



# The Struggle for Civil Rights Part V

To cheapen the lives of any group of men,  
cheapens the lives of all men, even our own.

William Pickens



# Gay and Lesbian Civil Rights

- more engaged in politics than ever before
- advantaged in terms of education and income status, strong fundraising
- gains in high culture and mass entertainment
- increasing tolerance in public attitudes
- little national *legislative* success
- biggest advances have been in the courts
- mixed record at the state and local levels





# Gay and Lesbian Civil Rights

- Early homosexual rights groups
  - **Mattachine Society** (1951): one of the earliest homophile organizations in the US, probably second only to Chicago's Society for Human Rights ... Harry Hay and a group of LA male friends formed the group to protect and improve the rights of gay men.
  - **Daughters of Bilitis** (1955): first lesbian civil and political rights organization in the US ... conceived as a social alternative to lesbian bars, which were subject to raids and police harassment, but as it gained members, focus shifted to providing support to women who were afraid to come out, educating them about gay rights and history



Harry Hay



# Gay and Lesbian Civil Rights

- [Lambda Legal Defense and Education Fund](#): American civil rights organization founded in 1971 that focuses on lesbian, gay, bisexual and transgender (LGBT) communities as well as people living with HIV/AIDS through impact litigation, societal education and public policy work
- [National Center for Lesbian Rights](#) (NCLR): founded as the Lesbian Rights Project in 1977 ... non-profit, public interest law firm that advocates for equitable public policies affecting the lesbian, gay, bisexual and transgender (LGBT) community, provides free legal assistance to LGBT clients and their legal advocates, and conducts community education on LGBT legal issues ... only organization in the US dedicated to lesbian legal issues, and the largest national lesbian organization in terms of members



# Gay and Lesbian Civil Rights

- Homosexuality was viewed as an illness by psychiatrists until 1973, when the weight of empirical data led the Board of Directors of the APA to remove homosexuality from the *DSM* ... a move ratified by a vote of the APA membership in 1974.
- **Stonewall Rebellion** (1969): watershed event ... series of spontaneous, violent demonstrations by members of gay community against a police raid that took place in the early morning hours at the Stonewall Inn, a popular hangout in Greenwich Village, NYC ... widely considered to constitute single most important event leading to gay liberation movement and modern fight for LGBT rights
- ***Bowers v. Hardwick*** (1986): upheld constitutionality of a Georgia sodomy law ... overturned in 2003





# Gay and Lesbian Civil Rights

- **Defense of Marriage Act (DOMA, 1996)**: national law that, prior to being ruled unconstitutional, defined marriage for national purposes as the union of one man and one woman, and allowed states to refuse to recognize same-sex marriages granted under the laws of other states
- ***Romer v. Evans* (1996)**: *If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest ...* landmark case dealing with sexual orientation and state laws
- **Vermont high court (1999)**: ordered state legislature to extend to same-sex couples same rights, protections, benefits, obligations available to different-sex couples



# Gay and Lesbian Civil Rights



- *Lawrence v. Texas* (2003): struck down TX sodomy law and, by extension, invalidated sodomy laws in 13 other states, making same-sex sexual activity legal in every US state and territory
- *Massachusetts high court* (2004): legalized same-sex marriage
- *Congressional LGBT Equality Caucus* (2008): 91 members (including two Republicans) strongly committed to ensuring that human rights for LGBT people are fully protected
- *US v. Windsor* (2013): DOMA denies same-sex couples the rights that come from national recognition of marriage, which are available to other couples with legal marriages under state law. The Court held that the purpose and effect of DOMA was to impose a *disadvantage, a separate status and so a stigma* on same-sex couples in violation of the 5th amendment's guarantee of equal protection.



