Justice.

Even though UC is run by the State of California, it is subject to the ADA and the zealous federal bureaucrats who enforce it. UC must either spend considerable amounts of money to make all of its online offerings ADA-compliant, or else shut them down. And one more shot: the university was instructed to "pay compensatory damages to aggrieved individuals for injuries caused" by its failure to comply with the law.

If that sounds like an opening for trial lawyers to squeeze money out of UC, it is. Cato Institute legal scholar Walter Olson observes here that there is a “tag-team alliance of the U.S. Department of Justice, disabled-rights groups, and fee-seeking private lawyers in gearing up web-accessibility doctrine: when extreme positions are too politically unpalatable for DoJ to endorse directly, it supports private groups in their demands, and when a demand is too impractical even for the rights groups, there’s nothing to stop the freelance lawyers from taking it up.”

On Sept. 13, UC vice chancellor Cathy Koshland responded to Bond’s letter with a submissive statement (with federal regulators, a submissive tone is imperative) saying that the school wants to comply with the law, but that the costs of doing so would probably prevent it from continuing to offer all of that content.

This is a revealing instance of federal regulators insisting that the perfect become the enemy of the good. Merely on the supposition that a disabled student somewhere might find free UC courses less than ideally suited to him – and of course there isn’t any evidence of a student being “injured” by one — the Justice Department is prepared to make UC eliminate its free courses. Naturally, other universities that also offer free online courses will get the message.

Manhattan Institute’s Preston Cooper sums up the controversy well, writing, “Universities should strive to make their courses as accessible as possible to people with disabilities. But the government should not set up a dichotomy between ‘access for all’ and ‘access for none.’”

He’s right, but federal bureaucrats like using the power at their disposal and rarely stop to consider the harm they do with their “comply or else” diktats.

This little kerfuffle exemplifies one of the biggest problems with administrative law – that Congress keeps writing vague laws and giving unelected officials plenary power to interpret and enforce them.