

A lesson for Bob Dole: old rules no longer apply

A disability treaty with broad support seemed like a sure thing to the ex-Senate stalwart. But his own party had other ideas

By [Michael Kranish](#)

Third in a series

WASHINGTON — It had been 16 years since Bob Dole stepped down as Senate Republican leader, ending a legislative career in which he earned a reputation as a master of bipartisanship. Yet there he was at the end of 2012, trying to close a deal.

Dole was 89 years old, just out of the hospital, working the phones to win senators' support. Then, in a dramatic effort, he rolled in his wheelchair onto the Senate floor, all but daring senators to vote against him and, by proxy, anyone with a disability.

It was a moment Dole had long awaited. He had brought the parties together to pass his greatest piece of legislation, the Americans with Disabilities Act of 1990, which required the retrofitting of buildings and sidewalks and provided an array of other rights.

Now he wanted the Senate to approve an international treaty that would spur other nations to pass their version of the law, making the United States a role model to help tens of millions of people around the world.

Do it for Dole, supporters urged.

But what had once seemed like a foregone conclusion — passage of the treaty — went awry amid infighting that few had foreseen. The deepest wound — some considered it betrayal — came from a Republican senator from Dole's home state of Kansas. That senator, Jerry Moran, had announced he supported the treaty and would be “standing up for the rights of those with disabilities.” But instead of carrying the Dole flag into battle, Moran wound up casting a crucial vote against the measure, dismissing his initial support by saying in an interview he “had never made a conclusion as to whether I was for it or against it.”

The treaty's defeat on Dec. 4, 2012, was a defining moment for the Senate, even if it received far less notice than crises such as the fiscal cliff.

A reconstruction by The Boston Globe of the events leading up the defeat provides an inside look at how the Senate, once known as the “world’s greatest deliberative body,” has become overwhelmed by partisanship — even on a seemingly uncontroversial measure aimed at helping some of the world’s most vulnerable people.

It demonstrates how outside groups and powerful constituencies exert outsized influence with arguments that are, in their best light, often tangential to the issue of the day.

As Dole sat in his Washington law office in February, still stunned by the outcome, he blamed his own party and suggested a headline: “Republican Party closes its doors to make repairs.” The GOP, added Dole, one of the party’s most revered figures, “needs a timeout” to tone down the antigovernment rhetoric.

To be sure, Dole says there is a larger problem of political dysfunction in which Democrats also share blame. But if there is a legislative tale that symbolizes the rise and fall of bipartisanship in Washington during the past quarter-century — and the Republican Party’s own schism — it is the story of Dole’s initial success and recent failure on behalf of people with disabilities. It is also the story of Dole himself, discovering how Washington has changed and become a broken city.

Era of bipartisanship

The story begins with an era of bipartisanship that is almost impossible to imagine today.

It was 1989, and Senator George Mitchell, the Maine Democrat, had become the majority leader. Dole was the minority leader. At their first meeting, Mitchell said he promised Dole, “I will never criticize you,” and Dole agreed to the same. “To this day, we never have had a harsh word,” Mitchell said in a February interview. “It is an important thing that leaders have some degree of trust.” The two remain “dearest friends,” Mitchell said.

They saw their job as meeting halfway. “I thought when I was elected I was supposed to do something,” Dole said.

AP/File

“I thought when I was elected I was supposed to do something,” said Bob Dole, commenting on his working relationship with the Senate majority leader, Democrat George Mitchell, in 1989.

And they did. The 1989-90 session was one of the most bipartisan and productive of the past 40 years. Democrats and Republicans joined together to pass a new version of the Clean Air Act, the most sweeping environmental legislation in the nation’s history. The parties worked together — after then-President George H.W. Bush famously broke his “no new taxes” pledge — to cut the deficit and help put the nation on the path to budget surpluses.

One of the most enduring acts was the passage of Dole's proposal to enhance the rights of millions of people with disabilities.

