

Changes in American Judicial Behavior in Disability Discrimination Cases
in Response to Anti-Discrimination Legislation

by

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ABSTRACT

Disabled people have historically lacked legal protection and often faced discrimination in healthcare, reproductive rights, education, and more despite being the largest minority group in the United States. One of the most common ways that American disability activists have advocated for their rights is by challenging discriminatory behavior or regulations in court and advocating for policy change in local, state, and federal governments. As a result, understanding the relationships between legislation and the judicial processes by which American judges approach disability discrimination is crucial to protecting and expanding the rights of disabled Americans. This study analyzes five American disability rights cases from the last fifty years as well as two foundational pieces of federal legislation, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). I conducted this research as a member of the Embryo Project, where I wrote and peer-reviewed articles for the Embryo Project Encyclopedia, which is an online open-access resource for topics relating to reproduction, embryology, and development. In my articles, I summarize the litigation and holdings of each case with additional contextualization in science and society. The passage of the ADA represents a watershed moment after which the American judiciary observed the rights of the disabled as legislatively codified rather than only subject to interpretations of the Constitution. Since laws can be repealed far more easily than constitutional amendments, precedent from legislative interpretation is only as secure as the law on which it is based. Lawmakers must understand the need to craft legislation with reduced textual ambiguity to prevent undermining the original intent of the law.

With the recent overturning of long-standing precedent and the composition of the Supreme Court as of 2023, disability rights are on fragile footing. Judicial behavior in response to disability legislation has historically narrowed the protections offered by federal statute and failed to bolster disability rights by refusing to base decisions on Constitutional protections.

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CHAPTER 1

BACKGROUND

Disability impacts the lives of millions of Americans, with about one in four adults in the United States having at least one form of disability (Peacock et al., 2015). Disabled people have historically lacked legal protection and often faced discrimination in healthcare, reproductive rights, education, and more despite being the largest minority group in the United States (Gewin, 2023). One of the most common ways that disability activists have advocated for their rights is by challenging discriminatory behavior or regulations in court and advocating for policy change in local, state, and federal governments. As such, understanding the relationships between legislation and the judicial processes by which American judges approach disability discrimination is crucial to protecting and expanding the rights of disabled Americans.

This study analyzes two foundational pieces of federal legislation, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA), as well as five American disability rights cases from the last fifty years that challenged or expanded on those pieces of legislation. The ADA is a federal law that was passed in 1990 to protect the rights of individuals with disabilities. That law prohibits discrimination against people with disabilities. The ADA is broken up into several divisions that protect people from discrimination from employers, schools, and other governments. For example, the accessibility requirements of the law have made it easier for individuals with disabilities to live independently and participate in their communities

by mandating that public spaces be accessible for those with physical disabilities. (Ross, 2022a). The IDEA is a federal law passed in 1975 to ensure that children with disabilities have access to a free and appropriate public education. One of the key provisions of IDEA is that it requires schools to provide special education and related services to children with disabilities. Services can include speech therapy, occupational therapy, and other specialized instruction. Schools must also develop an Individualized Education Program (IEP) for each child with a disability, which outlines the specific goals and services that the child will receive (Ross, 2022b).

Conceptions of disability vary due to a multitude of cultural and social factors. As such, defining what it means to be disabled or have a disability leads to significant consternation, particularly in the legal sphere. The definition of disability that policymakers or judges use can have drastically different repercussions. Definitional ambiguity of “disability” in the ADA resulted in judicial reinterpretation of the classification and the erosion of civil rights for the disabled (Sutton v. United Air Lines, 1999) (Toyota Manufacturing, Kentucky, Inc. v. Williams, 2002). For almost two decades after 1990, the Supreme Court narrowed the scope of conditions protected by the ADA, holding that impairments with ameliorative interventions are not disabilities and that impairments must significantly interfere with carrying out actions central to normal life to qualify for ADA protections (Sutton v. United Air Lines, 1999) (Toyota Manufacturing, Kentucky, Inc. v. Williams, 2002). Both definitions used by the court strayed from the initial intent of Congress, which led to the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). The ADAAA clarified the legal definition of disability as:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3))

(ADA Amendments Act of 2008, 2008).

Major life activities include, for example, walking, seeing, and major bodily functions such as digestive or reproductive functions. For the purposes of this study, disability and people with disabilities will fall under this definition unless otherwise noted.

Much of the existing literature on the ADA and the IDEA centers on the changes in the lives of people with disabilities and improvements in accessibility that the laws provided. Research indicates that the ADA improved employment rates for people with disabilities since it posed that qualified job applicants with disabilities must receive accommodations in the hiring process and workplace (Stone, 1995) (Garberoglio, 2019). Moreover, studies have focused on indirect effects, such as the alleviation of poverty amongst disabled Americans following the ADA (Bagenstos, 2002). Similarly, researchers have found that the IDEA vastly expanded the number of disabled children who received an education (Katsiyannis et al., 2001). However, there is little research examining the changes in judicial behavior following the passage of either piece of legislation. Most legal research centers on individual cases and how they relied on or overturned precedent (Zappa, 1990) (Lee, 2003). Additionally, scholars have analyzed

how courts interpret legislation, but have focused on the changes from the original intent of the legislative branch, rather than the approaches of the courts to cases where legislatively codified rights are being challenged (Selmi, 2008).

In this study, I examine whether there are any changes in how judges behave through an analysis of the court decisions in education-related disability cases and then more general disability discrimination cases. Using the ADA and IDEA as benchmarks in time, the study involves identifying the legal sources that judges pull from to reach their decisions, whether it be the Constitution or federal legislation. In cases where judges rely only on the interpretation of legislation rather than the Constitution, the holding is narrower in scope and does not expand or eliminate rights in as significant a manner. Thus, the sources that judges use largely determine a decision's impact and can inform how civil rights protections manifest in employment, education, and public life. Since no research into that area emerged, this study aims to facilitate more questions and potential avenues of research.

CHAPTER 2

METHODS

For this project, I completed a research synthesis that focused on disability law cases in the United States as well as the impacts of disability-related legislation. Furthermore, I analyzed primary source documents relating to the cases and legislation, culminating in encyclopedic articles that summarize the case or law and explain the significance. A research synthesis is a type of research study that involves combining and analyzing the results of multiple previous studies on a specific topic in order to draw broader conclusions. Overall, a research synthesis aims to provide a more comprehensive and nuanced understanding of a particular research question or issue by combining and analyzing the results of multiple previous studies (Suri, 2011).

I began the research synthesis by utilizing the ASU Library search engine, which allows access to journal articles and databases. I prioritized resources in law reviews as well as articles contemporary to case decisions to contextualize sentiments regarding disability rights over time. To better understand the state of disability law in the present day, I used keywords relating to disability law and education, employment, and healthcare. Initial research presented about a half dozen laws protecting disability rights passed or amended during the twentieth century. Most of the laws were fairly narrow in scope, such as the National Voter Registration Act of 1993, Air Carrier Access Act, and the Fair Housing Act. Two laws, the IDEA, and the ADA, consistently held prominent places in recent literature as significantly altering the legal, social, and political landscape

for disability rights. As a result, I focused my review on those two promulgations and selected court cases that challenged or reinforced their protections.

As legal cases and federal laws, the primary source documents for the study are widely available. I used court document aggregation websites [Justia.com](https://www.justia.com) and [Oyez.org](https://www.oyez.org) to access majority and dissenting opinions and records of oral arguments. While my literature review relied on secondary sources to identify the cases and laws of interest, I also reviewed and analyzed the original primary sources. My analysis included reading the majority, dissenting, and concurring opinions for all five cases, as well as the most frequently cited cases. Other primary sources included audio or transcripts of oral arguments and congressional records of the laws during the legislative process. That independent analysis of the documentation supplemented the literature review and allowed me to understand potential gaps in the literature.

I conducted this research as a member of a course called the Embryo Project, where I wrote and peer-reviewed articles for the *Embryo Project Encyclopedia*, which is an online, open-access resource for topics relating to reproduction, embryology, and development. In my articles for the Embryo Project, I summarize the litigation and holdings of each case with additional contextualization of the case in science and society. During this research, I completed seven law articles, each of which are viewable on the *Embryo Project Encyclopedia* and are included in this document. I am the sole author of all included articles, and I present them here in their entirety. Throughout, I provide context for how the articles contribute to the goals of this research.

CHAPTER 3

RESULTS

Analyzing the existing literature as well as primary source documents demonstrates a shift in judicial approaches to cases involving discrimination based on disability status following federal legislation. The passage of the Americans with Disabilities Act represents a watershed moment after which the American judiciary observed the rights of the disabled as legislatively codified rather than only subject to the interpretation of the Constitution. Over the twentieth century, advancement in the understanding of developmental disabilities resulted in diverging Supreme Court decisions involving autonomy for the developmentally and intellectually disabled. Finally, court cases that initially centered on disability discrimination from the government frequently deviated from a central question of civil rights into a question of government rights, even to the point where the primary holding has nothing to do with discrimination.

In this paper, I include seven of my Embryo Project articles, each focusing on a particular court case or statute. I begin with “*Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania (1972)*” and “*Mills v. Board of Education of District of Columbia (1972)*,” which are both cases involving the right of disabled American children to access education. I then move on to the “*Individuals with Disabilities Education Act (1975)*,” which echoes the holdings of *PARC* and *Mills* and codified the right of disabled children to access education. Next, I transition away from special education to disability rights at large. First, I include “*Stump v. Sparkman*

(1978),” which involves the forced sterilization of the disabled. Following “Stump” is “Americans with Disabilities Act (1990),” which discusses the federal law that protects the rights of disabled Americans from discrimination by employers, the government, and in public accommodations. I conclude with two cases that involved discrimination claims under the ADA, “Olmstead v. L.C. (1999)” and “U.S. v. Georgia (2006).”

Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania ([published](#) May 25, 2022 in the Embryo Project Encyclopedia)

In 1972, the United States District Court for the Eastern District of Pennsylvania decided the case of *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania*, hereafter *PARC v. Pennsylvania*. The court ruled that the state could not deny an individual's right to equal access to education based on intellectual or developmental disability status. PARC brought the case against the state of Pennsylvania on behalf of fourteen families with intellectually disabled children who were unable to access public schools based on their child's disability. PARC challenged state laws that permitted schools to deny education to children who do not reach the mental age of five, or the average intelligence of people aged five, by the time they begin first grade. Both sides settled following the testimony of expert witnesses on PARC's behalf, and the US District Court approved the consent decree. *PARC v. Pennsylvania* was one of the first cases to establish that people born with an intellectual disability should have the same access to education as the rest of the population.

During the time of *PARC v. Pennsylvania*, medical professionals, government officials, and lawyers used certain phrases to classify people with disabilities that have become unacceptable according to the medical, legal, and social standards of 2022. Professionals used to consider phrases like "mentally retarded" an appropriate way to classify people with a broad array of disabilities, from Autism to Down Syndrome. As understanding of disabilities increased over time, phrases such as "intellectual disabilities" and "developmental disabilities" have become the preferred terminology in medical and legal fields. In 2010, the United States Congress passed a federal law that would phase out the use of "mental retardation" and replace it with the term "intellectual disability."

PARC, which changed its name to The Arc in 1992, is a non-profit organization that aims to increase opportunity and accessibility for people with intellectual disabilities. Parents of fourteen intellectually disabled children who were denied free education in Pennsylvania partnered with PARC to sue the Commonwealth of Pennsylvania. Thomas Gilhool argued the case on behalf of PARC, and Edward Weintraub, a Deputy Attorney General, argued on behalf of the Commonwealth of Pennsylvania.

PARC v. Pennsylvania followed another court decision that opposed discrimination in education. In 1954, the US Supreme Court ruled that separate classrooms for African-American students violated the Equal Protection Clause of the Fourteenth Amendment in the case *Brown v. Board of Education*, hereafter *Brown*. The Equal Protection Clause demands that laws in the US protect US citizens equally. Disability rights activists saw *Brown* as an opportunity to challenge instances of

discrimination against disabled children in education. PARC's argument relied on the precedent of *Brown*, stating that the Pennsylvania law violated the Due Process Clause of the Fourteenth Amendment since the schools did not allow for any hearings or recourse when denying the child's right to access public education. The Due Process Clause requires a formal process before denying a US citizen their rights. *PARC v. Pennsylvania* revolved around four Pennsylvania statutes. The statutes in question allowed public schools to postpone admittance into school indefinitely barred students whom a school psychologist deemed "uneducable" from public schools, exempted intellectually disabled students from compulsory education, and removed intellectually disabled students from classrooms as soon as they turned seventeen. As the courts found that students were guaranteed equal access to education regardless of race in *Brown*, PARC sought a court ruling that expanded that access to disabled students as well.

In January 1971, PARC filed a complaint against the Commonwealth of Pennsylvania citing discriminatory practices in the state's public schools. A few months later, in June 1971, the trial began in the United States District Court for the Eastern District of Pennsylvania. Settlement discussions began almost immediately following the beginning of the trial. A federal panel of three judges consisting of District Judges Thomas Masterson and Raymond Broderick and Circuit Judge Arlin Adams oversaw the trial. The court heard from four expert witnesses in the field of educating children with intellectual and developmental disabilities. The expert witnesses included Ignacy Goldberg, an education professor at Columbia University; James J. Gallagher, the director of the Bureau of Education for the Handicapped; Donald J. Stedman, associate director of the John F. Kennedy Center for Research on Education and Human

Development at Peabody College; and Burton Blatt, who was the director of the Division of Special Education and Rehabilitation at Syracuse University.

The experts focused on the issue of labeling students with "mental retardation" in their testimony. The experts argued that there is no such thing as "uneducable," the term used by Pennsylvania schools to deny education to disabled students. Additionally, they argued that schools are often the first institutions to label students with "mental retardation," reinforcing the stigma behind the term. Goldberg identified the source of the stigma attached to the label of "mental retardation" to the American eugenics movement. Eugenics is a set of political beliefs focused on eliminating people whom some label as undesirable with the goal of improving society. Goldberg testified that eugenics organizations in the United States claimed that people with "mental retardation" were often criminals and caused the breakdown of American society by passing on their genes. Goldberg explained that the claims and beliefs of the American eugenics movement still affected public sentiment, which meant that the label of "mentally retarded" was stigmatizing.

PARC v. Pennsylvania cited the Supreme Court case *Wisconsin v. Constantineau*, hereafter *Wisconsin*, which found that the state cannot stigmatize a citizen without due process. Stigmatization by the government in *Wisconsin* was characterized as when an individual's reputation is jeopardized as the result of a government action. *PARC*'s lawyers argued that Pennsylvania schools frequently placed the "mental retardation" label onto children without any process to challenge the label or confirm its accuracy. The experts cited a study by Pennsylvania-based school psychologist Lester Mann that found

that the diagnosis made by the school of "mental retardation" was erroneous in up to twenty-five percent of cases. Mann found that several issues in the classification process in schools contributed to the rate of misdiagnosis, including misusing diagnostic criteria, insufficient testing equipment, and unequal standards for children of different races. Finally, the expert opinion argued that all intellectually disabled people benefit from education, either gaining some level of self-sufficiency or self-care.

Following the expert testimony, the litigants asked for time to discuss the settlement of the case. The panel allowed the parties to come to a satisfactory settlement. By October 1971, the litigants submitted a consent agreement. The Commonwealth of Pennsylvania agreed to provide free and appropriate public education to all people ages six to twenty-one characterized as "mentally retarded." In the court opinion, which Judge Masterson wrote, the court found that the consent agreement submitted by the parties was fair and ordered an injunction against the state from exercising the laws challenged in the case. Finally, the court ordered schools to give the opportunity for a hearing before a school is allowed to classify a student as "mentally retarded." Additionally, it required schools to give "mentally retarded" children re-evaluation on their classification at least every two years. The litigants filed no appeals following the decision and settlement.

PARC v. Pennsylvania was one of the first cases that dealt with the issues of intellectual disabilities, developmental disabilities, and education. The case also helped establish principles such as "free appropriate public education," "zero-reject," and "least restrictive environment" that allow for access to education regardless of disability. Also in 1972, the United States District Court for the District of Columbia decided a similar

case in *Mills v. Board of Education of District of Columbia*, hereafter *Mills*. *Mills* expanded the rights of disabled children to have free appropriate public education to include physical, mental, and emotional disabilities in addition to intellectual and developmental disabilities, as found in *PARC v. Pennsylvania*. Twenty-seven federal lawsuits involving disabilities and education followed *PARC v. Pennsylvania* and *Mills*, leading to Congress passing legislation to federally mandate states grant equal access to education for disabled students.

The Education for All Handicapped Children Act of 1975, now called the Individuals with Disabilities Education Act, or IDEA, specifically codified the right to free appropriate public education for disabled children found in *PARC v. Pennsylvania*. According to Gilhool, the attorney who represented PARC, about three percent of American students at the time were classified as "mentally retarded," with more than 60 percent of them receiving no public education. Pennsylvania itself had over 100,000 students classified as "mentally retarded" with only half receiving any form of public education. Following *PARC v. Pennsylvania*, previously excluded students in Pennsylvania could attend public schools, becoming the first state in the United States to guarantee that opportunity to students deemed "mentally retarded." *PARC v. Pennsylvania* guaranteed that intellectually disabled students could not be denied their constitutional right to equal access to public education because of their disability.

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Mills v. Board of Education of District of Columbia (1972) ([published](#) June 14, 2022 in the Embryo Project Encyclopedia)

In *Mills v. Board of Education of District of Columbia* (1972), hereafter *Mills*, the United States District Court for the District of Columbia held that students with disabilities are entitled to an education, and that education cannot be denied based on the accommodations' additional cost to the school. *Mills* was a class action lawsuit brought to the court on behalf of seven children denied public education by the District of Columbia School District because of their disabilities and the cost of accommodations the school would incur to educate them. US District Court Judge Joseph Cornelius Waddy presided over the case and ruled in favor of the students, finding that they were not given due process prior to expulsion from the school. *Mills* was one of the first cases in the US that guaranteed the right of students with any disability to a public education, regardless of the cost to the school system, and led to comprehensive federal legislation protecting disabled children's right to free public education.

Mills originated from a lawsuit from the National Legal Aid & Defender Association, or NLADA. The NLADA is a non-profit organization that provides legal assistance and public defense to Americans unable to afford lawyers. The NLADA sued the Board of Education of the District of Columbia, the Superintendent of Schools for the District of Columbia, and the Commissioner of the District of Columbia. The NLADA argued that the Board of Education violated a congressional decree mandating publicly funded education for the children of the District of Columbia. The NLADA brought the

case forward on behalf of seven children aged eight to sixteen with various disabilities, including epilepsy, unspecified "behavior problems," and degrees of "mental retardation." As of 2022, terms like "mental retardation" are no longer acceptable to use, and professionals in the medical and legal fields opt for terms like "developmental disability" or "intellectual disability." All those students were barred from participation in the public school system and were unable to afford private education. While all students named in the lawsuit were Black, they represented a class of students from many different racial backgrounds. A class is a group of people who share similar characteristics who file a lawsuit under one name. A class-action lawsuit allows for courts to judge a case on behalf of many people in situations where the number of individual cases would otherwise be difficult or impossible to manage. Peter Mills, a twelve-year-old boy and ward of the state, was the lead plaintiff of the case and was the namesake of the Mills class.

