Policy Analysis

Cato Institute Policy Analysis No. 158: The Americans with Disabilities Act: Time for Amendments

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Executive Summary

Ironically, legislation enacted with the least partisan dispute often turns out to be the worst law because its provisions were never tested in any serious public debate. The Americans with Disabilities Act (ADA), signed into law by President Bush on July 26, 1990, is an outstanding example. The act is the culmination of a series of laws, beginning with the Rehabilitation Act of 1973, intended to outlaw discrimination against disabled individuals. Those laws are based on the principle of "mainstreaming"--integrating disabled individuals as fully into American society as technologically possible regardless of the costs of such integration.

As is frequently the case, Congress drafted the ADA broadly, using imprecise and undefined terms, and consequently left the task of fleshing out the meaning of its provisions to the federal judiciary. The ADA has four major titles: employment, public services, public accommodations and services operated by private entities, and telecommunications.

Contrary to the claims of its proponents, the ADA imposes significant costs on American business firms and governmental entities. The act fails to balance those costs with the benefits derived from its regulatory mandates. Indeed, the ADA so zealously pursues its mainstreaming goal that individuals, businesses, and governmental bodies must make expensive accommodations to ensure full integration even when less costly, more convenient alternatives, which are preferred by disabled individuals, are available. Furthermore, the vagueness of the ADA will undoubtedly be a bonanza for lawyers--encouraging constant and expensive litigation. As a result of the costs mandated by the ADA, consumer prices may rise and employment may fall. State and local governments may be compelled to raise taxes or cut services to non-disabled Americans. The overall international competitiveness of the American economy may be damaged.

The ADA is objectionable on moral as well as economic grounds. In a free society the government should employ its coercive powers only to protect the life, liberty, and property of its citizens from aggression. Any attempt to enforce moral behavior, however noble or desirable, is beyond the proper scope of government. Even if one concedes a role for government in eliminating private discrimination, one must also acknowledge that discrimination against disabled individuals is different in kind from discrimination by reason of race, national origin, religion, or sex. The elimination of those familiar forms of discrimination should, in theory, entail either no or de minimis costs. In contrast, the ADA forces employers, state and local governments, and the owners of commercial enterprises to bear substantial costs to accommodate disabled individuals. Imposing such costs on innocent third parties is unjustified and morally objectionable. At the very least, strict limits should be adopted to minimize the costs imposed on the non-disabled.

Moreover, when government uses its regulatory power not to prevent one person from harming others but instead to impose substantial costs on some people for the benefit of others, such regulations are takings. The government has a moral, if not a legal, obligation under the Fifth Amendment to the U.S. Constitution to compensate individuals and business firms for the costs of such regulations. Failing to provide such compensation, the ADA is confiscatory in nature and represents another congressional attempt to force American business to act as a social welfare and income redistribution agency.

Certain amendments to the ADA could significantly limit its costs while actually enhancing the act's ability to integrate disabled people into American society. Costs that are not offset by tax credits or grants and that exceed certain minimal amounts should be presumed to be an "undue hardship" on employers or "not readily achievable" and an "undue burden" on the owners of public accommodations. For example, under certain conditions, paratransit services should be a legally acceptable alternative to retrofitting existing mass transit system vehicles and stations; telephone ratepayers should not be forced to subsidize specialized services for the hearing impaired; only a limited percentage of new multifamily housing should be required to be fully accessible; and expansion of existing state credits and grants to offset the costs of accommodations required under the ADA may be desirable.

What Is Discrimination?

In economic terms, discrimination against a person with a particular characteristic occurs when an individual, either on his own account or representing a firm, chooses to forgo some potential benefits or endure additional costs in order to indulge his bias against people with that characteristic. For example, an art dealer discriminates on the basis of race when he agrees to pay a white painter, who can generate $100,000 in gross sales, $30,000 rather than hire a black painter, who can generate the same sales volume, for $25,000.[1] Here, racial discrimination costs the employer $5,000. Now assume the employer hires both artists. If the black painter can generate only $95,000 in sales instead of $100,000, his lower salary is not discriminatory because the net benefits of $70,000 from each employee (gross revenue attributable to an employee minus his employment cost) are equal. Likewise, a theater owner who refuses to seat people who adhere to Islam loses the potential revenue from ticket sales to Moslems.

Those examples indicate that economic discrimination is clearly costly to anyone who discriminates, and it reduces overall economic efficiency. Consequently, market competition tends to eliminate economic discrimination over time, just as competition forces high-cost producers to become more efficient or go out of business. Milton Friedman notes:

There is an economic incentive in a free market to separate economic efficiency from other characteristics of an individual. A businessman or an entrepreneur who expresses preferences in his business activities that are not related to productive efficiency is at a disadvantage compared to other individuals who do not. Such an individual is in effect imposing higher costs upon himself than are other individuals who do not have such preferences. Hence, in a free market they will tend to drive him out.[2]

Characteristics such as race, national origin, religion, and sex do not generally affect the value of economic transactions. For almost all employers, the costs and expected benefits of hiring a white or a black, a German or an Italian, a Christian or a Jew, or even a man or a woman, each of whom has equivalent aptitude and qualifications, should be equal, or any difference should be de minimis.[3] Likewise, for almost all owners of public accommodations, the costs of and the revenue from selling goods or providing services should not vary significantly according to customers' race, national origin, religion, or sex.

Discrimination under the law is not necessarily identical with economic discrimination. Legally, discrimination occurs when an individual, either on his own account or representing a firm, violates the provisions of a law prohibiting discrimination against people with a certain characteristic. For example, many jobs do not produce a readily measurable product. For those jobs, employers must use subjective evaluations in making employment decisions. To gauge whether discrimination occurred under the law, the courts and enforcement agencies frequently rely on objective comparisons of the stated qualifications of job applicants and the performance standards for the vacant positions. The use of objective criteria may obscure real, but not easily quantifiable, differences in the net benefits an employer can expect from hiring one job applicant or another. To avoid legal liability, an employer may sometimes bypass the applicant the employer feels would produce the greatest net benefits and hire instead another applicant whose

qualifications look better on paper. If that employer forgoes income or incurs additional costs as a result, the employer has engaged in economic discrimination to avoid the charge of legal discrimination.