Dole had been wounded in Italy in World War II, leaving him with limited use of his right arm. While he recovered from most of his wounds, he learned that many people with disabilities had a hard time getting employment, or getting to work, and even just getting around. A person in a wheelchair faced obstacles traveling on sidewalks or ascending buildings or getting into bathrooms. Some people with disabilities were forced into separate schools. To Dole, this was a matter of civil rights. After being elected to the Senate in 1968, he gave his first floor speech on April 14, 1969, the 24th anniversary of his wounding. He spoke then, as he did on every such anniversary while he served in the Senate, on problems faced by people with disabilities.

It was 20 years after that speech when Dole worked closely with Mitchell to bring the Americans with Disabilities Act to a vote. Concerns were raised by business groups and local governments about the cost of expanding rights for people with disabilities. But Republicans and Democrats came to a remarkable agreement on disabilities that became known as "The Pact." Tony Coelho, a former House Democratic whip who introduced the bill in his chamber of Congress, said that under the pact, "we would always do things in a bipartisan way on disability legislation."

The bill was passed in 1989 in the Senate by an overwhelming bipartisan margin, 76 to 8, and passed the House the following year. As President George H. W. Bush signed it into law, he said the legislation "has made the United States the international leader on this human rights issue."

Bush's son, President George W. Bush, followed up by negotiating the international treaty on disabilities in 2006. There were two crucial steps to go. The Obama administration made the United States a signatory to the treaty in 2009. But under US law, treaties don't take effect unless they are ratified by a two-thirds vote of the Senate.

Fast forward to 2012.

Supporters hoped the time was right to win ratification. Of the 193 countries in the United Nations, 155 have signed the treaty and 129 have ratified it, including countries such as Afghanistan, Cuba, and Russia. In an effort to win Republican support, treaty backers asked Dole to take up the fight. The old warrior, while weakened from his most recent hospitalization, promptly agreed.

No one disputed the difficulties faced by many of the 1 billion people worldwide with disabilities; in many developing countries, most children with disabilities don't go to school and have little chance of gainful employment, not to mention basic accommodation, according to the State Department. Ratifying the treaty, supporters said, would spread American leadership around the globe as well as create new markets for US-made disabilities products.

For a Congress that had been divided by debates over the deficit, health care, taxes, and other matters, passage of a Republican-brokered treaty with no direct cost to US taxpayers, aimed at helping some of the world's most vulnerable people, seemed like a sure win. Republicans began lining up to join Democrats to back the measure. Senator John McCain, Republican of Arizona,

said the treaty would advance “fundamental values of equality and human dignity around the world.”

Most importantly, the two Republican senators from Kansas were expected to carry the torch that had been lit by Dole 22 years earlier. Kansas Senator Pat Roberts spoke privately with Dole, leaving him hopeful, but Roberts said nothing publicly.

Moran, meanwhile, offered a public and seemingly unequivocal show of support. He authorized a press release in which he was one of three Republicans in a bipartisan group of senators who “announced their support for US ratification” of the treaty.

“Each person has the inherent right to life and should have the opportunity to pursue happiness, participate in society, and be treated equally before the law,” Moran said in a written statement issued May 25, 2012. The treaty “advances these fundamental values by standing up for the rights of those with disabilities, including our nation’s veterans and service members, and respecting the dignity of all.”

A month later Moran joined the same bipartisan group in a meeting at the Capitol at which the strategy for ratifying the treaty was discussed. Moran, who had been elected to the Senate in 2010, was considered the key to winning over other conservative Republicans.

A shift in the Capitol

The Senate of 2011-12, in which the treaty would be voted upon, seemed barely recognizable to those who had witnessed the extraordinary productivity of the one that had convened 22 years earlier. But the partnership of the Mitchell-Dole era had been replaced by the bitter, often-unworkable relationship of majority leader Harry Reid, Democrat of Nevada, and minority leader Mitch McConnell, Republican of Kentucky.

Years earlier, McConnell had been in that 1989-90 session and often had followed Dole’s moderate, bipartisan lead, voting for the ADA.