The case comes from the denial of "exceptional" children from accessing public education. "Exceptional" children included children with physical, mental, intellectual, and developmental disabilities. "Exceptional" children composed a large portion of the students in the District of Columbia during the time of the *Mills* case, with an estimated 16,000–22,000 children falling under that designation. However, since the District of Columbia had failed to collect census data on children aged three to eighteen, a precise number was not known at the time. The NLADA argued that approximately 22,000 children with severe disabilities resided in the District of Columbia, with about 18,000 of those children not receiving any specialized education. An estimated 164,000 school-aged children lived in the district at the time of *Mills*.

The case relies on precedent from *Brown v. Board of Education of Topeka* (1954) and *Bolling v. Sharpe* (1954), which determined that education is crucial for the basic development of citizens and is, therefore, a right that must be provided equally regardless of race. *Brown* and *Bolling* were similar cases involving racial discrimination in public services, and the US Supreme Court decided both cases on the same day in 1954. Additionally, the NLADA cited the case of *Hobson v. Hansen* (1967), which found that denying opportunities to low-income public-school children that affluent public school children receive violates the Due Process Clause of the Fifth Amendment. The Due Process Clause requires that a person be granted a fair process whenever the government may deny a person "life, liberty or property" by the government. The students in *Mills* were not granted any hearings or appeals to challenge their exclusion from the public school system. Therefore, the Mills class argued that no such due process was present.

The Board of Education of the District of Columbia, hereafter the Board, argued that if the school system did include the "exceptional" children, they would require millions of dollars in additional funds from the US government, or they would have to divert funds already appropriated to other educational services. The Board argued that doing so would violate an Act of Congress by making the school system unequal in favor of disabled students to the detriment of non-disabled students. The court was unconvinced by this argument, citing *Goldberg v. Kelly* (1969), which considered whether a welfare recipient had a right to a hearing prior to losing benefits if the hearing was expensive. In *Goldberg*, the Supreme Court found that the state's interest in protecting due process rights surpasses the interest in reducing financial burden by

bypassing a hearing. The court applied the same reasoning in *Mills* since the interest in educating all children surpasses the need to save government funds.

Siding with the disabled students, Judge Waddy wrote the court decision on 1 August, 1972. He ordered the Board to comply with several decrees to provide relief to the students in the Mills class. He ordered the Board to provide public education to all students regardless of the severity or extent of their disability or the availability of funds, with thirty days to provide education to the participants of the Mills class. Additionally, the court required the Board to identify, contact, and provide education to any eligible student who had been previously excluded or expelled by the school system and publicly advertise the policy change. The Board could also no longer suspend a student for more than two days without due process in the form of a hearing. The order went beyond requiring the public schools to include the students. Waddy ordered that the schools give the students individual assessments and educational plans and develop procedures for disciplinary hearings that followed the judge's guidelines.

Mills was one of the first cases to challenge the systemic denial of disabled children in public education in the US. In a similar case decided in the same year, *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* (1972), hereafter *PARC*, a district court found a Pennsylvania statute that permitted school districts to discriminate against intellectually and developmentally disabled students to be unconstitutional. *Mills* is unique from *PARC* in that the decision expanded the protection of the right of education to include all forms of disability, not just those deemed "mentally retarded." Since the *Mills* and *PARC* decisions in 1972, over

150 federal and state courts have cited them as precedent. Additionally, federal legislation put into statute many of the provisions that originated in the rulings of *Mills* and *PARC* in the Education for All Handicapped Children Act of 1975, which is called the Individuals with Disabilities Education Act, or IDEA, as of 2022. Provisions found in the *Mills* decision, including documentation outlining specific individual education plans for disabled students, the identification and evaluation of students suspected of having a disability, and the right of parents to challenge any evaluation made by schools about educational placement, are components of IDEA as of 2022.

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Results cont.

PARC and *Mills* preceded the IDEA, and the influence those decisions had on the content of the legislation is clear. *Mills* and *PARC* are some of the first instances of terms such as "free and appropriate public education," which became a bedrock for the IDEA and is still a term of art used in special education as of 2023 (Ross, 2022b). The IDEA served to enshrine the rights of disabled people in education within federal law and gave millions of children access to education that they would not have had otherwise.

Individuals with Disabilities Education Act (1975) ([published](#) October 06, 2022 in the Embryo Project Encyclopedia)

In 1975, the United States Congress passed the Individuals with Disabilities Education Act, referred to as the IDEA, which codified the right of all American children to a free and appropriate public education regardless of disability status. The IDEA requires all public schools that accept federal funds to provide education that meets the needs of students with disabilities at the public expense. Prior to IDEA, many students with disabilities went without any educational opportunities, and many faced confinement in institutions. The IDEA enshrined the right to education for children with disabilities, allowing millions of children to learn in a public school classroom by setting guidelines for accessibility and the instruction of students with disabilities in American public schools.

During most of the twentieth century, children with disabilities frequently faced discrimination in public education, either through the lack of appropriate accommodations or complete exclusion from local schools. At the start of the 1970s, only about twenty percent of children with disabilities attended a public school. Often, instead of attending local schools, children who were blind, deaf, had physical disabilities like cerebral palsy, or had intellectual disabilities like Down syndrome were sent to institutions with little to no educational instruction. Parents and disability activists at the time called for an end to forcing children with disabilities into separate learning facilities.

The IDEA came about after decades of civil rights struggles involving the American education system. In the 1954 case *Brown v. Board of Education*, the US

Supreme Court found that racial segregation of students in public schools violated the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause requires all people to be subject to equal treatment under the law. Following the end of segregation based on race, disability advocates began to file lawsuits of their own against the continued segregation of students with disabilities in public education. Two 1972 federal court cases, *Pennsylvania Association for Retarded Citizens (PARC) v. Pennsylvania*, hereafter *PARC*, and *Mills v. Board of Education*, hereafter *Mills*, ended with the decision that schools are required to provide education to fit the needs of students with disabilities. Despite the judicial victory, there was still a lack of a federal standard for special education programming, and enforcement of accessibility requirements, so disability advocates pushed for a federal law enshrining education rights.

The legislative history of the IDEA began in 1960 with the Elementary and Secondary Education Act of 1965, which was the first time the federal government allocated direct aid to states for public education. A portion of the money included funding for state-run institutions for the Blind, Deaf, and people who were, at the time, called mentally retarded, a term which is unacceptable for describing people with disabilities as of 2022. The following year, Congress amended the Elementary and Secondary Education Act to create the Bureau for the Education of the Handicapped. A few years later, Congress passed the Education of the Handicapped Act of 1970, or the EHA, which expanded the grant offerings by the federal government for special education programming in state public schools. After the decisions in *PARC* and *Mills*,

Congress amended the EHA to allow states to receive federal funds only if they implemented policies to fully integrate students with disabilities in their schools.

In 1975, Congress passed Amendments to the EHA called the Education for All Handicapped Children Act, or the EAHCA. The EAHCA included a bill of rights for students with disabilities that specified the right to access a free and appropriate public education, or FAPE. FAPE includes special education programming designed to meet the individual needs of a student at no cost to their family. In 1990, the EAHCA was amended once again and renamed the Individuals with Disabilities Education Act. The 1990 amendments included several changes, including the addition of autism and traumatic brain injury as eligible for IDEA benefits.

Congress once again reauthorized the IDEA in 1997, under President William Clinton. The 1997 amendments to the IDEA included allowances for disciplinary actions schools can take with students with disabilities. Among the provisions was the right for a school to remove a student from the school for up to forty-five days if they are involved with drugs or weapon use. Additionally, the amendments codify the right of students with disabilities to continue to receive educational services even when they are expelled or suspended.

The most recent reauthorization as of 2022 occurred in 2004 under President George W. Bush with the Individuals with Disabilities Education Improvement Act of 2004, or IDEA 2004. Several of the amendments in IDEA 2004 involved learning disabilities, including requirements for states to develop criteria for identifying and assessing students with learning disabilities, along with a requirement that the criteria

cannot include a discrepancy in intellectual ability and achievement. Additional changes required special education teachers who teach core subjects to their students to be highly qualified, which requires a bachelor's degree, state licensure, and satisfactory completion of appropriate state examinations. The 2004 reauthorization of the IDEA established the National Center for Special Education Research within the Department of Education, which examines and improves the implementation of the IDEA and special education programs.

IDEA is divided into four sections, labeled parts A, B, C, and D. Part A defines terms used throughout the IDEA and mandates the formation of the Office of Special Education Programs, which monitors special education funding to states. Part B outlines the requirements for schools to educate students from ages three to twenty-one as well as ensures federal funding. Additionally, Part B codifies the rights to FAPE, student evaluations for disability, input by parents and students, and learning in a least restrictive environment, which means students with disabilities should learn in settings with non-disabled peers as much as possible. Another component of Part B is individualized education plans, or IEPs. IEPs are developed in coordination with the school, parents, and the student to specify what actions the school will take to achieve a child's development goals. Finally, Part B mandates that children and parents are entitled to due process rights to determine if the child is receiving the proper services.

Parts C and D expanded the programming offered by the IDEA. Part C focuses on early intervention for infants and toddlers with disabilities from birth to two years of age. Similar to IEPs, Part C requires states that receive federal funds from IDEA to develop

Individualized Family Service Plans, or IFSPs, to clarify resources and goals for families with physically or developmentally disabled children. Part D provides resources for national activities intended to improve education outcomes for students with disabilities. Some Part D expenditures include improving the training for qualified special educators, translating academic research into practical tools in special education, and funding research and deployment of assistive technologies for students with disabilities.

