

American Disability Act 1990

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Introduction

The Americans with Disabilities Act (ADA) was a monumental policy in U.S. history. The policy process is well documented as it became law in 1990, but was amended as the Americans with Disabilities Act Amendments (ADAAA) in 2008 when there were changes made to what qualified and was defined as a “disability”. First, the ADA amended the concept and scope of disability based on the Rehabilitation Act. According to American Disability Act, whether the person concerned should be regarded as a person with a legal disability is subject to a personalized assessment by the court under the provisions of the law in the light of the circumstances of the case. It defines the "disability" as a physical or psychological defect that substantially restricts an individual from engaging in one or more major daily activities. Besides, the ADA prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications, and access to state and local government programs and services. The American Disability Amendments Act later specified and clarified their definitions. The American Disability Act has led people with disabilities into a new era. The law forces policymakers to think in a whole new way based on equality and has improved the awareness of disabilities and the understanding of them.

The issue itself of equality is important and plays into the social and humanitarian interests of the American public as many Americans fall under the label of disabled themselves. According to the ADA Network, the American Community Survey 2011 reported that there were 37.3 million Americans of all ages that fall under the category. (ADA Network) While the equality for disabled persons should be an issue, regardless of the

number of affected people, that number is very large and speaks volumes of how many people really are affected by these labels laid out in the ADA and then the ADAAA.

Background Information

The Problem That Threatens the Public

First of all, there is the issue of equality. The United States hopes to draw attention to equality on the issue of people with disabilities. The law hopes to eliminate segregation and discrimination against people with disabilities, so that they can live independently. The issue is in the consciousness of the disabled, who hope that they will not be treated differently, yearn for social integration and independence, and yearn for their legal rights. Although they are a minority group with physical or mental handicaps, they do not think of themselves as a particular group. They want society to change its view of groups, maintain their legitimate and equal rights, and give an overall solution.

Historical Developments and Important Facts

With the Reagan administration coming to power in the 1980s, some officials who sympathized with the suffering of the disabled were retired. As well as many problems left by the Rehabilitation Act of 1973, the protection of the rights of the disabled was weakened, which promoted the re-emergence of the "disabled rights movement." There is an urgent need to prohibit discrimination against persons with disabilities in employment in many areas, including private enterprises, education, and medical treatment, and so on.

First, during the implementation of the Rehabilitation Act 1973, the public still discriminated against persons with disabilities because of their historical thinking and

stereotypes. On the other hand, the implementation of the Rehabilitation Act of 1973 by the government is not strong enough, and the Court of Appeal has also made a ruling against the disabled, who still lack reliable legal means to resist discrimination. Because the 1973 Rehabilitation Act exists only in federally funded enterprises or programs, projects that do not receive federal funds are entirely outside the scope of the 1973 Rehabilitation Act.

Second, as persons with disabilities need broader legal protection, some organizations of persons with disabilities hold rallies and protests. The independence movement for the disabled, which was popular in the 1970s, revived again. "while the disabled emphasize self-reliance, they also emphasize the idea of liberalism, that is, people with disabilities, as citizens of the United States, should enjoy the same dignity and rights as normal people." (Skarstad, 2018) To realize the equality of rights of the disabled, we should not only rely on the individual efforts of the disabled to enhance their value but also how the society and the government should do it.

Third, social activities such as joint gatherings for the disabled. In the 1980s, people with disabilities in the past joined together to hold rallies and sit-ins to fight for equal employment rights, but during this period, many forces that did not belong to the political process appeared, which affected the expansion of the federal government's employment policy for the disabled. Some targeted collective protests are organized spontaneously by citizens, such as American Disabled for Accessible Public Transit's repeated protests on public transport and the "the Deaf President Now" protest at Gallaudet University in 1988. (PERRY, 2018) Especially in the Garoudet protest, the fundamental issues of independence and self-management attracted the sympathetic attention of the country and even the world. (Altman & Bamartt, 1993)

Fourth, the participation and promotion of other non-profit organizations. Several disabled persons' organizations also played an essential role in the introduction of the American Disability Act. They participated in drafting the main contents of the Act, participated in hearings held by the Senate around the American disabled Persons Act, participated in testifying, and made detailed preparations for individual testimony. Some of these organizations include Paralyzed Veterans of America, United Cerebral Palsy Associations, the National Center for Law and the Deaf, Gallaudet University, the Disability Rights Education and Defense Fund, and the Association for Retarded Citizens. Although organizations representing deaf-mutes were actively involved in the preparation of the American Disability Act, the National Association of the Deaf withdrew from the process before it was completed because of conflicts with organizations representing other disabilities and believed that the requirements of the National Association of Deaf-mutes could not be met. (Barnartt & Scotch, 2001).

