

After 30 Years, Did the Disabilities Act Work?

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July 22, 2020

Thirty years ago, President George H.W. Bush signed [7/26/1990] the Americans with Disabilities Act, which was supposed to create a new era of equality and justice. Instead, the ADA often turns disabilities into assets, encouraging far more people to claim to be disabled to receive special treatment or privileges. The ADA's breadth and vagueness have spurred a deluge of absurd federal decrees and more than half a million lawsuits that risk stigmatizing people the law sought to assist.

The ADA is essentially a federal command for people to treat certain other people “nice”- with harsh penalties for any behavior considered not nice – and with niceness defined on a case-by-case basis through endless court cases and complaint settlements. Anyone who is disabled acquires a legal right to request accommodations from employers and others, with the federal government and private lawyers waiting to sue anyone who fails to “accommodate.” Congress defined “disability” far more broadly than most Americans recognize, including anyone who claims they have significant trouble standing, lifting, bending, reading, concentrating, or thinking.

The ADA is known as “Attorney’s Dreams Answered.” According to lawyer Mark Pulliam, the ADA “may be the most widely-abused law in our history. . . . Nationwide, a cottage industry has developed among a bottom-feeding element of the plaintiffs’ bar that specializes in bringing a high volume of cookie-cutter lawsuits against small businesses for technical violations of the ADA, and extorting quick settlements of several thousand dollars each.” Federal judges have characterized mass-produced ADA lawsuits as a “sham” and “an ongoing scheme to bilk attorneys’ fees from the defendant.”

. Hundreds of Florida businesses were hit with cookie-cutter ADA access lawsuits in 2016 and 2019 complaining that “the pipes in the bathrooms weren’t properly wrapped” and similar grave perils. The *Florida News-Press* reported that “some of the harshest critics of these suits come from people who are disabled or advocate on behalf of people with disabilities.” Kevin Berry, co-chairman of the Southwest Florida ADA Council, complained that the lawsuit surge “has the reverse effect. If someone comes in with a wheelchair or an obvious disability, the (business owner) is saying, ‘Here comes a lawsuit.’”

One federal judge denounced a lawyer filing such lawsuits for behaving like “a parasite disguised as a social engineer.” But the legal carpet-bombing continues. Late last year, four law firms filed “more than 100 putative class actions charging that retailers are violating the ADA by marketing gift cards that do not include Braille versions,” as the *Cato Institute’s* Walter Olson, one of the ADA’s most persistent and perceptive critics, reported.

“You snooze, you lose — you sue,” was the *New York Post*’s summary of the latest ADA lawsuit trend for sleep apnea sufferers. An obese New York hospital employee sued her former employer for \$10 million in 2018 because she was fired after twice falling asleep at her job as an ambulance dispatcher. Her lawyer told the *New York Post*: “Helen didn’t have a job where it was critical that she be awake 100 percent of the time.” A Kansas policeman who repeatedly fell asleep in his patrol car received almost a million dollars in a jury verdict.

An ex-policeman in the Chicago suburbs filed a lawsuit seeking \$75,000 in damages because he was fired after driving drunk, hitting and badly injuring a pedestrian, and leaving the scene of the accident. The ex-policeman claims his firing violates the ADA because he had Post-Traumatic Stress Disorder (PTSD).

The ADA is increasingly derailing the Internet. University of Chicago law professor Richard Epstein observed, “The ability to work and shop online at one’s own pace offers a set of dazzling technological improvements that have done more to help the disabled than the massive expenditures under the ADA.” Lawyers are increasingly suing colleges, companies, and other targets because their websites are not accessible to the blind, claiming that web pages are “places of public accommodations.” The University of California at Berkeley created a vast offering of free online lectures but threats from the Justice Department resulted in its shutdown in 2016.”

The Justice Department promised to provide clear compliance guidelines for ADA online access but abandoned the task after issuing conflicting guidance. A tidal wave of litigation resulted, including more than two thousand federal lawsuits on Internet access in 2018 – three times as many as in 2017. Domino’s Pizza was successfully sued by a blind person who claimed he was denied “full and equal enjoyment” of its pizza offerings on its website and app – even though Domino’s offered 13 other ways to place an order for a pizza. Yaroslav Suris, a deaf man, recently sued Pornhub and similar websites claiming that they violated the ADA. Suris complained that, because of lack of closed captioning, he was unable to comprehend the action in “Hot Step Aunt Babysits Disobedient Nephew.”

The ADA is roiling schools and colleges by incentivizing disability claims by students seeking privileges. Three times as many college students now consider themselves mentally ill compared to the 1980s. The ADA compels schools to provide “reasonable” accommodations” to students who claim to be disabled – and a doctor’s note is all the proof they need. Up to 25% of students at top colleges “are now classified as disabled, largely because of mental-health issues such as depression or anxiety, entitling them to a widening array of special accommodations like longer time to take exams,” the Wall Street Journal reported in 2018. Lawyer Miriam Kurtzig Freedman observed that giving extra time on tests to people claiming disabilities is “like lowering the basket from 10 feet to eight feet; you’re changing the game.”

Catch-all federal disability definitions have spawned “Noah’s Ark in the air.” The federal Department of Transportation entitled almost anyone who asserts they have an emotional or mental disorder to bring “emotional support animals” on airplanes. The result is a million cats, kangaroos, squirrels, peacocks, pigs, monkeys, miniature horses, and untrained dogs brought onboard flights each year. Uncontrolled animals have engaged in wholesale “urinating, defecating, and biting” passengers, according to a recent *Federal Register* notice. The only thing necessary to qualify to bring your pets onboard is to spend \$99 for an “emotional support animal letter” from one of the many dubious websites offering to certify people’s disorders.

The ADA has also been a disaster at helping the disabled find work and become financially self-reliant. The percentage of disabled who are employed has fallen sharply since the ADA was enacted. A Massachusetts Institute of Technology study concluded that the ADA reduced employment “of disabled men of all working ages and all disabled women under age 40.” Between 1991 and 2010, the percentage of disabled who were employed fell from 50% to 41.% The Census Bureau reported earlier this year that only 19% of persons with a disability were employed in 2019, compared to 66% of people without a disability.

The ADA sought to achieve progress by maximizing the number of lawsuits, as if average citizens and businesses must be endlessly scourged into decency. The ADA’s absurdities and ritualized legal racketeering are occurring in an era when Americans have become far more humane, rational, and compassionate towards the disabled. It is time to end the flying kangaroos, college testing scams, and torpedoed websites and to finally curb the parasite lawyers.