

ADA Congressional Findings and Purpose in 42 U.S.C. § 12101

Accommodating People with Mental Health Conditions and Developmental Disabilities

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*2023 Virtual ADA Conference for State and Local
Governments*

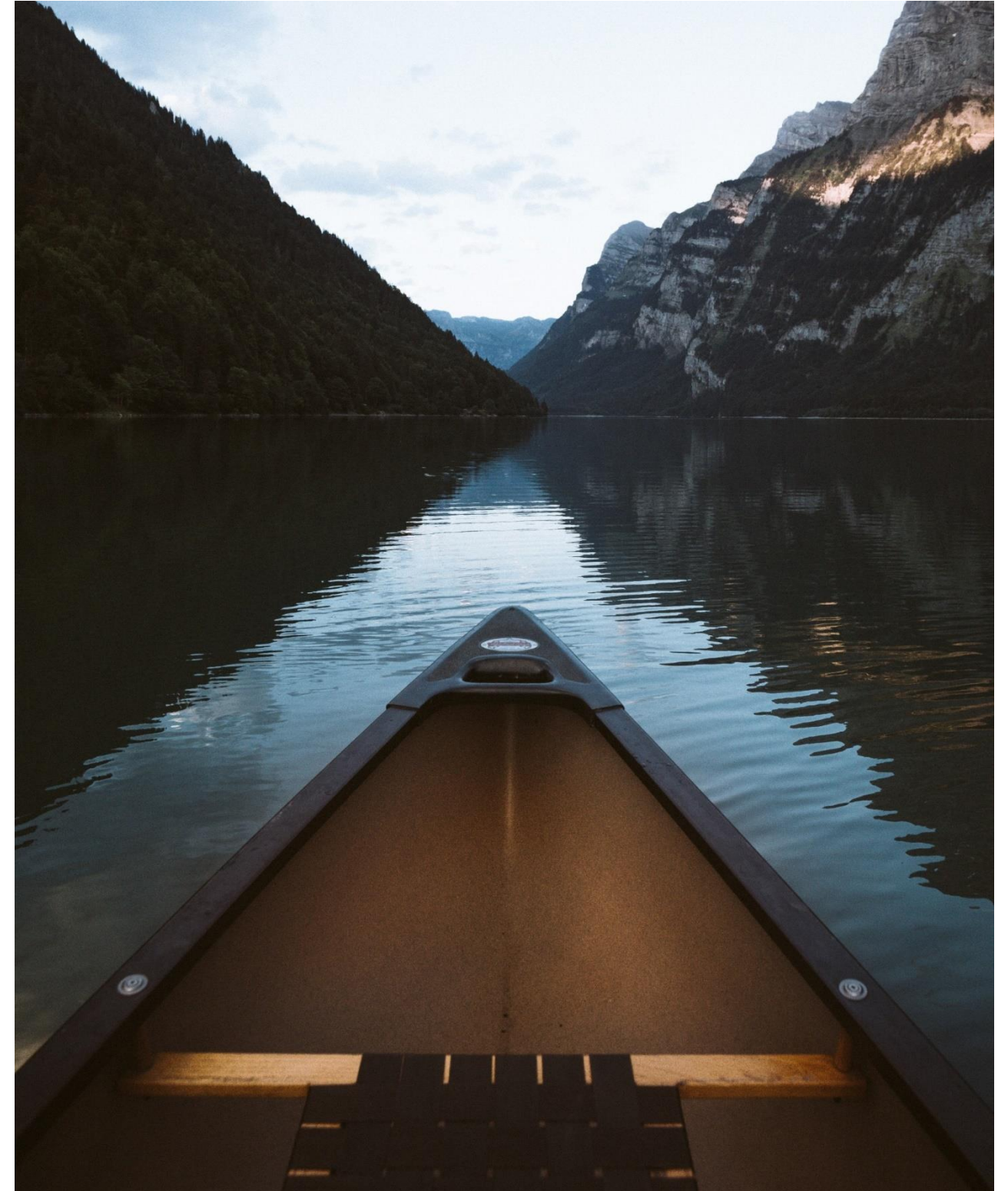
State ADA Coordinator's Office

*Georgia State Financing and Investment
Commission*



Session Objectives

- Provide a comparison of the general rights of Americans with the history of discrimination of people with disabilities, particularly with a focus on Georgia.
- Discuss the civil rights and legislative history that led to the passage of the Americans with Disabilities Act of 1990 (ADA).
- Examine the Congressional Findings and Purpose of the ADA.
- Discuss how we can interpret the Congressional Findings and Purpose of the ADA in providing reasonable accommodations to people with disabilities today, particularly with respect to people with mental health conditions and developmental disabilities.



