

# Partnership Policy Spotlight

## Access to Opportunity for People Living with Disabilities: History, Data, & Policy Solutions



People living with disabilities, which include physical, sensory, mental, developmental, and cognitive impairments, face unique obstacles to equity and economic opportunity. These groups experience higher levels of poverty, food insecurity, and housing, employment, and health discrimination than non-disabled populations due to institutional, environmental, and attitudinal barriers. Living with a disability while these barriers exist inhibits a person's [full and effective participation in society on an equal basis with others.](#) Although disabilities are present across all demographics, they affect some subgroups more than others, including people experiencing low-incomes, women, seniors, people who identify as American Indian or Alaska Natives, and incarcerated individuals. Ensuring that all people living with disabilities have meaningful access to programs and services offered in accessible, inclusive settings is crucial to addressing the causes and conditions of poverty.

**The National Community Action Partnership celebrates the history, contributions, and pride of the disability community and recognizes the work of Community Action Agencies across the country to support and serve persons living with disabilities in their communities.**

### HISTORY OF DISABILITY RIGHTS

The state of [disability rights](#) in America during the first half of the twentieth century was mixed. There were certain programmatic and representational gains – in 1920, the [Smith-Fess Act](#) (modeled after similar legislation for veterans) provided individuals with disabilities with rehabilitative and vocational services, and in 1932 Franklin Delano Roosevelt became the first disabled person elected president. At the same time, however, there was an active eugenics movement that sought to 'safeguard' the gene pool by legalizing the forced sterilization of disabled individuals.

Protections were expanded in the 1960s and 1970s. The 1964 Civil Rights Act [did not](#) include individuals with disabilities among those whose rights it was intended to protect, however, the 1968 follow-up included the Fair Housing Act (FHA), which prohibited discrimination in housing based on disability. The FHA requires [physical accessibility](#) in newly-constructed homes, regardless of whether they are privately or publicly funded and intended for rental or ownership. Prior to the FHA, the American Standards Asso-



ciation (now the American National Standards Institute) published the first [accessibility design standards](#) in 1961, and the [Architectural Barriers Act](#) established accessibility standards for the federal government in 1968. [Section 504](#) of the Rehabilitation Act of 1973 prohibits discrimination based on disability in federally funded programs. It requires institutions that receive federal funding (such as universities) to make reasonable accommodations for individuals with disabilities. It also requires multifamily housing facilities receiving U.S. Department of Housing and Urban Development (HUD) funding to construct at least 5% of their units to be accessible for individuals with mobility impairments.

At the same time as these legislative advancements, the U.S. Supreme Court recognized various rights for individuals with disabilities. The Court determined that the state [could not exclude](#) children with intellectual disabilities from enrolling in public school, [even if](#) there were budgetary constraints. The Court also ruled on how the state may care for and confine individuals with disabilities, establishing that the state may not [involuntarily confine](#) a non-dangerous individual, may not violate an individual's Fourteenth Amendment rights through the inappropriate use of [physical restraints](#), and may not deny a [permit](#) for a group home if that denial was based on prejudice against individuals with disabilities.

In 1990, the passage of the Americans with Disabilities Act ([ADA](#)) prohibited discrimination against individuals with disabilities in all aspects of public life and all areas open to the general public. The ADA applies to areas including employment, public accommodations, transportation, and schools, and guarantees to people with disabilities the same types of civil rights protec-

tions as those based on classifications like race, sex, and national origin.

## CURRENT DEMOGRAPHICS

More than [61 million](#) adults in the U.S. – 26% of the adult population – are living with some type of disability. This group is not a monolith – it includes a broad spectrum of the population with a wide variety of disabilities, including deafness or blindness, serious difficulty with mobility, and difficulty living independently. Rather than a static reality, disability is something that individuals may experience temporarily, and the likelihood and severity may [increase](#) with age. The share of people who report having experienced a disability is 10% among people from ages 15 to 24, about 30% of adults between 55 and 64, and more than 55% of adults ages 75 to 79. Layered with prevalence based on age, there are some groups among whom disability is particularly common. For example, one in four women, two in five non-Hispanic American Indians or Alaska Natives, and two in five adults aged 65 or older are living with a disability. There are also more specific commonalities within subgroups: [incarcerated individuals](#) are far more likely than the general public to report a cognitive disability.

