Could We Pass the ADA Today? Disability Rights in an Age of Partisan Polarization

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COULD WE PASS THE ADA TODAY? DISABILITY RIGHTS IN AN AGE OF PARTISAN POLARIZATION

TONY COELHO*

Thank you very much for the kind introduction. I would like to talk a little about why I’m such an advocate, why disability is my ministry, and why I devote so much time to it. The question before us today is would the Americans with Disabilities Act be adopted today? The answer is no. But I’ll get to that when I go onto some questions.

When I was fifteen or sixteen years old, I had an automobile accident in a pickup truck. The accident was very serious, and I hit my head. I wasn’t too worried, except I totaled the pickup, and I was more concerned about what my dad would do to my other end.

About a year later, I was in the barn milking cows, and all of a sudden, I woke up. I was in my bed in the house, and the doctor was sitting on me. I lived in a small California town, a little community of 2,000 people and that was the way they practiced medicine! I just had a seizure, and he was talking to my parents. They were discussing me and my prognosis, but I didn’t hear him say that I had epilepsy. I only learned later that he told my parents I had epilepsy. My parents, however, told me they didn’t know what I had. What is interesting is that you can see the impact that stigma has. Stigma is still a huge issue for the community today. My parents thought that if you had epilepsy, you were possessed by the devil. As strong Catholics that is what they were taught! Now, it is one thing when my Republican friends think I am possessed, but to have your parents feel you are possessed was pretty tough. But, making matters worse, they didn’t even tell me what they felt.

I went to three different doctors, and each one told my parents about my epilepsy. Yet, my parents continued to keep it from me – stigma! After that they took me to witch doctors, and that was a very interesting experience. They take you into a darkened room with candles burning and pour oil on your forehead.

* The Honorable Tony Coelho is a retired U.S. Congressman from California, a former House of Representatives Majority Whip, Democratic Congressional Campaign Committee Chairman, and the principal author of the Americans with Disabilities Act. Diagnosed with epilepsy when he was 22 years old, Mr. Coelho has spent his entire adult life helping advance the lives of people with disabilities. Mr. Coelho founded The Coelho Center for Disability Law, Policy and Innovation at his alma mater, Loyola Marymount University. Remarks from the 2018 AALS Disability Law Panel.
and chest and say prayers in a language I couldn’t understand. After the third witch doctor I said I wouldn’t do it anymore – that started the deterioration of my relationship with my parents.

I eventually decided I wanted to go away to college with the encouragement of my high school superintendent. I went from central California to Loyola Los Angeles. I loved the campus and I loved the Jesuits, however I kept having seizures. I thought it was just passing out. After it was over, I’d get up and go back to living my life. It didn’t trouble me, although it was an annoyance because it could happen at any time, apparently randomly. When I was a junior, John Kennedy was assassinated, and I decided that instead of being a trial lawyer I would devote my life to public service. If John Kennedy could do it with his life, I wanted to do the same. And the best way I saw to do this was to become a Catholic priest.

My decision was a shock to my girlfriend of five years and to my fraternity brothers, but I knew what I wanted and began the process. I soon went for my physical and after examining me, the doctor asked if I had ever heard of the word ‘epilepsy.’ I replied that I had not. He said, “Has anyone ever told you that you have epilepsy?,” and again I said, “No.” He said, “Well, you do. There is good news and bad news to having epilepsy. The good news (this was 1964 and in the midst of the Vietnam War) is you are 4F and can’t serve in the military. The bad news is that Cannon Law established in 400 A.D. stated that if you had epilepsy or possessed by the devil - you can’t be a priest.” So, I was denied entry to the priesthood. That didn’t bother me so much because after all these years I finally knew what my seizures were about. The doctor wrote me a prescription, which allowed me to reduce the number of seizures and the severity of them.

I called my parents to give them the update from the doctor and they said, “No son of ours has epilepsy.” The stigma continued. Our relationship really began to deteriorate at that point. They insisted that I go back to my small town in central California because folks in Los Angeles were ignorant.

When I started looking for a job, I had more than eighty offers, as I had been student body President and an outstanding senior classman. But as I filled out job applications and checked the box for having ‘epilepsy’, not only was I not getting a job, I didn’t even get interviews. At first it didn’t trouble me. Then I started to realize what was going on. I wouldn’t lie. But I started drinking and feeling sorry for myself. It seemed like everything I ever loved in my life—my God, my church, my parents—had turned against me.

If you know Los Angeles, there is a park called Griffith Park. I was there every day, and by 2:00 pm every day I was drunk. I was on a hill top, and in those days as a result of my drinking, I thought it was a mountain. On the day, I was going to do the “dirty deed,” I saw a merry-go-round at the bottom of the hill. I had not seen it before. I heard the merry-go-round music, the laughter and the screams of the little kids riding the merry-go-around. Then, all of a sudden, I heard a voice that said to me, “You’re going to be just like those little kids.
You are never going to let anything or anyone stop you from doing what you want to do.” And that’s it. I’ve not been depressed since. I drink, but I no longer get drunk. And I’ve never let anyone stop me from doing anything I want to do, particularly in regard to disabilities.

