

The Limits of the ADA?

*Disability and Structural Inequality in the
Post-ADA Era*

David Pettinicchio

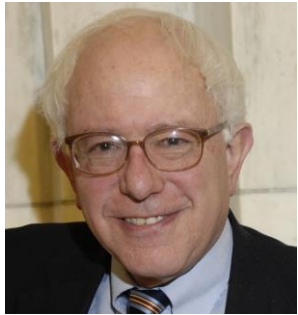
University of Toronto

Assistant Professor

Department of Sociology/School of Public Policy and Governance



- **Clinton**: “we've got to figure out how we get the minimum wage up and include people with disabilities in the minimum wage.”



- **Sanders**: “it is unacceptable that over 80 percent of adults with disabilities are unemployed. We need to fully fund the Individuals with Disabilities Education Act (IDEA) and vocational education programs.”



- **Kasich**: “disabled people shouldn’t be put in a setting just because we’ve done it for the last 50 years ... People who have severe disabilities can work in hospitals and grocery stores and libraries.”

From Innovator to Laggard?



- 1968 Architectural Barriers Act.
- 1973 Section 504 Rehabilitation Act.
- 1990 Americans with Disabilities Act.

BUT

- Employment rates today are lower than before the ADA was enacted.
- Earnings are stagnant.
- Significant occupational “ghettoization.”
- U.S. is considerably behind other countries in terms of policy outcomes.

The Politics of Disability Policymaking

- Linking policy, labor market outcomes and persistent inequality.
- The politics of disability policymaking.
 - Why do policies look how they do?
 - What motivated policy?
- The politics of disability policy outcomes.
 - Why do policies fail?
 - Retrenchment and lack of enforcement.
 - Labor market realities: supply-and-demand factors.
 - Changing attitudes, preferences, and behaviors.