Rights as Americans

- Constitutional Rights
 - Freedom of Religion
 - Freedom of Speech
 - Freedom of Association
 - Freedom of Petition
 - Right to Due Process
 - Equality Protection
 - Right to Vote
 - Right to Bear Arms
- Other Rights Under the Law
 - Right to contract
 - Right to a Public Education
 - Right to own property
- What else?

We hold these truths to be self-evident, that all *men* are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.



History of Americans with Disabilities

- Rights Denied
- We will use Georgia for some examples but discrimination, exclusion, and deprivation of rights occurred across the country.



Jenkins, R. Michael, photographer. *Jesse Jackson shaking hands with disability advocate Justin Dart Jr., who is in a wheelchair, during a hearing of the House Committee on Education and Labor on a bill which became the Americans with Disabilities Act.* Washington D.C, 1989. [17 July] Photograph.

<https://www.loc.gov/item/2019646232>

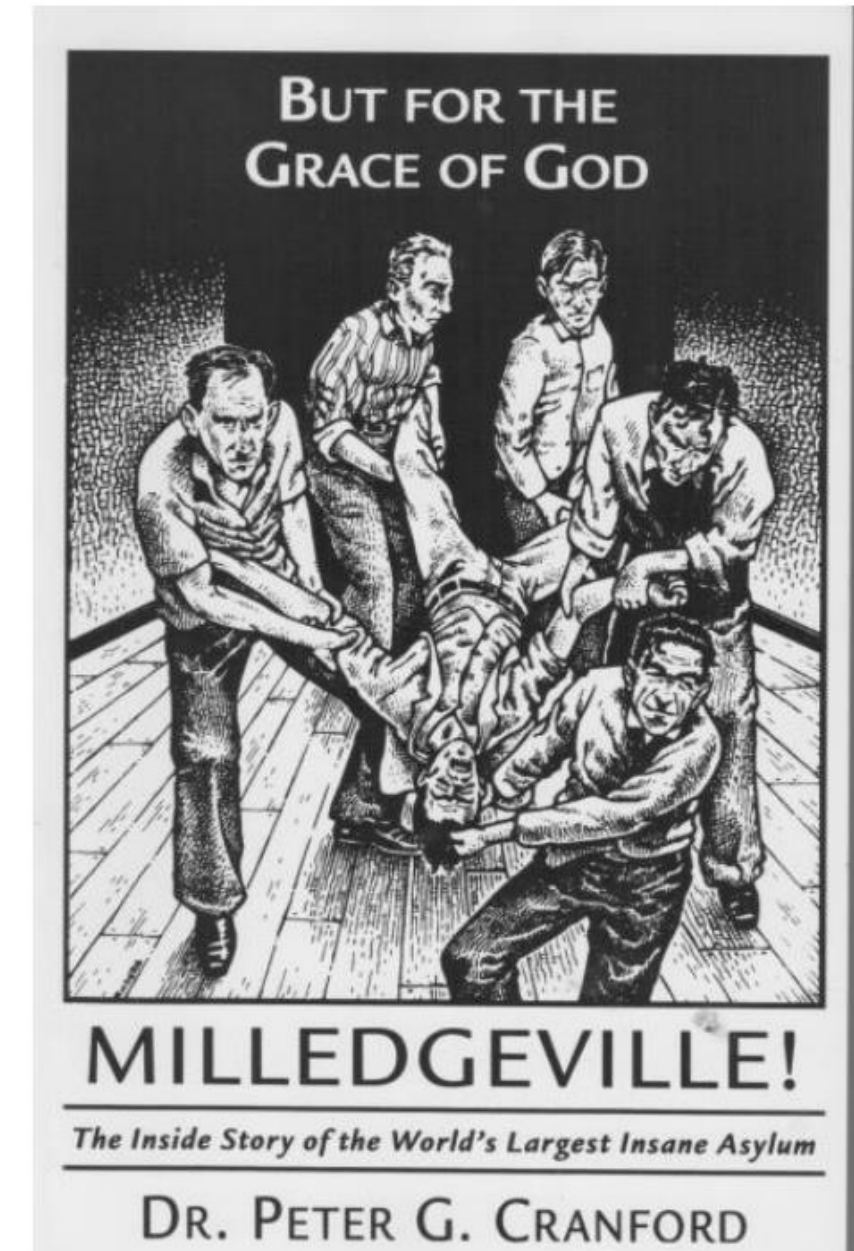


A long history of institutionalizing people with disabilities

Georgia State Sanitarium, Milledgeville, Ga., late 1800s

Institutionalization in Georgia

- In 1837 Georgia Legislature created the “state lunatic, idiot, and epileptic asylum.”
- People were sent for having epilepsy, alcoholism, aged, mental health conditions, and developmental disabilities.
- Georgia’s psychiatric hospitals had major scandals, investigations, and deadly incidents in every decade from 1908 through 2007. In 1916, for instance, the Atlanta Constitution had an article patients experiencing physical abuse and being sent to the hospital without cause.
- 6,000 “patients” at Milledgeville State Hospital in 1929. The Atlanta Constitution reported the institution was in “a serious and distressing condition.”
- In 2007, the Atlanta Journal Constitution found that at least 115 patients in the state’s hospitals died under “suspicious circumstances.”
- Two U.S. major U.S. Supreme Court cases (1970s and 1990s) on the deprivation of rights of people in Georgia state hospitals.



This history is from Georgia's Institutional Care: A History of Tragedy, Scandals, and Litigation by Andy Miller

Eugenics in Georgia

- 1937 Georgia became 32nd state to legalize eugenics.