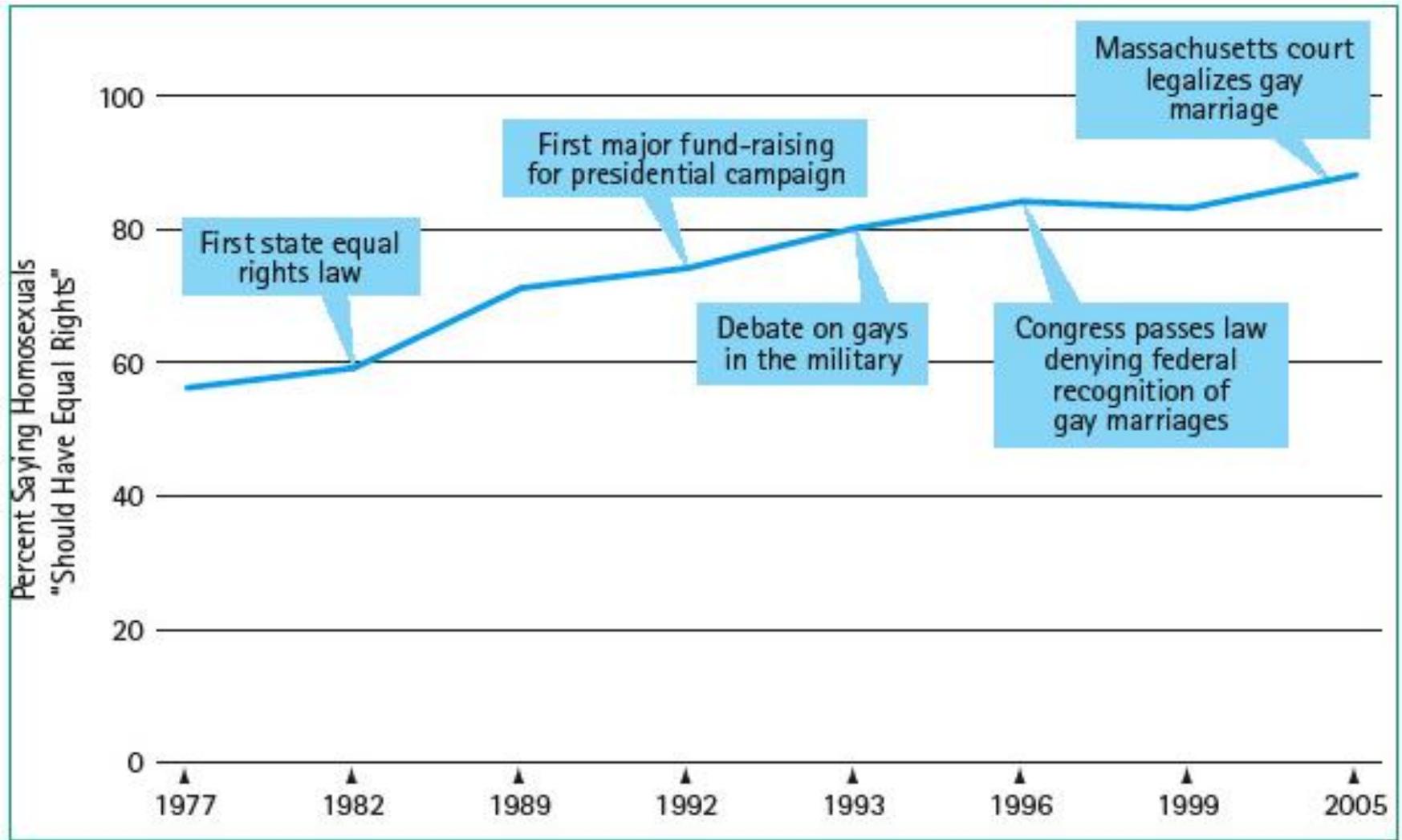
# Gay and Lesbian Civil Rights

- *Obergefell v. Hodges* (2015): Judicial precedent has held that the right to marry is a fundamental liberty because it is inherent to the concept of individual autonomy. Because there are no differences between a same-sex union and an opposite-sex union with respect to these principles, the exclusion of same-sex couples from the right to marry violates the due process clause of the 14th amendment. 1st amendment protects rights of religious organizations to adhere to their principles, but does not allow states to deny same-sex couples the right to marry on the same terms as those for opposite-sex couples.





