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# On (Not) Deserving Disadvantage

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# 4 On (not) deserving disadvantage

## What kind of difference does "disability" make?

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Disability rights are often characterized as paradoxical. On the one hand, disability rights are civil rights. As such, they should be rights held by everyone in a given civil society. On the other hand, claims for disability rights, as well as their instantiation in law, are often categorical: they may only be claimed by those fitting within the category of "the disabled."

The ADA illustrates this paradox. It is listed among the U.S. civil rights statutes. But it is structured to require people to have a characteristic—"disability," as the statute defines—to claim its protections. Seen as categorical, the ADA is then subjected to the criticism that it accords special rights to people, evoking the problematic reply that the deficiencies of their holders warrant these rights. This reply then places people with disabilities in the position of needing to show that they are sufficiently disadvantaged, in a way that they did not deserve, to claim the benefits accorded by these supposedly special rights.

In this chapter, I attempt to dissolve this paradox. I do so with an account of disability civil rights in anti-discrimination terms. The account presented here is based on my work with Anita Silvers; I deeply regret her death and dedicate this chapter to her memory.

Everyone has civil rights; people do not need to show that they are disadvantaged, deservedly or undeservedly, to claim civil rights. I first outline how as a civil rights statute the ADA protects against discrimination. I then show that even when the ADA requires accommodation for individuals, it does so by way of understanding what discrimination is, rather than what disability is (Silvers and Francis). Key to this point is seeing "disability" and "discrimination" as defined terms of art.

The ADA protects against discrimination based on disability. Discrimination is treating people unfairly because of a particular characteristic they have. In the United States, civil rights statutes prohibit discrimination of some particularly serious kinds, but it is important to recognize that these protections remain incomplete. At the federal level, civil rights statutes address unfair treatment based on characteristics such as race, sex, religion, color, national origin, age, and disability. Many state statutes also address unfair treatment based on sexual orientation. These characteristics are singled out because

disadvantageous treatment based on them is pervasive, has been historically persistent, and has affected the design of social institutions in complex ways (Eidelson; Silvers, Wasserman & Mahowald, 175–176). Moreover, in these cases the disadvantageous treatment has been critically associated with devalued status. For disability, Justice Marshall described this history of diminution and mistreatment powerfully:

> Fueled by the rising tide of Social Darwinism, the "science" of eugenics, and … extreme xenophobia … leading medical authorities and others began to portray the "feeble-minded" as a "menace to society and civilization … responsible in a large degree for many, if not all, of our social problems." A regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow.[1]

As an anti-discrimination statute, the ADA addresses how discrimination excludes, both individually and generally. Accommodations respond to individual exclusion: individuals may seek accommodations when their differences in body or mind require adjustments for them to work successfully, participate in public services, or experience public accommodations as others do. Other requirements for modifications in policies or in the built world, such as ramps, respond to forms of exclusion that might affect anyone. These modifications are better understood not as adjustments in circumstances that would otherwise exclude individuals, but as responses to both inaccessible physical structures—structures in the literal sense—and social policies and institutions that exclude, structures in a more metaphorical sense (Barclay).

## The ADA as anti-discrimination

The ADA as enacted began with a statement of findings and purpose. The findings included histories of exclusion, isolation and segregation, discrimination, and disadvantage of people with disabilities.[2] As stated in the original ADA, the findings also included the observation that "some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older." This observation proved an invitation to the courts to narrow the population of people who could be considered disabled under the ADA. It was removed by the ADA Amendments Act (ADAAA) in 2008.[3]

The ADA's announced statutory purposes were providing a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and strong and "enforceable standards addressing discrimination against individual with disabilities." The statute also asserted the central role of the federal government in enforcing these standards "on behalf of individuals with disabilities." It invoked sweeping

authority to "address the major areas of discrimination faced day-to-day by people with disabilities."[4]

The ADA then continued with separate sections prohibiting discrimination in employment; prohibiting discrimination in public services, including a section governing all public services and a special section addressing public transportation; prohibiting discrimination in public accommodations; incorporating various miscellaneous provisions; and addressing accessibility in telecommunications. Some provisions within these sections require accommodations for particular individuals who need them to work, benefit from public services, or enjoy public accommodations. Thus it is discrimination for an employer to fail to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability" unless the employer can demonstrate undue hardship.[5] It is discrimination for a public entity to exclude qualified individuals with disabilities from participation in services, programs, or activities.[6] Individuals are qualified if they can meet essential eligibility requirements with or without reasonable modifications, removal of architectural or other barriers, or auxiliary aids and services.[7] And it is discrimination for a public accommodation to fail to provide auxiliary aids and services such as sign interpretation unless these steps would fundamentally alter the nature of the accommodation or result in an undue burden.[8]