## POVERTY

Individuals with disabilities face obstacles accessing healthcare, obtaining education, and entering the workforce. These factors all contribute to disproportionately high poverty rates among people with disabilities – the poverty rate for adults living with a disability is [double](#) that of adults without a disability and nearly half (48%) of people with disabilities have an annual personal income that is less than \$15,000. Almost

two-thirds of adults experiencing long-term poverty are individuals living with disabilities, and individuals with disabilities were almost twice as likely to respond that they would “certainly” or “probably” not have access to \$2,000 for an unexpected expense. Rates of food insecurity for households that include people with disabilities are much higher than among households that do not. This lack of financial stability, in turn, negatively impacts the physical and psychological health of individuals, leading to tangible effects such as emotionally strained caregiving situations and skipping necessary medications.

## EMPLOYMENT

People with disabilities overwhelmingly want to participate in the workforce. According to the American Association of People with Disabilities, two-thirds of people with disabilities are adults who would like to work. A 2018 survey, however, found that only 36% of people with disabilities were employed, compared to 77% of the general population. Further, a 2019 Census Bureau

Report showed that pay for employees with disabilities is only two-thirds that of the average worker without a disability. Workers with disabilities have also been hit harder by the pandemic. They tend to be over-represented in low-wage, in-person jobs, which means that they were more likely to become unemployed as those positions were eliminated and recovery has been slow. There has, however, been an increase of almost half a million people with disabilities in the workforce since before the pandemic, which is likely a result of employees experiencing long-term health impacts from COVID.

## FROM SUBMINIMUM WAGE TO COMPETITIVE INTEGRATED EMPLOYMENT

The Fair Labor Standards Act (FLSA), passed in 1938, established a federal minimum wage, but it also created a subminimum wage for people with disabilities. In some ways, the law incentivizes hiring people with disabilities because an employer with a 14(c) certificate is permitted to pay an employee with a disability based on their productivity. The system is based on the erro-



[neous theory](#) that the work these employees perform is less valuable than the work of employees without disabilities. While it may have originally been an effective method for incorporating individuals with disabilities into the workforce, the system is [discriminatory](#) and is not in keeping with evolving views on disability rights. In 2020, the U.S. Commission on Civil Rights [recommended](#) phasing out the program. Bipartisan bills in the [House](#) and [Senate](#), [endorsed](#) by disability rights advocates, propose phasing out the program by providing grants to support current employers and ceasing to grant new certificates (see [Issues We're Tracking!](#)!).

Rather than using a subminimum wage to encourage employers to hire individuals with disabilities, advocates and lawmakers are focusing on the valuable and unique [contributions](#) these individuals make to the workplace. [Vocational rehabilitation services](#) can provide support for people with disabilities who are preparing for and seeking jobs and can help identify positions that will be well-suited to their specific [capabilities](#). The [Workforce Innovation and Opportunity Act](#) (WIOA), initially passed in 2014, supports



this approach. Under the 14(c) system, employees with disabilities were often [isolated](#) from the general workforce. Under [WIOA](#), the goal is [competitive integrated employment](#), meaning that employees with disabilities should enjoy the same benefits, compensation, and opportunities for advancement as non-disabled employees.

## HEALTHCARE

Adults living with disabilities are both more likely to need health care services than the general population and more likely to encounter barriers to receiving those services. According to the CDC, [one in three](#) adults 18-44 with a disability were prevented from addressing a healthcare need within the past year because they simply could not afford services. As with employment, the pandemic has had a disparate impact on healthcare for this community. Individuals with disabilities have a [higher risk](#) of contracting COVID and experience higher rates of severe illness and death after becoming infected. Their risk and the [care](#) they receive is impacted by the spread of the virus in institutions as well as [discriminatory treatment](#) in healthcare settings. For children with disabilities, accessing school during the pandemic has also been challenging, particularly as some states have [tried](#) to [prohibit](#) mask mandates that help [keep them safe](#) in schools.