# Public Opinion on Gay Rights Changed as Gay Political Activism Has Increased





# Gay Rights and Business

- **Chick-fil-A**: CEO comments *very much against gay marriage* led to protest, boycotting
- **Urban Outfitters**: racist, sexist and anti-gay sentiments
- **Exxon**: has been fighting for years against non-discrimination protection and equal benefits coverage for its employees ... Before Mobil was acquired by Exxon, it had policies to protect discrimination against gay men and lesbians, and offered benefits to same-sex couples, but Exxon ended those policies, as it did with XTO Energy's
- **Purina**: doesn't provide a policy that protects gender identity or expression, or offer health care coverage for partners of its gay employees



# Gay Rights and Business

- **Cracker Barrel:** employees were fired for not displaying *normal heterosexual values* as was prescribed by an intra-company memo ... doesn't have a non-discrimination policy that protects gender identity and/or expression ... also segregated customers, seated and served white customers before black customers, and allowed white servers to refuse to wait on black customers





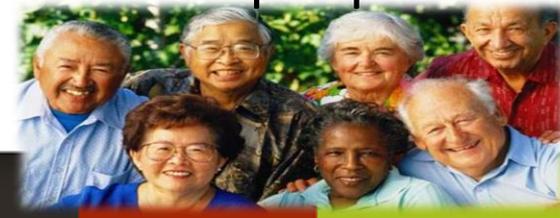
# Contemporary Gay and Lesbian Civil Rights Issues

- In 28 states, same-sex couples have no legal recourse if their **landlords decide to evict** them from their home.
- In 31 states, it is still **legal to fire employees** because they're gay or transgender.
- In 36 states, there are **no laws prohibiting discrimination against LGBT students in schools**. Eight out of ten LGBT students report experiencing harassment at their school within the past year based on their sexual orientation.
- need **comprehensive civil rights legislation** prohibiting discrimination on basis of sexual orientation in seven critical areas: employment, education, housing, public accommodations, jury service, credit, federal financial assistance



