

**Remarks of Andrew D. Levy
Chair, Maryland Commission on Disabilities
at the
Maryland Celebration of the
22nd Anniversary of the Americans with Disabilities Act**

**University of Maryland, Baltimore County
July 26, 2012**

Hello and welcome to Maryland's celebration of the 22nd Anniversary of the Americans with Disabilities Act. My name is Andy Levy and I am Chair of the Maryland Commission on Disabilities, which by statute advises the Department of Disabilities on matters affecting individuals with disabilities, including public policy, outreach, and personal assistance services.

Our theme today is technology and its ability to empower individuals with disabilities. It is particularly fitting that we are gathered to celebrate technology on this campus. There is no institution in this State more closely associated with technology and all that it can offer to improve lives than this great University and its visionary leader, Dr. Hrabowski.

Dr. Hrabowski, my son is an alumnus and over the years my wife Sandy and I have written quite a few checks to UMBC. I can see the money was well spent. We will be hearing from Dr. Hrabowski in a few minutes. In the meantime I'd ask you to join me in thanking him and his wonderful staff for making it possible for us to meet here for this celebration.

I'd also like to thank Secretary Cathy Raggio for all that she does. Cathy is in her sixth year as Secretary of the Department of Disabilities. One of the genuine pleasures of being Chair of the Commission on Disabilities is getting to work with Cathy and her excellent staff. Cathy tends to shun the spotlight, preferring to let others get the credit. And true to form, she has resisted my efforts to ask her to speak today, preferring to let the attention be on others. But make no mistake, no one is more responsible for putting this celebration together than Cathy.

Before I introduce our speakers I'd like to take a few moments to talk to you about some critical developments relating to the ADA. Today is an opportunity to celebrate the promise of the ADA. In a thousand different ways, large and small, the ADA has changed and improved lives. Lives not just of people with disabilities, but of everyone in our community. We must always remember that diversity benefits everyone – everyone's life is made richer by the inclusion of people with different backgrounds, different abilities, and different life experiences.

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In Fair Housing litigation the point is often made that housing discrimination – the refusal to sell or rent to people based on things such as their color, ethnicity, or disability – harms more than just the excluded individuals. It also harms the people living in the neighborhood, who by virtue of the discrimination are denied the right to live with and enjoy the fellowship people of different backgrounds. So understood, laws against discrimination are not merely individual rights, they are community rights.

But just as it is fitting that we celebrate the ADA, it is also important that we not take it for granted. Merely having the rights on paper doesn't automatically translate to having the rights in reality. Martin Luther King famously said that "the moral arc of the Universe is long, but it bends toward justice."

And so it does, but it doesn't do it automatically, or on its own. The rights protected by the ADA are what we make of them. If we are complacent, if we take them for granted, they will die. As surely as a plant will die if it is not watered, and nurtured, and defended against predators that would do it harm.

But if we embrace these rights, if we understand that the rights guaranteed will only become and remain a reality if every individual who cares about them assumes personal responsibility for enforcing them and insists that they be respected and enforced, the ADA will thrive.

There are two recent developments I want to tell you about that pose threats to the ADA. The first is that a bill has been introduced in Congress that will make it more difficult to sue under the ADA. It is HR 3356 – the so-called "ADA Compliance for Customer Entry to Stores and Services Act of 2011." The acronym is ACCESS! Don't you love it? It's a bill that if enacted will result in *less* access. George Orwell would have been proud.

If enacted, it will require people who are discriminated against in public accommodations to jump through a series of procedural steps including notice and a waiting period before suing to enforce access to public accommodations.

I don't have nearly enough time to here to give the details but suffice to say, the ADA is already one of the most under-enforced laws. One of the reasons is that there is no provision for damages in Title III (relating to public accommodation discrimination), even where the violations are well-known and of long-standing. The lack of damages and requirement of notice will effectively result in a blanket, nationwide exemption for compliance with the ADA.

I mention this, because this has been going on while we weren't paying attention. If we don't vigilantly enforce and defend these rights, they will go away.

Let me give you one other example. In May, the Department of Justice formally issued some regulations with respect to swimming pools and spas in large public places – hotels, resorts, large swim clubs. They required accessible means of entry – such as a lift or sloped entry. The substance of these regulations was not new – they had been issued by the Access Board in 2004 and first adopted by DOJ in 2010.

When they were formally proposed in May, a coalition of the hotel and resort industry quickly mobilized in opposition. Virtually before anyone knew what was happening, DOJ agreed to extend the compliance date “to provide pool owners and operators additional time to evaluate and comply with their program accessibility and readily achievable barrier removal obligations.” Although DOJ said that it was only extending the compliance date, there was great concern among disability advocates that this was only the first salvo in a concerted effort by the hotel and resort industry to roll-back the regulations themselves. And indeed, that is exactly what is happening as we speak. And as we meet to celebrate ADA.

This points out that although we, members of a community who cares about the ADA, are greater in number, those who would weaken the ADA are better organized.

But we can change this. We can organize. And we can mobilize. And we can make it clear that the ADA is here to stay. That we will not allow these rights to be rolled back.

Another thing that requires our attention is amending Maryland’s public accommodations law to allow for damages for violations, and to make clear that web sites are public accommodations and must be made accessible by users of screen readers.

With respect to all of these things, it bears noting that the thousands of individuals with disabilities have joined our community in recent years as a result of their service in the military, in Iraq and Afghanistan. It is commonplace today to hear people talk about “honoring their service.” But you cannot both “honor their service” and dilute the protections of the ADA. The greatest way to honor their service is to strengthen the ADA. Make your homes and your businesses fully accessible to them. That will honor their service.

I want to close my remarks by talking briefly about a very recent court decision decided just a week and a half ago. The case involved whether Disneyland was required to allow a visitor to use a Segway to get around the park, or whether it could limit mobility aids only to wheelchairs and scooters. The plaintiff was a woman who alleged that use of a wheelchair was painful and that she could best enjoy Disneyland by using a Segway, which would allow her to see the exhibits

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from a standing position. Disney's position was that the ADA only required certain minimum levels of accessibility, not necessarily the best accessibility.¹

The opinion, by Federal Judge Alex Kozinski, held that "The ADA guarantees the disabled more than mere access to public facilities; it guarantees them 'full and equal enjoyment.'" That is, not merely the minimum possible, if it is reasonably possible to do so. In Judge Kozinski's words:

Facilities ... need only make accommodations that are reasonable. In deciding what's reasonable, facilities may consider the costs of such accommodations, disruption of their business and safety. But they must also take into account evolving technology that might make it cheaper and easier In the past, it might have been enough for a theme park to permit only non-powered wheelchairs. As technology made motorized wheelchairs and scooters cheaper, safer and more reliable, our expectations of what is reasonable changed But technological advances didn't end with the powered wheelchair. As new devices become available, public accommodations must consider using or adapting them to help disabled guests have an experience more akin to that of non-disabled guests.

And he concluded:

New technology presents risks as well as opportunities; we must not allow fear of the former to deprive us of the latter. We have every confidence that the organization that, half a century ago, brought us the Carousel of Progress and Great Moments with Mr. Lincoln can lead the way in using new technology to make its parks more welcoming to disabled guests. As the man who started it all [Walt Disney] said, "Disneyland will never be completed as long as there is imagination left in the world."

Similarly, our job in making the promise of ADA a reality will never be fully completed. Today, we celebrate the role technology and imagination can play in making it a reality.

Thank you very much.

¹*Baughman v. Walt Disney World Co.* (US 9th Cir. 7/18/12).