These and other provisions mandate accessibility generally. These mandates do not attach to particular individuals or their differences but change world-design in a manner that augments accessibility for everyone. As just described, the public services section of the ADA requires reasonable program modifications and removal of architectural barriers. All public entities operating fixed route transit systems must assure accessibility in all purchases of new vehicles after 1990.[9] Entities operating fixed route systems also must make paratransit available as a complement.[10] Other provisions govern accessibility of stations and intercity and commuter rail. The ADA's public accommodation section specifies that it is discrimination to fail to remove architectural barriers and communication barriers that are structural in nature, if removal is "readily achievable."[11] Private sector entities operating public transit must ensure accessibility on newly-purchased vehicles seating more than sixteen people, unless they otherwise provide levels of service to people with disabilities that are equivalent to services provided to individuals without disabilities.[12] New construction is subject to the more stringent requirement that it be "readily accessible and usable" except where it is "structurally impracticable" to achieve this goal.[13] Finally, several ADA provisions ensure accessible communications. Telecommunications providers must provide relay services to hearing-impaired and speech-impaired persons.[14] Television public service announcements that are federally produced or funded must include closed captioning.[15] None of these provisions are dependent on requests from particular individuals with disabilities; they help to ensure a world inclusive of all.

To summarize, the ADA addresses disability discrimination in two ways. It requires the world to become more accessible. And it requires individual accommodations such as auxiliary aids when necessary to avert discriminatory exclusions of particular individuals. Only the individual accommodations requirements can reasonably be seen as special rights. Interpreting the ADA as a statute that only grants special rights is therefore clearly mistaken.

## Non-discrimination and accommodations

But what of the accommodation requirements found throughout the ADA? Does the right to accommodation create a special right and, if so, what kind of special right? The argument that accommodations create special rights rests in the idea that only people with disabilities can claim accommodations. Instead, I argue, the definition of disability is used as part of an account of non-discrimination: that non-discrimination requires accommodations to enable otherwise qualified individuals to work successfully, participate in public services, or enjoy public accommodations.

To claim protection from discrimination, individuals must have a disability, have a record of a disability, or be regarded as having a disability.[16] These are the three prongs of the definition of disability in the ADA. To claim an actual disability under the first prong, an individual must have an impairment that substantially limits a major life activity.[17] Major life activities include important bodily functions and such activities as self-care, manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.[18] To claim a record of a disability under the second prong, presumably an individual must have had an impairment of this kind at some time in the past; the ADA contains no further specification of the meaning of this prong. To claim to be regarded as having a disability, a person must

> establish that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.[19]

The condition in question, however, may not be "transitory and minor"; conditions are "transitory" if they are expected to last for six months or less.[20] An ankle sprain expected to heal within a month would be transitory in this sense but might not be minor depending on its impact on the individual's life activities.

The ADAAA specifies that these prongs of the definition of disability should be interpreted in favor of broad coverage.[21] Episodic conditions are disabilities even when they are in remission, if they would be disabilities when they are active.[22] Whether a person has an actual disability should be determined without considering any mitigating measures except ordinary

eyeglasses, including medications, assistive devices, accommodations, or individual adaptive strategies for managing the condition.[23]

Along with broadening the interpretation of "disability," however, the ADAAA also specified that people claiming statutory protection because they are regarded as disabled do not have rights to accommodation or modification.[24] Elizabeth Emens contends that this provision signals that disability is being treated as a special right: "the ADAAA has conceded something to the accommodation-is-different camp" (21). Emens draws a similar conclusion from the ADAAA's prohibition[25] of what are called "reverse discrimination" claims, claims brought by individuals who claim to have been discriminated against because they don't have a disability and didn't receive an accommodation while people with a disability received an accommodation. An example of this kind of claim would be somebody who says they've been discriminated against because someone else was allowed a later starting time for the workday as an accommodation for chronic fatigue syndrome.

My claim instead is that these provisions were carefully crafted in light of the goal of non-discrimination. That is, they were crafted artfully for a specific purpose. It is discrimination to exclude someone because of an impairment that significantly affects their lives, when they are otherwise qualified. Likewise, if reasonable changes or aids could avoid exclusion of people who are otherwise qualified, it is discrimination to fail to provide them; this is the point of the accommodation requirement.

