

President Bush signs into law the Americans with Disabilities Act of 1990 on the South Lawn of the White House, by U.S. National Archives and Records Administration, unrestricted use.

# The Americans With Disabilities Act

## Vision and motivation

"I'll take all night if I have to," eight-year-old Jennifer Keelan shouted, struggling up the 82 steps of the Capitol Hill building as the cameras zoomed in on her face.\(^1\) Abandoning her wheelchair, she joined 60 others defiantly crawling up the steps on a sweltering March morning in 1989.\(^2\) In the chambers above, politicians debated the Americans with Disabilities Act (ADA), but the protesters were losing patience as the New York Times warned, "Measure Barring Discrimination Against Disabled Runs into Snag.\(^3\) "What do we want? ADA!," the protesters chanted, growing

<sup>1- &</sup>quot;Climbing the Capitol Steps for ADA." YouTube, https://www.youtube.com/Watch?v=kU9cDyqvH-g.

<sup>2-</sup>Kaufmann, Stephen. "They Abandoned Their Wheelchairs and Crawled up the Capitol Steps." Share America, 12 Mar. 2015, https://share.america.gov/crawling-up-steps-demand-their-rights/.

<sup>3-</sup>Holmes, Steven A. "Measure Barring Discrimination Against Disabled Runs Into Snag." New York Times, 13 Mar. 1990, www.nytimes.com/1990/03/13/us/measure-barring-discrimination-against-disabled-runs-into-snag. html.

louder and more insistent, "When do we want it? Now!"4

Designed to prevent discrimination against people with disabilities, the ADA demanded accessible public transport and buildings, non-discriminatory hiring practices, and a nationwide relay service allowing those with hearing or speech impairments to use the telephone.<sup>5</sup> Existing legislation already mandated wheelchair lifts on buses<sup>6</sup>, that facilities built using federal dollars be accessible<sup>7</sup> and affirmative action to hire workers with disabilities in federal agencies.<sup>8</sup> But it was not enough. The laws were never effectively enforced and discrimination remained widespread. In the early 1970's, over a million children with disabilities were excluded from public schools while millions more languished in unsanitary and overcrowded state institutions <sup>9</sup>

Standing on the manicured White House lawn on July 26 1989, George H. Bush smiled as he addressed the three-thousand strong crowd. "With today's signing of the landmark Americans with Disabilities Act, every man, woman and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom," he announced while two sign language interpreters translated his words, "...let the shameful wall of exclusion finally come tumbling down."

# **Goals and Objectives**

"Disability would be seen now and forever as a civil rights issue in which aid and redress would not be focused on physical therapy or monetary benefits. Rather, it would be about the right of individuals to have access to the world that everyone else is part of."- Lennard Davis, "Enabling Acts" 11

"You should hope he dies," doctors told Zona Roberts as her son's fever rocketed,

<sup>4-</sup> Kaufmann, Stephen. "They Abandoned Their Wheelchairs and Crawled up the Capitol Steps." Share America, 12 Mar. 2015, share.america.gov/crawling-up-steps-demand-their-rights/.

<sup>5-</sup> Burgdorf, Robert L. "Why I Wrote the Americans with Disabilities Act." Washington Post, 24 July 2015,

<sup>6-</sup> Urban Mass Transportation Act, (1970)

<sup>7-</sup> The Architectural Barriers Act (1978)

<sup>8-</sup> Section 504 Of the Rehabilitation Act of 1973

<sup>9-</sup> Burgdorf, Robert L. "Why I Wrote the Americans with Disabilities Act." Washington Post, 24 July 2015, 10- "Remarks of President George Bush at the Signing of the Americans with Disabilities Act." Equal Opportunity Employment Commission, www.eeoc.gov/eeoc/history/35th/videos/ada\_signing\_text.html.

<sup>11-</sup> Davis, Lennard J.Enabling Acts: The Hidden Story of How the Americans with Disabilities Act Gave the Largest US Minority Its Rights. Beacon Press, 2016.. Location 101.

