

TESTIMONY OF JUSTIN DART
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
APRIL 28, 1994

Mr. Chairman, it is an honor to appear before the Committee on Governmental Affairs. I am the former chair of the President's Committee on Employment of People with Disabilities.

On July 26, 1990, I had the privilege of witnessing the most important event in the history of people with disabilities. On that day, President Bush signed into law the Americans with Disabilities Act.

Senators, on that day, I cried.

I cried tears of agony for the crushing burden of responsibility we were undertaking as we promised the world to put an end to thousands of years of oppression and exclusion.

Throughout all history people with disabilities have been regarded as subhumans. At worst, they have been killed or left to die as beggar-outcasts. At best they have been cared for through subsistence welfare, usually in the most isolated and demeaning circumstances.

I remembered when I was 24 years old and had worked hard to be at the top of my education class in my university, only to be refused by the State of Texas to be certified as a teacher because of my wheelchair.

I remembered my disabled mother and brother who took their own lives because they were unwilling to face this massive discrimination and prejudice.

I remembered the 1989 congressional testimony of Perry Tillman:

"I went to Vietnam like a lot of other young men to fight for our country's ideals--freedom and the ability to become whatever we dreamed of becoming...When I came home as a wheel chair user, I found out that the rights I fought for applied to everyone except me."

But, I also cried tears of joy.

The ADA is a landmark in the evolution of human beings, the first

comprehensive civil rights law for people with disabilities in the history of the world. It is the emancipation proclamation for forty-nine million Americans with disabilities, and the symbol of dignity, respect and hope for almost a billion persons with disabilities around the world.

There are no words to tell you how proud I am of America; there are no words to tell you what it means to me and to millions of Americans with disabilities to be legally recognized as human beings, to be declared full members of the human race.

And so, Mr. Chairman, it would be impossible to convey to you the depth of the anger, the terror we feel when we read that our sacred, hard won civil rights law has been trivialized as an "unfunded mandate" that is burdensome to the nation.

The ADA is not an unfunded mandate. The ADA is a civil rights law that implements the promises of the equal protection clause of the 14th amendment of the United States Constitution.

The Bill of Rights is not an unfunded mandate. The historic Civil Rights Act of 1964, the Voting Rights Act, the Fair Housing Act are not unfunded mandates. The ADA is not an unfunded mandate.

The ADA is a brilliant blueprint for rational change. It is probably the most cost-effective civil rights law ever passed. According to President Bush, excluding millions of people with disabilities from the productive mainstream costs \$200 billion cash annually in public and private funds. ADA will cost a tiny fraction of the amount it will save.

The ADA provides the proper balance between the civil rights of people with disabilities and the legitimate concerns of state and local governments, employers, and private businesses. It is flexible, allowing different solutions in different situations. It has numerous provisions designed to eliminate undue hardships and undue financial burdens frequently described by those concerned about unfunded mandates.

Attorney General Dick Thornburgh, in 1989 congressional testimony stated it this way:

"This bill is fair, balanced legislation. It builds on an extensive body of statutes, case law, and regulations to avoid unnecessary confusion; it allows maximum flexibility for compliance; and it does not place undue burdens on Americans who must comply."

Mr. Chairman, the section in the ADA applicable to state and local governments is basically one sentence long--it specifies that state and local governments must

comply with the very same standards set out in section 504 of the Rehabilitation Act of 1973. Most state and local governments, as recipients of federal financial assistance, have been subject to section 504 rules of nondiscrimination for over 20 years.

In other words, those governments that have taken reasonable steps over the past 20 years to eliminate architectural and other artificial barriers in compliance with section 504, are most likely already in compliance with the ADA. It is those governments that have done the least over this period that are now complaining the loudest.

During the last two years I have personally held at least two forums in each of the fifty states to dialogue with leaders of state and local governments, business, and the disability community about full, harmonious, and cost-effective implementation of the ADA. I would like to share with you what I have found.

First, those communities which have developed formal communications among people with disabilities, government officials and private businesses have had the greatest success in implementing the ADA in a cost-effective manner. People with disabilities often know the cheapest way to ensure compliance.

For example, an architect might propose redesigning a water fountain to lower its height at a cost of several thousand dollars. On the other hand, a person with a disability would suggest installing a cup dispenser for under five dollars.

Second, there is a lot of fear and misunderstanding out there about the costs of compliance with the ADA. This fear is being fueled by lawyers, architects, builders, and self-styled expert consultants whose only interest is to promote profits for themselves.