About whether someone regarded as disabled would need accommodations, the ADAAA reasoning was that if someone were mistakenly believed to have a disability, but did not, there would be no basis for accommodations. This provision does create the possibility that some people who need accommodations to function on the job might not qualify for them, because they do not qualify as actually disabled, even when actual disability is broadly construed. An example might be someone who has back pain that is not sufficient to significantly affect a major life activity, but who needs breaks from lifting in order to manage the pain. Arguably, however, the conclusion to draw is that the ADAAA did not address all aspects of disability discrimination, not that the ADA was designed to create special rights. In support of this conclusion is the recognition that the ADAAA was a compromise between anti-discrimination advocates and business interests concerned about costs. The result was a statute that addressed more serious forms of discrimination but left others out. This is not the same as a statute that singles out a group—the "disabled"—for special treatment. It is instead a statute that addresses non-discrimination incompletely.

In what follows, I illustrate these points first with the section of the ADA governing non-discrimination in employment, using the example of pregnancy, and then with a current controversial case involving non-discrimination in public accommodations and waiting times at Walt Disney resorts.

**Employment, accommodations, and pregnancy.**

Employers who fail to provide reasonable accommodations for employees with disabilities discriminate. To claim the accommodation right, employees must show that they are actually disabled or (possibly) have a record of a disability. This provision is at the heart of the claim that disability rights are special rights. After all, many people who are not disabled might find accommodations useful, too. Adjustments in work hours are an example. People with disabilities may need adjusted schedules in order to perform their jobs; the ADA requires these adjustments if they are reasonable. Other people may need adjusted work schedules, too: people with small children or ill parents, for example. However, failure to provide these adjustments is not discrimination, although it may be unjust for other reasons or simply bad policy.

A standard example of adjusted work times as accommodations is an employee who can no longer work early morning hours or a night shift because of a disability. According to EEOC guidance, if assigning the employee hours later in the day does not disrupt the employer's workflow to the extent that it is an undue hardship for the employer, the accommodation is required. The EEOC example is a later shift for a day care worker if the employer has adequate coverage earlier in the day.[26] On the other hand, an employee operating the presses for a newspaper would need to be at work during the night when the papers are printed. For this employee, the EEOC says, the only available accommodation would be reassignment to a vacant position for which the employee is qualified. The employer would not, however, be required to provide the employee with training to enable the employee to become qualified for the vacant position (unless the training is part of the position), or to create a new job for the employee.

The problem is why these are requirements for non-discrimination when other desired accommodations are not. New parents might want these reassignments, too. Here's why these are non-discrimination requirements. They are responses to exclusion associated with histories of devaluation and mistreatment. Parents of young children have not been systematically excluded in this way based on parenthood. Compare discrimination on the basis of sex: it is arguable that women have been systematically excluded from and judged unworthy of employment because of biological and social features that are related to sex: women carry pregnancies and may have medical issues associated with them, women breast feed, and at least until recently (and perhaps even recently) women are primary caregivers for young children. So it is discriminatory to treat women differently because they are pregnant or likely to become pregnant in a way that it is not discriminatory to fail to grant accommodations to parents of young children. To say the failure is not discriminatory is not to say that it is morally acceptable or just; it is only to say that it is not discrimination addressed through civil rights protections.

Pregnancy poses a particularly complex example of this difference between non-discrimination and injustice, however. U.S. law considers disadvantageous

treatment on the basis of pregnancy discrimination on the basis of sex.[27] This provision, known as the Pregnancy Discrimination Act (PDA), was added to the employment discrimination title of the Civil Rights Act after a notorious holding of the Supreme Court that the failure to cover pregnancy under an employer's short term disability policy was not discrimination on the basis of sex but differential treatment of pregnant people and non-pregnant people.[28] Title VII of the Civil Rights Act, of which the PDA is a part, does not explicitly include a right to accommodation for discrimination based on race, sex, color, or national origin.[29] Its assumption is that these characteristics are completely irrelevant to the ability to perform jobs. Religious beliefs and practices, however, must be accommodated unless accommodation would be an undue hardship for the employer.[30]

