

# Access Without the ADA: The Implications of the Federal Judiciary's Exemption from Following the Disability Rights Statute It Upholds

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*For over thirty years, the Americans with Disabilities Act (ADA) has been the main federal protection against discrimination for disabled people. Although ADA protections are ensured in the federal legislative branch and in state courthouses, this pivotal disability rights statute does not cover the federal judiciary. ADA claims are consequently litigated in federal courthouses that may be inaccessible to disabled people, yet there is little scholarship on the topic. This Note aims to fill this gap by exploring the implications of the lack of accessibility in the federal judiciary. Without ADA protections, disabled people do not have recourse when faced with discrimination and inaccessible spaces. This lack of protection threatens disabled people's access to justice, access to the workplace, and representation both on juries and within the federal judiciary. This Note consequently argues that the federal judiciary should adopt ADA protections to provide equal access to the federal court system and ensure that the federal judiciary reflects the diverse public it serves. It is time to have an informed conversation with all relevant constituencies about applying ADA protections to the federal judiciary.*

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## INTRODUCTION

Eight years after the passage of the Americans with Disabilities Act (ADA), George Lane arrived at the Polk County Courthouse in Tennessee only to find that there was no elevator for him to reach its second floor. A wheelchair user, Lane had no choice but to attempt to crawl up two flights of stairs to appear in court.<sup>1</sup> As he struggled, the judge and other courthouse employees stood by and laughed.<sup>2</sup> When Lane refused to go through the demoralizing and painful experience of crawling up the stairs again after the court took a lunch break, he was arrested and jailed for failing to appear.<sup>3</sup>

When Lane, joined by court reporter and fellow wheelchair user Beverly Jones, sued the state for discrimination, the law was on their side. The ADA protects disabled people from discrimination in many areas of public life, and the U.S. Supreme Court found that this included state courthouses.<sup>4</sup>

But if Lane and Jones had been trying to access a *federal* courthouse, the case would not have been decided in their favor. While the ADA applies to the legislative branch,<sup>5</sup> it does not cover the executive branch or the federal judiciary.<sup>6</sup> ADA claims are consequently litigated in courthouses that disabled people<sup>7</sup> may be unable to enter.

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1. *Tennessee v. Lane*, 541 U.S. 509, 514 (2004).

2. Adam Cohen, *Editorial Observer; Can Disabled People Be Forced to Crawl up the Courthouse Steps?*, N.Y. TIMES (Jan. 11, 2004), <https://www.nytimes.com/2004/01/11/opinion/editorial-observer-can-disabled-people-be-forced-crawl-up-courthouse-steps.html> [<https://perma.cc/S7Y6-E5LG>].

3. *Lane*, 541 U.S. at 514.

4. *Id.* at 533–34.

5. Congressional Accountability Act of 1995, Pub. L. No. 104-1, 109 Stat. 3 (1995).

6. See 42 U.S.C. § 12131(1) (defining “public entity” as “any State or local government,” “any department, agency, special purpose district, or other instrumentality of a State or States or local government,” or “the National Railroad Passenger Corporation, and any other commuter authority”).

7. Individuals have different preferences on person-first (e.g. “people with disabilities”) versus identity-first (e.g. “disabled people”) language when describing the disability community. Jennifer Safstrom & Joseph Mead, *Developing Inclusive Language Competency in Clinical Teaching*, 29 CLINICAL L. REV. 349, 362 (2023) (“Different groups within the disability community have very different views on person-first versus identity-first approaches.”); see also Dana S. Dunn & Erin E. Andrews, *Person-First and Identity-First Language: Developing Psychologists’ Cultural Competence Using Disability Language*, 70 AM. PSYCH. 255, 262 (2015) (“[R]esearchers in disability studies encourage the use of identity-first language. Some disabled people choose one over the other, whereas

More than one in every four adults in the United States has a disability,<sup>8</sup> and it is the only minority group one can join at any time. Yet, disabled people have few protections against discrimination when accessing, litigating, and working in the federal courts,<sup>9</sup> which excludes a large part of the population from fully participating in the justice system.<sup>10</sup>

This Note explores the implications of this lack of ADA protections in the federal judiciary. First, this Note describes the importance of the ADA and the current lack of disability protections in the federal judiciary. Second, it delves into the ramifications of the federal judiciary's exemption from compliance with the ADA. Without ADA protections, disabled people do not have recourse when faced with discrimination and inaccessible spaces, threatening disabled people's access to justice, access to the workplace, and representation on juries and within the federal judiciary itself. Finally, given these concerns, this Note argues that the federal judiciary should adopt ADA protections to align with its stated goal to provide "the strongest presumption of open access to all levels of the judicial system"<sup>11</sup> and to "reflect[] the diversity of the public it serves."<sup>12</sup> More than thirty years after the passage of the ADA, it is past time to have an informed conversation with all relevant constituencies about applying ADA protections to the federal judiciary.

## I.

### THE AMERICANS WITH DISABILITIES ACT

The ADA, passed in 1990, "invoke[s] the sweep of congressional authority, including the power to enforce the [F]ourteenth [A]mendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."<sup>13</sup> It defines "disability" as a physical or mental impairment, or record or perception of a mental or physical impairment, that substantially limits one or more major life activities.<sup>14</sup> While the ADA does not

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others respond to either or use them interchangeably."). This Note will use identity-first language, as it aligns with the perception of disability as "a function of social and political experiences occurring within a world designed largely for nondisabled people." *Id.* at 259.

8. *Disability Impacts All of Us*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html> [<https://perma.cc/ND5A-57Y5>].

9. See 42 U.S.C. § 12131(1) (defining "public entity" as not including federal courts, leaving disabled people with few protections in these spaces).

10. See *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) ("[F]ailure to accommodate persons with disabilities will often have the same practical effect as outright exclusion . . .").

11. *Talamini v. Allstate Ins. Co.*, 470 U.S. 1067, 1070–71 (1985) (Stevens, J., concurring) (discussing how a jurisdictional discrepancy in an appeal relates to the broader issue of open access to the judicial system).

12. *Strategic Plan for the Federal Judiciary*, U.S. CTS. [hereinafter *Strategic Plan*], <https://www.uscourts.gov/statistics-reports/strategic-plan-federal-judiciary> [<https://perma.cc/7UET-W2H2>].

13. 42 U.S.C. § 12101(b)(4).

14. *Id.* § 12102(1).

list all covered disabilities, listed examples of major life activities include performing manual tasks, communicating, and taking care of oneself.<sup>15</sup> Major life activities also include bodily functions, such as digestive system or immune system functioning.<sup>16</sup>

The ADA has five parts, each of which establishes protections against discrimination in different areas. Title I regulates employment, prohibiting “covered entities” from discriminating against disabled people.<sup>17</sup> Covered entities include employers with fifteen or more employees, employment agencies, labor unions, and state and local governments.<sup>18</sup> Covered entities are required to provide reasonable accommodations for disabled employees unless it results in “undue hardship” for the entity.<sup>19</sup>

The remaining sections cover areas beyond employment. Title II requires that state and local governments give disabled people equal opportunity to benefit from their programs and services.<sup>20</sup> Title III prohibits exclusion and segregation in businesses that are generally open to the public, such as restaurants and movie theaters.<sup>21</sup> Title IV protects disabled people’s access to telecommunications.<sup>22</sup> Lastly, Title V contains provisions relating to the ADA as a whole, including its interactions with state immunity and insurance providers, its prohibition of retaliation, and attorney’s fees.<sup>23</sup> The Congressional Accountability Act of 1995 extends ADA protections to the legislative branch<sup>24</sup> but not to the federal judiciary or the executive branch.

Congress began to take action to protect disabled people from discrimination in the 1960s. The Civil Rights Act of 1964, which prohibits discrimination on the basis of sex, race, religion, or national origin,<sup>25</sup> inspired the movement for similar protections for disabled people.<sup>26</sup> Disability rights advocates began to organize for similar protections on the basis of disability. They made some progress with the passage of the Architectural Barriers Act of 1968,<sup>27</sup> which requires buildings that are constructed or altered with federal

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15. *Id.* § 12102(2)(A).

16. *Id.* § 12102(2)(B).

17. 42 U.S.C. §§ 12111–12117.

18. *Id.* § 12111(2), (5)(A).

19. *Id.* § 12112(b)(5)(A).

20. *Id.* §§ 12131–12165.

21. *Id.* §§ 12181–12189.

22. 47 U.S.C. § 225.

23. 42 U.S.C. §§ 12201–12212.

24. Congressional Accountability Act of 1995, Pub. L. No. 104-1, 109 Stat. 3 (1995).

25. 42 U.S.C. §§ 2000e–2000e-17.

26. MICHAEL L. FOREMAN, TRICIA JEFFERSON, BARBARA DE LA VIEZ, JENNY KIM PARK, PETER REILLY & BERNARD QUARTERMAN, U.S. COMM’N ON C.R., SHARING THE DREAM: IS THE ADA ACCOMMODATING ALL? A REPORT ON THE AMERICANS WITH DISABILITIES ACT 3, 5 (2000) (“The passage of the Civil Rights Act of 1964 . . . was a major inspiration for the concept of similar protection for people with disabilities.”).