The distinction between economic and legal discrimination becomes very important when discrimination against disabled individuals is considered. Unlike characteristics that should not affect ex ante the expected costs and benefits of hiring or serving a person, disabilities can often impose significant costs on employers or owners of public accommodations. To avoid economic discrimination between people with and without disabilities, any additional costs associated with hiring a disabled person that are not de minimis should be reflected in lower compensation paid to the disabled person. Likewise, any significant additional cost of selling a good or providing a service to a disabled person should be offset with higher prices paid by the disabled person. If employers and owners of public accommodations were forced to bear those costs, they would effectively be forced to engage in economic discrimination against the nondisabled, and overall economic efficiency would be diminished.

Who Are "Individuals with Disabilities"?

The first legislation attempting to outlaw some forms of discrimination against the handicapped was the Rehabilitation Act of 1973. Originally, that act defined "handi- capped individual" as

any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (B) can reasonably be expected to benefit in terms of employability from vocational rehabilitative services.[4]

Subsequent amendments in the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 redefined the term "handicapped individual" as

any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life functions, (ii) has a record of such impairment, or (iii) is regarded as having such impairment.[5]

For employment purposes,

such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current drug or alcohol abuse, would constitute a direct threat to property or the safety or others.[6]

In 1986 the Rehabilitation Act was again amended to replace the term "handicapped individual" with "individual with a handicap."

That amended definition became the basis for designating disabled people under the Fair Housing Amendments Act and the Americans with Disabilities Act. The Civil Rights Act of 1968, as changed by the Fair Housing Amendments Act, excludes as a handicap current illegal use of or addiction to a controlled substance.[7] Under the Americans with Disabilities Act, "disability" replaces "handicap." However, section 511 of the ADA specifically excludes individuals with the following conditions from protection under the act: homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyro mania, and disorders resulting from the current illegal use of drugs.[8] Those exclusions under section 511 of the ADA do not apply to the sale and rental of housing covered under the Civil Rights Act of 1968, as amended.

Supporters of the ADA claim that 43 million Americans have one or more physical or mental disabilities.[9] To arrive at that seemingly high number, however, the supporters treat all 31 million Americans who are age 65 or older as disabled. Although some elderly Americans are mentally or physically disabled, many clearly are not. More realistic estimates from the National Institute on Disability and Rehabilitation Research suggest that the number of Americans suffering from serious disabilities is much smaller. Approximately 7.9 million Americans have some form of vision impairment, but fewer than 400,000 are actually blind. Likewise, only 1.7 million of the 21 million people with hearing impairments are actually deaf. Even individuals confined to wheelchairs, the group most commonly thought of as disabled, number only 720,000.[10]

Rehabilitation Act of 1973

Although the Rehabilitation Act of 1973 deals primarily with the authorization of programs to provide rehabilitation services to handicapped individuals, the act also contains the first federal prohibitions of discrimination against the handicapped in its title V. Section 503 requires federal contractors to establish affirmative action programs to hire and train the handicapped.[11] Section 504 forbids any program receiving federal assistance to discriminate against an "otherwise qualified" handicapped individual on the basis of his or her handicap.[12] Those anti-discrimination provisions, however, initially covered only persons or entities who work for, do business with, or receive funds from the federal government. The Rehabilitation Comprehensive Services and Developmental Disabilities Act of 1978 expands the coverage of section 504 to include all the activities of the executive branch of the federal government and the U.S. Postal Service.

Fair Housing Amendments Act of 1988

The Fair Housing Amendments Act of 1988 seeks, among other things, to outlaw discrimination in the sale and rental of housing on the basis of disability. Section 6 of that act amends section 804 of the Civil Rights Act of 1968 to make it illegal to

discriminate in the sale or rental [of housing] . . . because of a handicap of-- (A) that buyer or renter; (B) a person residing in or intending to reside in that dwelling . . .; or (C) any person associated with that buyer or renter.[13]

Section 804(f)[3] of the Fair Housing Amendments Act lists several specific actions that constitute discrimination against the handicapped with regard to housing. The first of those actions is "a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises."[14] The act does not require the owners of existing homes and apartments to modify them to accommodate disabled individuals. Instead, the act requires only that owners allow disabled individuals to adapt those structures to their special needs at their own expense. Since a disabled person must pay for the modifications he requires, that section does not constitute an uncompensated taking unless such modifications significantly diminish the value of the property.

However, that section also provides that all newly constructed multifamily dwellings covered by the act must be

designed and constructed in such a manner that (i) the public use and common portions are readily accessible and usable by handicapped persons; (ii) all the doors designed to allow passage into and within the premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow the later installation of grab bars; and (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.[15]

Covered multifamily dwellings are all units in buildings with four or more units and an elevator and all ground units in complexes with four or more ground units.

The supporters of the act claim that those features of adaptive design will not consume additional floor space.[16] That seems extremely unlikely. The kitchens and bathrooms in many urban apartments are simply too small to be wheelchair accessible. Providing adequate space for wheelchairs often means that either the floor space devoted to other uses such as living rooms, dining rooms, bedrooms, and closets must be reduced or that the overall floor space must be increased. If space is added to kitchens and bathrooms at the expense of other rooms, the adaptive design features are likely to make all covered new apartments less comfortable for and desirable to the nondisabled. For example, requiring that all light switches, outlets, and thermostats be moved to heights convenient for wheelchair users may make them uncomfortable and unsightly for everyone else. Furthermore, if overall space is increased, the rent charged both disabled and nondisabled tenants for the new apartments will probably be higher than it would otherwise have been.

In the Additional Views section of House Report 100- 711, some more skeptical Judiciary Committee members note, "While the [act] does specify to some extent `features of adaptive design,' the costs and true impact are not clear."[17] Under the act,

every single unit must be a special unit, not an exceptional unit. It isn't an accommodation for that percentage of the population that might be handicapped or confined to a wheelchair; this is for everybody. Every unit in new construction of a building that is four or more units . . . must be constructed to accommodate handicapped people. What is the impact going to be on the construction industry? What is the financial impact going to be on the buying public and renting public?[18]

The Congressional Budget Office apparently assumed that the Fair Housing Amendments Act of 1988 would not have a significant impact on housing costs.[19] Although adapting new structures for the handicapped is much less costly than retrofitting existing buildings, it seems unlikely that such significant changes in residential building and design standards would be costless. They would inevitably increase the rents of some people, whether disabled or not, and reduce the comfort and convenience of residences for the great majority of renters who are not disabled. As the act is interpreted and applied over time, the cost and inconvenience to the nondisabled will probably increase.