In a decision in 2015, the U.S. Supreme Court considered a case in which a pregnant employee was not granted the accommodation of light duty work when other employees with similar restrictions were given this accommodation. Peggy Young was a part-time driver for UPS. Her job responsibilities required her to lift up to 70 pounds. When she became pregnant, she was instructed not to lift more than 20 pounds during the first 20 weeks and not more than 10 pounds thereafter. She requested to continue to work with a lifting restriction, but the request was denied; she stayed home without work during her pregnancy and lost her medical insurance as a result. She claimed that UPS had violated the PDA by refusing to accommodate her pregnancy-related lifting restriction although it accommodated similar lifting restrictions for employees with medical conditions covered by the ADA or employees with on-the-job injuries. Her position was that if UPS granted accommodations to anyone with a similar lifting restriction, even if the reason was that an employee had been injured on the job due to undertaking a particularly hazardous activity, it also had to grant similar pregnancy-related lifting restrictions. UPS, on the other hand, claimed that it was not discriminating on the basis of pregnancy but applying a neutral, non-pregnancy-related criterion to determine eligibility for accommodation: whether the condition was covered by the ADA or the result of an on-the-job injury. The Supreme Court rejected both of these positions as extreme and held that employers who refuse to grant accommodations needed by pregnancy while granting similar accommodations for other reasons must demonstrate a legitimate non-discriminatory reason that the employee can demonstrate is not sufficiently strong to justify the burden on pregnant women.[31] UPS later settled with Young and now makes accommodations for pregnant women requiring light duty assignments.[32] The upshot is a compromise: pregnant women may claim accommodations if other workers are given them and the employer does not have a sufficiently strong reason for distinguishing pregnancy from its other grounds for accommodation.

This analysis still places pregnant women in a different situation from people claiming disability discrimination for failure to accommodate, in several important ways. First, the right to claim accommodations is an aspect of

non-discrimination under the ADA but not under the PDA. Under the PDA, the right to accommodations depends on parity with the accommodations given other workers; employers who accommodate no one do not have to accommodate women who are pregnant. The ADA will not fill the gap for some pregnant women, because to seek accommodations under the ADA they will still need to show a condition that substantially limits a major life activity, albeit broadly construed. Uncomplicated pregnancies, births, and post-partum needs likely are not covered because it is unlikely that the employee will be able to show that she has an impairment that substantially limits a major life activity.[33] Second, under the ADA if the employee shows that she is qualified to perform the job with a reasonable accommodation, it is up to the employer to show that the requested accommodation is an undue hardship. By contrast, under the Supreme Court's interpretation of the PDA, the employee will need to show that the employer's reason for rejecting pregnancy accommodations while granting accommodations for others with similar restrictions is insufficiently weighty to counter the burden on pregnant women. The burden of persuasion is on the employee, rather than the employer. And the analysis is a balance between the employer's reason and the burden on the employee.

Consider this illustrative fact situation:

> Andrea Mosby-Meacham was an in-house attorney for Memphis Light & Gas Company. She had telecommuted successfully for several periods of time in the past and her work did not require appearances in court. About a year before Mosby-Meacham became pregnant, her new supervisor announced a policy that all employees were expected to be at work between 8:30 a.m. and 5 p.m., in order "to set a good example for the support staff." The employer had no formal telecommuting policy and employees often telecommuted successfully, even after the announced policy. When Mosby-Meacham was 23 weeks pregnant, she required hospitalization, had surgery, and was placed on modified bed rest for 10 weeks. She requested to be able to work from home during that period as an accommodation. The accommodation request was denied, with the employer claiming that physical presence was an essential function of her position. So, Mosby-Meacham took sick leave, then family medical leave, then short-term disability insurance; she returned to work after the 10-week period of bed rest. She claimed the failure to accommodate was disability discrimination; a jury verdict for Mosby-Meacham was affirmed by the court of appeals.[34]

In this case, Mosby-Meacham presented her case as disability discrimination under the ADA. Her employer did not contest her claim to be a person with a disability. Had she not had the complications that required bedrest, however, the employer might well have tried to argue that her case did not come under the ADA. Under the ADA analysis, the question at issue was whether her

requested accommodations were unreasonable, because personal presence at the office was an essential job function or because her telecommuting presented an undue hardship. With an uncomplicated pregnancy, the analysis would instead have started with whether the employer permitted other workers to telecommute, for example to avoid for a period of time the fatigue of commuting when commuting had become especially difficult because of the care needs of an ailing parent. It would then have considered whether Mosby-Meacham could show that her employer's reasons for refusing accommodations to similarly situated pregnant women who also sought to avoid the fatigue of commuting were insufficiently weighty to outweigh the burden on pregnant women. This showing might be far more difficult for Mosby-Meacham to make than it would be for her to contend that her employer had not met the burden of persuasion to demonstrate that the accommodation would be an undue hardship.