27. 42 U.S.C. §§ 4151–4157.

funds after 1968 to be accessible,<sup>28</sup> and the Rehabilitation Act of 1973,<sup>29</sup> which prohibits entities that receive federal funds from discriminating against disabled people.<sup>30</sup> Section 504 of the Rehabilitation Act marked the first time that exclusion and segregation of disabled people was considered discrimination in the eyes of the law.<sup>31</sup>

But before the ADA, no federal statute comprehensively protected disabled people's civil rights.<sup>32</sup> In advocating for the ADA, Attorney General Richard Thornburgh, on behalf of President George H.W. Bush, highlighted:

One of its most impressive strengths is its comprehensive character. Over the last 20 years, civil rights laws protecting disabled persons have been enacted in piecemeal fashion. Thus, existing Federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections.<sup>33</sup>

The ADA is critical because it is the "world's first comprehensive declaration of equality for people with disabilities."<sup>34</sup> It acknowledges the history of disabled people being isolated, segregated, and discriminated against and declares the "Nation's proper goals" for disabled people: "to assure equality of opportunity, full participation, independent living, and economic self-sufficiency."<sup>35</sup> Taken together, "The ADA amounts to a national declaration of commitment to include people with disabilities in all aspects of our civic and cultural life . . . ."<sup>36</sup>

Since its passage, the ADA has increased disabled people's access to buildings, public transit, and housing, helping them achieve greater respect and inclusion in public life and their communities.<sup>37</sup> By outlining the rights and remedies for disabled people in different areas of public life, the ADA, in Justice Ruth Bader Ginsburg's words, provides "not blindfolded equality, but

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28. *Id.*

29. Rehabilitation Act of 1973, 29 U.S.C. § 794.

30. *Id.*

31. Ruth Colker, *The Rehabilitation Act of 1973*, in *FEDERAL DISABILITY LAW IN A NUTSHELL* 37–38 (5th ed. 2015).

32. *See id.*; 42 U.S.C. §§ 4151–4157; 20 U.S.C. § 1400.

33. *Americans with Disabilities Act: Hearing on S. 933 Before the S. Comm. on Lab. & Hum. Res.*, 101st Cong. 5 (1989) (statement of Dick Thornburgh, Att'y Gen. of the United States).

34. George H.W. Bush, President of the United States, Remarks at the Signing of the Americans with Disabilities Act (July 26, 1990), [https://archive.ada.gov/ghw\\_bush\\_ada\\_remarks.html](https://archive.ada.gov/ghw_bush_ada_remarks.html) [<https://perma.cc/KDL2-WB9J>].

35. 42 U.S.C. § 12101(a)(2), (7).

36. Mary A. Lynch, *The Application of Equal Protection to Prospective Jurors with Disabilities: Will Batson Cover Disability-Based Strikes?*, 57 ALB. L. REV. 289, 296 (1993).

37. FOREMAN ET AL., *supra* note 26, at 19 ("The survey demonstrated that the ADA prompted better access to buildings, greater access to transportation, and fuller inclusion in the community."); *see also* LEX FRIEDEN, TEX. HEALTH SCI. CTR. HOUS., *THE IMPACT OF THE ADA IN AMERICAN COMMUNITIES* 6 (July 23, 2015) (highlighting that the ADA's greatest impact was in access to public accommodations in addition to access to "transportation, access to independent and community living, and public awareness about the ADA and disability etiquette").

responsiveness to difference; not indifference, but accommodation.”<sup>38</sup> The ADA is consequently “the most important piece of federal legislation since the Civil Rights Act of 1964,” extending antidiscrimination protections to a new class of people.<sup>39</sup>

Despite its comprehensive nature, the ADA’s scope still has limitations. On the day he signed the ADA, President George H.W. Bush declared, “Let the shameful wall of exclusion finally come tumbling down.”<sup>40</sup> While the ADA provided more protection and opportunity for disabled people to participate in public life than ever before, many “shameful wall[s] of exclusion” still persist, particularly in the federal judiciary.

## II.

### DISABILITY RIGHTS IN THE FEDERAL JUDICIARY

Despite enormous strides in most areas of public life, disability rights in the federal judiciary are stuck in the 1960s. Although the ADA and the Rehabilitation Act cover state and local courts, these statutes do not apply to the federal judiciary.<sup>41</sup> Instead, in terms of physical access, federal courts are governed by the Architectural Barriers Act of 1968;<sup>42</sup> however, this statute has significant limitations. The Act only requires buildings that are constructed or altered with federal funds after 1968 to be accessible,<sup>43</sup> running the risk of incomplete access. For example, if the entrance of a federal courthouse is updated, it will need to be made accessible, likely including a ramp or lift. However, the restrooms in the courthouse may remain inaccessible if they have not been altered since 1968.<sup>44</sup> Further, the Architectural Barriers Act also does not provide a private right of action for violations, so would-be plaintiffs cannot sue to force the courts to give them access. Instead, one may file a complaint with the U.S. Access Board.<sup>45</sup>

In other access areas, existing law still provides incomplete coverage. The Court Interpreters Act of 1978 regulates access to federal courts for individuals who are deaf, hard of hearing, or have other communication impairments.<sup>46</sup> It establishes the use of certified interpreters in “judicial proceedings instituted by the United States,” which include criminal, civil, pretrial, and grand jury

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38. *Tennessee v. Lane*, 541 U.S. 509, 536 (2004) (Ginsburg, J., concurring).

39. LAWRENCE O. GOSTIN & HENRY A. BEYER, *IMPLEMENTING THE AMERICANS WITH DISABILITIES ACT: RIGHTS AND RESPONSIBILITIES OF ALL AMERICANS*, at xiii (1993).

40. Bush, *supra* note 34.

41. Both acts refer to state and local government. Since it is a separate branch of government, the federal judiciary is not included. *See* 42 U.S.C. § 12131(1); 29 U.S.C. § 794 (covering state or local government departments, agencies, and entities or recipients of state or local government assistance).

42. 42 U.S.C. §§ 4151–4157.

43. *Id.* § 4151.

44. Colker, *supra* note 31, at 140–41.

45. *See* 29 U.S.C. § 792.

46. *See* 28 U.S.C. § 1827.

proceedings.<sup>47</sup> This right is further bolstered by the policy of the Judicial Conference of the United States,<sup>48</sup> a policymaking body for the federal courts.<sup>49</sup> The Judicial Conference requires all federal courts to “provide reasonable accommodations to persons with communication disabilities.”<sup>50</sup> While this policy covers court participants, federal courts are not required to provide accommodations for court spectators with communications disabilities. The Judicial Conference policy also does not accommodate other disabilities, such as visual or mobility impairments.<sup>51</sup>

Additionally, protections for disabled judicial employees are incomplete. The Judicial Conference has a Model Equal Employment Opportunity (EEO) Plan, which dictates that each court adopt a plan to provide equal employment to all regardless of identity, including “handicap.”<sup>52</sup> Each court also implements an Employment Dispute Resolution (EDR) plan based on the Model EDR plan released by the Judicial Conference.<sup>53</sup> The Model EDR plan prohibits discrimination, including discrimination on the basis of disability.<sup>54</sup> Similar to the ADA, the plan defines disability as a physical or mental impairment, or record or perception of a mental or physical impairment, that substantially limits one or more major life activities of an employee.<sup>55</sup> If an employee files a complaint, they may receive an accommodation, which may include the “purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.”<sup>56</sup> There is no further information on employee rights, the accommodations process, or the means by which an “appropriate” accommodation is reached.<sup>57</sup> The result of these half-measures is that employees have only limited, and not legally enforceable, rights, and physical access remains outdated in many buildings. Without the ADA, the protections afforded to disabled people in all aspects of the federal judiciary are incomplete.

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47. *Id.* § 1827(j).

48. Marc Charmatz & Antoinette McRae, *Access to the Courts: A Blueprint for Successful Litigation Under the Americans with Disabilities Act and the Rehabilitation Act*, 3 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 333, 350–51 (2003) (citing JUD. CONF., GUIDE TO JUDICIAL POLICY AND PROCEDURES, GUIDELINES FOR PROVIDING SERVICES TO THE HEARING IMPAIRED AND OTHER PERSONS WITH COMMUNICATION DISABILITIES, at ch. 3, pt. H).

49. 28 U.S.C. § 331.

50. Charmatz & McRae, *supra* note 48.

51. *See id.*

52. JUD. CONF. U.S., MODEL EQUAL EMPLOYMENT OPPORTUNITY (EEO) PLAN, at § I (1980) (revised 1986), [https://www.ncwb.uscourts.gov/sites/ncwb/files/EEO\\_Plan.pdf](https://www.ncwb.uscourts.gov/sites/ncwb/files/EEO_Plan.pdf) [https://perma.cc/ZD2P-RSVD].

53. JUD. CONF. U.S., MODEL EMPLOYMENT DISPUTE RESOLUTION (EDR) PLAN, at ch. I, § 1 (2018), <https://www.uscourts.gov/sites/default/files/guide-vol12-ch02-appx2b-model-edr-plan.pdf> [https://perma.cc/X2S9-QAXK].

54. *Id.* at ch. II, § 1.

55. *Id.* at ch. II, § 2.

56. *Id.* at ch. X, § 12(B)(10).