Those problems arise primarily because Congress insisted, beyond all reason, on applying the requirements to all new covered apartments, even though the benefits would accrue primarily to the relatively small number of individuals confined to wheelchairs. In the end, the Fair Housing Amendments Act may reduce the availability and affordability of new multifamily housing for both the disabled and the nondisabled, as builders shun such construction.

Americans with Disabilities Act of 1990

The costs imposed on the American people by earlier attempts to outlaw discrimination against disabled individuals are minor in comparison with the crushing burdens mandated by the ADA. In each of its four major titles, the ADA pursues, with zealous disregard for economic costs, its stated goal of mainstreaming disabled individuals. The provisions of the ADA and the regulations derived from it are frequently outlandish.

Title I--Employment

The scope of title I is broad. It covers all employers with 50 or more employees after June 1994 (25 or more after June 1992) except the U.S. government, Indian tribes, and private membership clubs. Employment agencies, labor organizations, and joint labor-management committees are covered.[20] However, the exemption for small business firms under title I provides little relief. Although title I may not affect small employers directly, those businesses that are considered "public accommodations" fall under the control of the ADA's title III, which provides no exemption for small businesses. Consequently, the ADA will affect almost all American businesses in one way or another. Section 102(a) of the ADA provides that

no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.[21]

The key phrase in that section is a "qualified individual with a disability." Section 101 defines that phrase to mean "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position." The same section goes on to describe what "reasonable accommodation" may include.

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.[22]

"Qualified individual with a disability" is the first of numerous terms in the ADA that are ill-defined and subject to

judicial interpretation. Under the ADA, a qualified individual is not someone who can fulfill all of the requirements of a job. Instead, a qualified individual is someone who, after an employer has borne the expense of making "reasonable accommodation," can perform the "essential functions," but not the marginal or trivial functions, of a job. Unlike the employment discrimination provisions of the Civil Rights Act of 1964, the ADA requires employers to hire employees who can perform only "essential" functions, not all of their job functions. The law gives an employer the rebuttable presumption that his definition of essential functions, contained in a preexisting job description, is correct. Thus, federal courts must accept an employer's definition of what is essential, provided it is written down in a job description, unless a plaintiff can clearly and convincingly demonstrate that the employer's definition is incorrect.

The ADA fails to give "reasonable accommodation" a clear meaning. Rather than specify what constitutes reasonable accommodation, the act merely lists some, but not all, possible accommodations. The act places no specific limits on what may be required of an employer. Congress rejected repeated attempts to place a specific cost ceiling on what constitutes "reasonable." Indeed, the Senate Committee on Labor and Human Resources specifically rejected "the principles enunciated by the Supreme Court in TWA v. Hardison,"[23] which places de minimis limitations on the expenses an employer must bear to accommodate his employees' religious beliefs.[24] To protect themselves from charges of legal discrimination, employers may have to hire disabled individuals and thereby incur significant additional costs, which are not compensated by tax credits or grants.

For example, the ADA will clearly require employers to redesign and modify their work facilities to make them "readily accessible to and usable by" disabled people. Employers must restructure aisles and passageways to allow the passage of employees confined to wheelchairs. Likewise, employers must add ramps to most existing facilities that lack them. Most bathrooms and drinking fountains must also be made usable by those in wheelchairs--which will probably make those facilities uncomfortable for everyone else. Braille markings must be placed on all directional signs to assist the blind. Other structural improvements that "readily accessible" may require will be discussed more thoroughly when title III is examined. In addition to making structural changes, employers must purchase special equipment for the physically disabled such as goose neck telephone headsets, mechanical page turners, and raised or lowered furniture.

Moreover, the ADA explicitly lists the provision of qualified readers and interpreters as an example of reasonable accommodation. The hiring of a reader or interpreter obviously involves considerable expense. Qualified readers or interpreters earn from $8 to $12 per hour depending on their experience and geographic location.[25] Nevertheless, to avoid discriminating against a deaf or blind person, an employer may be required to hire a reader or interpreter-- even though the cost of the reader or interpreter may exceed the compensation paid to the deaf or blind person. Moreover, since readers and interpreters take lunch breaks, become sick, and go on vacation, an employer may be compelled to hire not just one but several qualified readers or interpreters to accommodate a single blind or deaf employee. That requirement on employers is plainly unreasonable and abusive.

Section 102(b)[5](A) makes an employer liable for discrimination if he fails to provide "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual" unless such "accommodation would impose an undue hardship."[26] Section 101 attempts to define "undue hardship" as "an action requiring significant difficulty or expense, when considered in light of" such factors as

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.[27]

The undue hardship test is vague. The act provides no guidance about what constitutes "significant difficulty or expense." The bureaucrats and the courts are left to decide.

Moreover, the undue hardship exemption appears to apply only to one of the potential constructions of discrimination. Section 102(b)5(B) construes discrimination as

denying employment opportunities to . . . an otherwise qualified individual with a disability, if such denial is based on the need of [the employer] to make reasonable accommodations to the physical or mental impairments of the employee or applicant.[28]

Because that construction contains no undue hardship clause, the courts could hold an employer who fails to make any accommodation, however costly, guilty of discrimination.

The ADA may virtually eliminate any form of standardized job-related testing. Section 102(b)6 forbids employers to use

qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related and consistent with business necessity.[29]

Moreover, section 102(b)7 requires

select[ing] and administer[ing] tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant.[30]

Presumably, a person who scores below the cutoff point on a job-related test can be excluded from consideration. A low score, however, may be used to establish that a person suffers from a mental disability. If that mental disability can be shown to limit one or more major life functions and the affected applicant can perform the "essential functions" of the job (not perform all of the functions or even perform them as well as persons with higher test scores), the person with the low test score has established himself as a "qualified individual with a disability" protected from discrimination under the act. As a result, standardized job-related testing may become pointless.