"If he lives he will be no more than a vegetable for the rest of his life." <sup>12</sup> But 14-year old Ed stubbornly refused. Polio paralysed him, forcing him to spend 18 hours a day in an iron lung just to keep breathing, but he attended high school by telephone, completed community college and set his sights on Berkeley. <sup>13</sup> "We tried cripples," the admissions office informed him curtly, "and it didn't work." Undeterred, Ed sued and started studying Political Science in the Autumn of 1962. <sup>14</sup> The following year, another severely disabled student joined the university and soon an entire floor of the Cowell Hospital was commandeered to accommodate the "Rolling Quads." <sup>15</sup>

Ed's approach was revolutionary. Until Ed, it was soldiers, not students, who led the fight for disability rights. Few paralysed soldiers survived the filthy field hospitals of the First World War, but by 1945 medical technology was evolving fast and thousands of paraplegic veterans returned home. Home, than 600,000 Americans were wounded in these wars, many of them permanently disabled. Back home, workers flocked to factories to support the war effort and industrial accidents soared. "One of the most destructive attacks on our nation...was not made by a foreign enemy," lamented National Safety Council head William Irvin, "The attack came from within, and left in its wake 102,500 dead." 18

Initially legislators focussed on financial support. By 1925, almost every state mandated compensation for injured workers and the War Risk Insurance Act of 1918 guaranteed compensation for wounded soldiers. But they demanded more than pity and alms. Rehabilitation was cheaper, activists argued, claiming that support for a disabled adult cost \$500 annually, while a \$300 training program could promote self sufficiency.

 $<sup>12-\</sup>text{``Ed Roberts: The Birth of the Independent Living Movement.'' Council on Developmental Disabilities, \\ mn.gov/mnddc/parallels/six/6b/1.html.$ 

<sup>13-</sup> Pfaff, Timothy. "A Conversation with Ed Roberts California Q&A." Council on Developmental Disabilities, mn.gov/mnddc/ed-roberts/articles-docs/Conversation with Ed Roberts.pdf.

<sup>14-</sup> Ibid

<sup>15-</sup> Ibid

<sup>16-</sup> Shapiro, Joseph P. No Pity: People with Disabilities Forging a New Civil Rights Movement. Broadway Books. 2011.

<sup>17- &</sup>quot;Research Starters: US Military by the Numbers." The National WWII Museum New Orleans, www. nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-us-military-numbers.

<sup>18-</sup> Jennings, Audra. Out of the Horrors of War: Disability Politics in World War II America Audra. University of Pennsylvania Press, 2016.p.23

<sup>19-</sup> Ibid. p.5

<sup>20-</sup> Ibid. p.23

Responding to this logic, new legislation required vocational training for both veterans and civilians, with subsequent amendments to the Vocational Rehabilitation Act (1920) mandating medical services and social rehabilitation for the blind, deaf and mentally ill.<sup>21</sup> <sup>22</sup> Unfortunately, these laws were not reflected in reality. New laws often attempted to reiterate the unenforced provisions of their predecessors with little changing on the ground. "Why cannot industry and the public generally realise," demanded disability activist Paul Strachan, "that we too aspire to...the feeling of security that comes from fair recognition of our rights as citizens, and our needs as Handicapped?"<sup>23</sup> In 1962, Ed Roberts decided it was finally time to enforce these rights.

Sidling through the police lines in his wheelchair, Ed joined the civil rights protests that rocked campuses nationwide.<sup>24</sup> Together the Rolling Quads shouted slogans, sang "We shall overcome" and addressed the crowds. Their message was clear: disability was not "a disease in need of remediation," but a "position in need of civil rights."<sup>25</sup> "If buses are built so that wheelchair users...cannot get aboard," activists argued, "the vehicles might as well have signs saying 'No cripples on board." <sup>26</sup>

# Leadership

On a Sunday afternoon in early 1989, disability lawyer Bobby Silverstein crafted the first draft of the ADA in the Temple Rodef Shalom Library as he waited for his children to finish their lessons.<sup>27</sup> Conceptually, the Bill was simple, but every detail proved contentious. How widely should disability be construed? Were infectious diseases like HIV and TB covered? Retrofitting was expensive; should small businesses risk financial ruin to comply? Employers were expected to make "reasonable accommodations" for disabled workers, without inflicting "undue hardships" themselves, but where was the line?