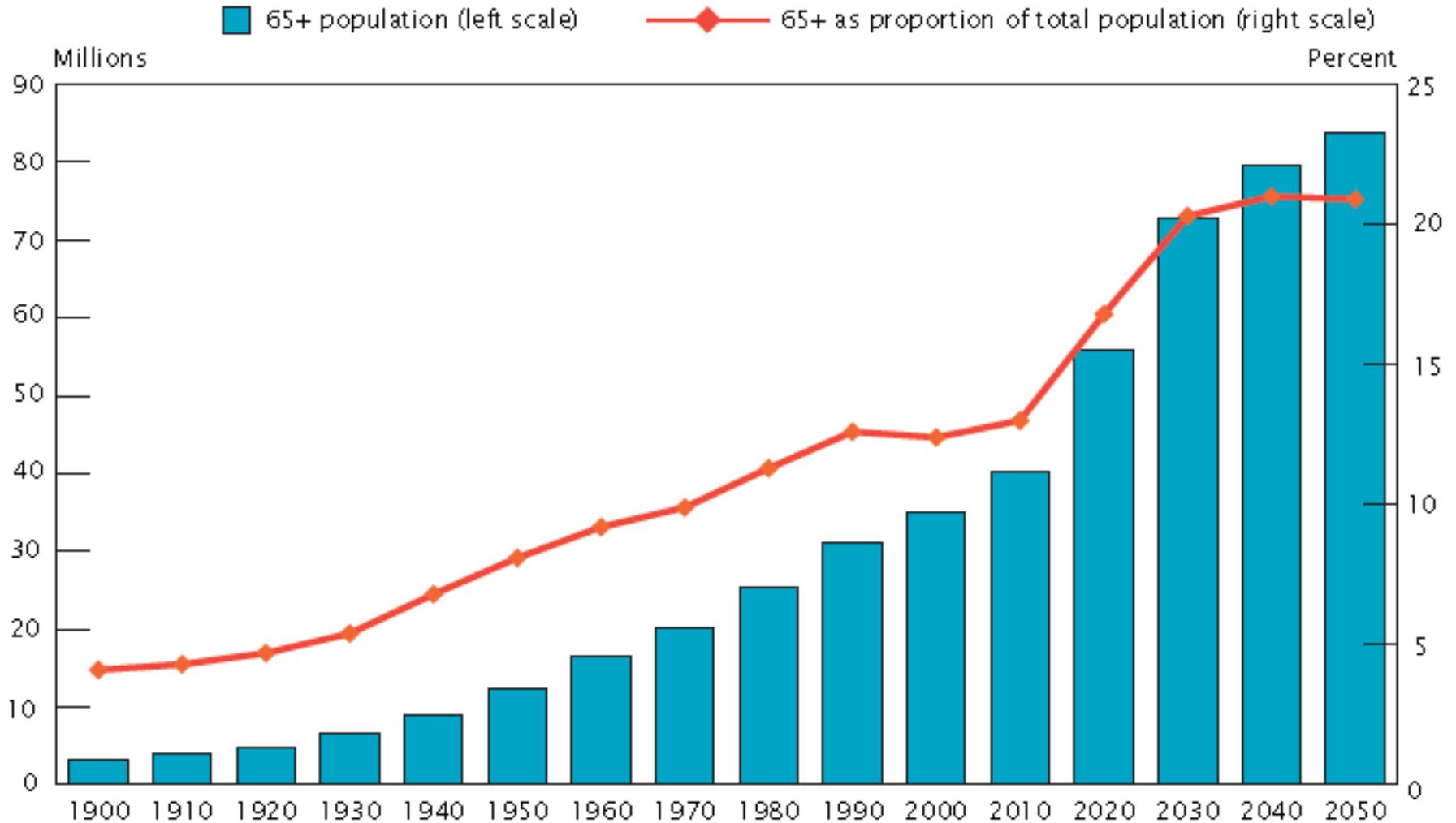
# Civil Rights for Senior Citizens

- Senior citizens are those Americans who are **older than retirement age** and who are therefore eligible for state benefits.
- American population shifts have caused the elderly population to **expand significantly** in recent decades, and it is expected to grow into the 2040s.
- Senior citizens are vulnerable to civil rights abuses due to a propensity for **sickness, disability** and **poverty**.
- The first social movements oriented toward elders developed in the 1930s during the Depression.
- The increasing longevity and relative wealth of older people have greatly **augmented their political clout**.





# Population Over the Age of 65, 1900-2050





# Civil Rights for Senior Citizens

- Government policies throughout the 20th century were aimed at meeting the needs of elderly Americans.
- **Social Security Act** (1935): social welfare legislative act which created the US Social Security system
- **The Older Americans Act** (1965): sought to provide equal opportunity for the enjoyment of adequate income in retirement, adequate health care, housing, long-term care, recreation, community services, freedom and self-determination, and protection against abuse, neglect and exploitation ... Recipients are disproportionately poor, female, rural and African American, as these elderly populations are particularly vulnerable.



# Civil Rights for Senior Citizens

- Government policies aimed at meeting the needs of elderly Americans
- **Age Discrimination in Employment Act (ADEA, 1967):** forbid employment discrimination against anyone who is at least 40 years old, denial of benefits based on age, mandatory retirement and prohibited statements of age preferences in job notices or advertisements ... attempted to address company policies that force elderly employees out of work once they become eligible for government retirement benefits or due to prejudice against the elderly





# Older Workers and Age Discrimination

The Age Discrimination in Employment Act (ADEA), signed into law in 1967, forbids discrimination in the workplace against anyone 40 or older. A recent survey shows that many workers still believe there are signs of age discrimination on the job today.