Section 103(b) allows employers to impose "a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace."[31] However, other provisions of the title may limit the ability of an employer to enforce such rules. For example, section 102(c)[2] prohibits employers from requiring preemployment medical examinations or even asking questions about the nature and severity of a disability during a job interview. Employers, however, may legally inquire about an applicant's ability "to perform job-related functions."[32] Section 102(c)[3] permits employers to require a medical examination after a job offer has been made if and only if all new employees must submit to such examinations.[33]

Thus, an employer can no longer inquire directly about the disabilities of job applicants--no matter how those disabilities may affect their job performance or the safety of others in the workplace. An employer must ask indirect questions, the answers to which may or may not indicate whether an applicant can do a job in a safe manner. Only after a job offer has been extended can an employer learn whether disabilities may prevent an employee from performing his job and then only through across-the-board medical examinations of all new employees. Such thorough medical examinations would be expensive and particularly burdensome to small businesses.

Consider the example of a florist shop that needs to hire a driver for its delivery truck. A licensed driver whose vision began to fail after his last license renewal applies for the job. Obviously, a visually impaired driver is a danger to others on the road. However, under the ADA, a shop manager cannot ask an applicant whether his vision is impaired before a job offer is made; the manager can only ask if the applicant has a driver's license. To exclude an applicant because of vision problems, the shop owner must bear the expense of testing all applicants, keeping the results of the

tests confidential, and not using the results of the tests against any applicant unless he is completely unqualified for the job. If the shop manager does not want to bear that expense, his only alternative is to monitor the performance of the visually impaired driver on the job.

Section 104(a) excludes as "a qualified individual with a disability" for the purposes of title I "any person who is currently using illegal drugs when the employer acts on the basis of such use."[34] Section 104(b), however, protects former drug users who are in or have successfully completed rehabilitation.[35] Section 104(c) specifically permits employers to prohibit the use of alcohol or illegal drugs at the workplace, to require employees not be under the influence of alcohol or illegal drugs at the workplace, and to hold alcoholics and drug addicts to the same qualifications and job performance standards as other employees.[36]

Title II--Public Services/p>

Title II, Public Services, is divided into two parts: subtitle A, Prohibition against Discrimination and Other Generally Applicable Provisions, and subtitle B, Actions Applicable to Public Transportation Entities Provided by Public Entities Considered Discriminatory. The first subtitle is broad and expansive while the second is focused on ground transportation provided by state and local governments. Title II becomes effective in December 1991.

Subtitle A. Section 202 provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[37] That extends the policy of nondiscrimination on the basis of disability contained in section 504 of the Rehabilitation Act of 1973, which applied to federal agencies and recipients of federal financial assistance, to cover all functions of all state and local government entities. The Senate report declares that "the forms of discrimination prohibited by section 202 are comparable to those set out in titles I and III of this legislation."[38]

In accordance with section 204, the attorney general promulgated regulations to implement subtitle A on February 28, 1991.[39] Those regulations were vague and left many questions unanswered. Nevertheless, the impact of the ADA on state and local governments will be great. Consider voting.

In the United States, many private homes, community halls, and church buildings are used as polling places. Few private homes and only some community halls and church buildings are fully accessible to disabled people. As a result, persons confined to wheelchairs may be physically unable to cast ballots at some polling places and must instead use absentee voting procedures. However, the ADA applies its nondiscrimination provisions to all activities of state and local governments, including voting, regardless of whether those activities involve federal funds. Segregated and clearly unequal access to voting facilities would appear on its face to be a violation of section 202. Therefore, the ADA would seem to mandate that all voting facilities be made accessible to disabled individuals, forcing some difficult choices on state and local governments. Will those governments be required to spend taxpayers' funds to make private homes, community halls, and churches that may be used as polling places one or two days each year fully accessible? Or will those governments be forced to close some polling places, making voting less convenient and possibly running afoul of the Voting Rights Act?

The ADA would also seriously affect state courts. Consider child custody and adoption cases. Historically, state courts have weighed the physical and mental capacities of parents when awarding child custody and sanctioning adoption. For example, state courts have usually denied the custody of small children to parents whose physical disabilities prevent them from performing normal child-raising duties such as lifting a baby and changing diapers. Under the ADA, refusing custody on the basis of physical disability appears to constitute illegal discrimination. State courts have also kept prospective parents with a history of illegal drug abuse from adopting children. However, the ADA exempts only the current use of illegal drugs from inclusion as a covered disability. In addition, the ADA would seem to prevent an attorney from excluding a blind person from a jury even when visual evidence may be critical to the case.

Finally, many services performed by state and local governments require complex communications between citizens and officials. For example, a builder who is seeking a variance from a local zoning board must often submit numerous written statements, plans, and drawings. Without qualified in-house readers and interpreters, zoning officials may be unable to communicate their reasons for a denial to a blind or deaf person. Thus, the ADA will probably force many

government agencies to hire qualified readers and interpreters at great expense to local taxpayers to serve a small number of disabled individuals.

Subtitle B. Unlike subtitle A, subtitle B places fairly specific requirments on government providers of public transportation. Section 222 mandates that all intracity transit systems' new buses and rail cars be "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs." Remanufactured vehicles must also be "readily accessible" to "the maximum extent feasible."[40] Those provisions mean that lifts will be required on all buses. Section 226 requires all new stations and similar facilities be "readily accessible."[41] Section 227 requires that all key stations on rail transit systems be made readily accessible within three years; however, the secretary of transportation may grant a reprieve of up to 30 years for extraordinarily expensive structural changes.[42] Moreover, section 223 mandates that government transit systems provide paratransit services for those disabled persons who cannot use a "readily accessible" transit system. The level of paratransit services must be "comparable to the level of designated public transportation services provided to individuals without disabilities using such system."[43]