IDEA enforcement has primarily occurred through federal oversight and parents filing lawsuits against school districts that fail to meet their child's needs. However, the effectiveness of that enforcement came under threat at the start of the 1980s. Initially, in 1981, the newly elected Ronald Reagan administration declared plans to eliminate IDEA in its entirety to reduce the size of the federal government by ending the oversight required to ensure students with disabilities received FAPE. However, public outcry led them to attempt to less overtly curtail some of the rights outlined in the IDEA. One proposed change was to reduce or eliminate many of the oversight measures on school districts to reduce the burden on schools. Another proposed change was to reduce the number of students who would qualify for services by narrowing the definitions of handicaps under the law. Under such a change, simply having a disability would not necessarily deem a child eligible for services under IDEA. The administration also sought to reduce the ability of parents to challenge changes to their child's education plans and IEPs. Schools would no longer be required to consult parents to change an IEP. Finally, the proposed changes would have nullified all mandates for students to learn in a least restrictive environment not explicitly outlined in the IDEA itself. Overall, the proposed amendments would have reduced federal spending on special education services under

IDEA by thirty percent by drastically cutting educational resources for children with disabilities.

The Reagan Administration's proposed changes to IDEA and attempts to revoke implementation of other disability legislation like Section 504 of the Rehabilitation Act of 1973, which forbade organizations that accepted federal funds from discriminating against people with disabilities, drew responses from tens of thousands of concerned parents and disability activists. Disability activists, primarily Patrisha Wright and Evan Kemp, organized a national letter-writing campaign that collected over 40,000 letters from concerned Americans, dropping off hundreds of bags containing pleas to keep the IDEA and Section 504 intact at the White House in protest. Wright and Kemp were both disabled self-advocates with decades of leadership experience in the disability rights movement. Additional protests included thousands of parents and disability community advocates attending public hearing events held throughout the country. By 1983, the administration relented, with Vice President George H. W. Bush writing a letter to Kemp saying that the IDEA and Section 504 would remain unchanged. Bush cited the outpouring of opposition from community members and parents, especially the personal stories of the people facing the loss of necessary services, as the reason for the change in policy direction.

The IDEA served as a clear acknowledgment of the inadequacies of American public education in service to students with disabilities. After several decades of legal development and policy implementation, nearly all children with disabilities in the United States have access to accessible education as of 2022. The US Department of Education

reported that 7.5 million students with disabilities received services under the IDEA during the 2018 to 2019 school year. Millions of children who would have otherwise received little to no formal education are fully integrated into public school classrooms across the United States. While disparities in graduation rates and post-secondary education attainment persist between disabled and non-disabled students as of 2022, implementation of the IDEA continues to close the gap by ensuring students with disabilities have the opportunity to learn in public school classrooms with their non-disabled peers.

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Results cont.

Federal courts decided *Mills* and *PARC* based on constitutional claims. However, special education cases that followed the passage of the IDEA rarely approached the constitutional question. For example, in *Board of Education v. Rowley*, which was brought to the court the year after the passage of the IDEA, argued that a deaf girl was not receiving a free and appropriate public education since the school did not provide an interpreter (Silvestri & Hartman, 2022). In that case, the Supreme Court decided only based on the IDEA and did not answer any questions about the Equal Protection Clause in the Constitution. Similar changes occurred after the passage of the Americans with Disabilities Act, with cases such as *Olmstead v. L.C.* relying on the interpretation of the ADA and answering no constitutional questions in the majority decisions at the Supreme Court (Dinerstein, 2016). Avoiding constitutional questions allows a court to rule on a case without potentially setting an unforeseen constitutional precedent. Judges often

would rather keep decisions narrowly focused on legislation to limit the possibility of their precedent being overturned or used as argumentation in other cases that do not involve the same federal law.

Two cases involving women with intellectual disabilities, *Stump v. Sparkman* from 1978 and *Olmstead* from 1999, reflect the differences in understanding of disabilities and the legal protections individuals with disabilities should be afforded. Both cases were decided at the Supreme Court and involved violations of personal autonomy; however, the outcomes were drastically different. *Stump* involved a woman who was forcibly sterilized because of a law that allowed such procedures for people with intellectual disabilities (Block, 1980) (*Stump v. Sparkman*, 1978). *Olmstead* involved the segregation of two disabled women away from non-disabled patients in a healthcare facility based on their disabilities (Sloan & Gulrajani, 2019) (*Olmstead v. L.C.*, 1999). In *Stump*, the Supreme Court affirmed lower court decisions that disabled people did not have recourse or protection from forced sterilization by only focusing on the issue of judicial immunity (Kessler, 2014). That action demonstrated a lack of understanding about the capacity of intellectually disabled people to make informed decisions. Twenty-one years later, in *Olmstead*, the Supreme Court officially recognized the rights of the intellectually disabled, acknowledging that they not only have the capacity to make their own decisions, but they also must be integrated into community-based services whenever possible, rather than simply left in isolation (Sloan & Gulrajani, 2019).

The following are three articles, “*Stump v. Sparkman* (1978)”, The “Americans with Disabilities Act (1990)”, and “*Olmstead v. L.C.* (1999).” In the span of just over two

decades, the same judicial body presented drastically different holdings regarding the rights of the disabled. The ADA, with its robust and explicit protections, allowed that change to occur.

Stump v. Sparkman (1978) ([published](#) August 23, 2022 in the Embryo Project Encyclopedia)

Editor's Note: The following article contains discussion of terms that, as of 2022, are no longer acceptable for describing people with disabilities. Terms such as "retarded" belong to the people who originally used them and do not reflect the views of the Embryo Project authors and editors.

On 28 March, 1978, in *Stump v. Sparkman*, hereafter *Stump*, the United States Supreme Court held, in a five-to-three decision, that judges have absolute immunity from lawsuits involving any harm their judicial decisions cause. Linda Sparkman, who was unknowingly sterilized when she was fifteen years old in 1971, sued Harold Stump, the county circuit court judge who signed the petition to allow Sparkman's mother to have her sterilized. Sparkman's mother stated to Stump that she wanted her daughter sterilized because of Sparkman's alleged mental deficiencies and sexual promiscuity. Sparkman argued that Stump violated her Fourteenth Amendment rights to due process because nobody informed her about the nature of the procedure and because Stump did not perform typical court proceedings. Stump argued that, because he was acting within his role as a judge, the doctrine of judicial immunity prevented his liability from

lawsuit. *Stump* strengthened the impunity with which judges can act, including acts found to be unconstitutional, regardless of any rights upon which such actions may infringe.

One of the fundamental arguments in *Stump* involves the doctrine of judicial immunity. The foundations of the doctrine of judicial immunity are associated with the 1871 case *Bradley v. Fisher*, hereafter *Bradley*. In *Bradley*, Joseph Bradley, serving as the attorney for an alleged co-conspirator to the assassination of US President Abraham Lincoln, insulted and threatened violence against George Fisher, one of the justices of the Supreme Court of the District of Columbia. In response, Fisher disbarred Bradley from practicing in the court. The US Supreme Court reversed the disbarment since the act was outside of Fisher's jurisdiction as a judge. Bradley then sued Fisher for damages, which the Supreme Court denied because, although Fisher did not have the authority to disbar Bradley, he was not liable for damages his actions caused when acting in his official capacity as a judge. A lack of liability protected judges from lawsuits when performing judicial acts; however, *Stump* brought into question what counts as a judicial act.

Stump originates in the state of Indiana, where the American eugenics movement led to legalization and the use of compulsory sterilization on people with disabilities, the incarcerated, and the institutionalized. The eugenics movement consisted of scientists, policymakers, and social critics who believed that selective breeding of humans would improve society. Eugenicists advocated for and implemented policies that permitted the forced sterilization of people they deemed genetically inferior, including racial and ethnic minorities, current and formerly incarcerated individuals, and people with disabilities. Indiana was the first state in the US to formally institute a law

allowing for compulsory sterilization in 1907. Over the following decades, the Indiana state government amended the law due to constitutional challenges. In 1974, three years after Sparkman's sterilization, then-Indiana Governor Otis R. Bowen repealed all sterilization laws in the state. An estimated 2,000 people were forcibly sterilized in Indiana alone while the law was in place.

In 1971, Ora Spitler McFarlin, the mother of then-fifteen-year-old Sparkman, brought a petition to Stump for the tubal ligation of her daughter. At the time, Stump served as the elected judge of DeKalb County Circuit Court in Auburn, Indiana. McFarlin argued that the procedure was necessary since her daughter was, in McFarlin's words, "somewhat retarded" and had previously stayed overnight with men. Stump granted the petition the same day he received it, never notifying Sparkman about the petition or the procedure. Stump held no hearing, nor did he appoint guardian *ad litem*, which is a person appointed by a judge to represent the interests of a minor during a court proceeding. Stump considered no evidence other than McFarlin's testimony of her daughter's intellectual disability and promiscuity and cited no law that gave him the authority to sign the petition.

McFarlin took her daughter for the sterilization procedure six days after Stump signed the petition. Both McFarlin and the hospital staff told Sparkman that she was having an appendectomy, a procedure to remove the appendix. Two years later, in 1973, Sparkman married and, finding she could not conceive a child, learned of her sterilization. Later that year, Sparkman brought a lawsuit in the US District Court for the Northern District of Indiana against McFarlin, McFarlin's lawyer, Stump, the doctors

who performed the procedure, and the hospital, for damages. Her husband joined the lawsuit under claims of loss of potential fatherhood. Indiana-based lawyers represented both parties. George Fruechtenicht represented Stump, and Richard Finley represented Sparkman.

Sparkman's lawsuit was first brought to trial judge Jesse Eschbach, in the district court in 1973. Sparkman argued that approving McFarlin's petition was beyond the scope of Stump's judicial authority, thus he was liable for damages. Eschbach dismissed Sparkman's claims since Stump was immune from lawsuit due to the precedent of *Bradley*. In 1977, Sparkman appealed to the Seventh Circuit Court of Appeals, which reversed the district court in a unanimous decision. In their decision, the circuit court judges wrote that judges only have immunity within their jurisdiction. While Indiana law allowed for the sterilization of institutionalized persons, Sparkman's case did not fall under that statute as she was not institutionalized. However, even if she was, she was not granted any hearing or court proceedings as required by the law. Stump appealed the circuit court's decision, and the US Supreme Court agreed to hear the case.

