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Rand Paul's civil-rights defense distorts provisions of disabilities law

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Fri May 21, 6:39 pm ET



AP — Republican U.S. Senate candidate Rand Paul walks past yard signs at his campaign headquarters after winning ...

Kentucky GOP Senate nominee Rand Paul has been talking a lot lately about the Civil Rights Act of 1964. But when his murky statements about whether or not he would have voted for it have gotten him into trouble, he's pivoted to a more convenient federal bugaboo: The Americans With Disabilities Act. Unfortunately, the horror story he tells about how it hobbles small-business owners appears to be false.

Paul told NPR's "All Things Considered" Wednesday that the ADA imposes irrational and onerous burdens on employers, requiring them to build expensive elevators for wheelchair-bound employees, even when letting them work on the ground floor would suffice:

I think if you have a two-story office and you hire someone who's handicapped, it might be reasonable to let him have an office on the first floor rather than the government saying you have to have a \$100,000 elevator. And I think when you get to solutions like that, the more local the better, and the more common sense the decisions are, rather than having a federal government make those decisions.

Yesterday on CNN's "Situation Room," where Paul rushed to do damage control from his disastrous remarks the night before on "The Rachel Maddow Show," he repeated the charge:

[L]et's say you have a local office and you have a two-story office, and one of your workers is handicapped. Should you not be allowed maybe to offer them an office on the first floor or should you be forced to put in a \$100,000 elevator? ... [M]y understanding is that small business owners were often forced to put in elevators, and I think you ought to at least be given a choice. Can you provide an opportunity without maybe having to pay for an elevator?

But Paul's "understanding" about the ADA is wrong. The legislation specifically exempts the vast majority of buildings three stories and under from any requirement to install elevators. In other words, if you own a small business and you have a two-story office and one of your workers is handicapped, no one can force you to build an elevator. It's true that the exemption doesn't apply to health-care facilities or shopping malls or buildings four stories and up — and Paul, who has an ophthalmology practice, may have been thinking of those provisions when he insisted that businesses are "often forced

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to put in elevators."

Trouble is, we searched far and wide for a single instance in which a private employer was successfully sued under the ADA for failing to provide an elevator, or was compelled by a lawsuit to do so, and we came up empty. We searched the case law, contacted ADA experts — both proponents and opponents of the law — the Justice Department, and the Equal Employment Opportunity Commission. Not one of them knew of any case involving the government-ordered installation of an elevator. It looks like Rand Paul is either peddling a myth or spinning some vanishingly small number of elevator installations we've yet to hear of into an epidemic big-government overreach.

That's because, while the ADA does impose a burden on employers and business owners to make their facilities accessible, it also contains [reasonable restrictions](#) on what owners and operators of existing buildings can be forced to do. The ADA says that owners of public accommodations — restaurants, hotels, etc. — must take every "readily achievable" measure to ensure accessibility. For owners of existing structures, that might mean installing ramps or rearranging facilities, but it most certainly does not mean spending hundreds of thousands of dollars to install an elevator. [Here's what the Department of Justice's Q-and-A on the ADA says:](#)

Q. Will businesses need to install elevators?

A. Businesses are not required to retrofit their facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.

So unlikely that it has apparently never happened. [Alejandro Miyar](#), a spokesman for the Justice Department's Civil Rights Division, which enforces the ADA's public-accommodations provisions, told Yahoo! News: "We are not aware of the Department of Justice ever requiring the installation of an elevator as a reasonable accommodation, nor are we aware of any case law involving what you've described."

The ADA imposes a slightly different burden on employers, forcing them to make workspaces accessible unless it imposes an "undue hardship." But again, according to the Equal Employment Opportunity Commission, which enforces the ADA's employment provisions, installing an elevator is generally considered an undue hardship under the law. "We are not aware of any case where a court required any business — let alone a small business — to install an elevator as a [reasonable accommodation](#) for an employee," said EEOC spokesperson Justine Lisser.

Robert Dinerstein, a professor at American University's Washington College of Law and an expert on the ADA, concurs: "I'm not aware of any cases where an elevator had to be installed. There's certainly no leading case out there that says that." Indeed, courts have found just the opposite. In [Association for Disabled Americans v. Concorde Gaming](#), a U.S. District Court judge in Florida ruled that a gambling boat didn't have to build a \$200,000 elevator to allow wheelchair-bound patrons access to the upper floors: "Installation of an elevator is, therefore, not readily achievable and Plaintiffs are entitled to no such relief."

Not even the ADA's most vocal opponents, who presumably would be busy collecting tales detailing the law's onerous requirements, could point to a single case where an employer was forced to install an elevator to accommodate an employee under the ADA. "I don't have a bunch of anecdotes," said the Heritage Foundation's [James Sherk](#), who has written of the ADA's ["burdensome accommodation process."](#) We called the libertarian Cato Institute to ask if anyone there could corroborate Paul's stories, and were told, "We don't have anyone." We eventually contacted Walter Olson, a Cato scholar who decried the legislation in his book "The Excuse Factory: How Employment Law Is Paralyzing the American Workplace," on our own. "I did a little Google searching and didn't immediately come up with one," he said, "but I think you'll find them." When we told him that the EEOC and Justice Department couldn't, Olson pointed out that the ADA does force property owners to bring buildings into [compliance with the law](#) when they make renovations — in other words, some building owners may have to install elevators if they are spending enough money on other repairs to render the additional cost less of an "undue burden." But those requirements would be triggered by substantial renovations, not by the hiring of an employee with a disability, as Paul claimed.

"Like every candidate for the U.S. Senate I know, Paul can't quite keep [different provisions](#) of a complicated law apart in his mind," Olson said.

It should be noted that the ADA has required government buildings and courthouses to install elevators if they don't have them already. The Supreme Court ruled in [Tennessee v. Lane](#) that the law required a municipal courthouse to put in an elevator so wheelchair users could reach courtrooms on the upper floor. But that decision was based in part on constitutional principles about [equal access to justice](#), and doesn't apply to private employers and business owners.

We asked Paul's campaign for an example of the nation's scourge of federally mandated workplace elevators, but haven't received a response.



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