- 1937 law allowed individuals in institutions to be sterilized if it “would be likely, if released without sterilization, to procreate a child, or children, who would have a tendency to serious physical, mental, or nervous disease or deficiency.”
- Approximately 3,200 people were sterilized in Georgia between 1937 and 1963.

History and Photograph from “Eugenics in Georgia, New Georgia Encyclopedia, <https://www.georgiaencyclopedia.org/articles/government-politics/eugenics-in-georgia/> (photo provided to New Georgia Encyclopedia from Georgia State University Library





Other Ways Rights of People with Disabilities Denied

- Denied Right to Vote
- Denied Right to Contract
- Denied Public Education
- Civil Commitment
- Denied Access to Public Buildings
- Denied Right to be on Jury
- Denied Employment
- Denied Housing
- What else?

**RIGHTS
DENIED!**

Section 504 of the Rehabilitation Act of 1973

- Banned discrimination of people with disabilities by all who receive federal funds.
- Critical next step after passage was for the regulations to define who qualified as having a disability, what discrimination was, and other critical issues left undetermined by statute.
- Substantial delay by the federal agency and other leaders to move forward with these essential regulations.
- Disability rights activists, led by Judy Heumann, Kitty Cone, and others, held sit ins similar to those done by other civil rights movements.
- Gained wide spread public support.
- Extensive political advocacy by disability rights advocates with political and agency leaders also helped spur regulations.



Photo of Judy Heumann and other disability rights advocate used at Cone, Kitty, "Short History of the Section 504 Sit In," Disability Rights Education and Defense Fund, <https://dredf.org/504-sit-in-20th-anniversary/short-history-of-the-504-sit-in/>

“The San Francisco federal building sit-in . . . lasted 28 days and was critical in forcing the signing of the regulations almost unchanged. It began with a rally outside the federal building, then we marched inside where between 1 and 200 people would remain until the end. The composition of the sit-in represented the spectrum of the disability community with participation from people with a wide variety of disabilities, from different racial, social and economic backgrounds, and ages from adults to kids with disabilities and their parents.