57. *See id.*

A little over a decade after Congress passed the ADA, the American Bar Association passed a resolution urging all courts to implement the ADA access requirements.<sup>58</sup> Acknowledging the need for greater accessibility, the resolution urged the federal judiciary to view the ADA as a “model for effective practices in the federal court system.”<sup>59</sup> To date, it does not appear that the federal judiciary has changed its policies in response to this resolution. Federal courts remain unevenly accessible to disabled litigants, witnesses, employees, and spectators, with disastrous results.

### III.

#### IMPLICATIONS OF THE LACK OF ADA PROTECTIONS IN THE FEDERAL JUDICIARY

Discrimination against disabled people manifests in two main ways: prejudice and barriers. While prejudice may be akin to the bias faced by other marginalized groups, the barriers to access disabled people face are distinct.<sup>60</sup> Inaccessible buildings are one manifestation of how the “prejudices against people with disabilities are at work in the architecture of society itself.”<sup>61</sup> Part III describes how the law’s failure to protect disabled people against prejudice and ensure their access to the federal judiciary impacts the judiciary’s ability to effectively serve the public and ensure a fair workplace for its employees.

##### A. Access to Court Proceedings

The Constitution establishes the right to access judicial proceedings. But under current law, disabled people do not have the same level of access to federal courts as nondisabled people, threatening their ability to view and participate in court proceedings.<sup>62</sup> For example, in *Talamini v. Allstate*, Justice Stevens asserted in a concurring opinion that “[f]reedom of access to the courts is a cherished value in our democratic society. . . . There is, and should be, the strongest presumption of open access to all levels of the judicial system.”<sup>63</sup> The

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58. A.B.A., MIDYEAR MEETING RESOLUTION 112, at 1 (2002), [https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2002/2002\\_my\\_112.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2002/2002_my_112.pdf) [<https://perma.cc/Z663-T74E>].

59. *Id.*

60. Jane West, *The Social and Policy Context of the Act*, 69 MILBANK Q. 3, 6 (1991) (“Discrimination against persons with disabilities might be considered to have two aspects: (1) *prejudice* and (2) *barriers*. Persons with disabilities share with other groups the experience of being the target of prejudiced, or ‘pre-judged’ attitudes. However, many of the barriers confronted by persons with disabilities are unique to them.”).

61. Tobin Siebers, *Disability Experience on Trial*, in MATERIAL FEMINISMS 291, 295 (Stacy Alaimo & Susan Hekman eds., 2008).

62. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 599 (1980) (Stewart, J., concurring) (“[T]he First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal.”).

63. *Talamini v. Allstate Ins. Co.*, 470 U.S. 1067, 1070–71 (1985) (discussing how a jurisdictional discrepancy in an appeal relates to the broader issue of open access to the judicial system).



federal judiciary recognizes this right to access, asserting that its “historic buildings . . . are designed for the public to visit and learn first-hand about the tradition and purpose of the American judicial process.”<sup>64</sup>

Access to justice, however, looks different for disabled people. It goes beyond hiring an attorney and having one’s day in court. It is more than simply having the courts open to the public to see the judicial process in action. To view or participate in judicial proceedings, disabled people may need an accessible parking spot or restroom. They need to be able to open courthouse and courtroom doors, sit in the jury box, communicate on the witness stand, and reach the clerk counter.<sup>65</sup> Prohibitions on service animals or a lack of assistive technology at a courthouse may preclude a disabled person from being able to participate fully.<sup>66</sup> Many factors that impact disabled people’s ability to access courts are often overlooked or taken for granted by nondisabled people, demonstrating disabled people’s need for increased protection to ensure equal access to the federal court system.<sup>67</sup>

Without ADA protections, the federal judiciary falls short of its promise to provide “Access for All.”<sup>68</sup> Only buildings that were updated or constructed after the passage of the Architectural Barriers Act must be made accessible,<sup>69</sup> hindering disabled people’s physical access to these historic federal court buildings.<sup>70</sup> Likewise, although the Court Interpreter’s Act<sup>71</sup> and Judicial Conference<sup>72</sup> aim to cover people with communication disabilities, these policies fail to include protections and accommodations for other disabilities, such as visual or mobility impairments. Court spectators are also not covered by either of these rules, leaving disabled spectators who need accommodations unable to watch judicial proceedings in person like nondisabled spectators can.<sup>73</sup>

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64. *Visit a Federal Court*, U.S. CTS. [hereinafter *Visit a Federal Court*], <https://www.uscourts.gov/about-federal-courts/federal-courts-public/visit-federal-court> [https://perma.cc/85WF-2VFY].

65. Charmatz & McRae, *supra* note 48, at 333 (“For individuals with disabilities, ‘access to the courts’ involves more than hiring a lawyer, filing a complaint, or proceeding through the numerous stages of the litigation process. . . . [I]n this context, [it] means finding an accessible parking place, getting up steps, opening courthouse doors, finding the courtroom, sitting at counsel tables, entering the jury box, sitting on the bench, and communicating effectively with judges, lawyers, courtroom personnel, and the jury.”).

66. Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities, and the Legal System*, 17 ILSA J. INT’L & COMPAR. L. 281, 305 (2011).

67. Telephone Interview with Lili Siegel, Former Law Clerk, U.S. Dist. Ct. N.D. Cal. & Or. Ct. App. (Apr. 2, 2024).

68. *Visit a Federal Court*, *supra* note 64.

69. 42 U.S.C. § 4151.

70. See Colker, *supra* note 31, at 140–41 (“Coverage under the ABA is further limited because, when alterations are made, only the altered portion of a covered building must be made accessible to it. Thus, for example, a building might have accessible restrooms (if the portion of the building containing the restrooms is altered) but have no accessible entry into the building.”).

71. See 28 U.S.C. § 1827.

72. See Charmatz & McRae, *supra* note 48.

73. *Id.* at 351.

Remote access of court proceedings is not comprehensive enough to make up for a disabled spectator's inability to access proceedings in person. The Judicial Conference only recently changed its policy to permit remote audio access to non-trial proceedings of civil and bankruptcy cases, but the policy change does not include criminal proceedings. Judges can still exercise discretion to allow parties and counsel to appear remotely by teleconference or videoconference.<sup>74</sup>

Most federal courts do not record or broadcast civil cases. For example, three district courts in the Ninth Circuit are a part of an extended pilot program allowing some video coverage. Likewise, with advance permission, the Ninth Circuit allows cameras and live streaming of oral arguments. The Second Circuit also allows cameras in some cases, and the Third Circuit provides video of select oral arguments.<sup>75</sup> The sparse remote coverage currently offered by the federal court system cannot replace a person's inability to attend proceedings in person.

Moreover, the Judicial Conference policy does not have the legal backing of a statute. The policy functions as a mere suggestion for federal courts to promote uniformity. Each federal court then creates its own policy.<sup>76</sup> Thus, both the substance of the possible accommodations and the procedure by which they are provided are variable and uncertain.<sup>77</sup> For example, the Central District of California has a seven-page policy posted on its website outlining accommodations policies for jurors, trial participants, and the public.<sup>78</sup> In contrast, the Southern District of New York website simply states, "If you are an individual with a disability who needs an accommodation to participate in a court proceeding or other court activity, you may make a request for accommodations," and provides a link to an email address for submitting such requests.<sup>79</sup> The Southern District's website provides no additional information about the accommodations process,<sup>80</sup> leaving disabled people without any

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74. Temporary permission to conduct criminal proceedings by teleconference and video conference concluded in May of 2023. *Judicial Conference Revises Policy to Expand Remote Audio Access over Its Pre-COVID Policy*, U.S. CTS. (Sept. 12, 2023), <https://www.uscourts.gov/news/2023/09/12/judicial-conference-revises-policy-expand-remote-audio-access-over-its-pre-covid> [<https://perma.cc/UEY4-HE7Z>].

75. SARAH J. ECKMAN & JOANNA R. LAMPE, CONG. RSCH. SERV., BROADCASTING FEDERAL CRIMINAL PROCEEDINGS 2 (Aug. 14, 2023), [https://www.congress.gov/crs\\_external\\_products/IN/PDF/IN12220/IN12220.2.pdf](https://www.congress.gov/crs_external_products/IN/PDF/IN12220/IN12220.2.pdf) [<https://perma.cc/TV3S-2ARM>].

76. *Governance and the Judicial Conference*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference> [<https://perma.cc/M4WZ-2PD4>].

77. Siegel, *supra* note 67.

78. *Guidelines for Providing Accommodations for Trial Participants with Communications Disabilities, Jurors, and Members of the Public*, U.S. DIST. CT. C.D. CAL., <https://www.cacd.uscourts.gov/forms/guidelines-providing-accommodations-trial-participants-communications-disabilities-jurors-and> [<https://perma.cc/5AJ4-NYXE>].

79. *Request for Accommodation*, S.D.N.Y., <https://www.nysd.uscourts.gov/request-for-accommodation> [<https://perma.cc/JF29-QSS2>].

80. *See id.*

further details about how they can get the accommodations they need to participate.

Conversely, if a courthouse is covered under the ADA, disabled people have recourse to challenge the barriers they face. For example, many plaintiffs have successfully challenged the lack of wheelchair accessibility in state courthouses. In *Tennessee v. Lane*, two wheelchair users, a defendant and a court reporter, needed to crawl or be carried up the courthouse stairs because the building lacked wheelchair accessibility.<sup>81</sup> The court reporter was dropped as she was carried up the courthouse steps.<sup>82</sup> Similarly, in *Matthews v. Jefferson*, the plaintiff, a wheelchair user, was carried up to the second floor of the courthouse only to find that there was no accessible restroom for him to use or subsequent plan for him to be carried down at the end of the day.<sup>83</sup> These barriers threaten disabled people's health and safety in addition to their access to justice. Because the ADA covers state and local courts, these plaintiffs could successfully challenge their exclusion from the judicial process.