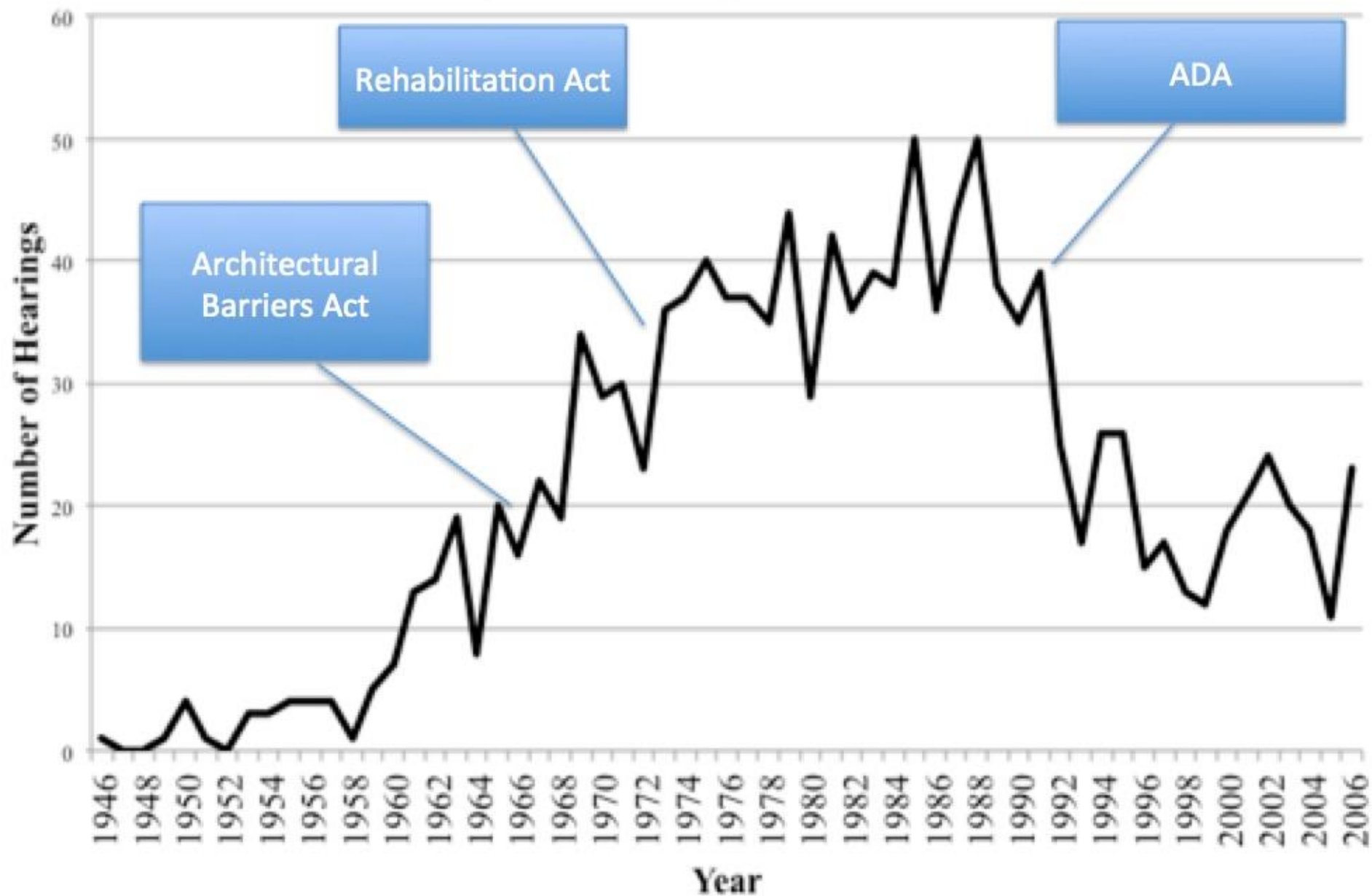
Today's Talk

- How did disability get onto the policy agenda?
 - What were the stakes, the rhetoric, the motives?
- The politics of retrenchment.
 - Effects on labor market inequality.
- The limitations of antidiscrimination legislation?
- The economic wellbeing of people with disabilities.
 - Declining employment and increasing earnings disparities.
- Some (modest) conclusions.

Government is inescapably responsible to provide leadership which results in citizen solutions.