We all felt that we were acting on behalf of hundreds of thousands of people who were not able to participate, people all over the country who were institutionalized or stuck in other dependency situations.”

-- Quotation of Kitty Cone, Organizer of Section 504 Sit In



SECTION 504
of the Rehabilitation Act of 1973

- The Section 504 regulations developed definition that a person with a disability (previously called “handicapped person”) is “a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.”
- They also defined reasonable accommodation and many of the other provisions that would be the basis for the Americans with Disabilities Act of 1990.

42 C.F.R. Part 104; 45 FR 30936 (May 9, 1980)

- The Americans with Disabilities Act was developed after substantial litigation, advocacy, and other legislation enforcing Section 504 and other earlier disability rights laws.
- Over and over again advocacy and legislation was used to beat back attempts to weaken these rights.
- National Council on Disabilities developed early draft of the ADA. Justin Dart, a disability rights advocate with significant political connections, held hearings across the country attended by thousands of people with disabilities on the proposed law.
- A national campaign called the “discrimination diaries” was held for people with disabilities to document their experiences of confronting barriers and discrimination.

Photograph of Justin Dart taken from White House photo of signing of Americans with Disabilities Act, July 26, 1990, <https://www.whitehousehistory.org/photos/americans-with-disabilities-act-signing>



Handicapped stage crawl-in protest up steps of Capitol

Slow pace of access legislation attacked

By the Los Angeles Times

WASHINGTON — Crawling up the Capitol steps to dramatize the barriers confronting them, scores of disabled persons rallied yesterday to protest delays in congressional action on a Senate-passed bill to expand their access to jobs, transportation and public services.

The legislation, endorsed by President Bush, has broad bipartisan backing but has been moving at glacial speed through four House committees since it was approved overwhelmingly by the Senate last September.

When dozens left their wheelchairs to crawl to the Capitol en-

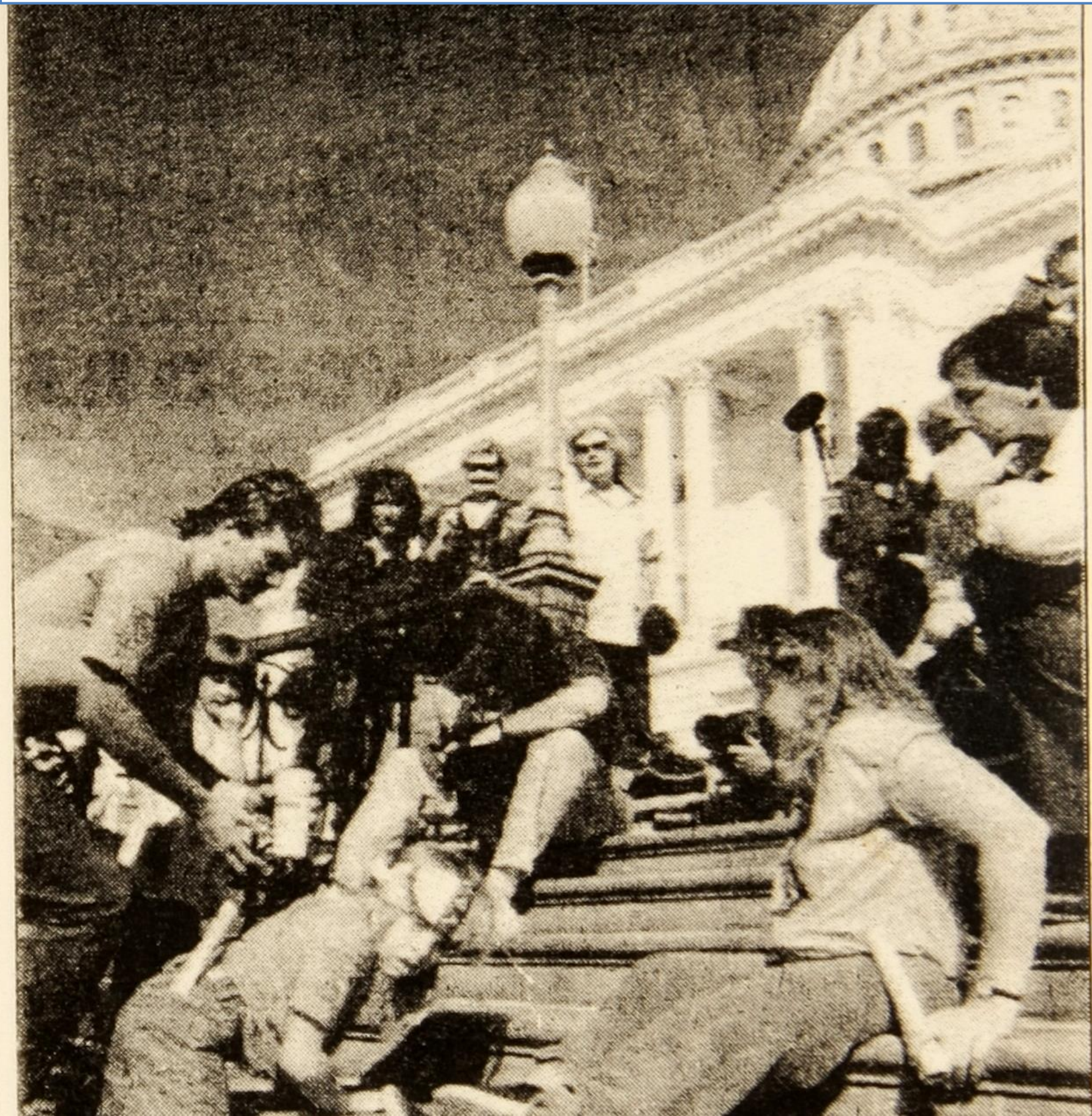
to do for people with disabilities."