But McConnell, like his party, had become more conservative over the years, amplified by the creation of the Tea Party movement, and McConnell would famously say that “the single most important thing we want to achieve is for President Obama to be a one-term president.”

Democrats, too, became more partisan. Obama pushed through health care legislation without Republican support. Reid inserted himself into the presidential campaign, saying — without supplying any evidence — that GOP nominee Mitt Romney didn’t pay federal taxes for a decade.

The culture of Washington had shifted dramatically. In the Mitchell-Dole years, many members of Congress lived in the nation’s capital much of the year and socialized with colleagues in the other party. By the time of the 2012 session, fund-raising and home-state demands prompted many members to spend far less time in Washington.

Donald Ritchie, the Senate's official historian, said some senators don't have time to know their colleagues. "Someone will come into the room and will ask, 'Who is that?'" Someone from across the aisle. They just don't have the kind of opportunities they used to have," Ritchie said. "One of the few times they get to see each other is when they are on the floor voting."

Senate voting records show a stark difference between the sessions that ended in 1990 and 2012, with the rise in filibusters leading to a sharp drop-off in successful legislation. (It takes 60 votes in the 100-member Senate to stop a filibuster, often enabling the minority party to kill legislation.) The number of motions filed to stop filibusters rose from 38 to 115, while the number of Senate-introduced bills enacted into law dropped from 8.2 percent to 1.8 percent.

Mix in the proliferation of partisan-oriented media, and the outsized power of small but well-organized groups in the Internet age, and the fractures of the current political era become evident.

Thus was the stage set for the surprising outcome during Dole's encore performance.

The first public sign of trouble came shortly after Moran announced he was joining a bipartisan group of supporters. Word spread that the Tea Party wanted to stop treaties that its members viewed as threats to American sovereignty.

Still, when Senate Foreign Relations Committee chairman John F. Kerry began a July 12, 2012, hearing on the treaty, passage seemed all but assured. Dole sent his strong endorsement. The US Chamber of Commerce, a key GOP ally, endorsed the measure, saying it would lead to "greater access and opportunities for individuals with disabilities throughout the world."

Former President George H.W. Bush was enlisted to win over any remaining doubters, writing to the Senate that the treaty "would not require any changes to US law. It would have no impact on the federal budget," while reminding senators that "disability rights issues have always enjoyed strong bipartisan support."

Pete Marovich for The Boston Globe

Michael Farris, founder of the Home School Legal Defense Fund.

Some of the most powerful testimony came from Bush's former attorney general, Richard Thornburgh, who had worked on the ADA bill in 1990 and later served as undersecretary general of the United Nations. The issue was personal to Thornburgh; his son, Peter, had been seriously injured in a car accident and had mental and physical disabilities. Thornburgh testified that the treaty would "impose no new costs upon US taxpayers" and would not require any changes in the nation's laws. The treaty simply would encourage other nations to follow the leadership of the United States in helping people with disabilities, Thornburgh testified.

Then a witness named Michael Farris stunned many in the hearing room as he sought to demolish the arguments for the treaty.

Farris was speaking in his role as the president of the Home School Legal Defense Fund, a group with 83,000 dues-paying families that he founded in 1983. The group monitors government actions that potentially impact home schooling and says its mission is “to defend and advance the constitutional right of parents to direct the education of their children and to protect family freedoms.”

Farris, added to the witness list after Republicans on the committee learned of his objections to the treaty, testified that the treaty was “dangerous” to parents who teach disabled children at home. In a later radio interview, Farris would put his argument in the starkest terms: “The definition of disability is not defined in the treaty and so, my kid wears glasses, now they’re disabled; now the UN gets control over them.”

Kerry sounded sarcastic as he belittled Farris’s claims.

“So you believe that President George Herbert Walker Bush and Attorney General Thornburgh and majority leader Robert Dole, and a bunch of other people, just don’t understand the Constitution or can’t read the law?” Kerry asked Farris.

Farris responded that all of them had “reached incorrect conclusions.”