The journey to the White House was a long one, with warring factions fighting every step of the way. "Over our dead bodies are we putting [closed captions] into the Bill," staffers insisted while disability groups lambasted Silverstein for

<sup>21-</sup> Vocational Rehabilitation Act Amendments (1943)

<sup>22-</sup> Vocational Rehabilitation Act Amendments (1965)

<sup>23-</sup> Jennings, p.25

<sup>24-</sup> Pfaff

<sup>25-</sup> Davis, Lennard J.Enabling Acts: The Hidden Story of How the Americans with Disabilities Act Gave the Largest US Minority Its Rights. Beacon Press, 2016.. Location 575.

<sup>26-</sup> Ibid. Location 386.

<sup>27-</sup> Ibid. Location 1892.

"compromising" before the Bill was even introduced.<sup>28</sup> With no clear leadership, the ADA's success required collaboration between an unlikely alliance of well-connected Washington insiders, enterprising lawyers and unruly activists. As the insiders maxed out their presidential access privileges,<sup>29</sup> the activists dramatically chained themselves to buildings when progress slowed.<sup>30</sup> "It is very helpful to have the grassroots groups to be pushing and demanding....," Curt Decker from the National Disability Rights Network explains, "Then those of us who are the suits... say, 'Yeah, but we can accept this compromise if we can get your support."<sup>31</sup>

Almost a decade before Silverstein drafted the ADA, a group of Berkeley activists invited the civil rights "movers and shakers" to a disability conference in San Francisco. Three days of discussions later, they were convinced. "Everyone was going to be in bed together whether we liked it or not...," lawyer Arlene Mayerson recalls, "People in the civil rights movement had to be interested in what happened with disability rights." The alliance was powerful, but no civil rights legislation could succeed without Republican backing and Orrin Hatch was happy to oblige. Through their theatrical spats on the Senate floor, Hatch and Democrat Ted Kennedy sold the ADA to both sides. "We would fight each other dramatically to the point where I'd be ready to punch him in the mouth," Kennedy remembers, "Then when the debate was over, he'd walk over to me and say 'How'd I do?' You couldn't really get mad at him..."

As the lobbyists clamoured to be heard in the corridors of power, Justin Dart flew to every US state to listen to the voices of the disabled. Dart himself was paralysed by Polio, but travelled the world launching new businesses and "chasing booze, women and money." In 1966 that abruptly changed. Visiting an institution for children with polio in Vietnam, he was horrified by the filth and flies. "A little girl reached up to me and looked into my eyes... She's reaching out for God and has found a counterfeit saint doing a photo op," Dart recounts. "I was engulfed by the devastating perception that I have met real evil, and I am part of it. The way I'm living and dealing with disability is killing this little girl..." Determined to change, Dart returned to the US and collected five thousand personal stories of everyday discrimination and not only did the accounts make a powerful case for the

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28- Ibid. Location 1947.
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<sup>29-</sup> Ibid. Location 781.

<sup>30-</sup> Ibid. Location 3298.

<sup>31-</sup> Ibid. Location 1944.

<sup>32-</sup> Ibid. Location 488.

<sup>33-</sup> Ibid. Location 1071.

<sup>34-</sup> Ibid. Location 1859.

<sup>35-</sup> Byzek, Josie. "ADA: A People's History." New Mobility, 1 July 2015, www.newmobility.com/2015/07/ada-a-peoples-history/.

necessity of the ADA, but ensured it would actually address the needs of ordinary disabled Americans.

#### Civic Environment

"I have studied with great interest the laws of several American states concerning prevention of reproduction by people whose progeny would, in all probability, be of no value or be injurious to the racial stock." - Adolf Hitler 36

"It is better for all the world...if society can prevent those who are manifestly unfit from continuing their kind," Supreme Court Justice Oliver Wendell Holmes concluded coldly in his infamous 1927 judgement, "Three generations of imbeciles are enough." And with that Carrie Buck was forcibly sterilized. Four summers before, Carrie was raped by her foster family's nephew on their isolated farm in conservative Virginia. Fearing scandal, the family branded the pregnant 17-year-old as "morally delinquent" and hurriedly consigned her to an institution. A cursory inspection of Carrie's daughter coupled with a concocted family "pedigree" tree were sufficient to convince the court she was "feeble-minded" and the case was in "scrupulous compliance" with the "very careful provisions" of Virginia's Sterilization Act. Ferming Sterilization Act.