**64%** of workers say they have seen or experienced age discrimination in the workplace.

**58%** of adults believe age discrimination begins among workers in their 50s.

Source: Bureau of Labor Statistics



# Civil Rights for Senior Citizens

- Government policies aimed at meeting the needs of elderly Americans
  - **Employee Retirement Income Security Act (ERISA, 1974)**: established minimum standards for pension plans in private industry and provided for extensive rules on the national income tax effects of transactions associated with employee benefit plans
  - **Age Discrimination Act (1975)**: prohibited discrimination on basis of age in programs receiving federal financial assistance
- Several national and state laws now bar **mandatory retirement** and courts have begun to strike down **hiring practices based on age** unless a compelling reason can be demonstrated.



# Court Response to Senior Citizen Civil Rights

- Court decisions in recent years have not been as sympathetic to the needs of elderly Americans.
- *Hazen Paper Company v. Biggins* (1993): Interfering with an employee's pension does not automatically violate ADEA, though it is a clear ERISA violation. While older employees may have more years of service, age and years of service are independent of each other. On remand, the court of appeals should reconsider whether there is sufficient evidence to support an ADEA violation independent of the pension interference.





# Court Response to Senior Citizen Civil Rights

- Court decisions in recent years have not been as sympathetic to the needs of elderly Americans.
- *Kimel v. Florida Board of Regents* (2000): ADEA contains a clear statement of Congressional intent to abrogate the states' immunity but that exceeds Congressional authority under the 14th amendment. States may discriminate on the basis of age without offending the 14th amendment if the age classification in question is rationally related to a legitimate state interest. Old age also does not define a discrete and insular minority because all persons, if they live out their normal life spans, will experience it.
- *Smith v. City of Jackson* (2005): ADEA allows an otherwise prohibited action where the discrimination is based on reasonable factors other than age.



# Contemporary Senior Citizen Civil Rights Issues

- Public programs for elders have worked: older people in American are better off than ever before. But well-being is **not equally distributed** - rates of poverty among black and other minority elderly are much higher than among whites.
- Other senior citizen issues include:
  - **Health care** for elders remains a major issue, particularly **nursing care** and **catastrophic illness insurance**.
  - **aging-in-place**: empowering seniors to live in their homes, not in senior living facilities against their will 
  - **physician-assisted suicide**  = **Aging in PLACE**
- Need an **intergenerational compromise** that provides for elders while lifting the burden of poverty from younger generations as well.



# Disabled American Civil Rights

- Disabled people make up more than 20% of the working-age population.
- The Americans with Disabilities Act (ADA) defines a **disability** as *a physical or mental impairment that substantially limits a major life activity* (caring for oneself, performing manual tasks, seeing, hearing, eating, walking, lifting, speaking, reading, thinking, working, communicating, etc) ... A person is not considered disabled if the condition can be corrected (for example, poor vision correctable with glasses).
- **Isolation** and **segregation** are not natural results of disability. They're results of physical and attitudinal barriers.
- **old model**: fix person to better accommodate environment
- **new model**: fix environment to better accommodate person





# Sources of Discrimination against Disabled Americans

- **discomfort**: fear of contagion, disease and death ... embarrassment
- **prejudice**: urge to create in groups and out groups ... assumptions about superiority/inferiority
- **patronization and pity**: charity ... benevolent paternalism
- **stereotyping**: see the disability before you see the person
  - most common stereotypes (Wolfensberger): subhuman, menace, poster child, object of pity, “supercrip”
- **stigmatization**: different from the norm, physically and mentally ... value judgment: this difference is undesired, negative