The same problems may exist in federal courts, but the ADA does not afford those plaintiffs legal standing to challenge inaccessible spaces.<sup>84</sup> Federal courthouses often have inaccessible witness stands, jury boxes, and restrooms, leaving disabled people without the accommodations they need to fully participate in the court proceedings.<sup>85</sup> Having to crawl up stairs or being unable to access the witness stand or counsel table may also impact disabled people's perceived credibility as attorneys, witnesses, litigants, and employees.<sup>86</sup> The barriers disabled people face in courthouses exemplify how the justice system is not designed for disabled people and contributes to the exclusion of disabled people at large.<sup>87</sup> Furthermore, without ADA protections, disabled litigants may be "doubly victimized"—they have both been wronged and left without recourse in the federal courts.<sup>88</sup>

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81. *Tennessee v. Lane*, 541 U.S. 509, 514 (2004).

82. Siebers, *supra* note 61, at 291.

83. *Matthews v. Jefferson*, 29 F. Supp. 2d 525, 528 (W.D. Ark. 1998).

84. For example, in April 2024 I went to watch my friend, an attorney, represent a client at the Alameda County Courthouse in Berkeley, California. I have a disability that impacts my spine, and I am often unable to sit as a result, so I stood with my cane in the back of the courtroom. After the court clerk had asked everyone to sit down multiple times, he came up to me and asked me to sit down. I told him that I had a disability and was unable to sit. He immediately told me to leave the courtroom and started escorting me out. Since the ADA covers state courts, I had a legal right to be in the courtroom and be accommodated despite the court clerk asking me to leave. If I had been attempting to watch federal court proceedings, I would not have had the legal backing to assert my right to view the court proceedings.

85. Siegel, *supra* note 67.

86. See Ortoleva, *supra* note 66, at 311.

87. See *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) ("[F]ailure to accommodate persons with disabilities will often have the same practical effect as outright exclusion . . ."); Siebers, *supra* note 61 ("Prejudices against disabled people are at work in the architecture of society itself.").

88. Siebers, *supra* note 61, at 294 ("The wronged are doubly victimized because they have both suffered injustice and been deprived of the means to argue their case.").

Given that ADA cases are often litigated in federal court, the lack of protections for disabled people is even more concerning. In crafting the ADA, Congress gave federal courts the latitude to decide the parameters of disability rights.<sup>89</sup> Federal courts consequently rule on whether state courts and other places covered by the ADA are accessible,<sup>90</sup> even though the federal judiciary itself has limited disability rights because it is not included in the ADA. Disabled people are expected to bring ADA cases in courts that are not mandated to be accessible to them. It is hypocritical and unjust that disabled people must bring their discrimination cases in courts that are exempt from the very statute that ensures their inclusion in public life.

### B. *Discrimination in the Workplace*

The lack of ADA protections impacts disabled people's ability to use the justice system and may also hinder their ability to participate in the federal judiciary as judges, clerks, or other courthouse employees. Much like access to justice, access to the workplace looks different for disabled and nondisabled people. Disabled employees may need countless accommodations to access the workplace like their nondisabled peers,<sup>91</sup> and disabled judicial employees are no exception. Disabled workers may need accessible equipment or software, a flexible work schedule, special parking spots and elevators, or an aide to assist them. While the ADA outlines the process and standards by which employers should accommodate disabled people,<sup>92</sup> the federal judiciary, along with the executive branch, are exempt.

Since disabled employees in the federal judiciary are not protected by the ADA, they have neither the protection from discrimination on the basis of disability nor the ability to seek the accommodations they need. Given the incomplete protections provided by the Architectural Barriers Act,<sup>93</sup> disabled employees may find themselves unable to use the restroom or even enter the building in which they work.<sup>94</sup> Likewise, even though the Model EDR<sup>95</sup> and EEO<sup>96</sup> plans prohibit discrimination on the basis of disability and obtaining accommodations through these processes is possible,<sup>97</sup> the Judicial Conference policies are merely models that courts may—but are not required to—adopt.<sup>98</sup> Court policies are consequently vague and difficult to access, making

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89. RUTH O'BRIEN, CRIPPLED JUSTICE: THE HISTORY OF MODERN DISABILITY POLICY IN THE WORKPLACE 176 (2001).

92. *Id.*

91. *Reasonable Accommodations in the Workplace*, ADA NAT'L NETWORK, <https://adata.org/factsheet/reasonable-accommodations-workplace> [<https://perma.cc/U3QW-SKM9>].

92. 42 U.S.C. §§ 12111–12117.

93. 42 U.S.C. § 4151.

94. Colker, *supra* note 31, at 140–41; Siegel, *supra* note 67.

95. JUD. CONF. U.S., *supra* note 53.

96. JUD. CONF. U.S., *supra* note 52.

97. JUD. CONF. U.S., *supra* note 53, at ch. X, § 12(B)(10).

98. *Id.* at ch. I, § 1.

employees' rights unclear.<sup>99</sup> Former federal judge Nancy Gertner explains: "To the extent that the complaint process is supposed to give content to the rules—defining what is or what is not harassment or discrimination—the rules are effectively inaccessible to employees or, for that matter, other judges."<sup>100</sup>

As a result of the lack of protections, disabled judicial employees, such as law clerks and federal public defenders, are unable to sue for discrimination or seek damages.<sup>101</sup> The federal judiciary is similarly exempt from Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex, race, religion, or national origin.<sup>102</sup> This lack of protections puts disabled employees with multiple marginalized identities, such as disabled women,<sup>103</sup> without recourse beyond the EDR in the face of unequal treatment.

Without the ADA to mandate compliance, the federal judiciary is largely unequipped to provide accommodations. A disabled attorney who has clerked at both the federal and state level reports that the way each court handled accommodations was markedly different. While the state court personnel seemed familiar with the interactive accommodations process mandated by the ADA, federal court personnel seemed "bamboozled" by her disability.<sup>104</sup> Lawyers are not typically trained on how to work with disabled people, leaving disabled judicial employees at the mercy of people who may be unequipped to navigate their access needs.<sup>105</sup> Moreover, without legal rights, disabled judicial employees are reliant on the goodwill of judges and human resources departments to listen to their needs and decide to accommodate them appropriately.<sup>106</sup> The absence of mandated ADA protections leaves disabled employees reliant on goodwill rather than guaranteed rights, resulting in inconsistent and often inadequate accommodations.

If a disabled person is unable to get the accommodations they need, they may file a complaint, but going through the EDR process is unlikely to lead to a helpful resolution. Complaints about judges are overseen by other judges,<sup>107</sup>

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99. Nancy Gertner, *Sexual Harassment and the Bench*, 71 STAN. L. REV. ONLINE 88, 89 (2018) ("Both plans could not be more general."); *id.* at 90 ("[T]he rules are effectively inaccessible to employees or, for that matter, other judges."); Siegel, *supra* note 67.

100. Gertner, *supra* note 99, at 90.

101. Neither the Model EEO plan nor the Model EDR plan include the ability to sue for discrimination or seek damages. *See* JUD. CONF. U.S., *supra* note 52; JUD. CONF. U.S., *supra* note 53.

102. 42 U.S.C. §§ 2000e–2000e-17.

103. *See e.g.*, Robyn Lewis Brown & Mairead Eastin Moloney, *Intersectionality, Work, and Well-being: The Effects of Gender and Disability*, 33 GENDER & SOC'Y 94 (2018) (documenting the layered discrimination that disabled women face from their intersectional identity).

104. Siegel, *supra* note 67 ("[Clerking] was tough in part because people were a bit bamboozled by me at times and just like wanted to do the right thing, but did not know what [the right thing] was.").

105. *See* Ortoleva, *supra* note 66, at 301–02 ("[L]awyers are not trained on disability law or on how to work with clients with disabilities. . . . They also have little experience working with disabled persons and minimal understanding of the so-called 'disability etiquette,' which helps in addressing and interacting with persons with disabilities.").

106. *See id.*

107. JUD. CONF. U.S., *supra* note 53, at ch. X, § 3.

making the process fraught with bias. Recent attention given to the problem of sexual harassment in the federal judiciary underscores this problem.<sup>108</sup> In a hearing before the Subcommittee on Courts, Intellectual Property, and the Internet, former clerk Caitlyn Clark describes how “complaints against sitting judges are adjudicated by the judges’ peers, leaving the fox guarding the henhouse.”<sup>109</sup> Furthermore, the process may take months, and employees may need to hire an attorney.<sup>110</sup> Then, remedies are limited—most complaints are dismissed<sup>111</sup>—and it is rare that the complaint will result in formal discipline.<sup>112</sup> Given the issues of bias and inefficiency, the EDR process is unlikely to aid disabled judicial employees in obtaining reasonable accommodations.

