UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

AMANDA McBAY, JOANNE PEARSON and SHANNON ROBERTS,	)	
Plaintiffs,	)	
	)	**Case No. 5:11-CV-03273-CLS**
v.	)	
CITY OF DECATUR,	)	
Defendant.	)	

UNITED STATES' BRIEF AS INTERVENOR AND AMICUS CURIAE IN OPPOSITION TO MOTION TO DISMISS

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The United States of America, by and through its undersigned counsel, respectfully submits the following brief as intervenor pursuant to 28 U.S.C. § 2403(a) and as amicus curiae. It submits this brief in opposition to the defendant's motion to dismiss.

QUESTIONS PRESENTED

1. Whether plaintiffs have pleaded a violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

2. Whether Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, is a valid exercise of Congress's authority under Section Five of the Fourteenth Amendment, to the extent that it ensures physical access to government facilities such as the public park at issue here.

3. Whether Title II is a valid exercise of Congress's authority under the Commerce Clause.

4. Whether the regulations implementing and construing Title II are privately enforceable under Title II's private right of action.

STATEMENT OF INTEREST

The United States submits this brief as an intervenor pursuant to 28 U.S.C. § 2403(a), which permits the United States to intervene to defend any federal law of the United States, and as amicus curiae pursuant to 28 U.S.C. § 517, which permits the Attorney General to send any officer to "attend to the interests of the United States in a suit pending in a court of the United States."

This motion concerns the constitutional validity and enforceability of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (ADA), and its implementing regulations. The Department of Justice has authority to enforce title II and to issue regulations implementing the statute. 42 U.S.C. §§ 12133-12134. Accordingly, it has a strong interest in the resolution of defendant's argument that Title II and its implementing regulations are unenforceable.

STATEMENT OF THE CASE

Plaintiffs require wheelchairs for mobility and have limited use of their upper extremities. Complaint 2-3 ¶¶ 3-5. They allege that they visited the Point Mallard Park in Decatur, Alabama, and failed to gain "full, safe and equal access" to the park

due to various barriers to access. *Ibid.* Plaintiffs allege that the park is inaccessible to wheelchair users in a variety of specific ways. *See id.* 8-11 ¶ 24. They do not allege that any relevant part of the park has been newly built or modified since the passage of the Americans with Disabilities Act.

Plaintiffs brought claims against the City of Decatur under Title II of the ADA, 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. They seek (1) a declaration that the city is in violation of Title II and the Rehabilitation Act; (2) an injunction directing Decatur to come into compliance with respect to the specific cited facilities and services; (3) an injunction directing Decatur to review its programs, services, and facilities; and (4) attorney's fees. *See* Complaint 11-14. They do not seek compensatory damages.

The city moves to dismiss on multiple grounds. First, it contends that plaintiffs have failed to plead facts showing that they were actually denied access to the facilities and services in question, and so they lack standing. Second, the city argues that, as applied to this case, Title II is unconstitutional, because it is not a valid exercise of Congress's authority pursuant to either Section Five of the Fourteenth Amendment or the Commerce Clause. Third, it argues that the ADA's private right of action does not permit a private plaintiff to enforce Title II's implementing regulations. Finally, it contends that the Rehabilitation Act claim

should be dismissed because the complaint does not state with sufficient particularity which municipal programs receive federal funds and so subject themselves to the Rehabilitation Act's requirements.

The city filed notice of a constitutional challenge to a federal statute and the United States intervened. This Court granted the United States until January 27 to file a brief in support of Title II's validity. In this brief, the United States addresses that question and also the defendant's argument that the regulations implementing Title II are unenforceable in a private action.

SUMMARY OF ARGUMENT

1. The plaintiffs have adequately pleaded a violation of Section 504 of the Rehabilitation Act, notwithstanding their failure so far to identify the specific city programs that receive federal funding but have not met their obligations under Section 504. While plaintiffs ultimately must identify these programs to make out a Section 504 claim, they do not need to do so at the pleading stage, because this information is peculiarly within the possession of the city. This Court should address this argument first, as the existence of a valid Section 504 claim renders it unnecessary for the Court to consider at this time the city's arguments regarding the constitutionality of Title II.

