

Executive Memorandum

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THERE THEY GO AGAIN: CONGRESS'S DOUBLE STANDARD ON DISABLED AMERICANS

“We love to pass laws that apply to everyone else besides ourselves, and that’s not right.” So said Senator John Glenn, the Ohio Democrat, who is sponsoring legislation that would require Congress to abide by some of the laws that it imposes on all other Americans. Routinely, however, Congress exempts itself from such laws. As noted in *The Imperial Congress: Crisis in the Separation of Powers*,¹ these exemptions include: the Civil Rights Act of 1964, the Equal Employment Opportunity Act, the Civil Service Reform Act, the Fair Labor Standards Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Minimum Wage Act, and the Civil Rights Restoration Act.

Congress’s newest addition to this list of double standards may be the Americans with Disabilities Act. Passed by the Senate on September 7, the proposed law requires state and local governments, businesses, and other private entities to make the necessary changes in policies and facilities that will guarantee equal opportunity and access to disabled individuals. The lopsided 80 to 8 Senate vote belied the fierce debate underlying this sensitive issue. Opponents argued that the cost of complying with the law will be astronomical. Supporters, such as Patrick Leahy, the Vermont Democrat, countered that cost is no object. “In this country, equality for all Americans is not a matter of cost. It is a matter of justice,” said Leahy on the Senate floor.

Resistance to Justice. It seems to be a justice from which Congress sought to be immune. As originally written, the Americans with Disabilities Act exempted Congress from complying with its provisions. In fact, the Senate nearly rejected an attempt by Charles Grassley, the Iowa Republican, specifically to bring Congress under the requirements of the Act. A Grassley amendment to do so sparked a heated debate in the Senate chamber, much of it unreported in the official *Congressional Record*. Senate staff who were present on the floor report that Grassley was surrounded by angry Democrats warning of the grave consequences should his amendment pass. One Senator, a chief sponsor of the bill, warned Grassley that his amendment would torpedo the bill. Another Senator was even more candid in his

1 Pharos Books, 1989.

off-the-record remarks, saying that the amendment would be enormously costly, forcing Congress to construct additional office buildings to accommodate all the new facilities required under the bill.

These Senate supporters of the bill, ironically, were admitting privately what the bill's opponents were saying publicly: the costs of compliance will be enormous. *Roll Call*, the official newspaper of Congress, reports that, during the September 7 floor debate, Grassley labeled this contradiction, "raw hypocrisy," and added, "If it's too burdensome for the U.S. Senate to live by this bill's command, then why is it any less burdensome for a small business to comply with it?" In the end, Grassley's amendment barely passed the Senate by voice vote.

Now the hypocrisy question shifts to the House of Representatives, where some lawmakers have crafted a strategy for stripping the Grassley amendment from the bill without requiring a public vote by House members. The plan involves three steps: First, ignore the Senate-passed version, and instead report to the House floor a separate bill – which, like the original Senate version, exempts Congress from the act. Second, utilize the House rules to prevent an amendment such as Grassley's from being offered during floor consideration of the bill. The powerful Rules Committee, for example, could impose a "closed rule," which would bar any floor amendments to the bill, or a "modified rule," which would limit the amendments that could be considered. Third, quietly resolve differences between the House and Senate-passed versions in a House-Senate conference.

The Same Old Hypocrisy. Any of these ploys would be an exercise in the kind of hypocrisy by which Congress applies one standard to all of America – except for Congress. At the very least, the full House should vote on the issue so that members have to put their positions on the record. Such action would be consistent with the text of the bill, which states as its purpose: "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," and "to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities."

If Congress exempts itself from the legislation, all the high-sounding rhetoric about helping others will ring hollow. As one wheelchair-bound congressional staff member told *Roll Call*, "I went over to the House side for a hearing [on the bill... but] I couldn't get off the curb."

If the proposed Americans with Disabilities Act is sound policy, Congress too should face the tough choices that implementation will require. George Bush should demand that the Grassley amendment be part of the final bill. If it is not, he should veto the bill for that reason. The time has come for Congress to live by the same laws it imposes on the rest of America.

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