## MEDICAID COVERAGE GAP

Of the 2.2 million adults in the Medicaid coverage gap in 2019, [15%](#) were individuals with disabilities. The [Medicaid coverage gap](#) exists for [individuals](#) who live in the twelve states that refused to expand Medicaid coverage and whose income is above their states' eligibility threshold for Medicaid but below the federal poverty line

(where subsidies for the federal health insurance marketplace begin). The Medicaid expansion is crucial for individuals with disabilities: more than 60% of nonelderly adults with disabilities qualify for Medicaid based on low-income rather than the strict medical standard required for Supplemental Security Income (SSI). The implications for individuals with disabilities go beyond healthcare. Prior to the Affordable Care Act and Medicaid expansion, people with disabilities needed to maintain a low income to qualify for Medicaid. When states expanded their Medicaid coverage, it allowed people with disabilities to enter the workforce and increase their earnings and assets without jeopardizing their access to necessary health services.

#### *Olmstead v. L.C.*

Courts have played a crucial role in the struggle for state recognition of and attention to the health care needs of people with disabilities. In 1999, Lois Curtis and Elaine Wilson, two women who had both been institutionalized intermittently since they were teenagers, were plaintiffs in a pivotal case before the Supreme Court. They argued that their confinement in institutional settings was discriminatory and violated their civil rights. The Court agreed but with a caveat. The majority held that people with disabilities should be able to live in the

## Issues We're Tracking

- **SSI Savings Penalty Elimination Act** ([S. 4102](#)) – Increases resource eligibility limits for the Supplemental Security Income (SSI) program.
- **Real Emergency Access for Aging and Disability Inclusion (REAADI) for Disasters Act** ([H.R. 4938](#) / [S. 2658](#)) – increases disaster preparedness for individuals with disabilities through new programs and requirements for certain federal agencies.
- **Better Care Better Jobs Act** ([H.R. 4131](#) / [S. 2210](#))
  - provides grant funds for state Medicaid programs to improve home- and community-based services through increased access and workforce supports.
- **Transformation to Competitive Integrated Employment Act** ([H.R. 2373](#)) – provides grants to incentivize transitions to providing competitive integrated employment.
- **Supplemental Security Income Restoration Act** ([H.R. 3763](#) / [S. 2065](#)) – requires that monthly SSI benefits are at least equal to the federal poverty guidelines, indexes them to inflation, and increases asset eligibility levels.
- **Online Accessibility Act** ([H.R. 1100](#)) – establishes requirements and guidance for consumer-facing websites to make them more accessible to people with disabilities.

least restrictive setting reasonably available, and that unnecessary institutionalization was a violation of their civil rights. However, the Court also observed that [community-based services](#) might not be appropriate for those with severe disabilities. Further, the Court declined to consider the women's constitutional arguments, opting instead to decide the case based on interpretation of the ADA. In his [dissent](#), Justice Thomas argued that the two plaintiffs had not suffered discrimination based on their disabilities and raised federalism concerns about the federal government imposing unreasonable standards of care and spending requirements on individual states.

While *Olmstead* has long provided support for the right of individuals with disabilities to access long term services and supports, the Court's recent decision in [Dobbs v. Jackson Women's Health Organization](#) makes the future of those rights less certain. An originalist interpretation of the 14<sup>th</sup> Amendment would likely not protect the rights of individuals with disabilities. Disability rights advocates point to the Court's willingness to overturn established precedent as [cause for concern](#), and have suggest that legislative action is necessary to safeguard the right of individuals with disabilities to access care in a person-driven format that provides independence rather than institutionalization.

## REPRODUCTIVE RIGHTS

The disability community has a long and complicated history with reproductive rights. In 1907, Indiana became the first state to pass a [eugenics sterilization law](#) based on the rationale that it would protect "vulnerable" women from unwanted pregnancies. Over the next thirty years,

more than half the states enacted similar laws that would allow authorities in state institutions to sterilize individuals they deemed "unfit" for parenthood. The Supreme Court [upheld](#) the validity of such laws, announcing in its 8-1 decision in [Buck v. Bell](#) (1927) that "[t]hree generations of imbeciles are enough." Following World War II and knowledge of the Nazi eugenics program, these laws quietly fell into disfavor, but *Buck v. Bell* has [never been explicitly overruled](#). Instead, a [legacy](#) of structural racism and ableism emanates from the decision.