The committee approved the treaty by a 13 to 6 vote, with three Republicans joining Democrats in support. The six Republican opponents issued a minority report that said there was no reason to enter into an international “entanglement,” concluding: “Proponents of this treaty believe its ratification would signal to the world our commitment to advancing the interests of those with disabilities. The US Senate should not ratify this or any other treaty on these grounds.”

Supporters predicted quick ratification by the full Senate. But two weeks after the hearing, Farris’s assertion was echoed by two of the Republican Party’s most influential conservatives. Senators James Inhofe of Oklahoma and Jim DeMint of South Carolina, favorites of the Tea Party, wrote an op-ed for The Washington Times that said the treaty “calls for government agents to supersede the authority of parents of disabled children and even covers abortion.”

Dole and other supporters of the treaty viewed the charges as laughably false. The treaty legislation clearly stated that it required no change in US law, and there were no new abortion rights, they said.

But Farris seemed to have shaken the Republican Party. Plans for a quick vote in the full Senate were put on hold.

Home-schooler’s platform

To get to the office of Michael Farris, a visitor drives about an hour from Washington to arrive at the town of Purcellville, population 8,043, a mix of old-world Virginia and strip mall suburbia. It

is here in the Appalachian foothills that Farris more than a decade ago established Patrick Henry College, a Christian liberal arts institution with 300 students. It also serves as headquarters for his political power base, the Home School Legal Defense Fund.

Sitting in his college office, surrounded by busts of George Washington and Patrick Henry and a wall-mounted elk head, Farris proudly explained how he set out to kill the disabilities treaty — and, not coincidentally, take on some within the Republican Party.

Farris has a history of run-ins with moderate Republicans. A father of 10, he was defeated in his 1993 bid to be lieutenant governor of Virginia after one of Dole's closest colleagues, then-Senator John Warner of Virginia, took the unusual step of declining to endorse him. Since then, Farris has used his home-schooling organization to take on moderates that he says are ruining the GOP.

“There are two parties in Washington,” Farris said. There is “the evil party,” meaning Democrats, and “the stupid party,” referring to many Republicans, he said.

Unlike some Republicans who say the party should moderate its positions in the aftermath of losses in the 2012 campaign, Farris said the opposite approach is the best prescription. What Republicans need to do, he said, is listen to grass-roots members whose primary concern is liberty and sovereignty. That is why he seized upon the disabilities treaty. He saw it as an attack on American ideals and values.

And he saw something else. It is, he said, the ideal “wedge issue” for future political campaigns. It also played into fears that the United Nations threatens American sovereignty.

UN spokesman Dan Shepard, asked about Farris's claim that the UN could dictate American disabilities policy, said it was “absolutely not true . . . it is not like any one swoops in and takes children. The UN doesn't have an army, it doesn't make laws for any member state . . . every member state is sovereign.”

Nonetheless, the assertion that the UN could supersede US law and have control over home-schooled children spread across the Internet. Within weeks, Farris's group, along with allies, had placed an estimated 250,000 calls to the offices of wavering senators. Some of the heaviest emphasis was placed on calls to the two Kansas senators, Roberts and Moran.

“We just beat them to death with calls,” Farris said of the Kansans.

Farris, meanwhile, stood by his assertion that he understood the treaty better than Republican supporters such as Thornburgh. Farris, a graduate of Gonzaga University School of Law, said he has better legal training when it comes to treaties.

“I have an LLM in international law from the University of London,” Farris said, referring to a postgraduate degree that is similar to a master's program. Asked for details, Farris said he didn't go to London for the degree; it came in a “distance learning” course and culminated in a proctored exam at a local community college.

“He is just flat wrong,” Farris said of Thornburgh’s sworn testimony that the treaty won’t change US law. “If he wrote that on an international law exam, at any law school, he would fail.”

Thornburgh, describing Farris’s claims as “outrageous,” said in an interview, “It is one thing to face down a rational argument, quite another to deal with fantasies and exaggeration, which was the case here.”