- Justin Dart, 1989

Disability Hearings, 1946-2006^o



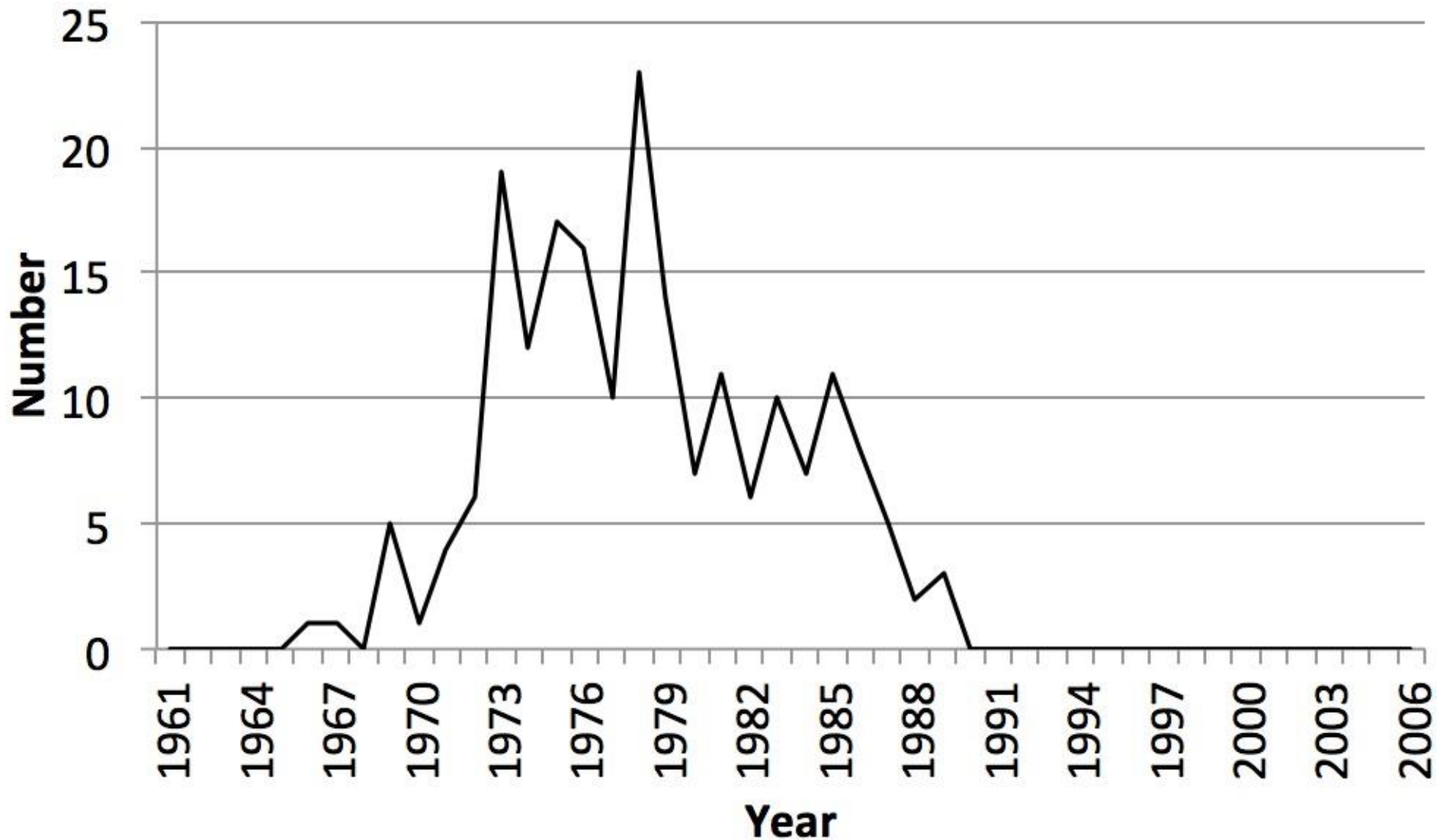
Framing Disability Rights Policy

- “Of humanity and self interest.”
- Independence and personal responsibility – “tax payers, not tax burdens.”
 - Employment “creates dignity.”
- Frame continuity with rights-related policy.
 - Equal access and non-discrimination are important for the economy.