# Forms of Discrimination against Disabled Americans

- **employment**: only one-third qualified to work can find jobs, low-level jobs, no advancement
- **transportation**: disproportionately high need for public transportation ... in 1990 only one-third of public buses were accessible ... handi-vans still segregate
- **education**: drop out three times the rate of nondisabled peers
- **public accommodations**: often avoided or ignored, even asked/told to leave





# Disabled American Civil Rights

- Disability rights are civil rights.
- People with disabilities have the right to enjoy all aspects of public life that people without disabilities can.
- **political advantage**: Everyone runs risk of one day being disabled.
- **political disadvantages**:
  - geographically dispersed
  - disabilities vary in kind and severity
  - less visible than ethnic minorities
  - mentally disabled don't vote or engage directly in politics
  - cost often a factor





# Disabled American Civil Rights

- The idea that disabled should have equal rights and opportunities first came to the forefront with the return of many **disabled veterans from WWII**. Since then, there has been an active effort to pass laws that help the disabled
- Needs of disabled initially championed by one individual: **Hugh Gallagher**, wheelchair-bound polio victim who served as a legislative aide in the US Senate.
- faced difficulty using public toilets
- could not gain entry into the Library of Congress
- At Gallagher's prodding, Congress passed Architectural Barriers Act in 1968: all future public buildings constructed with national monies must provide access for the disabled.
- similar work in transportation legislation in the 1970s





# Disabled American Civil Rights

- Special Olympics (1968): world's largest sports organization for children and adults with intellectual disabilities, providing year-round training and competitions
- Rehabilitation Act (1973): barred discrimination against people with disabilities in any program, activity or facility that was supported by federal funds ... employers must make *reasonable* accommodations
- Individuals with Disabilities Education Act (IDEA, 1975): ensured a free appropriate education for children with disabilities



NORM JUNG  
"I WOULDN'T BE TARDY IF THE SCHOOL HAD WHEELCHAIR ACCESS."



# Disabled American Civil Rights

- **Civil Rights of Institutionalized Persons Act (CRIPA, 1980):** gave Department of Justice authority to investigate abuse, neglect and treatment issues in publicly run facilities, including jails and prisons, mental health facilities, facilities for people with intellectual and developmental disabilities, and nursing homes
- **Assistance Technology Act (1988):** intended to promote people's awareness of, and access to, assistive technology devices and services ... **assistive technology device:** any item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of individuals with disabilities



# Disabled American Civil Rights

- **Fair Housing Act (1988)**: prohibited housing discrimination on the basis of race, color, religion, sex, disability, familial status and national origin in private housing, housing that receives federal financial assistance, and state and local government housing ... Owners of housing facilities were required to make reasonable exceptions in their policies for tenants with disabilities and to allow tenants with disabilities to make reasonable access-related modifications.





# Disabled American Civil Rights

- Americans with Disabilities Act (1990)
  - first comprehensive civil rights law that outlawed disability discrimination in public and private areas
  - greatly increased accessibility
  - prohibited discrimination and required reasonable efforts to increase accessibility in public facilities and places of employment
  - applied to employment (Title I), state and local government services (Title II), public accommodations and private businesses (Title III), telecommunications (Title IV)
  - dramatically narrowed by the Supreme Court in 2001





# Disabled American Civil Rights

- *Olmstead v. L.C.* (1999): unnecessary segregation of individuals with disabilities in institutions is a form of discrimination ... *People who are living in institutions who could live in more integrated settings must be provided with that choice.*
- *Board of Trustees of the University of Alabama v. Garrett* (2001): Suits in national court by state employees to recover money damages by reason of state's failure to comply with Title I of ADA are barred by 11th amendment.
- *PGA Tour Inc v. Martin* (2001): Golfer Casey Martin has a right under ADA to use a golf cart between shots.