Justin Dart, chairman of the President's Committee on Employment of People with Disabilities, told the rally, "Two centuries is long enough for people with disabilities to wait before the constitutional promise of justice is kept."

"If we have to come back, perhaps we'll simply stay until they pass (the bill)," said I. King Jordan, first deaf president of Gallaudet College for the deaf located nearby, hinting at a disabled camp-in on Capitol Hill.

Organizers of the rally said disabled persons from 30 states, many in wheelchairs, demand immediate ac-

Over and over again disability rights advocates demonstrated the need for the ADA



Post 3/13/90



Americans with Disabilities Act of 1990

The ADA generally uses the framework of Civil Rights Act of 1964 for coverage and enforcement and the terms and concepts of Section 504 for what constitutes discrimination.



1st Photograph, Tom Olin photo of Capitol Crawl <https://newmobility.com/the-capitol-crawl/> and 2nd photograph, President Bush signs the Americans with Disabilities Act, White House Photograph

ADA Congressional Findings 42 U.S.C. § 12101(a)

(a) FINDINGS

The Congress finds that—

- (1) physical or mental disabilities in **no way diminish a person's right to fully participate in all aspects of society**, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a [disability](#) or are regarded as having a [disability](#) also have been subjected to discrimination;
- (2) **historically**, society has tended to **isolate and segregate** individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities **continue to be a serious and pervasive social problem**;
- (3) **discrimination** against individuals with disabilities **persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services**;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced **discrimination on the basis of [disability](#) have often had no legal recourse to redress such discrimination**;

(emphasis added)

ADA Congressional Findings Part II

- (5) individuals with disabilities continually encounter various forms of discrimination, including **outright intentional exclusion**, the discriminatory effects of architectural, transportation, and communication **barriers, overprotective rules** and policies, **failure to make modifications** to existing facilities and practices, **exclusionary qualification standards** and criteria, **segregation**, and relegation to **lesser services**, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an **inferior status in our society**, and are **severely disadvantaged socially, vocationally, economically, and educationally**;
- (7) the Nation's proper goals regarding individuals with disabilities are to assure **equality of opportunity, full participation, independent living, and economic self-sufficiency** for such individuals; and
- (8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the **opportunity to compete on an equal basis** and to pursue those opportunities for which our free society is justifiably famous, and **costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.**

(emphasis added)

ADA Purpose 42 U.S.C. § 12101(b)