Current Policies and Government Addressing

The Disability Act not only gives people with disabilities the right to equal education, equal employment, equal opportunities, and full participation but also lays the foundation for other laws that follow.

After the promulgation of the American Disability Act, other relevant laws also went into the legislative and revision process. For example, in 1990, the Law on Education for Persons with Disabilities was revised, and in 1994, two bills focusing on improving education programs were added. In 2000, the government also issued new rules for construction and transport obstacles for people with disabilities. In 2008, President Bush signed an amendment to the American Disability Act. The bill gives a more extensive and

profound explanation of the concept of "disability." It includes injuries such as epilepsy and post-traumatic stress disorder ((PTSD)) that may seriously affect significant life activities into the concept of disability so that the Disability Act can protect more people.

However, due to the non-compliance of the law by enterprises and the discrimination and non-acceptance of them by traditional social concepts, the problem of equality of persons with disabilities cannot be solved completely. A survey in 2004 found that only 35 percent of persons with disabilities of working age were actually employed, while the employment rate of the rest of the population was 78 percent. 2/3 of the unemployed said they were willing to work, but could not find a job. (United Nations, 2014) In 2019, 19.3 percent of persons with a disability were employed, the U.S. Bureau of Labor Statistics reported today. In contrast, the employment-population ratio for persons without a disability was 66.3 percent. The unemployment rates for both persons with and without a disability declined from the previous year to 7.3 percent and 3.5 percent, respectively. (Bureau of Labor Statistics,2020)

Development and Implementation of Policy

Previous Efforts

The cause of the American Disability Act is due to the protection of the interests of wounded soldiers brought about by the First World War. To provide some security and help to these veterans who were physically disabled by combat, the United States issued the Smith-Hills Veterans Rehabilitation Act in 1918.

In 1920, the Smith-Faith Act was introduced. This is a more comprehensive bill in which the protected group of people with disabilities is no longer limited to American

veterans, but to all citizens who causes physical impairment is no longer limited to war. This change is due to Americans' sense of equality and the awakening of self-awareness of the disabled. People with disabilities have the right to enter the community, live independently, and set goals in life, and the government should support their efforts. After 1920, the federal government provided medical services for the disabled, and prosthetic devices were included in the program. At the same time, family members of people with mental disabilities, immigrants, poor teenagers, blind people, hearing-impaired people, and people with disabilities also have access to the services provided by the program.

In 1968, President Lyndon Johnson signed the Building barriers Act. It stipulates that the design, construction, and reconstruction of all federally funded buildings must facilitate access for people with disabilities. The U.S. Department of Defense, the Department of Housing and Urban Development, the General Service, and the Postal Service are all responsible for the bill. However, due to conflicts of interest, the implementation of these policies is always intermittent. Such as the Building barriers Act of 1968, it has been suggested that obstacles to some public facilities are necessary and refuse to enforce the law.

Another example is the Urban Public Transport Act passed by the United States Congress in 1970, which requires that "all newly equipped public transport vehicles must be equipped with wheelchair lifts." But the transportation department thinks that wheelchair lifts are indeed convenient for people with disabilities. However, the expenses should be borne by those who need these facilities (they should not be passed on to ordinary taxpayers).

Social discrimination has inspired people with disabilities to persist in the struggle. They are not held back by some local achievements but look forward to an overall solution.

They want society to realize that the low social and economic status of persons with disabilities is not caused by the disability itself, but by social barriers and prejudices.

In 1977, a group of people with disabilities occupied the office of the U.S. Department of Health, Education and Welfare and stayed for 25 days to protest against the then Minister Joseph Califano's boycott of section 504 of the 1973 Rehabilitation Act, which protects the rights and interests of people with disabilities. The occupation, known as the 504 Sit-In, was the longest non-violent occupation of the federal building in American history.