Recent events have brought this issue to the fore. During the 2021 trial in which Britney Spears sought to end her conservatorship, she testified about her inability to make her own reproductive decisions, a [situation](#) that many individuals with disabilities are subjected to by guardians. While individuals with disabilities may not share the same views on abortion, recent laws and decisions about reproductive rights pose a significant threat because reproductive justice and disability justice are both based on [rights to bodily autonomy](#). [Access to reproductive healthcare](#) is crucial for the independence and equality of individuals with disabilities.

## ACCESS TO THE BALLOT

Individuals with disabilities confront a variety of barriers to exercising their right to vote. These barriers – from outright prohibitions to accessibility challenges – have [deep historic roots](#). In 1819, Maine became the first state to ban individuals from voting based on mental incapacity and many other states followed suit. These bans prevented inhabitants of institutions from having a voice in the political process, even though that

process ultimately determined the quality of care they received in state-run hospitals and asylums. Even Civil War veterans suffered disenfranchisement because of the effects of mental trauma they experienced during the war. These bans are not just historic artifacts: in 2000, Maine voters [rejected](#) an amendment to the state constitution that would have eliminated the automatic voting ban for individuals under guardianships due to mental illness. While a Maine court has since ruled that an *automatic* ban is unconstitutional, there is [still a restriction](#) in place based on a functional standard that requires the individual to understand the nature and purpose of voting. This easing of restrictions does not equate to universal suffrage, however, as currently [all but ten states](#) maintain mental capacity [limitations on voting](#).

Voting systems can also create impediments and make accessibility a challenge for individuals with disabilities. In 2002, Congress passed the [Help America Vote Act](#) (HAVA) to address challenges identified during the 2000 election. HAVA established the Election Assistance Commission (EAC), which conducts studies, develops guidance, and shares information on election administration. An EAC [study](#) of the 2020 election demonstrated an increased turnout of almost 6% compared to 2016 for voters with disabilities, but also noted that [11%](#) of voters with disabilities encountered some type of difficulty with voting.

## From the Field!

[Community Action of Skagit County \(Mount Vernon, WA\)](#): One of the essential programs Community Action of Skagit County provides is a way to connect volunteers with elderly individuals and adults with disabilities. The organization's [Senior & Disabled Services](#) help individuals without a support network or the financial resources to secure volunteer assistance for things like transportation, housekeeping, and yard work. By bringing together volunteers with community members who are in need, Community Action of Skagit County provides a vital service while building relationships and community.

[Northwest Indiana Community Action \(NWICA\) \(Crown Point, IN\)](#): The [Aging & Disability Resource Center](#) (ADRC) at NWICA provides vital information for those exploring options for long-term support. The ADRC provides a wide array of resources about topics like benefit enrollment and long-term care, and counselors help individuals access various services. NWICA also assists individuals with case management and navigating the Aged & Disabled Waiver, allowing individuals with disabilities to remain in a community-based care setting rather than an institution.

Voting difficulties for people with disabilities often stem from the [\*Purcell\*](#) principle. This [principle](#) cautions against changing election rules too close to an election to prevent voter confusion and reduce the administrative burdens of time-sensitive changes. In practice, however, courts [often employ the principle](#) to deny relief in cases where voters are seeking injunctions against new voting laws that make accessing the ballot more difficult. This was particularly true [during the COVID-19 pandemic](#), as election officials attempted to increase accessibility while safeguarding public health. For example, courts cited *Purcell* when they refused injunctions against restrictive voter identification laws, even as the pandemic made obtaining the required forms of identification more challenging. Restrictions on the use of [mail-in ballots](#) have also had [particularly negative effects](#) on voters with disabilities.

## EXAMINING PROTECTIVE MEASURES

While the [highly publicized](#) struggle for Britney Spears to be free of her conservatorship was ultimately [successful](#), many other Americans continue to have their legal rights limited by similar protective arrangements. In 2018, the Senate Special Committee on Aging [estimated](#) that 1.5 million adults were living under protective legal arrangements such as a guardianships or conservatorships. Although these arrangements may be necessary for some individuals with physical disabilities or cognitive differences, these arrangements vary widely between states, create [opportunities for abuse](#), and can unreasonably (and even unintentionally and unknowingly) [strip individuals of their rights](#).