2. Should this Court nonetheless reach the question, it should find that Title II, as applied to require that public facilities are accessible to individuals with disabilities, is a valid exercise of Congress's legislative authority pursuant to Section Five of the Fourteenth Amendment. Before enacting Title II, Congress documented a long history of discrimination by public entities against individuals with disabilities, both in general and in this specific context. Title II is well tailored to remedy the past effects of such discrimination and prevent such discrimination in the future, while not imposing excessive compliance costs on public entities. In short, it is a congruent and proportional response to a documented pattern of official discrimination in this context, just as it is in the contexts of courthouse access and public education. *See Tennessee* v. *Lane*, 541 U.S. 509 (2004); *Association for Disabled Ams., Inc.* v. *Florida Int'l Univ.*, 405 F.3d 954 (11th Cir. 2005). In arguing to the contrary, the city asks this Court to adopt a mode of analysis rejected by *Lane* and *Association for Disabled Americans*.

3. Title II also is valid Commerce Clause legislation, in general and as applied to this case. Here, as in many of its applications, it directly regulates commercial activity – in this case, the design, construction, and maintenance of physical facilities – and so it directly affects interstate commerce. Moreover, Title II is an integral part of the larger Americans with Disabilities Act, which as a whole

regulates activity that has a substantial effect on interstate commerce. Because Title II regulates activity, not inactivity, the city's argument that Congress may not regulate inactivity misses the mark.

4. Where, as here, a private plaintiff brings suit to enforce Title II's anti-discrimination mandate, the plaintiff also may enforce regulations that authoritatively construe that mandate. *See Alexander* v. *Sandoval*, 532 U.S. 275, 284 (2001). Most of the regulations at issue here easily meet that standard for enforceability, as Congress specifically instructed the Justice Department to promulgate them in this form. The city errs in relying on dicta in *American Ass'n of People with Disabilities* v. *Harris*, 605 F.3d 1124 (11th Cir. 2010), *withdrawn and replaced*, 647 F.3d 1093 (11th Cir. 2011). The Eleventh Circuit correctly withdrew its initial decision in *Harris*, some of the reasoning of which conflicted with *Sandoval* and the holdings of every appellate court to consider the question.

ARGUMENT

I

PLAINTIFFS HAVE ADEQUATELY PLEADED VIOLATIONS OF SECTION 504 OF THE REHABILITATION ACT

The plaintiffs have adequately pleaded violations of Section 504 of the Rehabilitation Act, because they have pleaded all the relevant information they can reasonably be required to provide at this stage. While the city is correct that

plaintiffs ultimately must establish that the programs alleged to violate Section 504 receive federal funds, *see* Br. in Supp. of Mot. to Dismiss 64-72, it is unrealistic to expect plaintiffs to know before discovery which city programs are responsible for the allegations made here, let alone whether they receive such funds.

This Court should rule on this question first, because the answer may obviate the need to consider the city's constitutional challenge to Title II. The city's obligations are the same pursuant to Section 504 and Title II, and so as long as the plaintiffs maintain a live Section 504 claim, the constitutionality of Title II is a purely academic question that should not be decided. *See, e.g.*, *Bennett-Nelson* v. *Louisiana Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005) (finding it unnecessary to decide whether Title II is valid Fourteenth Amendment legislation where plaintiff had identical Section 504 claim), *cert. denied*, 547 U.S. 1098 (2006); *cf. Garrett* v. *University of Ala. at Birmingham Bd. of Trs.*, 344 F.3d 1288, 1293 (11th Cir. 2003) (per curiam) (defendant liable under Section 504 for employment discrimination even though Supreme Court ruled Title I of ADA did not abrogate sovereign immunity for such claims).