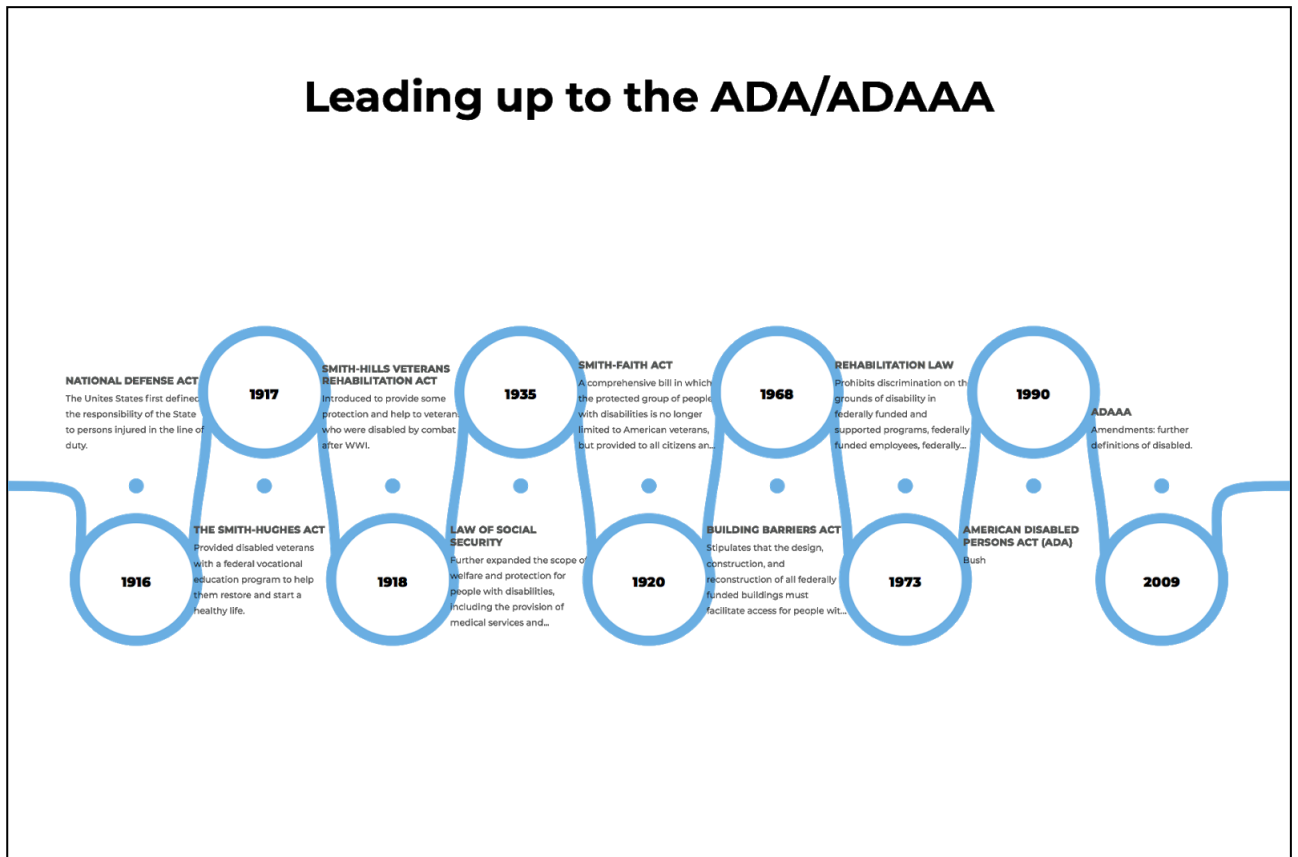
In 1989, the affirmative bill for people with disabilities was drafted by the government and Congress and submitted to Congress for the legislative process. Still, no progress has been made for more than a year. On March 14, 1990, hundreds of disabled people from 30 states went to the U.S. Capitol to protest against the failure of the American Disability Act to move forward in the House of Representatives. They climbed the steps of Congress, which triggered a heated discussion in the media, and the issue of equal rights for people with disabilities became the focus of the country. (Disability activists participating in the "Capital Crawl") Coupled with the fact that the media spread the sufferings of people with disabilities who were excluded from society at the hearing, hesitant lawmakers came under pressure to support the bill. Forced by public opinion, only four months later, in July, 26th 1990, the ADA bill was successfully signed.

Policy Process

Is it a well known fact that the policy process is viewed as a never-ending cycle of corrections, backtracking, and reforms. Many issues are continuously being cycled through the process, as over time social and political environments change. The ADAAA is a good

example of this, as it more recently went through some changes and reforms in transition from the ADA to the ADAAA. The changes over time can be seen, below, in Exhibit A.