So there is a difference between uncomplicated pregnancy and disability, as they are treated under current U.S. civil rights law. Disabled-pregnant Mosby-Mecham has a better chance at accommodations than pregnant Mosby-Mecham. The conclusion to draw from this difference, however, need not be that people with disabilities get special rights. Rather, it could be that U.S. law now defines discrimination to protect the civil rights of disabled-pregnant Mosby-Mecham but has yet to define discrimination to fully protect the civil rights of simply-pregnant Mosby-Mecham.

## Public accommodations and waiting in line at Disney theme parks

Title III of the ADA prohibits discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation…"[35] People may not be denied the opportunity to participate in or benefit from public accommodations, nor may they be given opportunities to participate or benefit that are "not equal to that afforded to other individuals."[36] A specific prohibition is the

> failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods …[37] Another prohibition is the failure to provide needed auxiliary aids or services, unless doing so would fundamentally alter the nature of the goods provided or result in an undue burden.[38]

Perhaps the most salient image for special rights giving rise to resentment is that undeserving people are butting in line (Hochschild). Requests for accommodations at Walt Disney theme parks present exactly this question. For many years, people with disabilities attending Disney parks received a

special pass that enabled them to bypass notoriously long lines. Disney believed that able-bodied people were abusing the policy by exaggerating their conditions by hiring people with disabilities to pretend to be family members visiting the park with them (Hetter). In response, Disney changed the program rather than require proof of disability status, allegedly because of concerns about confidentiality.

The replacement program builds on a program called FastPass," which Disney originally introduced in 1999 to allow guests to avoid long lines at particularly popular attractions. Fastpass allows park visitors to schedule three return time windows for attractions in advance and is included in the price of a Disneyland ticket. Visitors who use the service can do other things in the park rather than wait in line, although for popular attractions return times fill up quickly and there are limits as to when visitors can schedule additional passes. Disneyland also offers a MaxPass system for an additional fee which allows unlimited selections of FastPasses. For many visitors, these options are a meagre response to the frustration of long wait times and the disappointment of times being sold out for the most popular rides.

For people with cognitive disabilities, Disney augmented FastPass with a "Disability Access Service" DAS Card. DAS Cards allow visitors to obtain return times for rides in addition to the FastPass system; return times are not limited to a particular window but may be used any time after the set time for return. Visitors may hold only one return time at once; once they have used their return time, they may select another one that is available, including for the ride they have just enjoyed.[39] Disney also makes additional accommodations available depending on individual service needs.

People with autism claim that the DAS Card system denies them the opportunity to enjoy the park on terms equal to those afforded other visitors and is thus discriminatory. Their initial lawsuit advanced two different grounds for their claim. First, they claimed that it was discriminatory to offer the same program to everyone with cognitive disabilities rather than an accommodation based on individualized assessments of each person's needs. The courts rejected this argument, stating that a one-size-fits-all accommodation did not violate the ADA as long as it accommodated persons with the most severe disabilities.[40] (Parenthetically, the court's analysis here should have been as long as it accommodated everyone with disabilities; the court simply assumed that accommodations for the most severe disabilities would also be appropriate for less severe disabilities.) Second, they claimed that the DAS system failed to make the reasonable modifications needed by many people with autism. Their argument was that some people with autism have no sense of time or must follow exact schedules in order to experience the park without having meltdowns—and thus being able to visit the park in the same undisturbed manner that non-disabled park visitors enjoy.

In considering this argument, the court noted that the experience of non-disabled visitors is not seamless: they must plan ahead, endure wait times, and stand in physical lines. Parents of non-disabled children are likely familiar

with crying, temper tantrums, and general discomforts as well. It is thus not discrimination to provide people with disabilities an experience that includes these unpleasantries. A modification that eliminated these inconveniences for people with disabilities but not for others would indeed provide special benefits. However, the claim on behalf of people with autism was not that they should have a better experience than others. It was that their disabilities are such that if they are faced with inconveniences such as waits, they would not be able to enjoy the park to any reasonable extent because of their neurological conditions. Instead of enjoying other attractions while waiting, they would suffer meltdowns. The trial court's original ruling was that the evidence was insufficient to support this claim. The appellate court reversed this ruling and sent the case back to the district court to enable the plaintiffs to produce evidence that more necessary than the DAS Card were modifications for them to enjoy the park in a way similar to the experiences of others.[41] The trial court heard evidence in February 2020 but delayed its ruling to allow further submissions by the parties (Tribune News Service).