Additionally, the significant power imbalance between judges who oversee the EDR process and employees likely deters disabled workers from filing a complaint.<sup>113</sup> Unlike judicial employees, federal judges have job protections. For example, Article III judges can only be removed through impeachment by the House and conviction by the Senate.<sup>114</sup> Their salaries also cannot be diminished during their tenure.<sup>115</sup> Likewise, although any person may file complaints about a judge’s conduct or health through the Judicial Conduct and Disability

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108. See e.g., *Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the Need for Statutory Change: Hearing Before the Subcomm. on Cts., Intell. Prop. & the Internet of the H. Comm. on the Judiciary*, 117th Cong. 4 (2022) (statement of Laura Minor, Former Assoc. Dir., Dep’t Program Servs.; Former Equal Emp. Opportunity Officer, Admin. Off. Cts.; and Former Sec’y, Jud. Conf. U.S.) [hereinafter Minor Statement] (“When employees formally chose to report misconduct, oftentimes investigations were biased against the individual filing the report and conducted in a way that favored the interests of those with greater power and influence.”).

109. *Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the Need for Statutory Change: Hearing Before the Subcomm. on Cts., Intell. Prop. & the Internet of the H. Comm. on the Judiciary*, 117th Cong. 10 (2022) (statement of Caitlyn Clark, Former Clerk, U.S. Dist. Ct. M.D. Ga.) [hereinafter Clark Statement].

110. See e.g., *Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the Need for Statutory Change: Hearing Before the Subcomm. on Cts., Intell. Prop. & the Internet of the H. Comm. on the Judiciary*, 117th Cong. (2022) (written statement of Michelle Cohen Levy, EDR Couns. for Caitlyn Clark) [hereinafter Levy Statement].

111. See e.g., U.S. CTS., JUDICIAL COMPLAINTS—COMPLAINTS COMMENCED, TERMINATED, AND PENDING WITH ALLEGATIONS AND ACTIONS TAKEN UNDER AUTHORITY OF 28 U.S.C. 351–364 DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2022 1–3 (2022), [https://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_s22\\_0930.2022.pdf](https://www.uscourts.gov/sites/default/files/data_tables/jb_s22_0930.2022.pdf) [<https://perma.cc/6ENN-VKL8>] (demonstrating that, in 2022, of 1,520 complaints that were commenced, 252 were related to discrimination on the basis of race, color, sex or other, and 1,135 of them were dismissed in whole or in part).

112. See e.g., *id.* at 4 (highlighting that, in 2022, there was only one complaint where remedial action was taken, which resulted in censure or reprimand).

113. See Gertner, *supra* note 99, at 92 (“[T]here exist large power differentials between judges and employees.”); Clark Statement, *supra* note 109, at 10 (“Judges wield an immense amount of power and influence . . . I quickly realized that engaging in [the EDR] process would make me a pariah within the legal community.”); Minor Statement, *supra* note 108.

114. See U.S. CONST. art. III, § 1.

115. *Id.*

Process,<sup>116</sup> impeachment and conviction are incredibly rare.<sup>117</sup> This imbalance underscores the limited power disabled employees have to challenge their treatment in the judiciary.

The power dynamic between judges and employees has been more thoroughly analyzed in the context of sexual harassment between judges and law clerks.<sup>118</sup> Many judicial employees are law clerks who work for a judge for one to two years early in their careers. Each judge and their clerks work in a small, intimate chambers environment.<sup>119</sup> Each chambers is “a fiefdom, with its own rules and norms.”<sup>120</sup> The relationship between a judge and a clerk is consequently more “similar to that of a professor and a student than a traditional employment relationship.”<sup>121</sup> Judges are not only clerks’ bosses, but also recommenders who help propel clerks to the next phase of their career paths.<sup>122</sup> Filing a complaint could result in a negative recommendation that could impact a clerk’s professional trajectory. This deters clerks from filing complaints. Whether it be for sexual harassment or disability discrimination, there is a high likelihood that going through the EDR process will negatively impact a clerk’s career.<sup>123</sup>

Given the power dynamic between judges and employees, vague judicial policies, and the fraught complaints process, disabled judicial employees are vulnerable to discrimination and left without recourse. The treacherous landscape of the federal judiciary runs the risk of deterring disabled people from working for the federal judiciary or subjecting them to unequal treatment as employees.

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116. See 28 U.S.C. § 351(a).

117. The Federal Judicial Center reports only fifteen documented impeachments of federal judges by the U.S. House of Representatives and eight convictions by the U.S. Senate throughout history. *Impeachments of Federal Judges*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/impeachments-federal-judges> [<https://perma.cc/WZ86-4GTQ>].

118. See e.g., Gertner, *supra* note 99; Renee Knake Jefferson, *Judicial Ethics in the #MeToo World*, 89 FORDHAM L. REV. 1197 (2021) (examining how power dynamics contribute to the culture of silence around sexual harassment in the judiciary).

119. Willie J. Epps, Jr. & Jonathan M. Warren, *The Who, What, When, Where, Why, and How of Clerking, as Told by a Federal Judge and His Former Law Clerk*, 90 UMKC L. REV. 295, 297 (2021).

120. See Gertner, *supra* note 99, at 92.

121. *Public Hearing: Proposed Changes to Code of Conduct for U.S. Judges and Judicial Conduct and Disability Rules*, U.S. CTS., at 01:50:05 (Oct. 30, 2018) (statement of Renee Newman Knake, Doherty Chair in Legal Ethics & Professor of Law, Univ. Hous. L. Ctr.) [hereinafter Knake Statement], <https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-us-judges/proposed-changes-code-conduct-us-judges-and-judicial-conduct-and-disability-rules> [<https://perma.cc/N8P7-7QCB>].

122. See Gertner, *supra* note 99 (“The judge’s recommendations are critical to the clerk, not just in the year or two after the clerkship, but often throughout [their] legal career.”).

123. See Knake Statement, *supra* note 121 (“The pressure to endure harassment silently is fierce; indeed, a decision to report can ruin future prospects in the profession . . . . An unfavorable reference letter, or even the judge’s refusal to write one, can compromise or destroy career aspirations.”).

### C. Disability Representation

Diversity includes disability, and the federal judiciary needs diverse employees and juries to effectively serve the public. As shown in this Section, being exempt from the ADA stifles disability representation in all aspects of the federal court system, creating barriers to access for disabled attorneys, judges, and jurors.

#### 1. The Federal Judiciary

“[H]aving a diverse judicial branch is important because it bolsters public confidence in our system.”<sup>124</sup> Trust in institutions like the federal judiciary decreases when the makeup of the institution does not reflect the population it serves.<sup>125</sup> The American Bar Association (ABA) emphasizes that diversity in race, ethnicity, disability, sexual orientation, and gender identity is critical for the legitimacy of the federal court system.<sup>126</sup> Yet the bench is still overwhelmingly male and white.<sup>127</sup> Data regarding disability in the federal judiciary either do not exist or are not publicly available, demonstrating the need to begin counting disabled people in diversity statistics. Without concrete data, the degree of disability representation in the federal judiciary can only be surmised. Given that the federal judiciary does not follow the ADA<sup>128</sup> or maintain employment statistics about disabled workers, disabled people likely comprise a small minority of the bench.<sup>129</sup>

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124. Debra Cassens Weiss, *A Diverse Judiciary 'Bolsters Public Confidence in Our System,' Says SCOTUS Nominee Jackson*, A.B.A. J. (Mar. 23, 2022), <https://www.abajournal.com/web/article/jackson-a-diverse-judicial-branch-bolsters-public-confidence-in-our-system> [<https://perma.cc/WF8T-NRMH>] (quoting Justice Ketanji Brown Jackson).

125. See Jay Prapaisilp, *Diversifying the Federal Judiciary and Why It Matters*, 34 GEO. J. LEGAL ETHICS 1221, 1224 (2021) (highlighting that marginalized races and women tend to have less trust in the courts in comparison to white and male individuals).

126. See A.B.A., ANNUAL MEETING RESOLUTION 102 (2016), [https://www.americanbar.org/content/dam/aba/administrative/mental\\_physical\\_disability/102.pdf](https://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/102.pdf) [<https://perma.cc/N62M-R3YD>] (urging the Judicial Conference to recognize the importance of diversity and support the hiring of diverse candidates in the Judicial Branch); *Diversity Action Plan*, A.B.A. (2012), <https://www.americanbar.org/groups/judicial/committees/scdj/diversity-action-plan/> [<https://perma.cc/Z3VG-79XS>] (“[D]iversity in the judiciary in racial and ethnic, gender identity, sexual orientation, age, disabilities and religion is essential to maintaining public trust and confidence in the legal system.”).

127. See e.g., *Judges: Diversity on the Federal Bench*, A.B.A., <https://www.abalegalprofile.com/judges.html> [<https://perma.cc/7E4K-6W5X>] (highlighting that, as of October 1, 2023, the 1,423 sitting federal judges were 68 percent male and 76 percent white).

128. See 42 U.S.C. § 12131(1) (defining “public entity” as “any State or local government,” “any department, agency, special purpose district, or other instrumentality of a State or States or local government,” or “the National Railroad Passenger Corporation, and any other commuter authority”).

129. In 2023, the labor force participation rate for disabled workers between ages sixteen and sixty-four was 40.2 percent, while the rate was 77.7 percent for nondisabled workers. *Disability Employment Statistics*, U.S. DEP’T LAB., <https://www.dol.gov/agencies/odep/research-evaluation/statistics> [<https://perma.cc/669Y-X7CZ>].