Arguments before the Supreme Court began in 1978. Arguing for Stump, Fruechtenicht framed the issue before the court as one of judicial immunity rather than the constitutionality of Stump's actions against Sparkman's due process or reproductive rights. During questioning by the justices, Fruechtenicht admitted that Stump's "general jurisdiction" did not encompass all issue areas, there was no law at the time that permitted a parent to consent to their child's sterilization, and that Stump did not actually file any petition with the court.

In contrast, Sparkman's lawyer, Finley, argued that the order signed by Stump did not constitute a judicial act since it lacked any case filing or preceding. While McFarlin brought the sterilization petition to Stump, neither filed any documentation with the courthouse nor did Stump provide opportunity for any testimony as required for due process. Thus, Stump was not protected from suit under judicial immunity since he failed to perform basic judicial proceedings in his decision to approve the petition. During questioning, the Supreme Court justices asked why, if the petition was not a judicial act, did McFarlin consult the judge at all. Finley responded by saying that the doctors wanted the protection that a judge's signature would give them. Justice Warren Burger asked if the doctors were seeking a judicial act, and Finley argued that the order could not be classified as a judicial act without a case being filed. Thus, Finley argued that since Stump's actions did not meet the criteria of a judicial act, he was not immune from liability.

In a split five-to-three decision, the US Supreme Court reversed the circuit court decision and sided with Stump on 28 March 1978. Justice Byron White authored the decision, joined by Justices Warren Burger, John Stevens, Harry Blackmun, and William Rehnquist. In the majority opinion, the court established a two-prong test to determine whether a judge was protected under judicial immunity. First, a judge must have jurisdiction over the subject matter within the case. Second, the judge must be working in their judicial capacity. White writes that, even though Stump made an error in signing the petition, they believed that Indiana's law on general jurisdiction covered sterilization and that he did so in a judicial capacity regardless of a lack of court filings.

In the dissenting opinion written by Justice Potter Stewart and joined by Justices Lewis Powell and Thurgood Marshall, the Justices argued that, by signing off on a sterilization procedure, Stump went far beyond any action that could be construed as a judicial act and, thus, was not protected under judicial immunity. After White summarized the majority's opinion before the courtroom, Stewart read the dissenting opinion, a rare occurrence at the time, covering nearly the entire opinion in his speech. Stewart argued that the majority relied on false reasoning and a judge is not free to inflict damages simply by saying he is acting in a judicial capacity. Justice William J. Brennan, Jr. did not participate in the case.

Following the *Stump* decision, many legal scholars were critical of the decision, saying that the courts invented judicial immunity without any constitutional basis. Some scholars, like J. Randolph Block, argued that *Stump* called into question the Supreme Court's integrity. Additionally, Sparkman never received any monetary compensation for the forced sterilization procedure she endured. She later changed her name to Jamie Renae Coleman, and published a book about her early life. In her book, she explains how her family referred to her as "retarded" throughout her upbringing, allowing for her mother to use Sparkman's alleged intellectual disability to convince Stump to sign the sterilization petition. Stump continued his term as judge after the case and was re-elected for another six-year term during the next election.

Stump was a case about reproductive rights, disability rights, and women's rights. However, the decision by the Supreme Court narrowly focused on the protections afforded to judges who act to abridge the civil rights of an individual. In his dissent,

Stewart wrote that Stump's actions were unlike anything done by a judge in Indiana judicial history. However, that was not the case as Indiana was one of the leading states involved in the eugenics movement that sought to remove undesirable characteristics in humans through selective breeding practices, including forced sterilization. The Indiana legislature passed their first compulsory eugenic sterilization law in 1907, and sterilization laws remained in the state statutes until 1974, three years after Sparkman's sterilization. In the process of prioritizing arguments regarding the qualifications of judicial immunity, the Court relegated questions of the rights of eugenics victims to a subordinate position to judges' protection from lawsuits.

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Americans with Disabilities Act (1990) ([published](#) September 22, 2022 in the Embryo Project Encyclopedia)

In 1990, the United States Congress passed the Americans with Disabilities Act, or the ADA, which prohibits discrimination against people with disabilities by employers, governments, or public accommodations. Following gains made during the civil rights movements of the 1900s, people with disabilities sought similar anti-discrimination legislation. The ADA was the culmination of decades of protest and advocacy from the disability rights movement. After the ADA, federal law protected people with an impairment that limited major life functions like sight or mobility from discrimination. The ADA changed the lives of millions of Americans with disabilities by expanding the opportunities they had to work, travel, and participate in their communities legally protected from discrimination.

Prior to the ADA, people with disabilities faced legal discrimination statutorily and socially in education, workplaces, public spaces, medical facilities, transportation and more. Most places in the United States were not accessible for wheelchair users to navigate, children were forced out of public schools or institutionalized for intellectual disabilities, and employers could refuse to hire qualified applicants based on their disability status. Starting in 1907, many states, like Indiana, passed compulsory sterilization laws that targeted people with disabilities to prevent them from having children. In 2022, the National Women's Law Center reported that compulsory sterilization laws against people with disabilities remain in thirty-one states. Similarly, beginning in 1867 in the US, some states and cities passed laws that forbade people with

visible disabilities from being in public. Referred to as ugly laws, those ordinances determined that disabled people should not be allowed to intermingle with non-disabled people and gave police the right to jail and fine people deemed unsightly who went into public view. Chicago was one of the last municipalities to repeal their ugly law in 1974. Other state laws allowed school districts to deny students with a wide array of disabilities including blindness, mobility issues, and attention disorders. People with disabilities often struggled to use public transportation or access public services like courthouses, libraries, or restaurants due to a lack of regulations for accommodations such as ramps, elevators, or braille signage.

During the 1900s, as a result of several civil rights movements, the US Congress passed legislation promoting equality for marginalized populations, including racial and ethnic minorities and women, but that legislation did not protect people with disabilities. When Congress passed the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, color, religion, sex, or national origin, it did not include people with disabilities in the legal protection. Other civil rights legislation that followed, including the Voting Rights Act of 1965 and the Fair Housing Act of 1968, similarly did not prevent discrimination on the basis of disability.

People with disabilities used the progress under the law by other marginalized groups as a framework for legislation that would protect their civil rights. One success of the disability movement came in 1972 with the Rehabilitation Act, one of the first civil rights laws protecting the rights of disabled Americans, protected people with disabilities in federally funded programs, federal employment, and federal contractors. In 1975,

Congress passed the Education for All Handicapped Children Act, later renamed the Individuals with Disabilities Education Act, to protect the right to education for children with disabilities by requiring states to provide free public education to all children regardless of disability status. The Department of Education reported that only about twenty percent of students with disabilities received an education as many state and local governments explicitly barred them from classrooms. While the Rehabilitation Act and Education for All Handicapped Children Act demonstrated progress for disabled Americans, the significant barriers and discrimination that remained led the disability rights movement to continue to push for more comprehensive legislation.

The original draft of the ADA was written by Robert Burgdorf in January 1987. Burgdorf worked as an attorney at the National Council on Disability, a federal agency that began in 1978 and provides recommendations and guidance to federal and state governments about disability issues. Burgdorf wrote in the *Washington Post* that his inspiration for writing the ADA was the pervasive and systemic discrimination against disabled people in the US. He cited education inequality, transportation inaccessibility, institutionalization, forced sterilization, denial of voting rights, and denial of life-saving medical care among the reasons for writing the original bill.

The introduction of the bill crossed party lines, garnering support from both Democrats and Republicans in Congress. Republican Senator Lowell Weicker from Connecticut introduced the bill to the Senate in 1988, and Democratic Representative Tony Coelho of California sponsored the bill in the House of Representatives the following day. Both legislators spoke about their personal relationship to disability during

their advocacy for the ADA's passage. Weicker spoke about being a parent of a child with Down Syndrome, and Coelho spoke about the discrimination he faced as a person with epilepsy. However, the bill did not pass through Congress before the end of the 1988 election cycle.

In 1989, the newly elected Congress and the administration of President George H.W. Bush continued to revise the previous versions of the bill, which Coelho sponsored again in the House of Representatives in 1989. Senator Tom Harkin of Iowa sponsored the bill in the Senate. Harkin also spoke about his personal relationship with disability, as he had a Deaf brother who faced discrimination. Harkin delivered a portion of his introduction to the bill on the Senate floor in American Sign Language so that his brother and other Deaf people could understand him.

While the ADA had supporters from both political parties, the inclusion of employment protection for people with acquired immunodeficiency syndrome, or AIDS, threatened to derail the legislation. During the 1980s, AIDS was a new and misunderstood disease that many people, including members of Congress, associated with gay men. Fear and bias about AIDS led many politicians and legislators to propose laws that unfairly discriminated against people with AIDS, including during the writing of the ADA. On behalf of the National Restaurant Association, Representative Jim Chapman, a Democrat from Texas, argued for the inclusion of an addition, called the Chapman Amendment, which would have allowed restaurant owners to remove employees with AIDS from food-handling positions. Chapman argued that public fears about AIDS and the human immunodeficiency virus, or HIV, that causes it could force a

business to close if the public finds out an employee has AIDS, despite no evidence that food handling could spread the disease.

The House passed the Chapman Amendment in May of 1990, which caused people in the disability community to threaten to withdraw their support for the bill. Other members of Congress, including Representative John Lewis, compared the Chapman Amendment to racially motivated attempts to sabotage the Civil Rights Act of 1964. Congress found an eventual compromise when Senator Orrin Hatch of Utah proposed and passed another amendment to replace Chapman's. Hatch's amendment required the US Secretary of Health and Human Services to issue guidance on which communicable diseases can spread through food handling and did not allow restaurant employers to fire employees solely on the basis of their having AIDS. Since there was no evidence that the human immunodeficiency virus could be spread through preparing food, the bill once again protected people with AIDS from employment discrimination. A few months later, on 12 July 1990, the House passed the ADA with a vote of 377 to twenty-eight. The following day the Senate passed the bill with a ninety-one to six vote. Bush signed the bill into law at a ceremony on 26 July 1990.