(b) PURPOSE It is the purpose of this chapter—

- (1)** to provide a **clear and comprehensive** national **mandate** for the **elimination** of discrimination against individuals with disabilities;
- (2)** to provide clear, strong, consistent, **enforceable standards** addressing discrimination against individuals with disabilities;
- (3)** to ensure that the **Federal Government plays a central role in enforcing the standards** established in this chapter on behalf of individuals with disabilities; and
- (4)** to **invoke the sweep of congressional authority**, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(emphasis added)

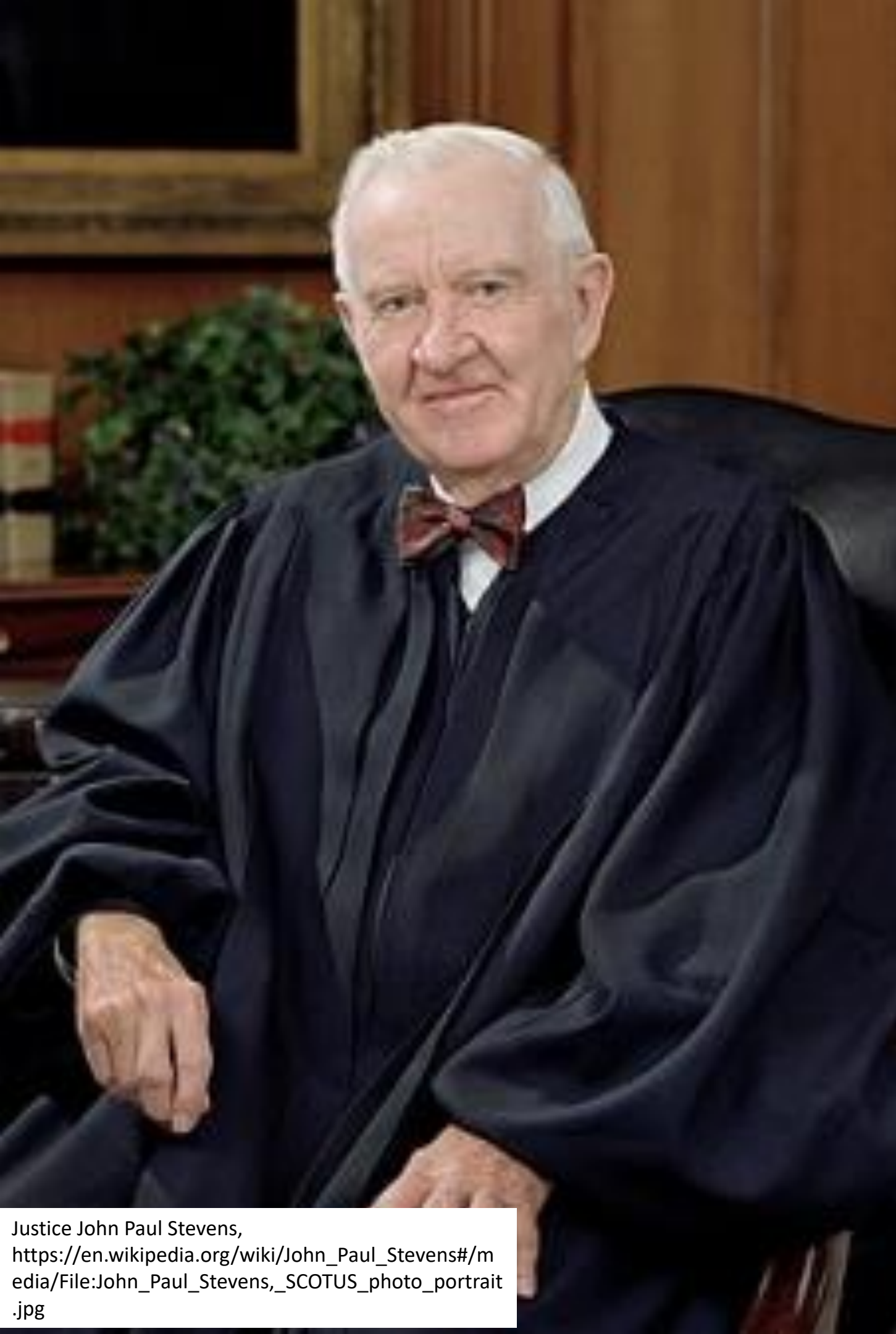


In *Olmstead v. LC* (1999), the Supreme Court held that people with disabilities have a qualified right to receive services in the community rather than in institutions under Title II of the ADA. Justice Ruth Bader Ginsburg cited these two provisions from the Congressional Findings in the ADA . . .

"historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem";

"individuals with disabilities continually encounter various forms of discrimination, including ... segregation"

She said that these findings showed that Congress “explicitly identified unjustified “segregation” of persons with disabilities as a ‘for[m] of discrimination.’”



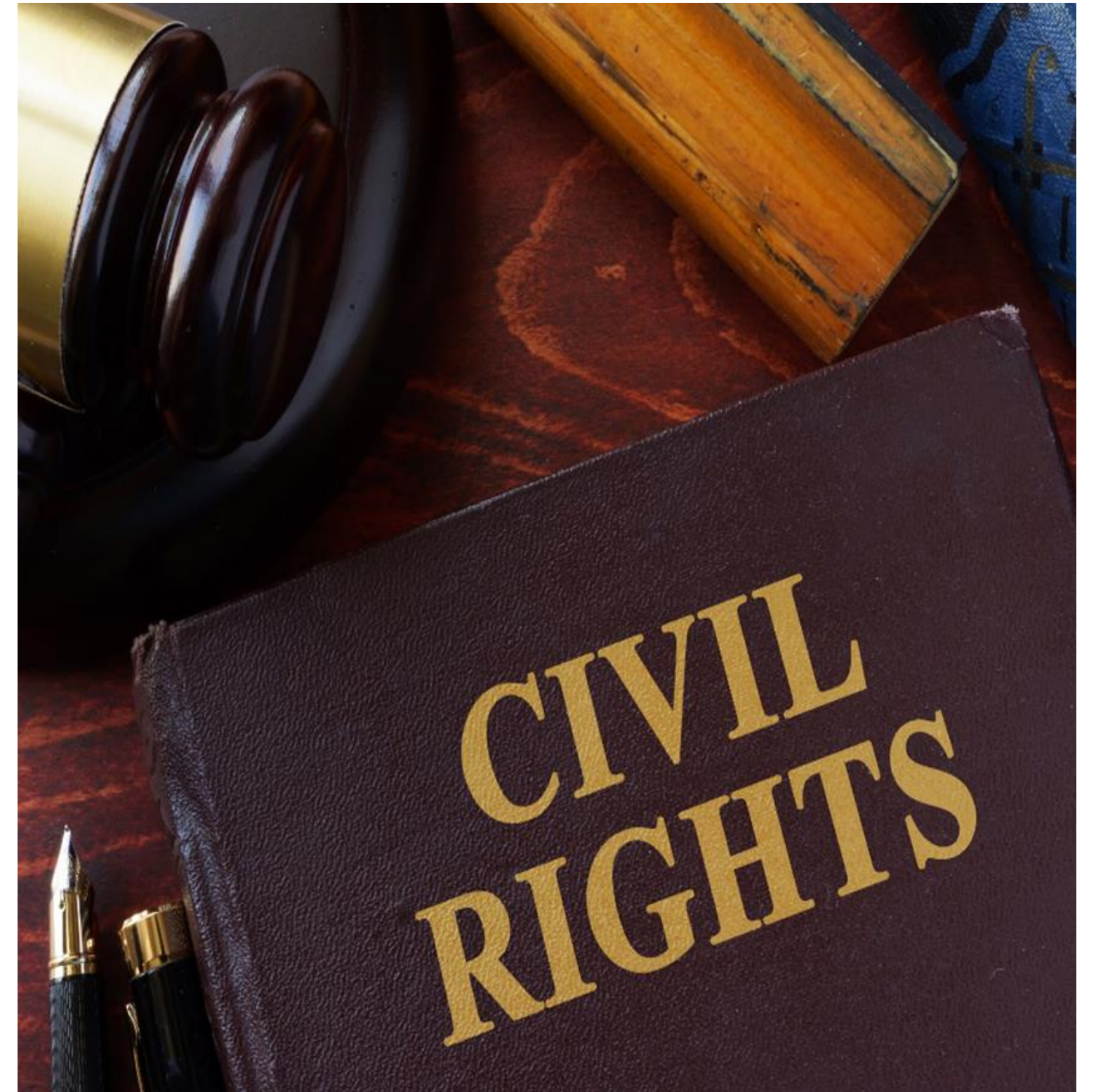
In *PGA Tour, Inc. v. Martin* (2001), Justice John Paul Stevens wrote the opinion of the 7-2 majority. The Supreme Court held that golfer Casey Martin who had a disability that caused him to need a golf cart in spite of a rule requiring walking was not a modification that would “fundamentally alter the nature” of the game. It used the following Congressional findings in making this determination.