Early Signs of Retrenchment

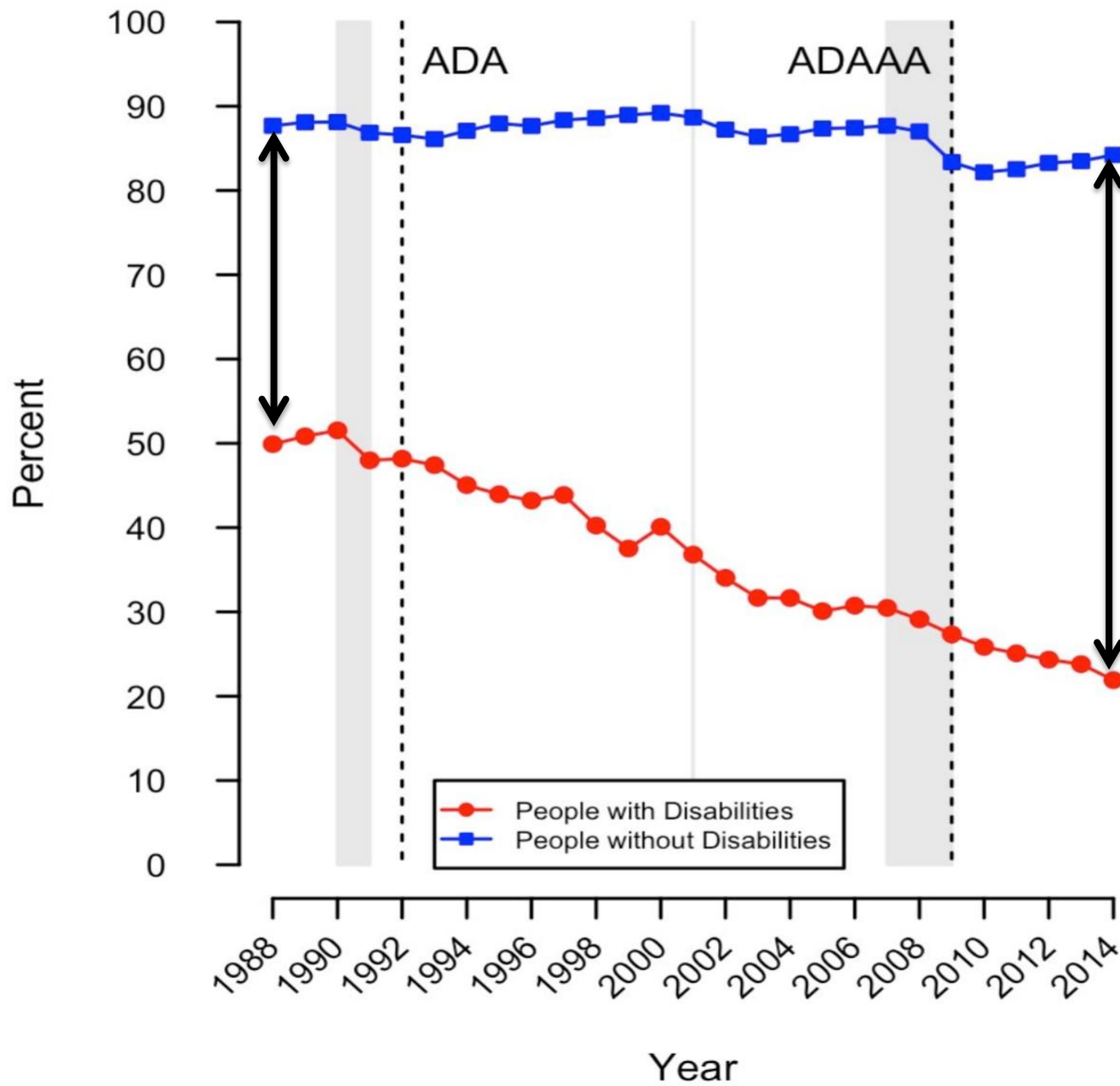
- Nixon's "new economic realism."
- Reluctance on regulations.
 - Stalling on rights policy led to grassroots mobilization.
- Backlash from public organizations.
- Davis v. Southeastern Community College.
- "Separate and unequal."