The final version of the 1990 bill included four general subject areas of protection, called titles, and one miscellaneous provisions title. The bill also included sections that discussed the purpose of the bill and defined terms used in the legislation. Among the definitions was the term disability, which the bill defined as an impairment that interferes with important everyday activities like walking or speaking, a documented history of an impairment, or being considered to have an impairment. Title I of the ADA

prohibits the discrimination of people with disabilities in employment by organizations that employ more than fifteen people, including private employers, governments, and labor unions. The title also requires employers to make reasonable accommodations to provide people with disabilities equal opportunity in the workplace. Title II prohibits discrimination against people with disabilities by state or local governments, including public transportation, education, and state-run medical facilities. Title III prohibits discrimination against people with disabilities in public accommodations, which includes locations like hotels, restaurants, and doctor's offices. Title IV of the ADA requires telecommunications companies to provide voice transmission relay services so that Deaf and hard-of-hearing people could communicate over the telephone. And finally, Title V of the ADA covers several additional areas, including allowing disability discrimination plaintiffs to recover attorney fees, specifying that illegal drug use is not a disability, and stating that any state or local law that goes beyond the protection of the ADA will not be limited to the protections outlined in the bill.

Enforcement of the ADA came through lawsuits by individuals with disabilities who believed they experienced unfair discrimination based on their disability. Lawsuits involving the ADA resulted in expanding the coverage of the law to include disabled people in courthouses, prisons, and medical institutions. One of the most common arguments in ADA lawsuits involved whether or not the plaintiff was actually disabled as defined by the ADA. In *Sutton v. United Airlines* (1999), hereafter *Sutton*, judicial interpretation of disability as defined by the ADA allowed United Airlines to fire employees because of their physical condition but argued that the employee was not disabled under the law, thus not protected by the ADA. In *Toyota v. Williams* (2002),

hereafter *Toyota*, the Supreme Court interpreted the ADA's definitions of disability to find that a woman with carpal tunnel that made opening and closing her hands more difficult was not disabled and therefore had no right to reasonable accommodations under the ADA.

In response to those lawsuits, Congress passed the ADA Amendments Act of 2008, or the ADAAA. The ADAAA clarified their definition of disability, stating that the courts used too strict of a standard when determining substantial limitations of life functions. The clarified definition of disabilities included impairments that reduce the ability for a person to complete major life functions including walking, speaking, learning, or working. The ADAAA specifically overturned the rulings in *Toyota* and *Sutton* by stating that even if accommodations can relieve some of the effects of a person's impairment, a person remains disabled and thus protected from discrimination.

As of 2022, to what extent the ADA covers people with disabilities remains an open question, particularly when the allegedly discriminatory person or organization claims the discrimination was unintentional. In 2017, two blind students attending the Los Angeles Community College District, or the LACCD, did not receive the accommodations they required such as audio recording of texts, and computer screen readers. The students, in coordination with the National Federation of the Blind, filed a lawsuit against the LACCD for federal civil rights violations under the ADA. The LACCD argued that they did not violate the ADA since any discrimination against the students was unintentional. Despite losing in the district and appellate courts, the LACCD

petitioned the Supreme Court to review the case in the fall of 2021. Following months of public protests by disability activists and advocates, the LACCD withdrew their petition and agreed to an outside settlement. The LACCD followed a similar case brought against CVS Pharmacies in 2021 that alleged discrimination under Section 504 of the Rehabilitation Act. CVS used the same defense that unintentional discrimination is not protected under federal civil rights law. The Supreme Court agreed to hear the CVS case in December of 2021, however CVS also withdrew their petition following public pressure.

As of 2022, the ADA as amended by the ADAAA is still federal law in the US, protecting the approximately one in four Americans with a disability from discrimination under the law. However, a lack of enforcement of legal protections and continued prejudice about the competence of people with disabilities leads to fewer opportunities for employment, education, and civil rights. Decades after the passage of the ADA, disabled Americans still find employment, graduate high school, and vote at a fraction of the rate for non-disabled Americans. Nonetheless, the ADA was one of the most substantial laws protecting the rights of disabled people in the United States, allowing for greater opportunity for the inclusion of all Americans in broader society, regardless of ability.

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Editor's Note: The following article contains discussion of terms that, as of 2022, are no longer acceptable for describing people with disabilities. Terms such as "retarded" belong to the people who originally used them and do not reflect the views of the Embryo Project authors and editors.

In the 1999 case *Olmstead v. L.C.*, hereafter *Olmstead*, the United States Supreme Court held in a six-to-three decision that the forced segregation of people based on disability violated the Americans with Disabilities Act. Two women with mental and intellectual disabilities, Lois Curtis and Elaine Wilson, referred to as L.C. and E.W. in case documents, sued the state of Georgia and Tommy Olmstead, the Commissioner of Georgia who headed the Department of Human Resources, for alleged violations of the Americans with Disabilities Act. The two women each voluntarily admitted themselves to treatment in the state-run Georgia Regional Hospital in Atlanta, Georgia, in 1990. After doctors cleared Curtis and Wilson for transfer into a community-based health setting with non-disabled people, the hospital denied them treatment in a community-based setting due to the financial costs of such treatment and the lack of space. *Olmstead* protected the rights of people with disabilities outlined in the Americans with Disabilities Act by finding the unjustified segregation of disabled people unconstitutional.

Olmstead involves interpretations of the Americans with Disabilities Act, or the ADA, a federal law passed in the US in 1990. The law prohibits discrimination based on

disability in public accommodations, employment, and by the government. Title II of the ADA specifically outlines provisions against government-based discrimination based on disability, extending to institutions that receive federal funding, like schools and hospitals. The ADA requires that disabled people be integrated into community settings as much as possible through reasonable accommodations as necessary. The ADA also requires integration and modification of disabled people into settings without disabled people as long as the alterations do not change the basic nature of the service. The case also involves the Fourteenth Amendment of the US Constitution, which prohibits violations of due process, which means that a person can only be denied rights like freedom or property after a fair proceeding, such as a hearing or trial.

Curtis and Wilson were intellectually and mentally disabled individuals who spent many years of their childhoods and adult lives institutionalized in medical facilities because they did not receive support for their disabilities in a community setting. Curtis was born in 1969 to a low-income family. Curtis was diagnosed with schizophrenia and what was called "mental retardation" at that time and spent most of her teenage years in institutions as her family could not afford to take care of her. Curtis had a history of calling the Atlanta Legal Aid Society and other legal service groups while in the hospital asking for assistance in getting released from her confinement. Wilson was born in 1951 and had physical and developmental disabilities resulting from brain damage caused by a high fever during infancy. Wilson experienced over thirty-six stays in mental institutions where the people holding her subjected her to shock treatments and psychotropic drugs as a teenager.

In 1990, Curtis and Wilson were admitted into Georgia Regional Hospital and confined in the psychiatric unit. After receiving clearance from their doctors to continue their treatment in a community-based setting, the hospital denied their transfer request and kept Curtis and Wilson in confinement for several more years. The Atlanta Legal Aid Society, an organization that provides free legal aid services to low-income people in civil rights cases, sued the hospital system on the women's behalf in 1995, alleging violations of the ADA and the Fourteenth Amendment of the Constitution. The Atlanta Legal Aid Society sued the Georgia state officials in charge of Georgia Regional Hospital's decision to keep the women in isolation, and specifically named Olmstead in the lawsuit who headed Georgia's Department of Human Resources.

Olmstead built on several previous court cases on the right to rehabilitative services and integration for people with disabilities in medical facilities. One case was the 1972 case *Wyatt v. Stickney*, a district court case in Alabama which held that people involuntarily committed to institutions have a constitutional right to treatment that will improve their conditions and provide them with the opportunity to return to society. Another was the 1975 federal circuit court case *New York State Association for Retarded Children v. Carey*, which found the conditions of Willowbrook State School, a state-run institution for children with disabilities on Staten Island in New York City, New York, unconstitutional based on extreme overcrowding and squalid conditions.

In 1997, the Atlanta Legal Aid Society argued the case before the US District Court for the Northern District of Georgia. The court appointed Jonathan Zimring as the guardian *ad litem* for Curtis and Wilson. A guardian *ad litem* is an individual responsible

for representing the interests of a person in court deemed too young or otherwise incapable of representing themselves. The district court granted summary judgment in favor of Curtis and Wilson, which is an order given by a judge without a full trial, saying that they qualified as people with disabilities and that Olmstead discriminated against them on that basis. The court found Olmstead in violation of Title II of the ADA but said they did not have to rule on the alleged Fourteenth Amendment violations since the court already found the hospital at fault for violating the ADA. No other court addressed the Fourteenth Amendment complaint.

The state of Georgia appealed the district court decision to the U.S. Court of Appeals for the Eleventh Circuit in 1998. The appellate court affirmed the district court's decision in favor of Curtis and Wilson. However, the appellate court also remanded the case back to the district court to consider Olmstead's defense that integrated settings were unreasonable accommodations as the strain on the state's mental health budget would fundamentally alter the nature of the service. Olmstead argued that the cost of including people with disabilities similar to Curtis and Wilson in community-based settings would be so substantial that the state would no longer be able to afford its current mental health programs, thus altering the nature of the mental health services performed by the state. Before the district court heard the remanded case, the US Supreme Court granted certiorari, which means they would hear the case themselves.

Arguments before the Supreme Court occurred on 21 April 1999. Beverly Downing, the senior assistant attorney general of Georgia, argued on behalf of Olmstead, and civil rights lawyer, Michael Gottesman, argued the case on behalf of Curtis and

Wilson. Downing argued that the ADA mandates equal treatment of people with disabilities but does not mandate that Georgia build more integrated facilities to meet the demand for those services. Gottesman argued the contrary, stating that the interpretation of the ADA by the Attorney General of the US indicates that services must be provided in the most integrated setting possible. He admitted that no part of the ADA mandates that a state must offer mental health services. However, since the state does offer the service, they are not permitted to discriminate on the basis of disability for access to the service.