Why did the ADA need to change? The ADAAA was passed because it narrowed the scope of who is under its protection and it focused more on whether or not the person actually has a disability and not on the debilitating event. You might not think that this would be an issue, but it presented itself to be an issue in several Supreme Court rulings. For example, in *Sutton v United Airlines*, the Sutton twins had vision issues that prevented United Airlines from hiring them as pilots. They used the ADA as reason to claim discrimination. "The Suttons claimed that they were disabled within the meaning of the ADA either because, under 42 U.S.C. Section 12102(2)(A), they suffered from a physical impairment that "substantially limits . . . major life activities," or because, under 42 U.S.C. Section 12102(2)(C), they were regarded as having such an impairment." (Oyez, 2020) The case was ultimately dismissed, but it stayed in court for a while due to the battle over whether or not they were discriminated against. In another case, *Toyota v. Williams*, Williams was fired for poor attendance and then cited her carpal tunnel as a cause for discrimination by Toyota. Williams's impairment did not qualify as a disability under the ADA, because it had not substantially limited any major life activity and that there was no evidence that Williams had had a record of a substantially limiting impairment. (Oyez, 2020) These supreme court cases directed the courts to use a more restrictive definition of disability, thereby eliminating the protections of the ADA for many people who had experienced disability discrimination in their communities, places of business, government offices and workplaces. In most cases, the courts never got past this issue to give attention to the discrimination event itself, which went on to become a serious problem.



(Exhibit A: Policies Leading Up to the ADA/ADAAA, B. Robinson)

Mapping the Policy Debate

Policy Camps

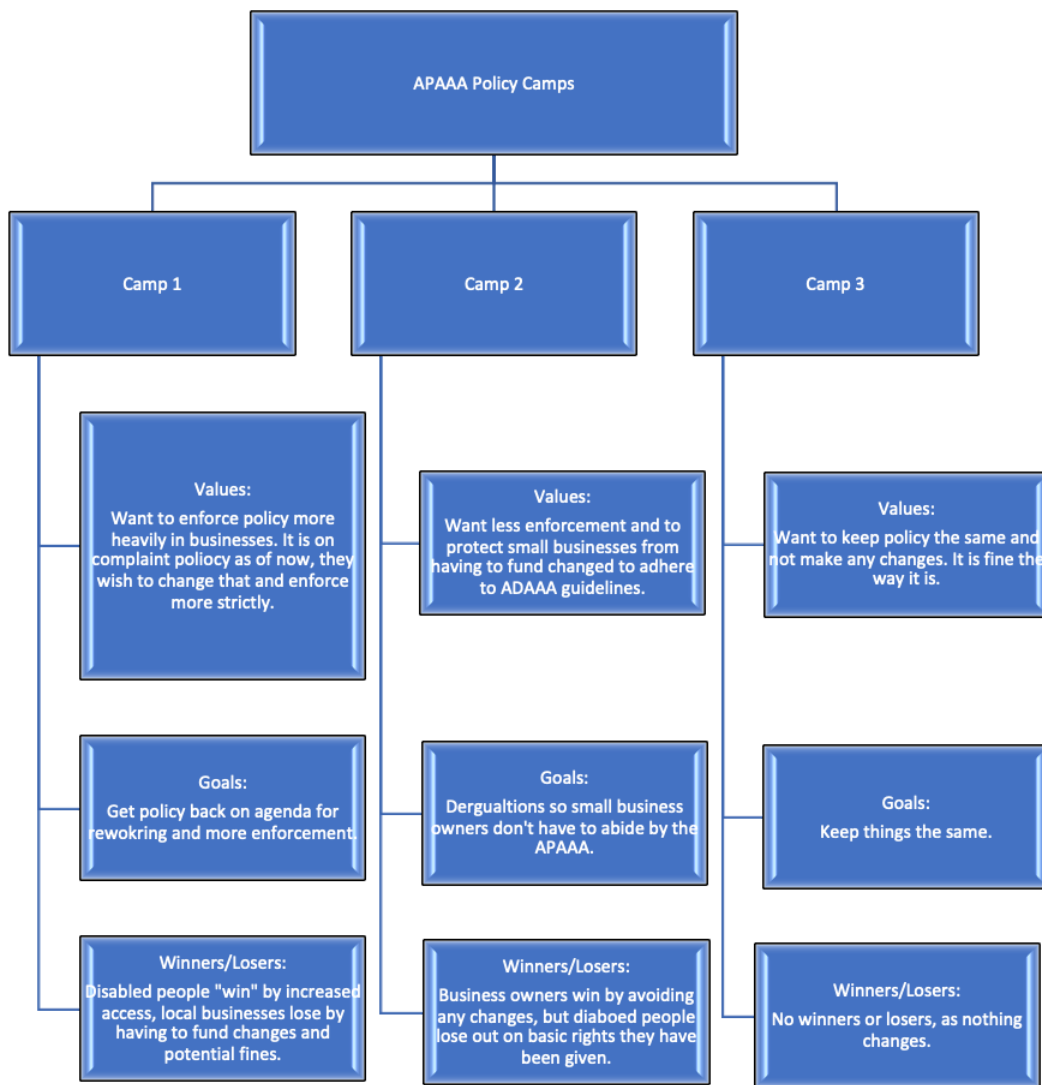
There is always more than one side to a story, and policies are no exception. Specifically with the ADA, there are multiple sides to view and different policy camps. On one policy camp side there are many positives pointed out, such as: “One distinct advantage of the ADA is that it opens doors to employment for disabled Americans. Besides helping to end overt discrimination against disabled persons, the ADA also helps implement workplace standards and government requirements that enable disabled persons to function as any other person would in the workplace.” (Mack, 2017) This sounds great, but there is another side