For Amtrak and commuter rail systems, section 242 mandates that [1] all new train cars be readily accessible, [2] all trains have at least one car that is readily accessible and fully usable by individuals with disabilities, [3] all new Amtrak and commuter rail stations must be readily accessible, and [4] all existing Amtrak and key commuter rail stations must be readily accessible within 20 and 3 years, respectively. However, the secretary of transportation may grant a reprieve of up to 20 years for extraordinarily expensive structural changes to key commuter rail stations.[44]

The new requirements will certainly prove very costly and may not actually improve transit service for disabled people. Subsection B essentially requires public transit authorities to make existing and future bus and rail service fully accessible to individuals confined to wheelchairs. For buses, in particular, the costs may be significant. As the Minority Views section of House Report 101-485(I) declares, "The cost of a new transit bus is approximately $150,000-$175,000. For a transit agency to equip that bus with a wheelchair lift will require an additional outlay of between $12,000-$15,000 with its attendant average annual maintenance costs of $2,000, amounting to a 10 percent surcharge per bus to the transit agency."[45]

The Minority Views section continues, "When we examine ridership figures for lift-equipped bus fleets we find that they are startlingly low." In Seattle, Washington, the city with the highest reported disabled ridership figures in the nation (the fleet is 80 percent lift equipped), each liftequipped bus used its lift 0.6 times per day. Milwaukee, Wisconsin, had 50 percent of its fleet accessible, and over a three-year period each of its lift-equipped buses used its lift only 0.008 times per day. "Fewer than 15 different people used the accessible buses during the three year period."[46]

Advocates for disabled individuals seem to be recommending mainstreaming disabled people on mass transit even when paratransit could provide them with better service at a lower cost to taxpayers. The Minority Views section notes:

Many disabled and elderly individuals cannot travel to and from a bus stop because of distance, lack of a curb cut, hilly terrain or adverse weather conditions. This legislation, however, would exclude them from eligibility for their only transportation alternative, paratransit service. Only if a disabled person (the elderly population is excluded) cannot actually board, ride or disembark from a lift-equipped bus is he eligible for the door-to-door paratransit service.[47]

The Additional Views section of House Report 101-485(I) states: "Very simply, adequate paratransit service often provides better mobility to the disabled, particularly in less populated areas, than a lift-equipped fixed-route system. It came as no surprise that many disabled across our country prefer it."[48] Ironically, the ADA may force some communities to replace existing portal-to-portal paratransit with less convenient lift-equipped fixed-route service. For example, the Minority Views section notes the testimony of representatives from St. Cloud, Minnesota, that "the ADA will require them to cut their paratransit service and install lift-equipped buses that the disabled community doesn't want."[49]

Finally, forcing disabled individuals to use mass transit rather than paratransit services may inconvenience the general public as well. Since lowering and raising a lift requires time, an individual confined to a wheelchair takes longer to

board a bus than does a person without mobility impairments. Because on-board space must be provided to secure wheelchairs, fewer seats will be available to other passengers.

Summary. The Senate report contains a regulatory impact statement that claims that the costs to state and local governments of implementing the ADA will be minimal. Since all states and most local governments already require that new public buildings be readily accessible, the report concludes that those governments will incur little or no additional costs for construction of public buildings because of the ADA. However, the report fails to estimate the costs to state and local governments of retrofittting existing public buildings to make them "readily accessible" to the "maximum extent feasible."[50]

Moreover, the only state and local government program for which the report calculates the costs of compliance with the ADA is bus and rail transit service. The report estimates that state and local governments will spend between $20 million and $30 million a year over the next several years to purchase lift-equipped buses. Annual maintenance costs will rise $15 million. The costs of paratransit systems are unspecified but "would add to those costs." The report states, "In 1979, . . . the CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million." The Department of Transportation estimated in 1981 that "adapting key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million."[51]

Taxpayers, however, should not assume that the costs they will ultimately bear will be so "minimal." Before the Carter administration's regulations requiring that all existing rail transit systems be retrofitted to accommodate disabled people were rescinded, Reagan administration officials calculated the actual cost of retrofitting at between $10 billion and $20 billion.[52] Also, remember that the Senate report assumes no additional costs for either retrofitting existing public buildings or modifying programs other than transit services to accommodate disabled individuals. That assumption is, at best, extremely naive, or more likely, very deceptive.

Title III--Public Accommodations and Services Operated by Private Entities

Title III extends the policy of nondiscrimination on the basis of disability, contained in section 504 of the Rehabilitation Act of 1973, to the provision of public ac commodations and services by private entities effective December 1991. Section 301[7] sets forth a broad definition of public accommodations, covering all places open to the public, that is similar to the coverage of title II of the Civil Rights Act of 1964.

Section 302(a) provides that "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[53] Section 302(b)[1](A) makes illegal the denial of participation, participation in unequal benefits, or separate benefits unless such separateness is necessary to provide disabled individuals benefits as effective as those provided to others.[54] Section 302(b)[1](B) mandates that goods and services be provided in "the most intgrated setting appropriate to the needs of the individual."[55] Section 302(b)[1](C) provides that individuals with disabilities be allowed to participate in nondifferentiated programs or activities even if differentiated programs or activities are provided for disabled individuals.[56]

Section 302(b)[2](A)(i) construes as discrimination "the imposition . . . of eligibility criteria that screen out or tend to screen out an individual with a disability . . . unless such criteria can be shown to be necessary for [the good or service] being offered."[57] Section 302(b)[2](A)(ii) construes as discrimination "a failure to make reasonable modifications in policies, practices, or procedures . . . when such modifications are necessary to afford [goods and services] to individuals with disabilities . . . unless . . . making such modifications would fundamentally alter the nature of such [goods or services]."[58] Moreover, section 302(b)[2](A)(iii) construes as discrimination "a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless . . . taking such steps would fundamentally alter the nature of [the good or service] being offered or result in an undue burden."[59]

The implications of those requirements are vast. For example, section 302 might affect a number of different

businesses. Assume that the businesses are all in buildings that are already readily accessible to people confined to wheelchairs so that no structural changes are required to comply with the law. First, consider a department store. Among the changes that the ADA would clearly compel is the addition of braille to all directional signs. How about a comedy club? Would hiring a signer for the deaf "fundamentally alter" its shows or be an "undue burden"? Or would the courts make that expense a cost of doing business? Title III provides no definition of "fundamentally alter" or "undue burden."