On 22 June 1999, in a six-to-three decision, the Supreme Court ruled in favor of Curtis and Wilson, finding that the state cannot discriminate on the basis of disability concerning who could access integrated community-based services. Writing the majority opinion, Justice Ruth Bader Ginsburg was joined by Justices John Stevens, Sandra Day O'Connor, Anthony Kennedy, David Souter, and Stephen Breyer. Ginsburg wrote in the opinion that the court's ruling on the case was exclusively an interpretation of legislative statute as they considered no Constitutional question in the arguments. The majority found that Title II of the ADA requires that states integrate people with disabilities into community settings whenever justified. Ginsburg further wrote that unjustified segregation of people with disabilities perpetuates notions of unworthiness of people with disabilities to engage in community life and opportunities. The dissenting opinion was written by Justice Clarence Thomas and was joined by Chief Justice William Rehnquist and Justice Antonin Scalia. The dissenting opinion disagreed with the majority's definition and application of discrimination, arguing that temporary segregation of people with mental disabilities in an institution does not constitute discrimination on the basis of disability.

In the decades following *Olmstead*, multiple US presidential administrations used the precedent set by the case to expand protections to people with disabilities in various settings. President William Clinton's administration looked to use the case to support the implementation of policies involving people with disabilities. Secretary of Health and Human Services Donna Shalala advocated to state legislators and governors in the months following *Olmstead* to implement the integration required by the Supreme Court's interpretation of the ADA. In 2001, President George W. Bush issued an executive order for federal assistance in implementing community-based alternatives to institutionalization as required by *Olmstead*. In 2009, President Barack Obama took additional executive action to bring all state institutions into compliance as well as expand the efforts to include nursing homes and congregate care facilities. Litigation by the US Justice Department and advocacy groups expanded the influence of *Olmstead* to schools and sheltered workshops. Sheltered workshops are segregated working facilities for people with disabilities that often do not have to meet state requirements for employment standards and pay subminimum wages to disabled employees.

Because of the case, Curtis and Wilson continued to receive integrated care in a community setting. As of 2022, Curtis remains in community-based care in Georgia, where she works as an artist. Curtis has showcased her work across the US, including in the White House. Wilson remained in community-based care until her death on 5 December 2004.

Olmstead broke down barriers preventing full integration of people with disabilities into their communities. As of 2022, people with disabilities continue to

experience segregation based on their disability. However, the *Olmstead* decision began the process to eliminate those experiences. Hundreds of thousands of people with disabilities have benefited from community integration that *Olmstead* helped support. As of 2022, some consider the right to integrate within broader society inapplicable to people with certain disabilities, and advocacy to the contrary is an ongoing dispute.

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Results cont.

Finally, in cases involving government officials discriminating against people with disabilities, cases will often deviate from one about discrimination into one about government power and authority. In *US v. Georgia* and *Stump v. Sparkman*, plaintiffs brought the cases based on civil rights violations. However, once the cases came to the Supreme Court, the decisions were almost exclusively based on the general rights of government actors, with little or no mention of civil rights violations (Ross, 2022g) (Block, 1980). For example, *US v. Georgia* was a case involving the state's refusal to reasonably accommodate a paraplegic inmate in accordance with the ADA. At the Supreme Court, the central question was not about discrimination; instead, it was a question about whether a state was protected from lawsuit under the sovereign immunity doctrine found in the Eleventh Amendment of the Constitution.

United States v. Georgia (2006) ([published](#) September 07, 2022 in the Embryo Project Encyclopedia)

In *United States v. Georgia*, the United States Supreme Court held, in a unanimous decision, that the rights protected under the Americans with Disabilities Act, or the ADA, extended to inmates held in state prisons. The Court also abolished sovereign immunity in cases where the Eighth Amendment is involved. The case came about as a result of Tony Goodman, a paraplegic man in a Georgia state prison, who attempted to sue the state under Title II of the ADA. The state of Georgia argued that

they were immune to civil suits based on sovereign immunity under the Eleventh Amendment which holds that Congress cannot pass laws that allow non-consenting states to be sued by their people, except for specific circumstances. The US federal government interceded on Goodman's behalf, with the case then being taken up by the Supreme Court. *US v. Georgia* partially determined the extent to which the ADA covers disabled Americans, improved the situation of disabled individuals in state prison systems, and further eroded the sovereign immunity claimed by states in cases where ADA violations are alleged.

The case focused on the protections of the Americans with Disabilities Act, a 1990 federal law that banned discrimination against people with disabilities. Title II of the ADA specifically prohibits state or local governments from discriminating against disabled people in public services. The ADA allows disabled people who believe they were discriminated based on their disabilities to file lawsuits against the discriminating entity. Several key constitutional issues surrounding the implementation of the ADA were central to the case. Those issues included whether or not Congress could use lawsuits filed under the ADA to go around states' protection from getting sued. Sovereign immunity is granted to states by the Eleventh Amendment of the US Constitution. Also relevant is the Eighth Amendment, which prohibits the use of cruel and unusual punishment. Additionally, the case involved the Fourteenth Amendment, which gives the federal government the authority to protect the rights of American citizens by forbidding states from abridging rights guaranteed by the federal government.

The US brought the case to the Supreme Court on behalf of Goodman, a paraplegic man who used a wheelchair for mobility and was an inmate at the Georgia State Prison. Goodman sustained spinal cord injuries in a vehicular accident prior to his incarceration that left him paralyzed. The prison administration refused to make Goodman's cell accessible, forcing him into a cell that was three feet by twelve feet for twenty-three hours a day. Goodman also could not turn his wheelchair around within the confines of the cell. He was often refused assistance in and out of his wheelchair to use the toilet or bathing facilities, resulting in several injuries and being forced to wait in his own excrement. Goodman also claimed that he was excluded from social, educational, and religious activities because of his disability. Arguing the case at the Supreme Court on the side of the US and Goodman was Paul Clement, who was acting solicitor general of the US, and Samuel Bagenstos. The state of Georgia was represented by Gregory Castanias and Gene Schaerr.

The Supreme Court received many *amici curiae*, or "friend-of-the-court briefs" submitted to the Court by third parties who had a vested interest in the outcome of the case, in support of Goodman and the US. The Court received briefs from the American Civil Liberties Union, the Southern Poverty Law Center, the American Psychologists Association, and other civil rights and medical organizations. The Court also received a brief from former President George H. W. Bush, who personally signed the ADA into law during his time as president. The briefs emphasized the importance of the ADA in protecting the rights of disabled people to access public and private spaces, urging the Court not to undermine the law with their ruling.

Goodman first filed suit in 1999, claiming his rights were being violated under Title II of the ADA. He argued for the Court to allow financial damages and injunctive relief, which would force Georgia to end the discriminatory treatment against him. Georgia argued that Goodman could not file the suit since the Eleventh Amendment and sovereign immunity protected the state from lawsuits. The district court sided with the state on both the monetary and injunctive relief grounds and granted their appeal for summary judgment, which meant that the state was under no obligation to alter its treatment of Goodman. Goodman appealed the decision to the Eleventh Circuit of the US Court of Appeals in September 2004. The Eleventh Circuit partially disagreed with the district court, finding that Goodman did have a right to injunctive relief. However, the circuit court agreed that Goodman could not sue for monetary damages. While the circuit court was deciding the case, the US government filed a suit against the state of Georgia on Goodman's behalf. The US government argued that the ADA removed the states' right to sovereign immunity in cases of disability discrimination. The circuit court disagreed, stating that the Eleventh Amendment protected the state in that case. The Supreme Court then interceded, granting certiorari for the case in May 2005, which meant the case would be heard before the Supreme Court. The Court heard the arguments for *US v. Georgia* in November 2005.

The US government's suit appealed to the 2004 case of *Tennessee v. Lane*. In that case, the Supreme Court found in a five-to-four decision that states did not have sovereign immunity from lawsuits filed alleging violation of the ADA when plaintiffs cannot enter the courthouse due to inaccessibility for the disabled. Representing Goodman, Bagenstos cited a national epidemic of ADA violations in state prisons. Justice

Antonin Scalia claimed Bagenstos' argument was irrelevant since the case was from Georgia, and there was no record of violations in the state. However, Justice Stephen Breyer pointed out that the general brief included a case in which a Georgian facility allowed mentally ill young people to be shackled in chairs and sprayed with pepper spray. Bagenstos also argued that monetary damages are necessary to deter further violations by the states against disabled prisoners.

The state's lawyers argued that siding against Georgia would lead to disabled incarcerated individuals suing states for frivolous reasons. Representing Georgia, Castanias stated that by allowing claims like Goodman's under the ADA, the Court opened states up to lawsuits about access to television for disabled inmates. He cited the fact that two district courts had granted relief to prisoners based on lack of television access using Title II of the ADA. He argued that if there are actual violations, prisoners should file a lawsuit under Section 1983 of federal civil rights law, which allows individuals to sue state officials directly for violations of civil rights. Scalia disagreed with that justification, stating that state officials do not have money for potential petitioners to take. Also representing Georgia, Schaerr argued that Congress should not have the authority to overrule how states run their prisons. He also described the cases being brought against states for having inaccessible televisions. Justice Anthony Kennedy stopped Schaerr from using that line of reasoning, as Goodman's complaints went far beyond television access.

In a unanimous decision authored by Justice Antonin Scalia, the Court found that Title II of the ADA abolished states' sovereign immunity in cases of disability

discrimination if Eighth Amendment violations are alleged. The Court asserted that the Fourteenth Amendment allows the federal government to intercede when a state abridges the rights of an American citizen, which applies in the case. The scope of the decision was narrow, as they did not answer the question of whether the same precedent holds if Eighth Amendment violations are not alleged. However, the case precedent remains influential, with over 1100 citing cases as of 2022. The case more broadly spoke to the strength of the ADA and the federal authority to enforce it. During the court proceedings, several politicians involved in the passage of the ADA came out in support of Goodman, stating that their intention for the law was to protect the rights of all disabled Americans, including those incarcerated. The lead sponsor of the ADA in the Senate, Senator Tom Harkin, attended the oral arguments in the Supreme Court, and published statements describing the decades of effort that was put into the passage of the ADA, imploring the Court to uphold those rights.