But the campaign against the treaty had taken hold. As supporters planned for a December vote, Farris launched a public alliance with former senator Rick Santorum of Pennsylvania, who had argued during his failed bid to become the 2012 Republican presidential nominee that the party had been undermined by moderates.

At a Capitol Hill press conference, Santorum appeared with his daughter, Bella, who was born with a potentially fatal disability. The treaty, Santorum maintained, could prevent parents from having children such as Bella. He said it would put a doctor “in position to say ‘we will do what we believe is in the best interest of your daughter, Bella, which is not to have her have a physical or mental disability that could lead to suffering and death but that person either should have an abortion or should not be given treatment. We shouldn’t be spending resources on a child like that. It is in her best interest not to live with these medical and physical disabilities.’ ”

Support evaporates

Even amid the onslaught of Farris, Santorum, and Tea Party leaders that was unsettling to so many Republicans on Capitol Hill, Dole still believed that key supporters, such as his home-state ally Jerry Moran, would bring enough votes to win approval.

Just months earlier, the Kansas senator had supported the treaty, vowing to be among those “standing up for the rights of those with disabilities.” Dole had thought the support was iron-clad, but he eventually received a letter in which Moran informed him that he would oppose the treaty. A number of senators learned privately about Moran’s decision days before the vote.

Moran, asked last week why he abandoned his initial support, responded: “That was an early position. It was trying to be helpful to Dole.” Moran’s new position was that, as he put it in a written statement after the vote, “foreign officials should not be put in a position to interfere with US policymaking.” He had signed on to the argument put forward by the treaty’s harshest critics.

Asked why he changed from the position he had taken in a press release, Moran noted that treaties don’t have cosponsors and said: “I’m quoted in a release.”

So was Moran saying he was never for the treaty?

“No, I’m not saying that,” Moran said in the interview, conducted as he walked through corridors of the Capitol. “I’m saying I tried to help [the treaty] come to the floor, and had never made a conclusion as to whether I was for or against it, and concluded that it was a bad idea to have the United Nations involved in this.”

Moran's turnabout was devastating to efforts for a bipartisan vote. (Roberts, the other Kansas senator, also wound up opposing the treaty.) Senator Richard Durbin, the Illinois Democrat who had been part of the bipartisan group of supporters that included Moran, recalled the shock when he learned of Moran's decision. "We needed a handful of conservative Republicans to stand with us . . . at some point many Republicans were very concerned about a conservative reaction to their vote on behalf of this treaty. We started seeing a number of them switching their votes."

Senator Tom Harkin, an Iowa Democrat who also was part of the bipartisan group, said the opposition from home-schoolers was crucial and unexpected. "It came out of left field. Who ever thought this would ever be part of the discussion?"

'A lesson about this town'

The day of the treaty vote began just like old times. It was Dec. 4, 2012, and Dole arrived on Capitol Hill to bipartisan acclaim. Several hundred people, including Democrats and Republicans, packed a Senate room to celebrate Dole's role in passing the Americans with Disabilities Act of 1990. Back then, Dole's own disability was hard to see.

He clutched a pen in such a manner so that people would not try to shake his right hand; his right arm hadn't functioned normally since he was injured in World War II. Still, he had stood ramrod straight and strong.

On this December day, however, he showed the wear of having been in and out of the hospital for extended periods during the prior three years. Just a week earlier, he had been treated for an unspecified illness at a nearby naval hospital, where he had watched the debate about the treaty on C-Span.

Now he was in a wheelchair, pushed by his wife, Elizabeth, also a former senator. It was not lost on Dole that many of the requirements of the ADA bill, including the ubiquitous "curb cuts" that made it easier to navigate sidewalks, now made it easier for him to get around. His empathy for people with disabilities had only increased. So as leaders in the disabilities community gathered with members of both parties to honor Dole's work, the reception was intended as a prelude to the vote later in the day.

It was around noon when Dole was wheeled on to the Senate floor as the final debate was underway.