However, disabled judges, clerks, and other judicial employees can bring a valuable worldview that is different from their nondisabled peers.<sup>130</sup> More specifically, diversity in chambers can bring a more nuanced understanding to issues, helping to mitigate implicit bias and support balanced decision-making.<sup>131</sup> Diversity of thought and perspective helps explain the need for clerks. Clerks play a critical role in the crafting of judicial orders and their backgrounds inform their opinions on cases.<sup>132</sup> Working closely with a judge also gives clerks the capacity to provide diverse perspectives that a judge may not have and help shape their judge's opinions on a case.<sup>133</sup> Clerks with marginalized identities provide judges with more inclusive views about the law and individual cases.<sup>134</sup>

Disabled perspectives are particularly critical in the federal courts where ADA cases are brought. Federal judges have "great latitude" in applying the standards and definitions outlined in the ADA.<sup>135</sup> When applying ADA guidelines, federal judges evaluate who has a disability and what accommodations are reasonable, consequently serving as the "gatekeepers" of disability rights.<sup>136</sup> Additionally, a judge's lived experience or lack thereof may impact their assessment of these cases,<sup>137</sup> as "[p]ersonal experiences affect the facts that judges choose to see."<sup>138</sup> For example, when examining Title VII cases,<sup>139</sup> studies have shown that having a primarily white, male environment can be harmful to plaintiffs, such as women or people of color, who bring

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130. See, e.g., Prapaisilp, *supra* note 125, at 1227 ("[S]imply having diverse judges will surely bring *different* viewpoints than the ones that are commonly shared among white, male judges and the impact can be substantial.").

131. Deeva Shah & Greg Washington, *Beyond Symbolism: Accepting the Substantive Value of Diversity in Law Clerk Hiring*, 97 NOTRE DAME L. REV. REFLECTION 317, 328 (2022) ("When groups consist of individuals with different experiences and values, there are more viewpoints to inform the decision-making process. . . . [T]here are fewer blind spots or implicit biases that will linger without pushback.").

132. See *id.* at 329 ("Clerks can play significant roles in shaping case outcomes and specific opinion language. Clerks may influence which facts a judge may focus on or what caselaw a judge relies on in coming to a decision."); Epps & Warren, *supra* note 119, at 296.

133. See Shah & Washington, *supra* note 131, at 322 ("Because of the sheer amount of work that a law clerk may assist with on any given case, law clerks may be able to shape the work of a particular judge or even a court in minor and major ways. Clerks will help prepare judges for oral argument, write bench memos summarizing—and framing—cases, recommend an outcome, and even produce initial drafts of opinions.").

134. See *id.* at 329 ("Clerks may have their own experiences that allow them to see a situation differently or analyze a case in a unique way.").

135. O'BRIEN, *supra* note 89, at 160.

136. *Id.* at 161.

137. See Shah & Washington, *supra* note 131, at 328 ("Judges from underrepresented groups can provide analysis on practical consequences that might otherwise be ignored.").

138. Sonia Sotomayor, *Lecture: 'A Latina Judge's Voice,'* N.Y. TIMES (May 14, 2009), <https://www.nytimes.com/2009/05/15/us/politics/15judge.text.html> [<https://perma.cc/2ZQ8-HPAY>].

139. Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sex, race, religion, or national origin. 42 U.S.C. §§ 2000e–2000e-17.

harassment and discrimination cases.<sup>140</sup> Particularly during summary judgment and bench trials, where the judge rules without a jury, a judge may only have their experience and the experience of their clerks to draw from when evaluating cases.<sup>141</sup> If everyone in chambers is nondisabled, then cases are ruled on without a disabled perspective weighing in. Having a “diverse judiciary greatly shapes judicial decisionmaking, legal analysis, and, by extension, the law itself,” and it is thus critical that disabled people are included.<sup>142</sup>

However, the lack of ADA protections in the federal judiciary may deter disabled attorneys from seeking jobs in the federal judiciary. Deterrence impacts disabled lawyers’ career trajectories and the diversity of the legal field at large. For an attorney, a federal clerkship is a prestigious opportunity offering invaluable training and a behind-the-scenes look at the federal court system.<sup>143</sup> Mentorship from a federal judge can help young lawyers excel in the legal field and become “leaders in the profession.”<sup>144</sup> Clerkships are also often viewed as a prerequisite to competitive jobs in legal academia.<sup>145</sup> Similarly, large law firms often offer substantial bonuses and high-ranking positions to former clerks, as they attract clients and bolster the firm’s prestige.<sup>146</sup> This wealth of opportunities may even lead former clerks themselves to become judges.<sup>147</sup> For example, six of the nine current Supreme Court justices were once Supreme Court clerks themselves.<sup>148</sup> It is possible to go far in the legal field without a clerkship, but clerks certainly have an advantage over non-clerks,<sup>149</sup> as “[t]he legal profession prizes access to judges and uses clerkships as a professional proxy to determine

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140. See Prapaisilp, *supra* note 125, at 1226 (“If white males comprise the vast majority of the lived experiences in the judiciary, then plaintiffs end up pleading their case in an environment where the idea of the workplace centers on the white, male experience.”).

141. See *id.* at 1226 (“[T]he plaintiff is left trying to convince a single white, male judge who may never have had experienced either [discrimination or harassment] in his lifetime.”).

142. Jill D. Weinberg & Laura Beth Nielsen, *Examining Empathy: Discrimination, Experience, and Judicial Decisionmaking*, 85 S. CAL. L. REV. 313, 324 (2012).

143. Epps & Warren, *supra* note 119, at 297.

144. DEBRA M. STRAUSS, BEHIND THE BENCH: THE GUIDE TO JUDICIAL CLERKSHIPS 291 (3rd ed. 2023) (quoting William G. Paul, Former President, A.B.A.).

145. See Shah & Washington, *supra* note 131, at 323 (“Clerkships are almost necessary credentials for law students who want to become law professors . . .”).

146. See, e.g., Epps & Warren, *supra* note 119, at 297–98 (noting that law firms may entice former U.S. district court clerks to work for them with bonuses up to \$100,000 for clerking, in addition to making six figures).

147. STRAUSS, *supra* note 144 (“Judicial law clerks . . . become judges and partners in law firms.”) (quoting William G. Paul, Former President, A.B.A.).

148. Joan Biskupic, *Inside the Exclusive World of Supreme Court Clerks Driving America’s Legal Controversies*, CNN (Dec. 15, 2023), <https://www.cnn.com/2023/12/15/politics/supreme-court-clerks/index.html> [https://perma.cc/RTY3-935L].

149. See Becky Beaupre Gillespie, *‘The Best Postdoc You Could Ever Have’: Behind the Law School’s Rising Clerkship Numbers*, UNIV. CHI. L. SCH. (Oct. 17, 2019), <https://www.law.uchicago.edu/news/best-postdoc-you-could-ever-have> [https://perma.cc/H47Q-C9WS] (“[Clerkships] can also jump start a student’s career.”) (quoting Jonathan S. Masur, Professor of Law, Univ. Chi. Sch. L.).

employment viability.”<sup>150</sup> The lack of ADA protections creates a ripple effect contributing to the underrepresentation of disabled attorneys in the federal judiciary specifically and the legal field generally.

The federal court system’s exemption from the ADA contributes to the systemic exclusion of disabled attorneys. Without disabled perspectives, the federal judiciary cannot fulfill its mission to have “a workforce of judges and employees that reflects the diversity of the public it serves . . . .”<sup>151</sup>

## 2. *Juries*

While the Supreme Court has repeatedly recognized that people have the right to a trial with a jury of their peers,<sup>152</sup> this becomes complicated when one’s peers physically cannot get through courthouse doors or sit in a jury box.<sup>153</sup> “[T]he American concept of the jury trial contemplates a jury drawn from a fair cross section of the community.”<sup>154</sup> Disabled people make up approximately 29 percent of the American population.<sup>155</sup> Yet jury boxes and courtrooms are not mandated to be ADA accessible, posing difficulties for disabled juror inclusion.<sup>156</sup>

Moreover, disabled people are systemically excluded from jury service, partially a result from the lack of ADA access. Jury pools are often drawn from driver’s licenses and voter registration lists<sup>157</sup> where disabled people are underrepresented.<sup>158</sup> Likewise, while the Supreme Court has found that attorneys may not strike individual jurors based on race<sup>159</sup> and gender<sup>160</sup> with peremptory

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150. Leah M. Litman & Deeva Shah, *On Sexual Harassment in the Judiciary*, 115 NW. UNIV. L. REV. 599, 623 (2020).

151. *Strategic Plan*, *supra* note 12.

152. See e.g., *Batson v. Kentucky*, 476 U.S. 79, 86 (1986) (“The very idea of a jury is a body . . . composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds.”) (quoting *Strauder v. West Virginia*, 100 U.S. 303, 308 (1880)).

153. Siegel, *supra* note 67.

154. *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975) (discussing the importance of community representation in response to a Louisiana law that excluded women from jury service).

155. *Disability Impacts All of Us*, *supra* note 8.

156. Siegel, *supra* note 67.

157. ADMIN. OFF. U.S. CTS., *THE FEDERAL COURT SYSTEM IN THE UNITED STATES: AN INTRODUCTION FOR JUDGES AND JUDICIAL ADMINISTRATORS IN OTHER COUNTRIES* 30 (4th ed. 2016), <https://www.uscourts.gov/sites/default/files/federalcourtsystemintheus.pdf> [<https://perma.cc/EZ3E-4TFM>].