After the passage of the Americans with Disabilities Act, disabled people had statutory grounds to file lawsuits over discrimination in public accommodations. In the years that followed, lawsuits alleging discrimination determined what disabled people had rights to access, and under what circumstances they were entitled to reasonable accommodations. *US v. Georgia* demonstrated that even after a decade with the ADA as federal law, people with disabilities were being denied their rights. Incarcerated individuals with disabilities have been frequently subjected to unequal treatment and the case aided in their ability to sue for damages. Beyond the impact on those incarcerated, the case also demonstrated that the ADA was a powerful piece of legislation, and states could not simply argue that their sovereignty supersedes the rights of the disabled.

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CHAPTER 4

DISCUSSION

This research serves as a case study for how to interpret different disability law cases, helping to generate preliminary results and areas of further investigation to analyze both changes over time and likely future issues. The study was one of the first to focus on comparisons and impacts of disability legislation on how judges decide cases.

Understanding how courts approach cases involving disability rights, and civil rights more generally, helps inform advocates and activists attempting to use the legislative and judicial processes in the United States. This study contributes to that understanding and offers the foundation for more extensive research to better inform attorneys and policymakers in the disability law field. Cases that rely on constitutional interpretation offer the greatest protection from the erosion of civil rights. Since laws can be repealed far more easily than constitutional amendments, precedent from legislative interpretation is only as secure as the law it is based on. Furthermore, understanding the rate at which judges decide cases through legislative or constitutional interpretation will help contextualize the security of civil rights for disabled Americans. Based on the frequency of judicial decision-making, advocates can tailor their legal strategies to more effectively protect the rights of their clients. Finally, disability policymakers can better understand the need for crafting legislation with reduced textual ambiguity to prevent undermining the original intent of the law as it is likely to be the basis judges decide future cases.

As an initial exploration into the area of research, this study contains a small sample size, though the selected cases are each significant. In law, cases of historical and

legal significance are often referred to as "landmark cases." Those cases are often incidents where courts overturn long-standing precedent, or some other lasting effect on the law occurs. The cases I analyzed are generally considered landmark cases, representing radical shifts in legal protections for disabled people in the realms of education, civil rights, and reproductive rights. Future directions of the project could involve examining court decisions more broadly, focusing on only the differences in reasoning from the court across a larger number of cases. Future projects could also evaluate whether the court interprets statutes or answers constitutional questions, as well as if initial claims of discrimination remain the case's central question as it moves through the court system. Either method could be more quantitative than that of this study, which would allow for more definite answers involving the frequency of events analyzed in this study and could generate more broadly applicable information.

CHAPTER 5

FUTURE IMPLICATIONS: DISABILITY DISCRIMINATION, A DEEPLY ROOTED TRADITION

On May 2nd, 2022, the newspaper *Politico* revealed that they received a leaked document of the draft decision written for the highly controversial *Dobbs v. Jackson Women's Health Clinic* (Gerstein & Ward, 2022). *Dobbs* involved a challenge to a Mississippi law that outlawed virtually all abortion procedures after the fifteenth week of pregnancy. The draft, written by Justice Samuel Alito, revealed that the Court intended to uphold the Mississippi law, allowing states to regulate or prohibit abortion without federal restrictions (*Dobbs v. Jackson Women's Health Clinic*, 2022). That decision overruled two landmark abortion cases, *Roe v. Wade* and *Planned Parenthood v. Casey*, which the Supreme Court decided in 1973 and 1992, respectively. *Roe* and *Casey* prohibited states from outlawing abortion in the early stages of pregnancy. In the decades following those decisions, over 6500 state and federal cases relied on *Roe* and *Casey*. Given the extent of abortion jurisprudence, the Court's decision to overturn nearly five decades of precedent sent shockwaves through the legal community.

Stare decisis, the doctrine allegedly followed by the United States judiciary, aims to avoid capricious judges overturning precedent by binding judges to what was previously decided except with special justification (Kozel, 2010). Not all precedent is treated equally by judges or legal scholars. So-called "super precedents" are decisions that have not only been repeatedly affirmed over a long period but are also relied on by public institutions and have embedded themselves into American society. Before *Dobbs*,

legal scholars and even judges considered *Roe* to be a super precedent (*Richmond Med. Ctr. for Women v. Gilmore*, 2000) (Gerhardt, 2006). Despite that, Alito, writing for the majority, stated that abortion was not “deeply rooted in the Nation’s history and traditions” (*Dobbs v. Jackson Women's Health Clinic*, 2022).

Disability protections, which have a far shorter history in both US law and tradition than abortion, are fundamentally at odds with the judicial approach made by the Supreme Court in *Dobbs*. Alito’s mandate in the majority decision that constitutional rights must be “deeply rooted” in our national tradition, presents immense complications for marginalized Americans of all backgrounds. Under the framework presented in *Dobbs*, and as noted by Justice Clarence Thomas’ concurrence, it is clear that issues such as marriage equality and access to contraceptives are at immediate risk (*Dobbs v. Jackson Women's Health Clinic*, 2022). Although not explicitly mentioned in *Dobbs*, the originalist philosophy observed by the Court’s majority could undermine disability rights. Few traditions are as deeply rooted in the United States as legalized discrimination against people with disabilities. For most of its existence, the United States allowed for the institutionalization, segregation, and ostracization of disabled people. The so-called “ugly laws,” the first of which cropped up in San Francisco in 1867, ordered that “unsightly” people be banned from showing their faces in public as a means of removing people with disabilities from public life (Schweik, 2011). Large cities around the country enacted similar laws, the last of which was not repealed until 1973, in Chicago, Illinois (Phelps Coco, 2010).

Keeping disabled people out of the public eye was not enough, as the eugenics movement, emerging around the turn of the 20th century, sought to eliminate disabled people entirely. Indiana adopted the first law allowing the forced sterilization of the disabled in 1907, followed by much of the United States (Reilly, 2015). In 1927, the Supreme Court fomented that practice, deciding in *Buck v. Bell* that the Constitution did not protect the disabled from forced sterilization (Reilly, 2015). As of 2023, the Court still has not explicitly overturned *Buck*. In fact, a 2022 analysis of state laws on forced sterilization found that only two states, North Carolina and Alaska, explicitly prohibit forced sterilization of disabled people (National Women’s Law Center, 2022). Thirty states and Washington D.C. have laws permitting forced sterilization of the disabled, seventeen of which include children in their statutes (National Women’s Law Center, 2022). Iowa and Nevada passed the most recent laws allowing sterilization of the disabled in 2019 (National Women’s Law Center, 2022).

Protection of the disabled is a new phenomenon in American law. *Olmstead*, one of the most crucial cases in disability rights, is less than twenty-five years old. One Supreme Court justice remains on the Court from *Olmstead*, the author of the dissent, Clarence Thomas. Justice Antonin Scalia joined in Thomas’ dissent, aided by now-Justice Amy Coney Barrett, one of his law clerks in 1999 (Garcia, 2022). The *Dobbs* decision validated the concerns of many about the current Supreme Court composition, producing a chilling effect on disability rights legal advocacy. Fearing how the current Supreme Court would rule on cases involving the ADA, many disability rights lawyers are declining to file lawsuits to prevent the erosion of disability rights through new precedent (Garcia, 2022). Their fears appear to be justified.

A 2022 case involving the Los Angeles Community College District (LACCD) threatened to gut the ADA. In *Payan v. LACCD*, two blind students sued the school district for denying them necessary class materials in an accessible format (*Payan v. Los Angeles Community College District*, 2022). LACCD argued that since their policy was facially neutral, any discrimination against disabled students is unintentional. Since the discrimination was allegedly unintentional, they argued that the students could not bring a discrimination claim based on the ADA (*Payan v. Los Angeles Community College District*, 2022). Judges at the district and circuit levels sided with the students, stating that the purpose of the ADA was to protect against discrimination caused by “thoughtless indifference” and not just intentional action. However, one appellate judge, appointed by former President Donald Trump, dissented, agreeing with LACCD’s argument. LACCD appealed to the Supreme Court, where three Trump appointees and three other justices appointed by a conservative president, reside (*Payan v. Los Angeles Community College District*, 2022). Fortunately, LACCD withdrew their appeal, and agreed to settle the case. However, the next case of that kind may not end that way.

As seen with *Dobbs*, only a single case is necessary to drastically change the legal landscape. For over a decade, the U.S. Equal Employment Opportunity Commission, which oversees violations of the ADA employment title, received more than 20,000 charges of ADA violations annually (U.S. Equal Employment Opportunity Commission, 2021). While the vast majority of cases are settled rather than litigated, just one arriving before the Supreme Court is all it would take to revoke the protections of millions of disabled Americans. How judges approach and rationalize their decisions matters. With the shift away from Constitutional interpretation in favor of legislative interpretation,

disability rights are on a far less stable foundation. Despite the original intent of the ADA to broadly protect people with disabilities, the judges who chose to interpret the law gutted protections for millions of Americans. While Congress eventually corrected the misinterpretation, the process took eighteen years, long enough for another generation of disabled Americans to reach adulthood without knowing protection from discrimination. With a supermajority guided by originalism on the Supreme Court, new interpretations of disability, or reversion to historic interpretations, could unravel decades of progress made by disability advocates and allies. Such an outcome would rely on Congress to override the Court once again, an action that has previously taken decades to occur. While waiting for legislation that may never come, we would condemn at least one generation of disabled Americans to grow up in a country with fewer protections than their parents.

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