Fueled by a toxic blend of misconstrued Darwinism, flawed statistics and racism, eugenics swept through the United States and beyond. More than 60,000 people were sterilized across 33 states.<sup>41</sup> "Feeble-mindedness" was defined so nebulously that it covered everything from the "inability to appreciate moral ideals" and minor behavioural problems to blindness and hearing impairments.<sup>42</sup> Dubious IQ tests defined 83% of Jewish immigrants and 87% of Russians as feeble-minded,

<sup>36-</sup> Black, Edwin. "The Horrifying American Roots of Nazi Eugenics." History News Network, Sept. 2003, historynewsnetwork.org/article/1796.

<sup>37-</sup> Buck v. Bell, 274 U.S. 200 (1927)

<sup>38- &</sup>quot;The Supreme Court and the Sterilization of Carrie Buck." Facing History and Ourselves, www. facinghistory.org/resource-library/supreme-court-and-sterilization-carrie-buck.

<sup>39-</sup> Nourse, Victoria. "Buck v. Bell: A Constitutional Tragedy from a Lost World." Georgetown University Law Center, 2011, scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2000&context=facpub...

<sup>40-</sup> Buck v. Bell, 274 U.S. 200 (1927)

<sup>41-</sup> Burrus, Trevor. "How States Sterilized 60,000 Americans – And Got Away with It." Foundation for Economic Education, 28 Jan. 2016, fee.org/articles/how-states-got-away-with-sterilizing-60-000-americans/.

<sup>42-</sup> Nourse, Victoria. "Buck v. Bell: A Constitutional Tragedy from a Lost World." Georgetown University Law Center, 2011, scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2000&context=facpub.

alongside 40% of US army recruits.<sup>43</sup> Eugenicists conflated disability with criminality, demanding immigration restrictions to stem the inflow of "defective germ plasm."<sup>44</sup>

However, in 1945, as allied soldiers stormed Nazi death camps and revealed the full extent of the regime's atrocities, eugenics abruptly fell from favour. Pity promptly replaced fear. Twenty-four hour Telethons, packed with celebrity entertainment, begged viewers for donations to cure the "curse" of disability. 45 "God goofed," quipped comedian Jerry Lewis, holding up a child with Muscular Dystrophy, "It's up to us to correct his mistakes." 46 The programmes raised billions, but the repercussions were problematic. "People would look at them and feel sorry for them," explains researcher George Taleporos, "rather than give them jobs or ask them out on a date." 47

As researchers battled to cure their "plight," people with disabilities were relegated to institutions. Doctors insisted "medicine not education, would find the answers" and demanded further investment in research. Meanwhile, the institutions were neglected. \*\*In 1964\*, an average of just \$5.57 a day was allocated to care for each person. \*\*4" "Thousands of residents [are] living in filth," complained Senator Robert Kennedy, after an unannounced visit to the Willowbrook Centre, "the rooms are less...cheerful than the cages in which we put animals in a zoo." \*\*50 Hit by successive scandals, the status quo slowly started to crumble. Institutions closed as children with disabilities were entitled to a free public education and more accessible housing was constructed. \*\*51

<sup>43- &</sup>quot;Rise of Eugenics." Council on Developmental Disabilities, mn.gov/mnddc/parallels/four/4d/2.html.

<sup>44-</sup> Allen, Garland E. "Intelligence Test and Immigration to the United States, 1900-1940." Encyclopedia of the Human Genome, 2003, www.researchgate.net/publication/230435620\_Intelligence\_Tests\_and\_ Immigration to the United States 1900-1940.

<sup>45-</sup> Andrews, Travis M. "Jerry Lewis Telethons Raised Billions for Muscular Dystrophy. Many Cheered When He Went off the Air." The Washington Post, 21 Aug. 2017.

<sup>46-</sup> Ibid

<sup>47-</sup> Buckmaster, Luke. "The Protest and Power of Disability Activism: 'It's Not as Sexy as Gay Rights or Climate Change'." The Guardian, 17 July 2017, www.theguardian.com/society/2017/jul/17/the-protest-and-power-of-disability-activism-its-not-as-sexy-as-gay-rights-or-climate-change.