- “[D]iscrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.”
- “Congress,” according to the decision, “noted that the many forms such discrimination takes include ‘outright intentional exclusion’ as well as the ‘failure to make modifications to existing facilities and practices.’”

ADA Title II

“... no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

42 U.S.C. 12132



Americans with Disabilities Regulations Title II Regulations

- The “**integration regulation**” requires a “public entity [to] administer ... programs ... in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” [28 CFR § 35.130\(d\)](#).
- The “**reasonable-modifications regulation**” requires public entities to “make reasonable modifications” to avoid “discrimination on the basis of disability,” but does not require measures that would “fundamentally alter” the nature of the entity’s programs. [28 CFR § 35.130\(b\)\(7\)](#).
- *See the entirety of the [ADA Title II regulations](#) here.*



Unique Challenges to Accommodations for Mental Health Diagnoses and /or Developmental Disabilities

- Mental Illness/Developmental Disabilities often less apparent than other disabilities.
- Accommodations also can be harder to identify
- Wide variety of different diagnoses, symptoms, and conditions requiring different accommodations.

Photo by [Nathan Anderson](#) on [Unsplash](#)

Photo from NBC News of Naomi Osaka
<https://www.nbcnews.com/news/us-news/u-s-open-offering-tennis-players-access-mental-health-services-n1277727>





Photo by [Paul Green](#) on [Unsplash](#)

Accommodations

- Use Plain Language
<https://www.plainlanguage.gov/>
- Speak slowly
- Use pictures and visual tools
- Repeat important information
- Ensure directions are understood by asking for them to be repeated back
- Ask someone with expertise in the specific type of disability
- Provide support for virtual communications

Additional Accommodations

- Breaks
- Timing and scheduling modifications
- Provide information in alternative formats to ensure it is understood
- Allow individual to assist
- Allow use of service or comfort animal
- When appropriate, ask the individual or his/her loved ones (if appropriate) for accommodations that worked in other settings



Photo by [Oladimeji Ajegbile](#) on [Unsplash](#)



Documents and Forms

- Individuals may need assistance with documents and forms or for the materials to be simplified.
- Forms should be simple and only ask for the information that is necessary.
- Large print should be used for ease of reading.

Assistance of Others

Maintain individual's privacy and dignity as much as possible

Family members or others who assist individual can be helpful but usually the individual should be consulted if others can assist

Even when guardian exists, individual has right to respect and usually to interact with who he/she chooses.

Individual providing accompaniment should not be required to interpret.

Photo by [Dane Deaner](#) on [Unsplash](#)



Georgia Mental Health & Developmental Disability Resources/Organizations

Georgia Crisis & Access Line -- 1-800-715-4225.

Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD)

Georgia Advocacy Office. The Georgia Advocacy Office is the state's designated and federally mandated Protection and Advocacy Organization for people with disabilities.

Crisis Intervention Teams (CITs) and Training: Georgia law enforcement officers can participate in a 40-hour CIT training to effectively assist individuals with mental illness and other brain disorders who are in crisis. Trainings in CIT are held throughout the year. For more information, contact Pat Strode by telephone (770 234-0855) or via email at cit@namiga.org .

National Association of Mental Illness Georgia (NAMI Georgia)

Mental Health America of Georgia (MHA of Georgia)

Georgia Council on Developmental Disabilities (GCDD)



Photo by [Camylla Battani](#) on [Unsplash](#)

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