State Disability Anti-Discrimination Laws, 1961-2006

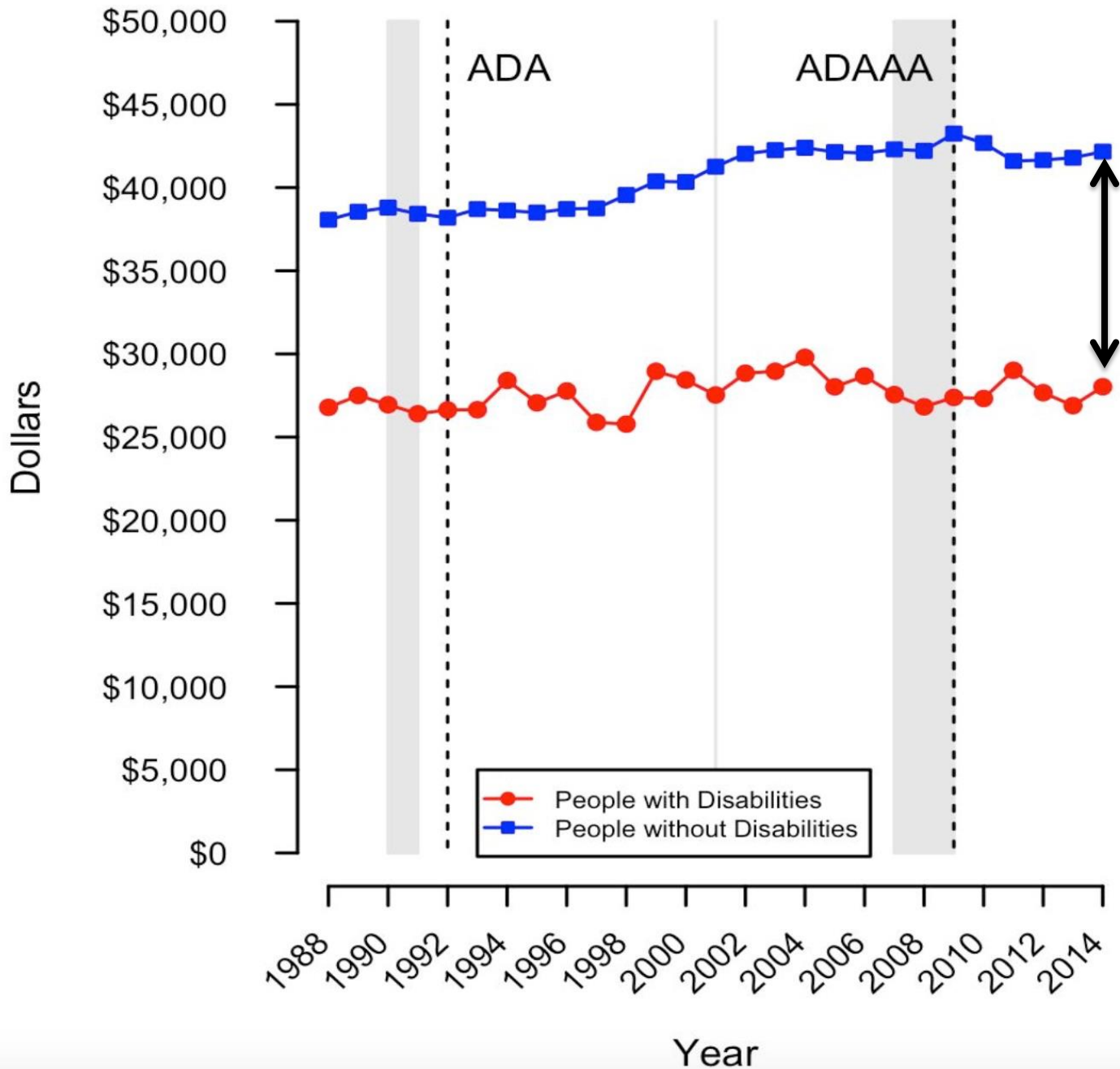


What is the reality for Americans with disabilities?

Percent Employed



Average Earnings at the Mean



Employment Rates and Earnings

Disability Status	<i>Employment</i>	<i>Earnings</i>	<i>Percent Difference</i>
Any Work Limitation	23%	\$29, 109	-38%
Cognitive Difficulty	32%	\$26, 520	-47%
Hearing and Vision Difficulty	56%	\$36, 143	-34%
Mobility Difficulty	18%	\$31, 125	-31%
Other Groups			
Women	74%	\$37, 354	-24%
African Americans	80%	\$39, 357	-8%
Hispanics	83%	\$42, 247	-8%
	N= 67, 912	N=50, 380	

Did Antidiscrimination Legislation Fail?

- The “unintended harms” argument.
- BUT:
 - Employment already in decline before ADA.
 - Only time employment and earning gaps narrowed was in the 1960s and early 70s.
- Did the ADA have any bite?

Does Disability Rights Legislation Matter and How?