<sup>48- &</sup>quot;Parallels in Time: A History of Developmental Disabilities." Council on Developmental Disabilities, mn.gov/mnddc/parallels/five/5b/6.html.

<sup>49- &</sup>quot;Parallels in Time: A History of Developmental Disabilities." Council on Developmental Disabilities, mn.gov/mnddc/parallels/five/5b/6.html.

<sup>50- &</sup>quot;The Closing of Willowbrook." Disability Justice, disability justice.org/the-closing-of-willowbrook/.

<sup>51- &</sup>quot;Disability Legislation Timeline Handout." Independence First, www.independencefirst.org/ IndependenceFirst/media/PDFs/Disability-Legislation-Timeline-Handout-Final.pdf.

# Message and Audience

Navigating the ADA through Washington's legislative labyrinth was a herculean task, especially in the challenging political climate. By the early 1980's, successive Supreme Court Rulings were unravelling existing disability rights and Reagan's administration feared that overzealous civil rights legislation was stifling business. Selling the ADA Bill to senators and big businesses, while ensuring its principles would be upheld in the highest courts, required not only ingenuity but subterfuge.

Bipartisan support was critical, so the bill's lobbyists framed it to the Republicans as an opportunity to save millions by getting "people off social welfare rolls and into jobs," but spun it as civil rights legislation to the democrats. To allay Republican fears over the Bill's cost, activists stayed up till midnight explaining the ADA recommendations to ultra-conservative economist John Raisian. "I was frightened to death...," Lex Frieden recalls, "that [he was] going to tell us that this cannot be afforded." But ultimately the late nights paid off, with Raisian's economic impact report concluding, "regardless of how you add the dollars, the outcome will be a benefit to the nation." "54"

Convincing big business was harder. Retrofitting buses was expensive, and businesses quickly branded the ADA "the Bankruptcy Bill." After meetings with business leaders, the ADA's backers took to the Senate floor to hammer out compromises to avoid crippling costs and frivolous litigation without undermining the spirit of the Bill. Leaving the senators to battle it out in Washington, Congressman Steny Hoyer drove to his local mall in Hyattsville. Standing in the carpark he listened patiently as the managers explained the practicalities of widening supermarket aisles and adapting shopping carts. His subsequent amendments to the Bill maximised accessibility while limiting costs, and won the support of the powerful Food Marketing Institute. 16

As politicians fought for the very survival of the Bill, lawyer Arlene Mayerson was already looking to the future. Ultimately any successful legislation would be at the mercy of the courts, so judges made powerful allies. "When I look back on then, I'm amazed at having the confidence... to do what I did," Mayerson recalls, "which was just kind of bully my way into all the [disability] cases in the Supreme Court." Wheedling her way into the courtroom, she taught the lawyers the art of framing their discrimination suits to most effectively sway the judges. And it worked;

<sup>52-</sup> Davis. Location 999.

<sup>53-</sup> Davis, Location 2756.

<sup>54-</sup> Davis. Location 1203.

<sup>55-</sup> Davis. Location 1850.

<sup>56-</sup> Davis. Location 3031.

<sup>57-</sup> Davis. Location 1080.

Justice Brenan's decision in Arline (1987) read like a "civil rights opinion."58

Disability itself was a powerful advocacy tool. Addressing the first Senate Hearing Committee in spring 1989, Justin Dart solemnly pointed to a brand new empty wheelchair. "Last year, my youngest brother, Peter, was faced with the necessity to use [this]," he explained, "Days later he committed suicide." Death, his brother believed, was preferable to the oppression and discrimination associated with disability. "I worry that people will treat me differently," 14-year-old Lakisha Griffin told senators, "because I'm blind, black and female." Hundreds of people with disabilities travelled to attend these hearings, with thousands more inundating wavering senators with letters and phone calls.