158. Donovan W. Frank & Brian N. Aleinikoff, *Juries and the Disabled*, FED. LAW., Dec. 2012, at 34, 36; see Jordan Benson, *Stricken: The Need for Positive Statutory Law to Prevent Discriminatory Peremptory Strikes of Disabled Jurors*, 103 CORNELL L. REV. 437, 439 (2018) (“States draw jurors from jury lists that underrepresent the disabled.”).

159. See *Batson v. Kentucky*, 476 U.S. 79, 97 (1986) (“Just as the Equal Protection Clause forbids the States to exclude [B]lack persons from the venire on the assumption that [B]lack as a group are unqualified to serve as jurors, so it forbids the States to strike [B]lack veniremen on the assumption that they will be biased in a particular case simply because the defendant is [B]lack.”).

160. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994) (“[T]he Equal Protection Clause prohibits discrimination in jury selection on the basis of gender, or on the assumption that an

challenges, similar protections do not exist for disability.<sup>161</sup> Furthermore, because the federal judiciary is not mandated to follow the ADA, courthouses themselves may be inaccessible to jurors: doors too heavy to open, fixed seats with little room for wheelchairs, bathrooms without handicap stalls, and jury boxes requiring a step for entry.<sup>162</sup> Negligible ADA access compounds the many obstacles contributing to the underrepresentation of disabled jurors.

Jury service is a core part of democracy that disabled people should be able to access. “[W]ith the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process.”<sup>163</sup> Without ADA accessibility in federal courthouses, disabled people face additional barriers to access this “fundamental” part of our democratic system.<sup>164</sup> The American Bar Association has recommended that “[e]ligibility for jury service should not be denied or limited on the basis of . . . disability” and that “[c]ourts should provide an adequate and suitable environment for jurors, including those who require reasonable accommodation due to disability.”<sup>165</sup> Without the ADA, there are no set processes and guidelines for how disabled jurors will get the reasonable accommodations they need to participate.

In *Peters v. Kiff*, Justice Thurgood Marshall reflected on the implications of systematically excluding a marginalized group from jury service:

When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented.<sup>166</sup>

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individual will be biased in a particular case for no reason other than the fact that the person happens to be a woman or happens to be a man.”).

161. See Benson, *supra* note 158 (“Peremptory strikes of disabled jurors remain constitutional nationwide today, in spite of the growing body of law prohibiting these strikes on the basis of qualities such as race, gender, and sexual orientation, and the Supreme Court has yet to take up the issue directly.”).

162. *Cities and Counties: First Steps Toward Solving Common ADA Problems*, U.S. DEP’T JUST. C.R. DIV., <https://archive.ada.gov/civiccommonprobs.htm> [<https://perma.cc/GE4G-HXBJ>] (describing common problems with courtroom design).

163. *Powers v. Ohio*, 499 U.S. 400, 407 (1991).

164. See *J.E.B.*, 511 U.S. at 145 (“Equal opportunity to participate in the fair administration of justice is fundamental to our democratic system.”).

165. A.B.A., *PRINCIPLES FOR JURIES AND JURY TRIALS* 4, 5 (2005), [https://www.uscourts.gov/sites/default/files/aba\\_principles\\_for\\_juries\\_and\\_jury\\_trials\\_2005.pdf](https://www.uscourts.gov/sites/default/files/aba_principles_for_juries_and_jury_trials_2005.pdf) [<https://perma.cc/T29G-YVFQ>].

166. *Peters v. Kiff*, 407 U.S. 493, 503–04 (1972) (discussing the systemic exclusion of Black jurors).

Disabled jurors have the capacity to provide a unique “perspective on human events” that is vital not only in ADA cases but in any case before the court. Disability arises in many aspects of the law and, without disabled representation, ableism may slip through the cracks.<sup>167</sup> Likewise, an increase in diversity will help juries make more thorough evaluations of evidence and participate more willingly in discussions about prejudice and discrimination in cases.<sup>168</sup> Jury composition also impacts the credibility and legitimacy of the court system.<sup>169</sup> Therefore, being exempt from the ADA threatens disability inclusion on juries, undermining the importance of having “a fair cross section of the community.”<sup>170</sup>

#### IV.

##### INCREASING DISABILITY PROTECTIONS

Reflecting on the ADA, Justice Anthony Kennedy wrote that:

One of the undoubted achievements of statutes designed to assist those with impairments is that citizens have an incentive, flowing from a legal duty, to develop a better understanding, a more decent perspective, for accepting persons with impairments or disabilities into the larger society. The law works this way because the law can be a teacher. So I do not doubt that the Americans with Disabilities Act of 1990 will be a milestone on the path to a more decent, tolerant, progressive society.<sup>171</sup>

Without the ADA, there is no statute governing the federal judiciary that compels it to “develop a better understanding” of and begin to “accept[]” disabled people.<sup>172</sup> Disabled people face distinct barriers,<sup>173</sup> warranting the protection of a disability-specific statute. This is of critical importance in the federal judiciary,

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167. See, e.g., Qudsiya Naqui, *Advancing Equal Access to Justice for Americans with Disabilities: Moving Towards Closing the Justice Gap on the 33rd Anniversary of the ADA*, U.S. DEP’T OF JUST. OFF. FOR ACCESS TO JUST. (July 26, 2023), <https://www.justice.gov/atj/blog/advancing-equal-access-justice-americans-disabilities-moving-towards-closing-justice-gap> [https://perma.cc/9P7W-9HDT] (“Several of the top ten most burdensome civil legal problems, including employment discrimination, access to healthcare, disputes over disability benefits and poor working conditions, disproportionately affect those with disabilities. In addition, people with disabilities are over-represented in the criminal justice system as compared to people without disabilities. According to the Bureau of Justice Statistics, the rate of violent crimes against people with disabilities was four times the rate for people without disabilities. In 2016, two in five (38%) of people incarcerated in state and federal prisons reported having at least one disability.”).

168. See, e.g., Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCH. 597, 606–07 (finding that racially diverse juries have more balanced decision-making and are more likely to discuss racism than all-white juries).

169. See, e.g., *id.* at 599 (“The bases for requirements of jury representativeness are not principally performance related; they include . . . a desire to maintain the perceived legitimacy of the system.”).

170. *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975).

171. *Bd. Trs. Univ. Ala. v. Garrett*, 531 U.S. 356, 375 (2001) (Kennedy, J., concurring).

172. *Id.*

173. West, *supra* note 60.

where most disability rights cases are litigated.<sup>174</sup> Adopting the ADA would help increase access to justice and promote diversity in the federal judiciary.

Moreover, being exempt from the ADA does not align with the federal judiciary's "obligat[ion] to be open and accessible to anyone."<sup>175</sup> As a separate branch of government, the federal judiciary is exempt from many statutes. For example, the Freedom of Information Act (FOIA) does not apply to the judicial branch.<sup>176</sup> Exemption from FOIA, however, may protect an institution from harms that could arise from disclosure.<sup>177</sup> In the case of the federal court system, FOIA runs the risk of directly interfering with the judiciary's decision-making process. Exemption from the ADA, on the other hand, does not protect the federal judiciary from harm, but instead harms the disabled people who interact with it. The exemption threatens the federal judiciary's ability to "ensure that [it] is open and accessible, on a non-discriminatory basis, to all those who participate in the judicial process."<sup>178</sup>

Adopting ADA protections would also align with recent trends of utilizing technology in the federal court system. In 2020, the COVID-19 pandemic prompted a shift from entirely in-person dockets, as many courts adopted online proceedings in response to stay-at-home orders. This change increased people's ability to access the courts remotely,<sup>179</sup> making it easier for disabled people to be court participants. Currently, while there is more remote access than in pre-pandemic times, the federal court system has decreased its remote access since the peak of the COVID-19 pandemic.<sup>180</sup> Nevertheless, the pandemic demanded accommodation and through this the federal judiciary demonstrated its ability to reimagine its functioning and accommodate limitations when needed.

There has also been increased discussion about workplace accountability in the federal judiciary. 2021 marked the introduction of the Judicial Accountability Act (JAA), which would extend Title VII protections to judicial employees. This change would give judicial employees with marginalized identities, including disabled people, the right to sue judges for discrimination and seek damages.<sup>181</sup>

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174. See 42 U.S.C. § 2000e-5.

175. *Issue 6: Enhancing Access to Justice and the Judicial Process*, U.S. CTS., <https://www.uscourts.gov/statistics-reports/issue-6-enhancing-access-justice-and-judicial-process> [<https://perma.cc/52ZK-Q8BW>].

176. See 5 U.S.C. § 551(1)(B).

177. See, e.g., *id.* § 552(b)(1)(A) (appropriately classified national security matters); *id.* § (b)(4) (trade secrets or certain commercial or financial information submitted to the government by a third party); *id.* § (b)(7) (certain law enforcement records).

178. *Issue 6: Enhancing Access to Justice and the Judicial Process*, *supra* note 175.

179. When the temporary COVID-19 policy allowing the use of teleconference technology for court proceedings ended in 2023, the Judicial Conference created a new policy permitting remote audio access to non-trial proceedings of civil and bankruptcy cases. *Judicial Conference Revises Policy to Expand Remote Audio Access over Its Pre-COVID Policy*, *supra* note 74. Currently the Second, Third, and Ninth Circuits allow video and camera coverage of some cases. ECKMAN & LAMPE, *supra* note 75.