# Disabled American Civil Rights

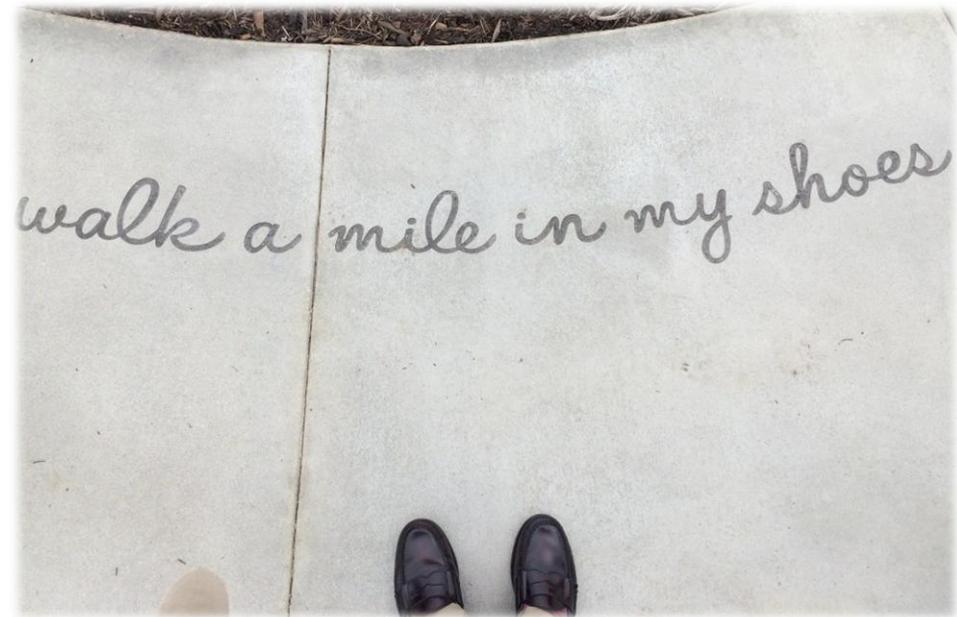
- *Atkins v. Virginia* (2002): banned states from executing individuals with intellectual disability
- **Reauthorization of IDEA** (2004): series of changes in the way special education services were implemented, not welcomed by many teachers, staff or parents
- **Affordable Care Act** (ACA, 2010): (aka Obamacare) most significant civil rights law for people with disabilities since the ADA ... prohibited discrimination on the basis of health status ... incorporated many major health and long term services and supported policy priorities for people with disabilities





# Disabled American Civil Rights

- Overall, opportunities for disabled have greatly increased.
- But courts have shown considerable reluctance to interpret the rights of disabled in sweeping terms.
- increasing political resistance





# Contemporary Disabled American Civil Rights Issues

- Disabled Americans have made great strides but have not yet fully achieved their goals.
- 70% of public school students who are physically restrained or secluded have disabilities.
- 60% of those in local jails have some form of mental disability.
- 48% of people with disabilities have a personal income of \$15,000 or less.
- Ensure people with disabilities are no longer segregated into, and overrepresented in, civil and criminal institutions such as nursing homes, psychiatric hospitals, jails or prisons.





# Potential Civil Rights Groups/Issues

- The 14th amendment's **equal protection clause** guarantees the right to equal treatment under the law to *all* Americans. Historically, equal treatment has been secured one group at a time.
- Groups will continue to push for their civil rights until *all* Americans are truly treated equally.
- recent groups/issues of concern
  - Following the terrorist attacks of 9/11, Arab Americans and American Muslims have experienced a backlash in the US, as hate crimes, harassment and police profiling have sharply increased.





# Potential Civil Rights Groups/Issues

- recent groups/issues of concern
  - Based in rising fears over border security, the 9/11 backlash has spread to other immigrant groups. Some politicians have called for building a wall between the US and Mexico.
  - As in the past, the US push-pull immigration policy has created confusion.
  - Latino immigrants face a renewed surge in discrimination and bias.





The End