Employment Earnings

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State-Level Laws & Enforcement

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No ADA-like law

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ADA charges/payouts

-

State-Level Economy

Unemployment rate

-

Transfer payments

+

Benefits

-

-

SSI

-

+

Court Cases

Lower court decisions

--

+

Liberal Supreme Court decisions

N= 137, 329

N= 19, 296



“...isolated statements by individual Members of Congress or its committees are incongruent or contrary to what intent *really* is in civil rights cases...”

Justice Powell

Judicial Resistance

- The post- Davis years.
- Grove City College v. Bell (1984).
 - The Court limited the enforcement of Section 504.
- Cove case (1989).
 - Undermined disparate impact as discrimination.
- Standing: Proving “disability.”
- Post-ADA – a “second retreat” from rights.

Characteristics of Supreme Court Civil Rights/Antidiscrimination Cases by Status, 1946-2010¹

	Disability (%)	Sex (%)	Race, National Origin, Age, and Religion (%)
Remanded, Reversed, and Vacated Cases	60	61	68
Conservative Decision Direction	69	34	50
Conservative Lower Court Direction	21	59	49
Affirmed	39	30	22
Conservative Decision Direction	21	21	55
Conservative Lower Court Direction	21	29	55
Total Number of Cases	47	49	138

[Source: U.S. Supreme Court Database; Data downloaded and compiled from http://scdb.wustl.edu/](http://scdb.wustl.edu/)

Notes: ¹Using the SCDB code for handicap rights under Rehabilitation Act, ADA and related statutes. Supreme Court disability cases begin in 1979-1980.

Characteristics of Disability Rights-Related Legal Mobilization, Pooled 1978-2001

	Outcome	
	Favorable	Unfavorable
Average Number of Amici Filed	5.6	3.3
Average Number Disability-Specific Group as Amici	2	4.5
Solicitor General Amicus	47%	13%
Average Presence of ACLU and/or NAPAS	2.7	2.5
N	19	15

The Impact of the Courts on Labor Market Inequality

- The “trilogy” of cases in 1999.
 - Sutton v. United Airlines.
 - Murphy v. UPS.
 - Kirkenberg v. Albertsons.
- The Catch-22.
 - Williams v. Toyota (2002).
- Case-by-case.
 - yet based in blanket assumptions - contributes to occupational segregation.