I then went to work for a wonderful human being: Bob Hope. A lot of you are too young to know who he was but he was a famous comedian here in Los Angeles, and he mentored me for over a year. He said, “You have a ministry that you think can only be practiced in the church. A true ministry is practiced in sports, entertainment, business, government, and you belong in politics.” And that was how I got started.

So, I wrote a letter to my congressman and got a job in his office. I got very involved in all kinds of different issues and eventually became his Chief of Staff. When he retired, I ran for his seat and easily won. During that campaign, my opponent said one day, “I don’t know if you know it or not but Tony is a very sick man. He has epilepsy and what would you think if he went to the White House to argue a critical issue for us such as water and had a seizure?” My response to reporters the next day was, “Well, in the fourteen years I’ve been in Washington, I’ve known a lot of people who have gone to the White House and had fits - but at least I have an excuse.” That ended that discussion of my epilepsy from that day forward.

When I got elected as a representative, I decided that I wanted to become very involved with disabilities. I kept introducing amendments dealing with disability rights in housing, transportation and other areas. That’s when I realized that those of us with disabilities didn’t have our basic civil rights. We could be fired because of our disabilities. We could be denied entry into restaurants and movie theaters because of our disability, and it was legal, totally legal to do that. Then I started thinking about how to change it. The grassroots efforts all over the country were already working on legislation. It was a big grassroots movement that I didn’t know and then of course got introduced to it and ultimately introduced the ADA. The significant thing about introducing the bill was that when I sent out a Dear Colleague letter asking for co-sponsors, I had colleagues approach me on the House floor with personal stories. They would say that their aunt, uncle, mother, father, daughter or neighbor has a disability, and they didn’t like the way the person was treated and intended to support the bill. I got co-signors from all segments of each party. When I put it in, I insisted on the legislation being bicameral and bipartisan.

3. COELHO, Tony, supra note 1.
On the Senate side Senator Weicker from Connecticut, who has a son with Down Syndrome, became the Republican Senate author of the legislation.4 After he was defeated for re-election Senators Ted Kennedy, Bob Dole, Orrin Hatch, and Tom Harkin took over.5 It went through the Senate rather easily.6 In the House we had problems with stigma. The Speaker at the time felt that the public would revolt against a major bill like this. He felt we would have to come back and repeal it due to its unpopularity. I didn’t agree nor did I care, so I pushed it anyway.

We had a tough time in committees. The Leadership assigned it to five different committees and several subcommittees.7 Motorbus owners worked hard against it. As a result, it was close in the Public Works Committee and succeeded by only one vote. This was all an effort to kill it, but we prevailed committee by committee.8 It was signed into law by President George H.W. Bush.9

The Supreme Court then decided that I didn’t know what I was doing because if you didn’t have a physical disability, they ruled that you weren’t covered by the ADA.10 And so we then had to go back and amend the ADA to include all disabilities.11 One of my concerns about the disability community and movement is that we operate in silos. If you have a heart problem, if you have epilepsy, if you have Down Syndrome or whatever it is, you are focused on your particular concern. As such, we don’t get involved in the other disabilities. In the ADA, we had to knock down those silos. When we did the ADA Amendments Act, it was interesting that those groups covered by the ADA as per the Supreme Court decision,12 were not that helpful.

4. Donavan W. Frank & Lisa L. Beane, How the ADA was Passed, FED. LAW., June 2015, at 62, 64.
5. Id. at 64–65.
6. Id. at 63, 65.
12. See Benfer, supra note 11, at 1–2.
An interesting point about Obamacare was, when we had that fight, the whole community came together because Obamacare included one of the things that is most critical to our community: pre-existing conditions. So the community came together again, we fought hard and as you know, we prevailed.

When the Disability Treaty was introduced, we worked hard to try to get it passed. We made a huge effort, and we thought we could come within two votes of passing it. We had to have sixty-seven votes in the Senate. The reason it didn’t pass was Ted Cruz from Texas had just gotten elected in November. After the election, during a lame duck session the treaty was being brought up. The day the treaty was to be brought up on the Senate floor, the Republicans were having their weekly luncheon. Cruz, as the elected Senator from Texas, not a member but elected, came to that meeting and spoke about the treaty. He said it was going to destroy people’s families with disabilities. The UN would be able to take the disabled children away from their families. These were outrageous statements, but it scared several members who had committed to be with us. Bob Dole, as a former Senator and majority leader, was on the Senate floor. He had gotten most of the commitments. Those Republicans that he got commitments from, including the two from Kansas, voted against the treaty and so we lost it.

Now only two countries in the world have yet to sign the Disability Treaty and the United States is one of them. The whole movement, made up of the Tea Party continues to be opposed to the ADA. I’ve always said that the odds of getting the ADA passed again are rather remote.


What is really important about any law, especially the ADA, is enforcement. Under Attorney General Sessions it is not going to be enforced, and we are already starting to see that happen.\(^\text{21}\) He is withdrawing a lot of the executive orders,\(^\text{22}\) and that is going to be our biggest problem. So, as we go forward in these three years, we can hold back some of the negative efforts, but we really won’t be able to do much. The judicial appointments and the executive orders that are being repealed are setting us back. I’d be happy to answer some questions. Thank you very much.

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\(^\text{22}\) Press Release, supra note 21.