A principal focus of title III is the removal of architectural barriers in all places of public accommodation and commercial facilities. Section 303(a) mandates that [1] all new construction be "readily accessible to and usable by" individuals with disabilities except where such accessibility is "structurally impracticable" and [2] alterations of existing facilities must make the altered portions of the facilities "readily accessible to and usable by" individuals with disabilities to "the maximum extent feasible."[60]

The phrase "readily accessible to and usable by" is a term found in federal laws and regulations and in building standards used by federal agencies and private industry. That language clearly intends to enable disabled people to get to, enter, and use a facility with ease. While it does not dictate that all portions of all facilities be accessible, the language does require a high degree of convenient accessibility to parking areas, entrances, and common areas as well as usable bathrooms and water fountains. The language does not mandate that all parking spaces, bathrooms, and bathroom stalls be accessible; it mandates only that a reasonable number be accessible, depending on such factors as their location and the overall number of people accommodated.[61]

The phrase "structurally impracticable" is a narrow exception that applies only in rare circumstances where the unique characteristics of terrain prevent the physical incorporation of means of access and provision of access would destroy the physical integrity of a facility. For example, a building that must be built on stilts because of its location in marshlands or over water may qualify for that exception. On the other hand, buildings located on hills or steep grades are not exempt because accessibility can be achieved without destroying the physical integrity of the structure. Moreover, the exemption is not complete. If a facility must be built on stilts and cannot be made accessible to people in wheelchairs, it must still be accessible to individuals with other disabilities such as visual or hearing impairments.[62]

As mandated by section 504, on January 22, 1991, the Architectural and Transportation Barriers and Compliance Board issued proposed guidelines to aid the Department of Justice in establishing accessibility guidelines for new construction and alteration of places of public accommoda tion. While many of those standards are technical in nature and merely incorporate certain features that are already commonplace, some of the proposed standards appear excessive and are needlessly burdensome. For example, at least one pay telephone per floor must have an amplification device for the hearing impaired, and at least one in every six pay telephones must be equipped with a Telecommunications Device for the Deaf that uses a typewriter-style keyboard and message display to send coded signals through the telephone network.[63] TDDs are expensive and vulnerable to vandalism.

In auditoriums and places of public assembly, wheelchair locations must be dispersed throughout the seating area (except balconies) rather than concentrated near the main aisles and exits. Because more space is needed to allow individuals confined to wheelchairs to get to scattered locations, the standard causes a greater loss of regular seating than necessary. Moreover, the standard requires an accessible route from all wheelchair locations in the seating area to the performing area, including the stage, arena floor, and dressing rooms. Since the performing area is often not directly accessible by nondisabled people from the seating area, it is unclear why an accessible route from wheelchair locations in the seating area should be mandated.[64]

The proposed guidelines require that all checkout lines in retail stores be accessible to individuals confined to wheelchairs.[65] Since checkout aisles must be significantly wider to accommodate wheelchairs, that standard will proba- bly cause a reduction in the total number of checkout lines and a significant increase in waiting time at peak periods for all customers.

The proposed guidelines require that hotels make 5 percent of their rooms fully accessible to individuals confined to wheelchairs (modifications include accessible bathrooms and closets) and another 5 percent fully accessible to hearing-

impaired individuals (modifications include visual alarms, visual notification devices for door knocks and telephone calls, and amplification devices on telephones).[66] What the market demand may be for specialized hotel rooms is unclear--presumably hotel owners would offer such facilities now if the demand were sufficient. In banquet facilities at restaurants and hotels, any raised platform used as a head or speakers' table must be fully accessible to individuals confined to wheelchairs, even if no one who is so confined sits there.[67]

Finally, the Architectural and Transportation Barriers and Compliance Review Board is still considering other, potentially more outrageous standards. For example, the board is studying how to make swimming pools accessible to people with mobility impairments. One proposal under review would mandate the installation of automatic, self-operated lifts at every public pool. What might happen to an individual confined to a wheelchair once he is lowered into the water is not discussed.[68]

Incorporating accessibility into the design of all new commercial construction and complete renovations of existing commercial buildings will affect costs. The Senate report claims that "for renovations and new construction, the costs of accessibility are generally between 0 and 1 percent of the construction budget."[69] Many private firms already meet the accessibility guidelines either voluntarily or because their structures comply with local building codes. The Senate estimates are undoubtedly low. The true additional costs associated with section 303 will pose as severe a problem as will those associated with other provisions.

The provisions that apply to existing facilities that are not being completely renovated pose more problems. Section 302(b)[2](A)(iv) mandates the removal of all architectural and other barriers in existing facilities where such removal is "readily achievable."[70] When such removal is not "readily achievable," Section 302(b)[2](A)(v) requires that alternative methods be used to provide disabled individuals with the goods or services that are inaccessible, if such alternative methods are "readily achievable."[71]

Obviously, the key phrase in those sections is "readily achievable." As is the case with the phrases "reasonable accommodation" and "undue hardship" in title I, "readily achievable" is defined circuitously. Section 301[9] states that "the term `readily achievable' means easily accomplishable and able to be carried out without much difficulty or expense." In determining whether an action is readily achievable, factors to be considered include

[1] the nature and cost of the action needed under this Act;

[2] the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action on the operation of the facility;

[3] the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

[4] the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.[72]

As it did in title I, Congress specifically rejected applying a cost test to determine what is readily achievable. Instead, the law is purposely vague--giving no clear guidance to businesses about what modifications to existing facilities may be required. Without a reasonable cap on costs, business firms may be forced to absorb large expenditures to accommodate disabled individuals or pass those expenses along to all customers in the form of higher prices. Congress may again be requiring business firms to engage in economic discrimination to avoid violating the legal prohibitions on discrimination against disabled people.

At a minimum, the "readily achievable" standard will require many businesses to spend substantial sums to retrofit existing facilities to accommodate disabled individuals, despite the protestations of proponents of the ADA. The costs of modifying practices and procedures may be significant as well. However, the exact costs cannot be reliably estimated until the courts and regulators give some meaning to the legislation.