## **Outreach Activities**

"When I hear of an engineer building a new product to include or make life easier for disabled users, when an architect designs a stylish building or public transport system that has universal design, when couples decide to raise a disabled child with all their love instead of having an abortion or putting it up for adoption, I'm reminded that we are living in a socially progressive time and that should not be forgotten." 61 -Christopher Reardon

Much has changed since protesters crawled the Capitol steps almost 30 years ago. Disabled senators scoot over the Capitol's new curb cuts as they hurry between subcommittee hearings<sup>62</sup> and sign language interpreters translate press conferences.<sup>63</sup> Inspired by the US legislation,181 countries including Japan, Australia and Chile have enacted similar laws since 2000 with the UN's Convention on the Rights of Persons with Disabilities modeled on the ADA.<sup>64</sup>

- 58- Davis, Location 1113.
- 59- Davis. Location 2219.
- 60- Davis. Location 1753.
- 61- Reardon, Christopher. "Randolph Bourne's 1911 Essay on Disability Shocked Society. But What's Changed since?" The Guardian, 9AD, 2018, www.theguardian.com/inequality/2018/jan/09/randolph-bournes-1911-essay-on-disability-shocked-society-but-whats-changed-since.
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But the fight is far from over. Over 500,000 Americans with disabilities never leave their homes due to public transport difficulties,<sup>65</sup> and around two-thirds of working age people with disabilities are unemployed.<sup>66</sup> The legislative struggle also continues; when the Supreme Court weakened the ADA in Sutton V. United Airlines, Inc.<sup>67</sup>, Congress hit back with a new bill to reinstate it.<sup>68</sup> As critics pushed the "devastating" ADA Education and Reform Act through Congress in 2017, Senate Democrats blocked the bill from coming to a vote.<sup>69</sup>

Although the ADA's fate remains uncertain, it has already empowered generations of people with disabilities to determine their own futures. Businesses are now starting to employ workers with disabilities not to fulfill quotas or assuage guilt, but to maximize efficiency and profits. The consulting company Accenture reported that companies who actively support disabled workers boast a 30% increase in profit margins and 28% higher revenues on average. "It's a lack of knowledge and awareness," explains disability campaigner Mark Capper, "People are often scared of the unknown. But...we find employers have a positive reaction and tell us about positive impacts."

The ADA has not only altered the architectural landscape and the public's perception of disability, but it has empowered individuals with disabilities. "Looking back, perhaps the most unexpected achievement of the ADA isn't the wheelchair lifts on buses or the sign-language interpreters at political conventions," explains journalist Ben Mattlin, "It's that it gave people like me a sense of entitlement, of belonging, of pride." 72

<sup>65-&</sup>quot;Equity in Transportation for People with Disabilities." AAPD, www.civilrightsdocs.info/pdf/transportation/final-transportation-equity-disability.pdf.

<sup>66-</sup> Bagenstos, Samuel. "Disability Laws Are Not Enough to Combat Discrimination." The New York Times, 26 July 2015, www.nytimes.com/roomfordebate/2015/07/26/the-americans-with-disabilities-act-25-years-later/disability-laws-are-not-enough-to-combat-discrimination.

<sup>67-</sup> Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999)

<sup>68-</sup> Banks, Lisa J. Trends in Disability Litigation. 26 Oct. 2010, www.kmblegal.com/wp-content/uploads/101026DCBarCLE-Banks-LitigationTrends2008-ADAAA.pdf.

<sup>69-</sup> Powell, Robyn. "Sen. Tammy Duckworth Saves the Americans With Disabilities Act—For Now." Rewire. News, 3 Apr. 2018, rewire.news/article/2018/04/03/sen-tammy-duckworth-saves-americans-disabilities-act-now/.

<sup>70-</sup> Kennedy, Ted. "Hiring People With Disabilities Is Good Business." The New York Times, 27AD, 2018, www.nytimes.com/2018/12/27/opinion/disability-rights-employment.html.

<sup>71-</sup> Forrest, Adam. "Guardian Sustainable Business Companies Fear Employing People with Learning Disabilities, Survey Reveals." The Guardian, 10 Nov. 2015, www.theguardian.com/sustainable-business/2015/nov/10/companies-fear-employing-people-learning-disabilities-survey-reveals-mencap-ian-duncan-smith.

<sup>72-</sup> Mattlin, Ben. "An Act That Enabled Acceptance." The New York Times, 25 July 2015, www.nytimes.com/2015/07/26/opinion/sunday/an-act-that-enabled-acceptance.html.

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