Section 504, as Spending Clause legislation, applies only to programs or activities that receive federal financial assistance. *See Koslow* v. *Pennsylvania*, 302 F.3d 161, 176 (3d Cir. 2002), *cert. denied*, 537 U.S. 1232 (2003). The plaintiffs'

pleading here, while not a model of precision, is sufficient to state a claim under Section 504, as it includes "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft* v. *Iqbal*, 129 S. Ct. 1937, 1949 (2009). Specifically, plaintiffs' allegation that the city receives federal funds "sufficient to invoke the coverage of Section 504," see Complaint 13 ¶ 31, permits this Court to draw the reasonable inference that the specific municipal programs responsible for the alleged discriminatory conduct receive such funds.

These are matters regarding the city's internal organization and funding that are peculiarly within the knowledge of the city itself. *See Rodriguez* v. *Plymouth Ambulance Serv.*, 577 F.3d 816, 830 (7th Cir. 2009) (prisoner entitled to limited discovery as to whether the defendant was a state actor, as prisoner could not be "charged fairly with knowing" defendant's contractual relationship with public entity). The city knows far better than the plaintiffs do which municipal programs are responsible for the activities at issue here and whether those programs receive federal funding. *See Cohn* v. *KeySpan Corp.*, 713 F. Supp. 2d 143, 159 (E.D.N.Y. 2010) ("Whether or not any of the Utility defendants receives federal funding is a fact peculiarly within the possession and control of those defendants, which plaintiff is entitled to discern during discovery."). If, in fact, the allegedly discriminatory

activity was undertaken by programs that do not receive such funding, the city needs merely to demonstrate that, and the Section 504 claim can be dismissed. But the city should not be able to accomplish such dismissals without disclosing the relevant information; otherwise, it would render itself immune to Section 504 claims through opacity.

II

TITLE II IS VALID SECTION FIVE LEGISLATION TO THE EXTENT THAT IT ENSURES ACCESSIBLE PUBLIC FACILITIES

To the extent that Title II of the Americans with Disabilities Act requires public entities to make their public facilities accessible, it is a valid exercise of Congress's legislative authority pursuant to Section Five of the Fourteenth Amendment. As applied to this context, Title II is a congruent and proportional response to the extensive history of public discrimination against individuals with disabilities, including pervasive discrimination in this very context.

After numerous hearings and other fact-finding, Congress concluded that, "historically, society has tended to isolate and segregate individuals with disabilities," and that "such forms of discrimination * * * continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). Based on these findings, Congress "invoke[d] the sweep of congressional authority, including the power to enforce the fourteenth amendment," to enact the ADA. 42 U.S.C. § 12101(b)(4).

In doing so, it established a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Part of that national mandate is Title II, which addresses discrimination by state and local governmental entities in the operation of public services, programs, and activities. *See* 42 U.S.C. §§ 12131-12165.

Title II was enacted "against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights." *Tennessee* v. *Lane*, 541 U.S. 509, 524 (2004). This long and broad history of official discrimination suffered by individuals with disabilities authorized Congress, pursuant to Section Five of the Fourteenth Amendment, not only to bar actual constitutional violations, but also to pass prophylactic legislation that remedies past harm and protects the right of people with disabilities to receive all public services on an equal footing going forward.[1] *Ibid.*; *accord Association for Disabled Ams., Inc.* v. *Florida Int'l Univ.*, 405 F.3d 954, 958 (11th Cir. 2005); *Bowers* v. *NCAA*, 475 F.3d 524, 554 & n.35 (3d Cir. 2007).