Finally, section 304 imposes on private providers of public transit services rules that are similar to those imposed on government providers in subtitle B of title II.[73] Section 306 requires the secretary of transportation to issue final regulations that would require structural changes on over-the-road buses to accommodate individuals confined to wheelchairs. Those regulations are due within one year after the completion of a study, mandated in section 305, of how such changes would affect intercity bus service. Such regulations would take effect in six years for large carriers and seven years for small carriers. The regulations may not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity. In the interim, the secretary may issue temporary regulations to improve the accessibility of over-the-road buses, provided no structural changes are required.[74]

Although the final language tempered the impact of the ADA on over-the-road bus companies by not requiring accessible restrooms if seating capacity would be lost, adding lifts to allow individuals confined to wheelchairs to board and providing room to secure wheelchairs on board would still take considerable space, which would diminish the number of seats and storage space on over-the-road buses. Specially equipped over-the-road buses will, in fact, rarely be used by individuals confined to wheelchairs. However, the capacity lost to lifts and space for those individuals, whether they use the buses or not, would cause a significant decline in revenue for over-the-road bus companies. As a result, bus companies will raise the fares for other passengers to recoup their losses or cut back on service to all.

Title IV--Telecommunications

The scope of title IV is very narrow. Section 401 modifies section 225 of the Communications Act of 1934[75] to require all common carriers of telephone service, both interstate and intrastate, to provide hearing- and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals. Those services must be functionally equivalent to telephone services provided to hearing individuals. Currently, hearing-impaired individuals can use TDDs. However, users of TDDs can communicate only with other users of TDDs. Current technology allows for communication between a TDD user and a voice telephone user through a relay system, employing third-party operators who transmit messages back and forth between the parties. Section 401 would mandate the availability of such relay systems around the clock.

That section also prohibits telephone firms from charging users of relay services for the extra expense associated with those services, which effectively forces other telephone users to subsidize services for the hearing disabled.[76] The Federal Communications Commission estimates the total additional costs of relay services at $250 million annually, or about $1.20 per customer per year.[77] By spreading the costs of TDDs over all ratepayers, the ADA compels telephone carriers to engage in economic discrimination to avoid legal liability for discrimination against disabled individuals.

What Now?

The ADA and related "civil rights" legislation for disabled individuals are quite different from other civil rights prohibitions of discrimination on the basis of race, national origin, religion, or sex. The "civil rights" requirements for disabled individuals impose significant economic costs and loss of service quality on other people; the other prohibitions on discrimination presumably do not. Imposing such standards under the label of "civil rights" inappropriately leads to requirements that hold the value of mainstreaming disabled individuals as an absolute beyond any economic considerations. Congress reflected that tendency when it rejected any cost-based standards for determining what the ADA requires, leaving vague limiting language such "undue hardship" and "undue burden" without any meaning.

Strict limitations on the costs and loss of service quality that the ADA and related legislation may impose on others are, in fact, necessary to prevent those laws from imposing irrational and unfair burdens on the general public. Ideological zealotry often leads to demands that all relevant economic considerations be excluded, but such demands can never make sense in the real world. Excluding economic considerations will probably lead to requirements that impose costs that are far greater than any conceivable benefits. Mainstreaming disabled individuals and assuring them access to any job are not necessarily worth any conceivable economic costs. Moreover, the exclusion of economic

considerations forecloses any effort or incentive to consider less costly alternatives. Disabled individuals should have the responsibility and incentive to seek out and choose employment alternatives that will impose the least costs on others. Shielding the disabled from the economic costs of their employment choices preempts that. Requiring expensive lifts on buses when door-to-door paratransit would cost far less and provide service that disabled individuals themselves view as superior goes beyond irrationality into the realm of the malicious.

Finally, the moral justification for imposing significant economic costs and loss of service quality on others to enhance the access of disabled persons remains to be articulated. Any sophisticated moral philosophy rejects the imposition of such costs on the innocent by coercive force as morally wrong. Even common-sense fairness indicates that there must be reasonable and clear limits to the costs that may be imposed on innocent third parties.

Such cost limitations would not significantly diminish the ADA's ability to achieve its stated purpose of integrat ing disabled individuals as fully as possible into the mainstream of American life. During the congressional hearings on the ADA, proponents testified that for a majority of employees, no accommodation is required; for many others the costs can be less than $50.[78]

If the costs are as minimal as proponents of the ADA claim, adding a reasonable limitation on such costs to the law will not significantly limit opportunities for disabled people. On the other hand, if the costs greatly exceed the estimates of ADA supporters, then cost limitations would serve the vital purpose of shielding American businesses and consumers from higher prices and the inefficiencies associated with excessive regulation.

Therefore, at a minimum the following changes should be made to the Americans with Disabilities Act.

1. If the costs, net of any tax credits or grants, to any employer for either any capital expenditure or ongoing annual expenses associated with accommodating a disabled applicant or employee exceed $250, such costs should be considered an "undue hardship."

2. The undue hardship exception should be clearly applied to all constructions of discrimination under title I.

3. The provision of qualified readers and interpreters should not be considered a "reasonable accommodation."

4. If the costs, net of any tax credits or grants, borne by any owner of any public accommodation for making all alterations needed to accommodate disabled individuals exceed the lesser of $10,000 or 1.0 percent of the total annual revenue produced by the public accommodation, such alterations should be considered "not readily achievable" and an "undue burden." Likewise, if the annual operating expenses, net of any tax credits or grants, associated with all such accommodations exceed the lesser of $2,500 or 0.25 percent of total annual revenues produced by the public accommodation, such accommodations should be considered "not readily achievable" and their costs an "undue burden."

Adequate paratransit service should be allowed as an alternative to requiring that all transit stations and services, particularly bus service, be fully accessible to individuals confined to wheelchairs. Although paratransit can provide disabled people with service superior to that given nondisabled bus and train riders, the ADA attempts to mainstream most disabled people on mass transit, against their own wishes, and limits the scope of paratransit. Disabled individuals generally prefer the convenience of door-to-door paratransit to lift-equipped fixed-route buses as long as public transportation authorities provide enough paratransit drivers and vehicles so that service calls may be answered quickly and costs are not excessive. Allowing the use of adequate paratransit could also save taxpayers large outlays for retrofitting existing transit systems.

