



MT: Supreme Court decision will fatten lawyers

By [Dustin Hurst](#) / August 7, 2012 / [No Comments](#)

By John Seiler | For Watchdog.org

HELENA — Montana is seeing another example of the absurdity of the federal 1990 [Americans With Disabilities Act](#) and its [Montana counterpart](#). Of course, everyone should treat disabled people decently. But the law deeply involved the federal government in the decisions businesses make concerning the disabled, hurting those it was supposed to help.

The latest absurdity involves a new [Montana Supreme Court](#) decision that says obesity could be considered a disability that bans firing employees from positions where being fat might interfere with one's job performance. Given [that 69.6 percent of adult Montanans now are obese](#), will the court next insist that more than 69.6 percent of future [Miss Montanas](#) be plus-size girls?

[Reported KPAX.com](#), "The opinion stems from a case that's been bouncing between the state and federal courts for more than 2 years. In 2009, [Eric Feit](#) accused [Burlington Northern Santa Fe](#) of discrimination for withdrawing a conditional offer of a job because of his weight.

"Feit told the [Montana Department of Labor and Industry](#), BNSF had refused to hire him as a conductor trainee saying he wasn't qualified for a 'safety sensitive' position because of the 'significant health and safety risks associated with extreme obesity,' telling him he needed to lose 10 percent of his weight."

In a better day, somebody in Feit's position would have lost the weight or found a different job.

[BNSF](#) isn't a doughnut shop, but a [railway](#). "Safety sensitive" doesn't mean spraying Lysol on a table, but preventing train wrecks.

From the story: "The labor and industry department ruled in favor of Feit, and the [Montana Human Rights Commission](#) upheld the decision." Like disabilities lawyers, labor and industry departments and Human Rights Commissions exist to find discrimination where it doesn't really exist, like here.

Next, will the court say that hospitals must hire blind surgeons? That airlines must hire pilots with vertigo? That the [National Football League](#) must hire anorexic female linebackers? Where will it end?

"Now, in a 4-3 decision, the majority said obesity without a 'physiological cause' could be considered as 'physical or mental impairment' under the state's Human Rights Act. However, the dissenting justices argue the federal law's definition requires a major system of the body to be impacted, and that a 'physiological cause' needs to be present before impairment exists."

That sounds like the lawyers will continue to gorge on this one for some time.

It's worth remembering that the 1990 ADA actually has *hurt* the disabled, not helped them. As [John Stossel has written](#): "An MIT study found that employment of disabled men ages 21 to 58 declined after the ADA went into effect. Same for women ages 21 to 39.

"How could employment among the disabled have declined?

"Because the law turns 'protected' people into potential lawsuits."

Like we're seeing here in Montana with this absurd case.

Stossel: "Walter Olson, a senior fellow at the Cato Institute and author of the [Overlawyered.com](#) blog, says that the law was unnecessary. Many 'hire the handicapped' programs existed before the ADA passed.

"Sadly, now most have been quietly discontinued, probably because of the threat of legal consequences if an employee doesn't work out.

“Under the ADA, Olson notes, fairness does not mean treating disabled people the same as non-disabled people. Rather it means accommodating them. In other words, the law requires that people be treated unequally.

“The law has also unleashed a landslide of lawsuits by ‘professional litigants’ who file a hundred suits at a time. Disabled people visit businesses to look for violations, but instead of simply asking that a violation be corrected, they partner with lawyers who (legally) extort settlement money from the businesses.”

It’s worth remembering that the ADA was pushed into law in 1990 by then-**Senate Republican Leader Bob Dole**, later his party’s 1996 presidential candidate, and after that a pitchman for an expensive aphrodisiac from Big Pharma. Dole himself was disabled in combat in **World War II**. He came to Washington in the **House of Representatives** in 1961 barely able to scrape two dimes together but left office worth millions (not counting the millions of **Liddy Dole**, his wife and later a senator herself).

And the ADA was signed into law by **President George H.W. Bush**, whose 1990 tax increases killed jobs and slammed the disabled even more than the backfiring ADA ever did.

But there’s a little poetic justice. The BNSF railway is owned by **Berkshire-Hathaway**, mega-billionaire **Warren Buffett’s** company. He’s a big liberal Democrat so he should be happy to pay for the caviar devoured and **Dom Perignon** guzzled by the lawyers this case is bloating.