## Resources

- [The Arc](#)
- [The National Organization on Disability](#)
- [USA.gov – Disability Services](#)
- [Independent Living Resources](#)
- [Department of Labor – Disability Resources](#)
- [National Disability Rights Network](#)
- [American Association of People with Disabilities](#)
- [U.S. Equal Employment Opportunity Commission – Disability Discrimination](#)
- [Ford Foundation – Disability Inclusion Toolkit](#)
- [United Nations – Disability Inclusion Strategy](#)
- [National Center on Disability & Journalism – Disability Language Style Guide](#)

Certain populations, such as those with developmental or intellectual disabilities, are at [higher risk](#) for guardianship than the general population. Parents may even seek guardianships for their children with disabilities when they reach adulthood, [not realizing](#) the profound effect it may have on their child's rights. In California, for example, an individual in a conservatorship loses the right to vote, and in order to have the

right restored they must affirmatively prove – to a judge with absolute discretion – that they have a [desire to vote](#). The [2016 law](#) actually represents an easing of restrictions, as it replaced the previous requirement that an individual must be capable of filling out a voter registration card in order to qualify as an elector.

In light of the potential harms associated with unnecessarily restrictive protective arrangements, there has been a movement in favor of [supported decision-making](#). Instead of placing a guardian in charge of decisions for a person with a disability, supported decision-making prioritizes the [autonomy](#) of the individual with a disability while providing them with necessary decision-making support.

## VISIBILITY & REPRESENTATION

Recently, individuals with disabilities have enjoyed highly visible successes in the arts. [Ali Stroker](#) became the first wheelchair user to [win a Tony](#) in 2019 for her portrayal of Ado Annie in the Broadway revival of “Oklahoma!” and she noted that, while Broadway theatres have historically been accessible for disabled audience members, the same accessibility does not exist backstage for disabled performers. This year “CODA,” a film featuring an ensemble of Deaf actors and employing American Sign Language for a substantial amount of its dialogue, won the Oscar for Best Picture while [Troy Kotsur](#) became the first Deaf man to win an Oscar for an Actor in a Supporting Role.

Despite these gains, disabled individuals continue to be [vastly under-represented](#) onscreen, and the representations that do exist often fail to reflect the diversity and depth of the disability



community. While representation of other marginalized groups on television has increased, the number of characters with disabilities has decreased and, at just [2.2%](#) of series regular roles, differs widely from reality. Representation is crucial – as conversations about [diversity, equity, and inclusion policies](#) abound, people with disabilities are routinely [overlooked](#) in those conversations. Even “CODA” has been [criticized](#) for relegating Deaf individuals to supporting roles and [overemphasizing](#) the family’s reliance on their hearing daughter.

Even worse, onscreen portrayals of disability still fall into [harmful tropes](#) that equate disability with evil. Much like Shakespeare [gave](#) Richard III a hunchback to reflect his perceived brutality, the 2020 film adaptation of Roald Dahl’s “The Witches” featured Anne Hathaway as a witch who could be identified as such by her hands, each of which had just two fingers and a thumb. The depiction prompted [outrage](#) from people with limb differences and led to apologies from the actor and the film studio.

## MOVING FORWARD

It has been over 30 years since the Americans with Disabilities Act was signed into law, but there is a lot more work to be done to ensure that people living with disabilities have equal access in all areas of society. Multiple pieces of federal legislation have been filed that would get us closer to that goal, including bills that transition industries to competitive integrated employment, improve home- and community-based services by funding workforce expansion, and require consumer-facing websites to be fully accessible to people with disabilities.

The Community Action Network also has a direct role to play as community leaders. Hundreds of CAAs provide services specifically tailored to people living with disabilities (see From the Field!). In addition, many CAAs and State Associations ensure that their outreach materials are aligned with current language guidelines and that front line staff are trained on how to in-

clusively direct people with disabilities to available services and application process accommodations. We can also ask current and potential elected officials where they stand on policies that affect the disability community, including making [voting more accessible](#) for people with disabilities, ending sub-minimum wage, reducing waitlists for home care services, and increasing business accessibility.

Most importantly, Community Action Agencies and State Associations can create opportunities that empower customers with disabilities to increase awareness by sharing their stories, voice their policy priorities with elected officials, and expand visibility by running for office themselves. Empowering customers living with disabilities and guaranteeing that they have equal opportunities and protected rights breaks down barriers, benefits all community members, and is crucial to addressing the causes and conditions of poverty.