that points out the flaws of the ADA. For example, there are some who think that the conditions set forth by the ADAAA for being labeled as disabled are not strict enough. People who are not as disabled can receive many of the same exact benefits that those who are more severely disabled receive. Also, some feel that the ADAAA places an unfair financial burden on some businesses to adhere to their standards.

One of the main complaints of the ADA and reason for opposition is due to the fact that the regulation of it is primarily complaint based, which has left a lot of facilities without proper handicap access. If people aren't filing the complaints, then nothing is enforced and it doesn't change. So, why hasn't it been more heavily regulated? "Many lobbying clients that favor deregulation — such as the U.S. Chamber of Commerce and the American Hotel and Lodging Association — simply have more money at their disposal than clients who favor more extensive ADA regulations. Since 2001, 119 organizations have filed 37 lobbying reports concerning 11 bills and a resolution that mentioned the ADA in their summaries, according to the Center for Responsive Politics." (Davenport, 2013) Due to this, it is very hard for platforms that are working to extend ADA regulations to get the ball rolling. Exhibit B, below, showcases the different opinions of different policy camps

Overall, in our opinion, there are three policy camps to consider with this policy. There is the policy camp where they want increased and more strict enforcing of the ADAAA, and their goal is to get it back on the policy agenda for some reworkings and improvements. Second, there is a policy camp of people adamantly do not want more strict enforcing of the policy and if anything their goal is to keep it the same or even less so, as to "protect" small business owners who do not have the money to make alterations to abide by the ADAAA. Third, there is a policy camp of people who think it is fine how it is. Ultimately,

if the first policy camp “wins”, then disabled people are also willing as they will receive improved access to more businesses, etc, but possibly at the cost of those local business owners. If the second policy camp were to “win”, then the business owners would also win, but disabled people would be losing access. As for the third policy camp, there wouldn’t be winners or losers, as the issue would stay stagnant.



(Exhibit B, Policy Camp Map. B. Robinson)

Conclusion/Policy Recommendation

Ultimately, we would recommend that the government adopts a policy that closely aligns with the first policy camp. This policy camp focuses on improving the enforcements around the issue, which would allow for more access to disabled citizens. However, we cannot overlook the burden that this places on business owners. We believe there are modifications to be made around the enforcing of the policy, while also allowing for businesses to apply for grants to help out with the costs associated with accounting for disabled workers and citizens. So, we do not neatly align with that policy camp, but it is the closest to our ideas and values.

We chose this position, instead of the alternatives, because we believe that the ADAAA should be enforced strictly already, and the lack of enforcement due to the complaint system is a fault of the current policy. Disabled people should be able to work in and enter businesses and they have rights that should ultimately be protected and preserved. As discussed in our introduction, there are so many Americans affected by disabilities and, while the efforts of the ADAAA are noble, there has been some lacking in the enforcement of it, which in turn shorts the hand of all disabled Americans.

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