The fears being raised now about the impact of the ADA are similar to those misgivings that were raised in the first few years following the implementation of section 504 of the Rehabilitation Act. There were predictions that those covered by the section 504 regulations would be bankrupted or forced to severely curtail or alter their services. These doomsday predictions were based on ignorance and myth and proved completely false.

Similar misgivings in the area of race discrimination surfaced in 1965 and proved to be equally unfounded.

Doomsday predictions about the ADA have not come true; they will not come true.

I have included a list of typical mis-understandings in Appendix 1 of my

written testimony. Let me give you some examples.

State and local officials have told me how burdensome it is to require that all public buses be retrofitted with lifts. I tell them that they are misinformed--buses are not required to be retrofitted; only new buses require lifts. Further, the federal government pays a significant portion of the cost of the lift.

State and local officials have complained to me about how they have to make every existing building, every existing entrance way, and every existing bathroom accessible. A local official told me about the burden of installing an elevator in a small rural library.

I tell them someone is selling them a bill of goods.

With respect to existing facilities, the ADA regulation (section 35.150 of part 35 of the Code of Federal Regulations) includes a standard which is referred to as the "program accessibility" standard. What this means is that the program of services must be made accessible, but not necessarily every building or every floor of every building. In other words, a public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

For example, according to the regulations, a public entity can comply through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternative accessible sites, or any other methods that result in making its services, programs or activities accessible.

The regulations also state that the ADA:

-does NOT necessarily require a public entity to make each of its existing facilities accessible;

-does NOT require a public entity to take any action that would threaten or destroy the historic significance of an historic property; and

-does NOT require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

In sum, I have found that the more people understand about what the ADA does and does not require, the more comfortable they feel about implementation.

Third, I have also learned that the ADA is frequently used as a scapegoat for local officials who want to renovate a building but cannot muster sufficient local

support.

Last year I read in a weekly newspaper that a tiny impoverished West Texas County was going to have a County Commissioners' meeting to vote for "renovations to the court house required by the ADA"--an automatic elevator, new bathrooms, all kinds of expensive things I knew they couldn't afford and ADA did not require.

I called the County judge and offered to come to the meeting and explain that the ADA really didn't require them to spend all that money in a time of budget problems. He said, "Justin, come to the meeting if you want to, but keep your damn mouth shut. I finally got the votes to fix this run-down courthouse right and by God I'm going to do it."

Mr. Chairman, the ADA may be misunderstood, but it is not a burdensome, unfunded mandate. It's a well thought-out, well-written, cost-effective civil rights law. It declares me to be a human being and I thank God for it. What we need is not less civil rights, but more information, and more courage to use it.

I respectfully suggest a simple economical solution for the problems of misinformation about the ADA, and the resulting unnecessary expense and the denial of rights. Congress must appropriate a sufficient amount of money to allow the Department of Justice to provide accurate ADA information to state and local communities, to business, and to people with disabilities.

To address the legitimate concerns of state and local governments, I respectfully suggest that as you draft legislation to protect states and communities from unwarranted financial burdens, you protect also the expansion of free enterprise democracy. Some of the bills before you, had they been in force for the last two hundred years, would have presented major barriers to the passage of our most significant social, economic, and civil rights legislation. A detailed analysis of the pending "unfunded mandate" bills is attached to my testimony as Appendix 2.

Finally, Mr. Chairman, I believe there is an underlying conceptual problem with many of the bills you are considering. Our adversarial political system has sometimes created the impression that there is a fundamental conflict between civil rights and free enterprise; that civil rights is a kind of bothersome luxury that do-gooders impose on sound business and sound government.

This is a dangerous fallacy. Civil rights and free enterprise are two sides of the same solid gold cultural currency that has revolutionized the productivity and the quality of human life in this nation.

Our forefathers and mothers came to this country because we offered

extraordinary legal guarantees of equal opportunity. They got rich and America got rich. Every time we expanded those civil rights guarantees to include another oppressed minority, Americans got richer. With the strongest civil rights guarantees in the world, we have one of the highest standards of living, and one of the lowest tax rates among industrial democracies.

America is rich not in spite of civil rights. America is rich because of civil rights.

The ADA is the most recent landmark in our magnificent march to the promised land of liberty and justice and prosperity for all. People with disabilities will rise from welfare poverty to be workers, customers, and taxpayers. Every county, city, and state will prosper. Every American will prosper.

Thank you for the opportunity to share my views with the Committee. God bless you.

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