Other telephone ratepayers should not be required to subsidize the costs of specialized services for the hearing impaired. The ADA should be amended to delete the prohibition on telephone carriers' charging the hearing disabled more for TDD service than regular customers pay for their service.

Under the Rehabilitation Act of 1973, as amended, states already operate limited programs of tax credits and grants to compensate employers for the additional expenses of hiring disabled individuals. The existing programs should be consolidated into a single, universal system of tax credits to offset any accommodation expenditures that are not de

minimis. Moreover, the system of tax credits should be expanded to include any accommodation costs borne by the owners of public accommodations. While a system of tax credits would force everyone to share the burdens imposed by the ADA, it would not eliminate them.

Section 804(f)[3](B) of the Civil Rights Act of 1968 should be amended to require that only 10 percent of all units in new multifamily housing be fully accessible by disabled people, including those confined to wheelchairs. The government should not require that all new apartments be designed to accommodate the special needs of a small number of potential residents.

Finally, several technical changes should be made to the ADA and related acts to address certain other problems that were mentioned earlier. These changes would prevent some unintended negative consequences.

1. Nothing in the ADA or related laws should be construed to limit the legitimate use of standardized job tests, and

2. The exclusions listed in section 511 of the ADA should also apply to the Rehabilitation Act of 1973, as amended, and the Civil Rights Act of 1968, as amended.

Those changes would temper the most severe costs imposed by the current law yet still go a great distance toward the ADA's goals.

Notes

[1] For simplicity, assume the employer neither pays any payroll taxes nor provides any fringe benefits.

[2] Milton Friedman, Capitalism and Freedom (Chicago and London: University of Chicago Press, 1962), pp. 109-10.

[3] There are some exceptions, of course. A candidate for the priesthood who adheres to the Catholic faith may gener ate a higher value to the Roman Catholic Church than one who does not. In that case, the use of religion as a criterion for employment as a priest would not be economically dis criminatory.

[4] 29 U.S.C. 706.

[5] Ibid.

[6] Ibid.

[7] 42 U.S.C. 3602.

[8] 42 U.S.C. 12211. Section 508 also specifically exempts transvestites. 42 U.S.C. 12208.

[9] 42 U.S.C. 12101.

[10] Data from National Health Interview Survey, National In stitute on Disabilities and Rehabilitation Research. Visual and hearing impairment data are from the 1983-85 survey; wheelchair datum is from the 1980 survey.

[11] 29 U.S.C. 793.

[12] 29 U.S.C. 794.

[13] 42 U.S.C. 3604.

[14] Ibid.

[15] Ibid.

[16] U.S. House of Representatives, Committee on the Judicia ry, Report 100-711 on the Fair Housing Amendments

Act of 1988 (June 17, 1988), pp. 26-27.

[17] House Report 100-711, Additional Views, p. 80.

[18] Ibid., Additional Views, pp. 80-81.

[19] Ibid., 42-43.

[20] 42 U.S.C. 12111.

[21] 42 U.S.C. 12112.

[22] 42 U.S.C. 12111.

[23] 432 U.S. 63 [1977].

[24] U.S. Senate, Committee on Labor and Human Resources, Report 101-116 on the Americans with Disabilities Act of 1989 (August 30, 1989), p. 36.

[25] National Institute on Disabilities and Rehabilitation Research [1990].

[26] 42 U.S.C. 12112.

[27] 42 U.S.C. 12111.

[28] 42 U.S.C. 12112.

[29] Ibid.

[30] Ibid.

[31] 42 U.S.C. 12113.

[32] 42 U.S.C. 12112.

[33] Ibid.

[34] 42 U.S.C. 12114.

[35] 42 U.S.C. 12113.

[36] 42 U.S.C. 12114.

[37] 42 U.S.C. 12132.

[38] Senate Report 101-116, p. 44.

[39] 56 Federal Register 40, 8538-8557 (February 28, 1991).

[40] 42 U.S.C. 12142.

[41] 42 U.S.C. 12146.

[42] 42 U.S.C. 12147.

[43] 42 U.S.C. 12143.

[44] 42 U.S.C. 12162.

[45] U.S. House of Representatives, Public Works and Trans portation Committee, Report 101-485(I) on the Americans with Disabilities Act of 1990, Minority Views of Bud Shuster, Bob McEwen, Ron Packard, Mel Hancock, and Christopher Cox (May 14, 1989), pp. 61-62.

[46] Ibid, p. 62.

[47] Ibid.

[48] House Report 101-485(I), Additional Views of John Paul Hammerschmidt, Arlan Strangeland, William F. Clinger, Jr., Jim Lightfoot, Dennis Hastert, James M. Inhofe, Cass Ballen ger, Bill Emerson, John J. Duncan, Jr., Bill Grant, and Susan Molinari (June 17, 1989), p. 59.

[49] House Report 101-485(I), Minority Views, p. 61.

[50] Senate Report 101-116, pp. 92-94.

[51] Ibid.

[52] Michael E. Hammond, "Civil Rights and the Disabled: The Legislative Twilight Zone," National Legal Center for the Public Interest, Washington, White Paper 1:5, November 15, 1989.

[53] 42 U.S.C. 12182.

[54] Ibid.

[55] Ibid.

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] 42 U.S.C. 12183.

[61] Senate Report 101-116, p. 69.

[62] Ibid., pp. 70-71.

[63] 56 Federal Register 14, 2334-2335 (January 22, 1991).

[64] Ibid., 2378-2380.

[65] Ibid., 2382-2383.

[66] Ibid., 2384-2385.

[67] Ibid., 2382.

[68] Ibid., 2318-2319.

[69] Senate Report 101-116, p. 89.

[70] 42 U.S.C. 12182.

[71] Ibid.

[72] 42 U.S.C. 12181.

[73] 42 U.S.C. 12184. Airline accessibility is covered sepa rately under the Air Carrier Access Act.

[74] 42 U.S.C. 12185.

[75] 47 U.S.C. 201 et seq.

[76] 47 U.S.C. 225.

[77] Senate Report 101-116, p. 89.

[78] Ibid., p. 10.