

Disability and First Amendment Rights

Keywords:

- Universal access
- Disability culture
- Employment opportunities
- Hate crime

Summary:

The disabled represent a minority group that lacks both cultural cohesiveness and political clout. As a result, many of the disabled have fallen victim to heinous hate crimes, unequal hiring practices, and lack of universal access. While the First Amendment guarantees freedom of speech, there is nevertheless the possibility that a minority group's speech be overlooked due to an either hostile or apathetic majority.

Key points:

- The Americans with Disabilities Act (ADA), signed into law on July 26, 1990, was designed to reduce barriers to employment and ensure access to education for people with disabilities.
- While not a "typical" cultural group and lacking in the strong cohesiveness that often characterizes one, the disabled have nevertheless proven capable of uniting in the name of asserting their civil rights.
- Disabled people have historically been forced into dependence on others for not only basic survival needs, but for governmental representation. However, with the advances in biotechnical medicine and the growing population of military veterans from the Vietnam War, the disabled have been an increasingly more vocal group.
- Looking forward, disability rights activists have identified that "deep structural barriers" to employment have *not* been addressed by disability legislation. In essence, while the government has eliminated discrimination on the basis of disability, *de facto* obstacles to employment have nevertheless persisted.

Brief:

While there isn't much literature on First Amendment issues as they apply to the disabled, there is nonetheless the empirical and deductive evidence that the disabled represent a minority group whose speech rights aren't intrinsically the same as everybody else's. Although they certainly have the right to speak—and aren't necessarily oppressed in that respect—the disabled lack the ability to get their voice heard on the scale of a more "typical" cultural group—such as African-Americans or Latinos. But this isn't to say that African-Americans or Latinos, for example, have been able to completely equalize their democratic rights with the majority Whites simply because they have effectively pushed for the successful passage of anti-discrimination legislation; *de facto* discrimination, ranging from housing to education to employment, still

persists, although not sanctioned by the government. The disabled, within this respect, have accomplished a great deal considering their lack of political clout, group cohesiveness, and dependence on others to raise awareness on their behalf. The passage of the 1973 Rehabilitation Act and, finally, the Americans with Disabilities Act, mark major milestones in the disabled's ultimate goal in achieving full and equal treatment under the law.

In order to examine contemporary issues in the First Amendment rights of the disabled, it is extremely important to recognize the tactics the disabled used in the past to push for favorable legislation. Similar to the other "less-enfranchised" minority groups of the 20th century, such as Hispanic Americans, African-Americans, and women, the disabled clamored for equal treatment under the law—especially in regards to employment and education. However, as mentioned previously, the disabled group, as a whole, lacks crucial components that work to the benefit of a civil rights movement. First, despite advances in biotechnology, disabled people are still dependent on others for basic survival needs and, as a consequence, for representation as well. Second, the disabled, while a group in their own right, are not particularly seen as a "viable" minority bloc; rather, they are widely seen as victims of a medical condition, deserving of charity and sympathy. The Hispanic American and African-American blocs are, on the other hand, seen as inherent and identifiable groups; as a result of this recognition, they have never actually needed to justify their viability as a group.

An example of a major First Amendment hurdle for the disabled was welfare reform. Although welfare generally had good intentions, the paternalism of the program nevertheless deterred the freedom of many of its disabled recipients. Disabled recipients of welfare were forced to comply with the dictates of rehabilitation counselors and welfare caseworkers in order to receive any benefits. Jacobus Tenbroek, a famous blind scholar-activist wrote the following regarding the welfare compliance: "It is the agency of welfare, not the recipient, who decides what life goals are to be followed, what ambitions may be entertained, what services are appropriate, what wants are to be recognized, what needs may be budgeted, and what funds allocated to each. In short the recipient is told *what* he wants as well as how much he is wanting." The welfare system, in essence, gave little voice to the disabled to live their lives as they see fit, thereby violating, or at least diminishing their freedom of speech.

Despite major obstacles to the disabled group's ability to voice dissent and push for formidable, favorable legislation, a lot has been accomplished since the 1970's (when the disabled movement technically began). The 1973 Rehabilitation Act addressed the disabled community's concern of strict compliance to welfare directives and prohibited the discrimination on the basis of disability in programs conducted by Federal agencies or programs that received Federal financial funding. In 1990, the disabled won another legislative victory with the passage of the American Disabilities Act, which afforded the disabled similar protections as other minority groups protected by the Civil Rights Act of 1964. However, despite these political victories, the disabled, like other minority groups in the United States, still face *de facto* discrimination, especially in the workplace and in medical-care legislation. Although equal under government provision, the disabled still face major obstacles in obtaining equal opportunity for employment. As well, although the 1973 Rehabilitation Act prohibited discrimination on the basis of disability by Federal agencies or federally funded programs, disabled people nevertheless face major hurdles and life restricting requirements for aid. For example, under Medicare if home services

enable an individual to leave his or her home on a routine basis, that individual will lose coverage for such services. It seems ironic that the state would punish a disabled person for reaching self-sufficiency by taking the very thing that helped him or her to achieve that state.

It would seem, at least in this case, that while the disabled don't necessarily have many notable obstacles to their First Amendment rights, they nevertheless face particular hurdles in achieving favorable legislation. However, whether this has to do with *de facto* limits to their free speech or austere budgetary predilections among state legislators is ambiguous. Regardless, the fact that the disabled find it excruciatingly more difficult to enact practical legislation that allows for sustainable state assistance to achieve relative self-sufficiency can be considered an obstacle to free speech—especially considering free speech can be considered unhindered participation and representation in government.

Works Cited:

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Links:

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<http://www.ada.gov/cguide.htm>

<http://law.jrank.org/pages/7291/Hate-Crime.html>

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<http://bancroft.berkeley.edu/collections/drilm/>



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