

# A Legal Tool for Social Change

By Barry C. Taylor

In 1990, Congress enacted the Americans with Disabilities Act (ADA) to provide comprehensive civil rights protection to people with disabilities in all aspects of life, including employment, state and local government services, public transportation and private businesses. July 26, 2015 marked the 25th anniversary of the ADA. This article reviews examples of how people with disabilities in Illinois have used the ADA to remove barriers over the last 25 years.

## Accessible Public Transportation

When Congress passed the ADA, it found that lack of access to public transportation was a significant barrier to people with disabilities' participation in community life. Because many people with disabilities are unable to drive or do not have access to a car, they rely heavily upon public transportation. Despite the ADA's extensive provisions related to public transportation, many barriers remained after passage of the law, making enforcement actions very important.

In the late-1990s, Equip for Equality received many complaints about the inaccessibility of the Chicago Transit Authority (CTA). Most of these complaints concerned parts of the CTA that were designated accessible, but in practice, were not actually accessible. For instance, although many of the elevated train stations had elevators, these elevators were frequently broken, so riders using wheelchairs were



unable to access trains. Additionally, nearly all of the CTA's buses had lifts, but often the bus lifts were broken or bus drivers would refuse to deploy them. Moreover, even though the ADA requires that stops be announced for people who are blind, bus drivers and train operators routinely failed to make the announcements or the microphones used to announce stops were frequently broken.

To address these systemic problems, Equip for Equality, Access Living, the law firm of Butler Ruben Saltarelli and Boyd, and private attorney Kate Yannias brought suit under the ADA in *Access Living v. Chicago Transit Authority*, 00 C 0770, on behalf of people with mobility, vision and hearing disabilities. After the court denied the CTA's motion to dismiss and motion for summary judgment, the parties negotiated a comprehensive class action settlement agreement.

Highlights of the settlement included:

- Installation of audio-visual equipment on buses to announce bus stop information to riders who have visual or hearing

disabilities;

- Improvements to the gap-filler system for rail riders who use wheelchairs;
- Specially-trained customer service controllers to assist riders with disabilities;
- A comprehensive rehab of train station elevators and increased elevator service repair hours; and
- Creation of a \$500,000 Operational Improvement Fund to increase access for riders with disabilities. Many of these changes benefitted non-disabled riders as well. The systemic changes achieved through this case would never have been possible without the ADA.

## Community Living

In passing the ADA, Congress recognized that the isolation and segregation of people with disabilities was a serious and pervasive social problem. Following passage of the ADA, the U.S. Department of Justice issued a regulation known as the "integration mandate," requiring that state and local governments administer their programs in the most integrated setting

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appropriate to the needs of people with disabilities.

In 1999, two women with intellectual disabilities and mental illness who were residents of a state-operated hospital in Georgia filed suit alleging that the state had violated the ADA's integration mandate by denying them community placements. Their case ultimately was heard by the U.S. Supreme Court. In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Court issued an historic decision holding that the unjustified institutionalization of people with disabilities is discrimination under the ADA. Many people compare the *Olmstead* decision to *Brown v. Board of Education* because of the Court's recognition that separate is not equal for people with disabilities.

The disability community was hopeful that the ADA and *Olmstead* would be catalysts for Illinois to develop a robust community-based service system and end its reliance on large institutions. However, after many years of trying to work collaboratively with the state, the disability community concluded that litigation would be the only way to achieve meaningful change in Illinois. Equip for Equality, Access Living, and the ACLU of Illinois jointly filed three community integration class actions against State of Illinois officials for failing to serve people with disabilities in the most integrated setting.

*Ligas v. Maram*, 05 C 0331, was filed on behalf of approximately 6,000 people with developmental disabilities across Illinois living in over 250 large privately-owned state-funded facilities, as well as on behalf of approximately 20,000 people with developmental disabilities living at home with family members waiting for services. Dentons served as the pro bono law firm for that case. A second case, *Williams v. Blagojevich*, 05 C 4673, was filed on behalf of approximately 5,000 people with mental illness residing in large privately-owned state-funded nursing homes, known as Institutions for Mental Disease. Kirkland & Ellis and the Bazelon Center for Mental Health Law served as co-counsel. *Colbert v. Blagojevich*, 07 C 4737, was filed on behalf of approximately 16,000 people with physical disabilities and/or mental illness residing in traditional nursing homes in Cook County.

Dentons served as pro bono counsel.

Ultimately, consent decrees were reached with the state in all three cases. Under the consent decrees, people with disabilities are finally being given a meaningful choice of where to live and the supports necessary to be successful in the community. Although all three consent decrees are still in the process of implementation, to date over 7,000 people with disabilities have received community services, and many thousands more will move into the community by the time the consent decrees end. Without the ADA, the vast majority of these people would still be denied the choice of living in the community.

### Prisoners' Rights

A significant number of prisoners have disabilities. When the ADA was passed, it was unclear whether prisoners with disabilities were even covered by the law. This question was answered in the affirmative by the U. S. Supreme Court in *Yeskey v. Pennsylvania Department of Corrections*, 524 U.S. 206 (1998).

In the wake of *Yeskey*, prisoners with disabilities have filed numerous ADA class actions, including two currently pending in Illinois. The first case, *Holmes v. Godinez*, 11 C 2961, was filed in response to the systemic failure of the Illinois Department of Corrections (IDOC) to provide accommodations to deaf and hard of hearing prisoners. The IDOC has failed to provide sign language interpreters, captioning, video relay services, and other accommodations required by the ADA. Without these accommodations, deaf and hard of hearing prisoners are deprived of meaningful access to disciplinary proceedings, healthcare, religious services, educational and vocational programs, telephones, library services, grievances, and pre-release programs. *Holmes* was filed by Equip for Equality, Uptown People's Law Center, the National Association of the Deaf and Winston & Strawn, providing representation on a pro bono basis.

The second case, *Rasho v. Godinez*, 1:07-CV-1298, was filed in response to the systemic discrimination faced by prisoners with mental illness, including receiving woefully substandard care, having little

opportunity to see mental health professionals beyond cursory conversations to renew their prescription medication, being punished for symptoms of their mental illness, and being placed in harmful social and physical isolation. *Rasho* was filed by Equip for Equality, Uptown People's Law Center, and Dentons and Mayer Brown, which are both providing representation on a pro bono basis.

Although the Constitution provides some remedies for prisoners with disabilities, the ADA is an important legal tool that provides additional protections and accommodations to address the discrimination that they routinely face.

### Access to Entertainment

Like most Americans, people with disabilities enjoy going to the movies. Unfortunately, people who are blind or deaf have not had equal access to the movies because of communication barriers. Accordingly, Equip for Equality filed a complaint with the Illinois Attorney General against AMC, the largest movie theater company in Illinois, seeking to remove these barriers.

Attorney General Madigan reached a comprehensive settlement with AMC that ensures that people who are blind and deaf have equal access to the movies at AMC. Under the terms of the settlement agreement, AMC made 100% of its 460 movie screens across Illinois accessible to people who are blind or deaf by providing audio descriptions to enhance the moviegoing experience for people who are blind, and personal captioning devices for people who are deaf. Without the ADA, people with disabilities would still not have meaningful access to the movies.

The ADA has been a tremendous legal tool for social change for people with disabilities across the country, including in Illinois. While many barriers still remain, 25 years after the passage of the ADA, the landscape for people with disabilities has improved dramatically and will continue to get better as the ADA is used to address the remaining barriers. ■