The Structure of the Labor Market

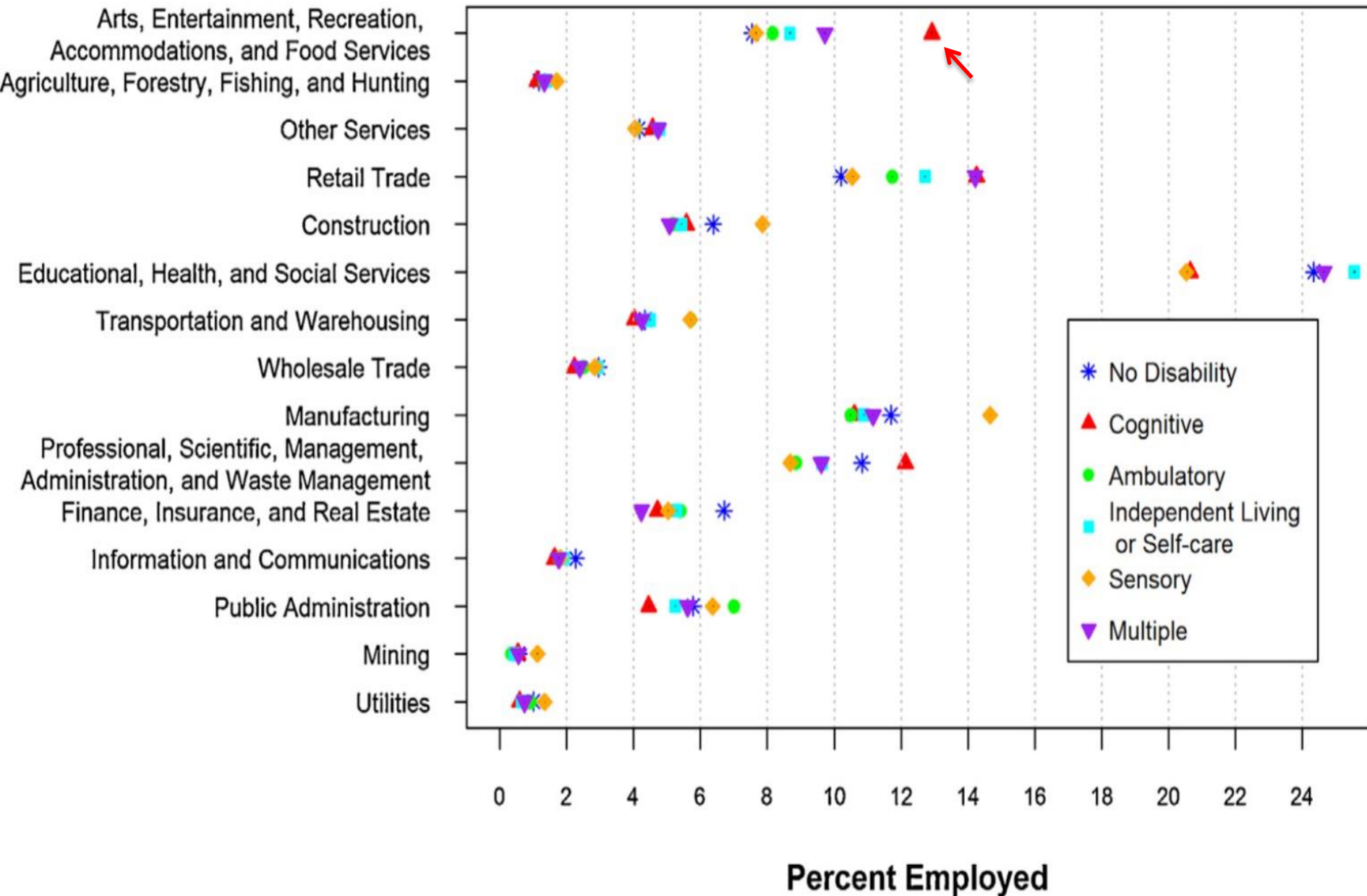
- The ADA and regulatory agencies have not provided enough guidance.
- The ADA does not prescribe solutions.
 - Educational outcomes.
 - Human and social capital.
 - Preferences for non-standard work arrangements.
- Employer preferences vary by occupation and industry sector.
- Labor market segregation, clustering in low paying, declining sectors.
 - Contributes to lower earnings.

	Index of Dissimilarity		Index of Isolation	
	Occupation	Industry	Occupation	Industry
Any Disability - No Disability	0.197	0.142	0.072	0.071
Type of Disability Compared to All Without that Disability				
Cognitive	0.271	0.198	0.012	0.011
Ambulatory	0.182	0.127	0.015	0.014
Independent living or self-care	0.200	0.16	0.004	0.004
Sensory	0.163	0.125	0.022	0.021
Multiple	0.283	0.214	0.027	0.036

Employment by Occupation and Disability Status



Employment by Industry and Disability Status



Explaining Gaps in Annual Earnings by Disability

	<i>Disability Status Only</i>
Disability (ref: none)	
Cognitive	-0.945
Ambulatory	-0.433
Self Care	-0.534
Sensory	-0.174
Multiple	-0.993
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r ²	0.02

N= 1, 071, 314

Summary: Policy, Discrimination and Inequality

- Unexplained variance: discriminatory attitudes and practices.
- Policies are not prescriptive.
- Enforcement remains a problem.
- Separate and unequal system of rights.
- Political will has to be there even after policy “victories.”
 - Programmatic failures are often ignored.

Moving Forward



- Antidiscrimination legislation, neoliberalism and capitalism.
- Intersectionality – “double penalties.”
- Universalizing effects of unionism?
- “Observing” discrimination.
 - Audit-based methodology.

Thank you!

d.pettinicchio@utoronto.ca

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