This approach, albeit imperfect, is rooted in non-discrimination. It is not discrimination for an amusement park to be crowded, noisy, stifling, or overpriced—although it might be price-gouging, misrepresentation, or cheating of visitors. Nor is it discrimination for a park to admit so many visitors that opportunities to enjoy the most popular attractions are unavailable to many. It is discrimination if people are unable to have roughly similar experiences based on a devalued characteristic such as disability. So it is undisputedly discrimination if people with mobility impairments cannot get on rides because they are built with steps, but not discrimination if they face the same limits of overcrowding that are faced by other park visitors. Thus the court was correct to insist that the plaintiffs bring evidence to show that without further modifications to the program they would be unable to enjoy the park in a way similar to the enjoyment—or lack thereof—available to others. Otherwise, the plaintiffs' claim could be regarded as a request for a special privilege rather than an anti-discrimination right.

## Conclusion

Civil rights law as it stands is imperfect. It does not protect against all forms of discrimination. This imperfection, however, does not show that civil rights law provides special rights, even when accommodation is required for non-discrimination. Key to dissolving the paradox with which I began—that disability rights claims appear both to be civil rights claims and special rights claims—is the recognition of how civil rights claims function. Moreover, civil rights law is not the same as law for justice. There are many social injustices, including structural injustices, that are not civil rights violations. The project of social justice is large and important and civil rights protection is only one part of it. This observation flags an additional, critical question that I have not addressed in this contribution, whether civil rights protections should be prioritized if they conflict with other requirements of justice.

## Notes

1 City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 461–462 (Marshall, J., concurring in the judgment in part and dissenting in part).
2 42 U.S.C. § 12101(a).
3 42 U.S.C. § 12101 note.
4 42 U.S.C. § 12101(b).
5 42 U.S.C. § 12112 (b)(5)(A).
6 42 U.S.C. § 12132.
7 42 U.S.C. § 12131(2).
8 42 U.S.C. § 12182(b)(2)(A)(iii).
9 42 U.S.C. § 12142.
10 42 U.S.C.§ 12143.
11 42 U.S.C. § 12182(b)(2)(A)(iv).
12 42 U.S.C. § 12182(b)(2)(C)(ii).
13 42 U.S.C. § 12183(a).
14 47 U.S.C. § 225(b)(1).
15 47 U.S.C. § 611.
16 42 U.S.C. § 12102(1).
17 42 U.S.C. § 12102(1)(A).
18 42 U.S.C. § 12102(2).
19 42 U.S.C. § 12102(3)(A).
20 42 U.S.C. § 12102(3)(B).
21 42 U.S.C. § 12102(4)(A).
22 42 U.S.C. § 12102(4)(D).
23 42 U.S.C. § 12102(4)(E).
24 42 U.S.C. § 12201(h).
25 42 U.S.C.§ 12201(g).
26 EEOC. 2002. Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act § 22. https://www.eeoc.gov/policy/docs/accommodation.html#modified.
27 42 U.S.C. § 2000e(k).
28 General Electric Company v. Gilbert, 429 U.S. 125 (1976). Geduldig v. Aiello, 417 U.S. 484 (1974) was a similar holding that California's exclusion of pregnancy from its disability insurance system violated the Equal Protection Clause.
29 42 U.S.C. §2000e-2(a).
30 42 U.S.C. §2000e(j).
31 Young v. United Parcel Service, Inc., 575 U.S. 206 (2015).
32 National Women's Law Center. 2015. Press Release: UPS Settles Pregnancy Discrimination Case, Marking the End of Peggy Young's Nine-Year Legal Battle. (Oct. ). https://nwlc.org/press-releases/ups-settles-pregnancy-discrimination-case-marking-end-peggy-young%E2%80%99s-nine-year-legal-battle/.
33 See, e.g. Heatherly v. Portillo's Hot Dogs, Inc.,958 F. Supp.2d 913 (N.D. Ill. 2013).
34 Mosby-Meacham v. Memphis Light, Gas & Water Division, 883 F.3d 595 (6th Cir. 2018).
35 42 U.S.C. § 12182(a).
36 42 U.S.C. § 12182(b)(1)(A)(i)(ii).
37 42 U.S.C. § 12182(b)(2)(A)(ii).
38 42 U.S.C. § 12182(b)(2)(A)(iii).
39 A.L. by and through D.L. v. Walt Disney Parks and Resorts US, Inc., 900 F.2d 1270 (11th Cir. 2018).
40 900 F.3d at 1291.
41 900 F.3d at 1298.

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