Congress is not limited to barring actual constitutional violations. It "may enact so-called prophylactic legislation that proscribes facially constitutional

[1] While the city appears to disagree with the Eleventh Circuit's reading of *Lane*, it nonetheless concedes it, *see* Br. in Supp. of Mot. to Dismiss 25, as it must, given authority that is controlling in this circuit.

conduct, in order to prevent and deter unconstitutional conduct." *Nevada Dep't of Human Res.* v. *Hibbs*, 538 U.S. 721, 727-728 (2003). In particular, Congress may ban "practices that are discriminatory in effect, if not in intent," notwithstanding that the Equal Protection Clause bans only intentional discrimination.[2] *Lane*, 541 U.S. at 520. What Congress may not do is pass legislation "which alters the meaning of" the constitutional rights purportedly enforced. *City of Boerne* v. *Flores*, 521 U.S. 507, 519 (1997). "[T]he line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies." *Id.* at 519-520. The ultimate question is whether there is "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.* at 520. Put another way, "the question is not *whether* Title II exceeds the boundaries of the Fourteenth Amendment, but *by how much*." *Constantine* v. *Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 490 (4th Cir. 2005).

[2] To the extent that *Alsbrook* v. *City of Maumelle*, 184 F.3d 999 (8th Cir. 1999) (en banc), can be cited for a contrary conclusion, *see* Br. in Supp. of Mot. to Dismiss 30, it is no longer good law after *Lane* and *Hibbs*. *See Klingler* v. *Department of Revenue*, 455 F.3d 888, 892 (8th Cir. 2006).

Thus, the only question for this Court is whether Congress's response, as applied to the class of cases at issue here, was congruent and proportional to the record of discrimination it confronted.

A. This Court First Must Determine Whether Plaintiffs Have Pleaded A Title II Claim

As a preliminary matter, this Court should not rule on this constitutional question until it determines precisely what conduct Title II requires of the defendants. *See United States* v. *Georgia*, 546 U.S. 151 (2006). The city argues that plaintiffs have failed to plead a Title II claim because they do not specify how the deficiencies they identify with the park prevented them from accessing any services. *See* Br. in Supp. of Mot. to Dismiss 9-20. In accord with *Georgia*, this Court first should determine whether plaintiffs sufficiently plead a Title II claim before reaching the city's constitutional arguments.

In *Georgia*, the Supreme Court set forth a three-step process for how such constitutional challenges in Title II cases should proceed. Courts must first determine "which aspects of the [defendant]'s alleged conduct violated Title II." *Georgia*, 546 U.S. at 159. If Title II was violated, a court next should determine "to what extent such misconduct also violated the Fourteenth Amendment." *Ibid.* Finally, and only if a court finds that the alleged "misconduct violated Title II but did not violate the Fourteenth Amendment," it should reach the question whether

Congress's exercise of its Section Five authority "as to that class of conduct is nevertheless valid." *Ibid.*[3]

Accordingly, this Court must first determine whether "any aspect of the [defendant's] alleged conduct forms the basis for a Title II claim." *Bowers*, 475 F.3d at 553. This rule is in keeping with the "fundamental and longstanding principle of judicial restraint" that "courts avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988). This constitutional avoidance principle is at its apex when courts address the constitutionality of an act of Congress, "the gravest and most delicate duty" that courts are "called upon to perform." *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981) (citation omitted); *accord Northwest Austin Mun. Util. Dist. No. One* v. *Holder*, 129 S. Ct. 2504, 2513 (2009). Moreover, by definition, it is impossible to determine whether Title II's statutory remedy is congruent and proportional to the constitutional harm Congress confronted without first ascertaining that remedy's scope.

The United States takes no position as to whether plaintiffs have provided sufficient detail regarding the manner in which they were denied the services offered

[3] *Georgia* and most other cases involving the validity of Title II arose in the context of a State contending that Title II did not validly abrogate its sovereign immunity. However, that question required the same analysis as applies here with respect to whether Title II is valid Fourteenth Amendment legislation.

at Point Mallard Park. The United States does observe that, while the plaintiffs have catalogued a variety of ways in which the Park does not conform to ADA design regulations, they do not allege that any part of Point Mallard Park has been newly built or altered since 1992. A public entity must make "readily accessible" any facility that is newly constructed or altered after 1992. 28 C.F.R. § 35.151(a).[4] In the absence of new construction or alteration, on the other hand, the defendants' obligation is only to ensure that each service, program, or activity, "when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a).[5] To comply with this mandate, a public entity need not necessarily make accessible each facility that existed prior to 1992, 28 C.F.R. § 35.150(a)(1), nor must it take any action that it can demonstrate would result in "undue financial and administrative burdens." 28 C.F.R. § 35.150(a)(3).