To one side was Dole's old friend, Senator John McCain. Both had been losing presidential nominees, but their bond was deeper than that; during the five years that McCain had been a prisoner of war, Dole had worn a bracelet with McCain's name. McCain had worked with Dole to win passage of the ADA 22 years earlier, and he had been part of the bipartisan group of senators working to win passage of the treaty.

McCain used part of his time during the debate to read a letter from Dole urging passage and was "deeply grieved" as he observed Republicans rejecting the plea of the party's former leader.

“It was, frankly, a lesson about this town . . . a lesson about the transience of power and the meaning of friendship,” McCain recalled in a recent interview. McCain, meanwhile, didn’t know Moran “well” and didn’t have a chance to talk to the Kansas senator about his change of position. The schism within the GOP that day was as stark as McCain had seen it. The assertions by opponents “were just nonsense,” McCain said, but they had stuck.

Kerry, who was in charge of efforts to pass the treaty, sounded exasperated as he pleaded on the Senate floor for votes. Referring to Dole, Kerry said: “The father of the (1990) act is sitting here . . . in all those 20 years, has any child been separated from a parent? No. Has home schooling been hurt? No. In fact it has grown and is flourishing across the nation.”

Dole watched from his wheelchair, as his wife patted him on the shoulder. One by one, Republicans turned against Dole and the treaty. Midway through the tally, sensing the outcome, he rolled out of the chamber. There were at least a couple of senators, Dole said in the interview later, “who were for it and they saw it going down the tubes and they voted ‘No.’ ”

The Senate voted 61 to 38, five short of the two-thirds needed for approval. All of the 38 votes against the legislation were cast by Republicans. Many of them walked off the floor without greeting Dole. His fight was over, at least for the moment.

In addition to the opposition from the Kansans, Senator Johnny Isakson of Georgia, who had backed the bill in committee, voted against it on the floor; he and 35 other Republicans had signed a letter opposing treaty votes during lame-duck sessions, although that practice has been common. Senator Thad Cochran of Mississippi at first voted for the measure on the floor, according to media reports at the time, but switched his vote in the final count. (Isakson and Cochran did not return calls seeking comment.) Several other senators had waited until the last moment to see how the vote was going and voted against it.

McCain, a 26-year veteran of the Senate, said it was his worst day in the chamber. “When you see the former nominee of the Republican Party on the floor in a wheelchair, in what might be his last real effort, voted down by Republican after Republican, I can’t tell you how sad that was to me,” McCain said.

Dole was devastated. “The home-schoolers thought the UN would be involved in how they dealt with their children,” he said. “I don’t know how they got there, but once the stampede starts, they notify their leaders to start ringing the phones, sending the e-mails. It’s really effective.”

Dole, famously acerbic, concluded: “There must be more home-schoolers out there than I thought.”

In the end, eight Republicans supported the bill, including four New Englanders: Scott Brown of Massachusetts, Kelly Ayotte of New Hampshire, and Susan Collins and Olympia Snowe of Maine.

“The Pact,” under which disabilities legislation would be supported on a bipartisan basis, was dead.

Easing gridlock

During one of Dole's recent hospitalizations, President Obama stopped by for a visit, and the two former senators discussed why it is so difficult to get things done in the chamber.

The president said he wished Dole were still in the Senate.

"I'm not sure I do," Dole said he told Obama, "not because of you, Mr. President, but because it is intractable."

So, Dole was asked during the Globe interview, what is the solution to end the gridlock that stifles action in Washington? It is a question he has pondered for years, and which led him and Mitchell in 2007 to become two of the cofounders of the Bipartisan Policy Center, which churns out proposals that aim for a middle ground to solve an array of the nation's problems.

"This is probably a naive view, but I always believed that if you had a view and I had a view, we are both well intentioned," Dole said. That is different than "having somebody saying 'never give in' and not compromise."

Solving Washington gridlock shouldn't be that difficult. Think of it as a math problem, he said.

"If somebody is at a two and you are at four, there ought to be some way to get to three," Dole said. "And you settle on three."