180. See *Judicial Conference Revises Policy to Expand Remote Audio Access over Its Pre-COVID Policy*, *supra* note 74; ECKMAN & LAMPE, *supra* note 75.

181. Judiciary Accountability Act of 2021, H.R. 4827, 117th Cong. (2021).

Additional changes that the JAA would enact include expanding the definition of “judicial misconduct”<sup>182</sup> to include discrimination and retaliation, implementing a confidential reporting system,<sup>183</sup> and creating a standardized EDR plan for all federal courts.<sup>184</sup> The bill would be a critical step in ensuring that marginalized judicial employees have legally enforceable rights.

The federal judiciary’s opposition to extending Title VII protections to judicial employees gives clues as to why it has refrained from adopting ADA protections in the same manner. In response to the JAA, the federal judiciary asserted that the bill “interferes with the internal governance of the Third Branch,” resulting in “intrusive requirements on Judicial Conference procedures.”<sup>185</sup> Likewise, the federal judges sent to testify at the House Judiciary Subcommittee Hearing expressed concern that the JAA would “impair the administration of justice”<sup>186</sup> and instead advocated for “judicial self-regulation and independence.”<sup>187</sup> The federal judiciary has a clear resistance to external regulations.

Likewise, in its opposition, the federal judiciary focused on highlighting the progress it has made and further changes it is considering, suggesting that the bill is unnecessary. The federal judiciary asserted that it already “has in place the protections and mechanisms to provide for an exemplary workplace, and to allow all employees to obtain confidential advice, report misconduct, and seek and receive remedial action.”<sup>188</sup> The judiciary also submitted a report from its Workplace Conduct Working Group with potential reforms.<sup>189</sup> The proposed changes include slight revisions to the Model EDR plan, such as requiring that a judge from a different courthouse oversee the complaint process<sup>190</sup> and “assess[ing] incorporation” of monetary remedies.<sup>191</sup> These slight changes do not

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182. *See id.* § 8 (amending 28 U.S.C. § 358).

183. *Id.* § 4(f)(2).

184. *Id.* § 5(d)(1)(E).

185. Letter from Roslynn R. Mauskopf, Sec’y, Jud. Conf. U.S., to Henry C. “Hank” Johnson, Jr., Chair, Subcomm. on Cts., Intell. Prop. & the Internet of the H. Comm. on the Judiciary (Aug. 25, 2021) [hereinafter Mauskopf Letter], [https://www.uscourts.gov/sites/default/files/house\\_letter\\_jaa.pdf](https://www.uscourts.gov/sites/default/files/house_letter_jaa.pdf) [https://perma.cc/K946-Q2TE].

186. *Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the Need for Statutory Change: Hearing Before the Subcomm. on Cts., Intell. Prop. & the Internet of the H. Comm. on the Judiciary*, 117th Cong. 15 (2022) (combined written statement of the Hon. M. Margaret McKeown, Cir. J., 9th Cir. and the Hon. Julie A. Robinson, Senior J., Kan. Dist. Ct.) [hereinafter McKeown & Robinson Statement], <https://docs.house.gov/meetings/JU/JU03/20220317/114503/HHRG-117-JU03-Wstate-RobinsonJ-20220317.pdf> [https://perma.cc/TE8Y-85BR].

187. *Id.* at 19.

188. Mauskopf Letter, *supra* note 185.

189. U.S. CTS., REPORT OF THE FEDERAL JUDICIARY WORKPLACE CONDUCT WORKING GROUP TO THE JUDICIAL CONFERENCE OF THE UNITED STATES (2022), [https://www.uscourts.gov/sites/default/files/report\\_of\\_the\\_workplace\\_conduct\\_working\\_group\\_-\\_march\\_2022\\_0.pdf](https://www.uscourts.gov/sites/default/files/report_of_the_workplace_conduct_working_group_-_march_2022_0.pdf) [https://perma.cc/4AA7-UN8L].

190. *Id.* at 23.

191. *Id.* at 24.

replace the lack of legally enforceable rights afforded to judicial employees nor do they comprehensively address the risk of bias and retaliation in the current system.<sup>192</sup>

While the JAA would broadly protect marginalized groups from discrimination, adopting the ADA would provide more specific guidance on how disabled people's access needs can be met. Given the strong opposition the federal judiciary expressed against the JAA, it is likely that similar concerns around "implicat[ing] judicial autonomy" and "undermin[ing] the integrity of the branch"<sup>193</sup> are preventing the federal judiciary from adopting the ADA. Simply altering the EDR plan cannot replace the legally cognizable rights that the JAA and ADA protect. The federal judiciary needs to follow the example of the legislative branch and extend these protections to the third branch.<sup>194</sup>

Furthermore, a core aspect of the disability rights movement is captured by the phrase "nothing about us without us."<sup>195</sup> All too often, disabled people are excluded from decisions that impact them. It is unclear whether disabled people were included in crafting the existing Judicial Conference accommodations policy. It is time to have a national conversation about the lack of accessibility in the federal judiciary, where affected constituencies—disability rights groups, employees, judges, and other stakeholders<sup>196</sup>—can share their perspectives. This dialogue could result in more thorough policies provided by the Judicial Conference on access and accommodation or, better yet, a statute that extends ADA protections to the federal judiciary.

#### CONCLUSION

"Effective participation by members of [minority groups and women] in the civil life of our Nation is essential if the dream of one Nation, indivisible, is to be realized."<sup>197</sup> The ADA made including disabled people in all aspects of public life our national policy;<sup>198</sup> however, the federal judiciary's exemption from the ADA highlights a significant disconnect between policy and reality.

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192. See Aliza Shatzman, *The Judiciary Accountability Act: Dismantling the Myth of the Untouchable Judge*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (2022), <https://nyujlpp.org/quorum/shatzman-judiciary-accountability-act/> [<https://perma.cc/2GPF-KG4A>].

193. McKeown & Robinson Statement, *supra* note 186.

194. Congressional Accountability Act of 1995, Pub. L. No. 104-1, 109 Stat. 3 (1995).

195. JAMES I. CHARLTON, NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT 3–4 (2000).

196. *How to Make Courts Accessible to Users with Disabilities and Limited English Proficiency*, PEW CHARITABLE TRS. (Jan. 29, 2024), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2024/01/29/how-to-make-courts-accessible-to-users-with-disabilities-and-limited-english-proficiency> [<https://perma.cc/9QMS-XVUD>].

197. Justice Ruth Bader Ginsburg, Remarks on the Value of Diversity, for Presentation at the Institut D'Etudes Politiques De Paris (July 17, 2009) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003)), <https://www.sciencespo.fr/en/news/the-value-of-diversity-ruth-bader-ginsburg-at-the-2009-graduation-ceremony/> [<https://perma.cc/FJ89-J8P4>].

198. See 42 U.S.C. § 12101(a)(7).



The lack of protections that mandate ADA access compromises the federal court system's ability to serve the public and protect its employees. Without these rights, disabled people may be unable to fully access the federal court system and disabled judicial employees are left vulnerable to discrimination—all without the ability to sue and seek damages for their unequal treatment. Disabled people are already underrepresented in jury pools and in the legal field, and the federal judiciary's exemption from the ADA only further excludes disabled people.

Disability rights activist Judy Heumann, who played an instrumental role in passing Section 504 of the Rehabilitation Act and the ADA, once said: "Disability only becomes a tragedy when society fails to provide the things we need to lead our lives—job opportunities or barrier-free buildings, for example."<sup>199</sup> The federal judiciary's exemption from following the disability rights statutes it upholds is not only increasingly hypocritical, but also tragic. Disabled judicial employees should not have to subject themselves to unequal treatment, and disabled litigants, like George Lane, should not have to crawl up stairs to access the justice system.

Because of *Lane*, Tennessee's Judicial Branch implemented a robust ADA policy.<sup>200</sup> Other states have followed suit, adopting changes that include crafting strategic plans for disability access, posting information on how to request accommodations on court websites, and training on legal accessibility requirements and ways for staff and judges to assist disabled people.<sup>201</sup> This Note urges the judicial branch to follow this example and adopt ADA standards.

It is time to start a national conversation about the lack of accessibility in the federal judiciary, where increased protections and policies can and should be discussed. While the promise of the ADA is yet to be fully realized, applying its protections to the federal judiciary would be a step in the right direction.

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199. Joseph Shapiro, *Activist Judy Heumann Led a Reimagining of What It Means to Be Disabled*, NPR (Mar. 4, 2023) (quoting Judy Heumann), <https://www.npr.org/2023/03/04/1161169017/disability-activist-judy-heumann-dead-75> [https://perma.cc/26J4-G9PL].

200. TENN. SUP. CT., POLICY 2.07 AMERICANS WITH DISABILITIES ACT (2015), [https://www.tncourts.gov/sites/default/files/docs/administrative\\_police\\_2.07\\_eff.\\_6-22-15.pdf](https://www.tncourts.gov/sites/default/files/docs/administrative_police_2.07_eff._6-22-15.pdf) [https://perma.cc/S8MK-C8LY].

201. See *Disability Access*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncaj.org/state-rankings/justice-index/disability-access> [https://perma.cc/YU3C-BZ5V].