Indelicate Balance

Chipping away the ADA leaves PWAs on thin ice

July 1, 1998 By Arthur S. Leonard

When Congress passed the Americans With Disabilities Act (ADA) in 1990, advocates for PWAs celebrated a great victory. Congress clearly intended to protect people affected by HIV and AIDS from discrimination, or so supporters of the legislation said on the floor.

Unfortunately, federal court decisions by Reaganand Bush appointees have so undermined the ADA as to have betrayed the congressional promise. For example, judges have ruled that people with HIV who have not developed physical symptoms are not included in the statute's definition of a "disability"; that people who receive disability benefits may not press employment discrimination claims; that people whose treatment restores health may not use the ADA to combat discrimination; and that HIV positive health care workers are not protected from discrimination because of the risk of transmission—however theoretical—they pose to patients.

One court recently ruled against an HIV positive grocery clerk because the employer feared he might cut himself and bleed on food. Also, a court ruled that the ADA allows an employer to place a low cap on payments for a particular medical condition, even though the inevitable effect is discrimination against people with costly conditions.

While such rulings may not represent a majority of the courts, many of these opinions came from federal appeals courts whose decisions are binding for millions of people. Why has the ADA, hailed in 1990 as a PWA charter of civil rights, produced so many terrible decisions?

When the federal and state governments began passing disability-rights laws in the 1970s, they intended to protect people with "traditional" disabilities, such as hearing or sight impairment, missing limbs and paralysis, or severe mental conditions. Their focus was on long-term or permanent conditions, not relatively brief illnesses. To express these concepts, they adopted definitions that stressed severity and longevity.

The ADA requires that an individual have a mental or physical impairment that substantially limits a major life activity, and have a record of such an impairment or be regarded by others as having one. Major life activities include things like walking, talking, taking care of oneself and working.

To be protected by the ADA, one must be deemed "qualified"—physically and mentally able to

participate, with or without “reasonable accommodations,” without presenting a threat to others. Looking at this statute, some courts have decided that people with HIV who are able to function on a daily basis don’t have a physical impairment. Some have ruled that the chance that people will transmit HIV “disqualifies” them. Moreover, others have ruled that anybody disabled enough to receive disability benefits could not possibly be “qualified” to work.

Most courts understand that the ADA can and should be liberally interpreted to protect those Congress intended to protect. But “strict construction” conservatives, looking for reasons to rule against a person with HIV, can find them in the strict ADA definitions. In March, the Supreme Court heard arguments in its first-ever case of HIV-related discrimination—in this instance, the appeal of a suit won by an HIV positive dental patient in Maine. By the time you read this, the court may have given us cause for a second ADA celebration, or we may be trudging back up Capitol Hill seeking a new congressional “fix” for the epidemic of AIDS discrimination.

SAY WHAT

No Way, José

“I really feel that the more you promote condom use as a means to prevent becoming infected, the more infected people there will be.” —Mexican Red Cross President José Barroso Chavez, La Jornada, February 9, 1998

Knight Moves

“Elton [John] is now queen of the entire world…He works mourning better than anyone on this earth.” —Village Voice gossip guru Michael Musto, Out, March 1998

As Good As He Gets

“I’d as soon cohabit with a warm garbage bag than wear a condom. I asked my doctor, who said, ‘Look, if you’re not shooting up and you’re not an active homosexual, you’re as likely to get AIDS as have a safe land on you.’ I say these things not so much because they’re politically incorrect, but because they don’t teach this in civics class…I have, after all, been in Reichian therapy. Pleasure denial is what I’m fighting against here. Pleasure denial and the fear of freedom is a more negative component of our society than the AIDS scare.” —Oscar winner Jack Nicholson, on why he is no friend of the condom, New York Post, March 11, 1998

Thais That Bind

“The concept is to find a new way to deal with AIDS. These people cannot stay in society. Thai society has never learned to accept AIDS. They never will—it’s impossible.” —Engineer-cum-monk Alongkot Tikkoaranyo, on his vision for a chain of AIDS colonies, Agence France-Press, March 17, 1998

© 2026 Smart + Strong All Rights Reserved.