[4] Any facility built in conformity with uniform federal standards – the ADA Accessibility Guidelines – complies with this requirement, though such conformity is not required where it is "clearly evident that equivalent access to the facility or part of the facility is [otherwise] provided." 28 C.F.R. § 35.151(c)(1).

[5] A new version of Title II's implementing regulations went into effect on March 15, 2011. The changes have no impact on the city's responsibilities here, and so this Court need not consider under which version the plaintiffs' claims should be adjudicated. We cite the new version in this brief.

B. The Relevant Context Is The Provision Of Public Facilities

While Title II's remedies apply to all public services, their congruence and proportionality can be adjudicated "on an individual or 'as-applied' basis in light of the particular constitutional rights at stake in the relevant category of public services."[6] *Association for Disabled Ams.*, 405 F.3d at 958. In this case, the "relevant category" of services is the provision of public facilities.

The city does not explain, nor is there a reasonable basis for, its defining the relevant category as "entertainment and recreation." *See* Br. in Supp. of Mot. to Dismiss 31. It appears to base this definition on its erroneous view that the Court should assess the constitutionality of Title II "under the allegations of the complaint in this case." *See* Br. in Supp. of Mot. to Dismiss 25. The constitutionality of Title II must be adjudicated as applied to broad categories of services provided by public entities, not the manner in which particular citizens may use such services or the claims they may bring. Title II is sweeping legislation that remedies a long history of discrimination across a variety of activities undertaken by public entities. Congress need not, and cannot, lay a historical predicate justifying every idiosyncratic application such a law may have for individual litigants.

[6] The United States maintains that Title II is constitutional in all of its applications. This case does not require this Court to consider that argument.

Lane illustrates this principle well. The plaintiffs, who had paraplegia, contended that courthouses were inaccessible to wheelchair users. *See Lane*, 541 U.S. at 513. As a result, one plaintiff could not appear to answer charges against him, while the other could not work as a court reporter. *Id.* at 513-514. The Supreme Court did not limit the constitutional question before it to either the specific judicial services (such as criminal adjudication) alleged to be inaccessible or the particular sort of access sought (wheelchair access to a courtroom). Rather, it considered the statute's constitutionality in the entire "class of cases implicating the accessibility of judicial services." *Id.* at 531.

Accordingly, the Court found relevant to its analysis a number of constitutional rights implicated by access to judicial services broadly but not by the particular plaintiffs' claims. Neither of the *Lane* plaintiffs alleged that he or she was excluded from jury service or subjected to a jury trial that excluded persons with disabilities. Neither was prevented from participating in civil litigation, nor did either allege a violation of First Amendment rights. Plaintiffs' disabilities did not implicate Title II's requirement that government, in the administration of justice, make available measures such as sign language interpreters or materials in braille. Yet the Supreme Court considered the full range of constitutional rights and Title II

remedies potentially at issue in the "class of cases implicating the accessibility of judicial services." *Lane*, 541 U.S. at 531.

Similarly, in *Association for Disabled Americans*, the Eleventh Circuit properly looked at Title II's application "in the context of a public education institution," *see* 405 F.3d at 957. It did not limit its focus to the particular defendant (a university) or the particular plaintiffs. Other courts likewise have correctly declined to focus their inquiries on the narrow sub-category of public education, such as community colleges, at issue in the particular cases before them. *See Toledo* v. *Sanchez*, 454 F.3d 24, 36 (1st Cir. 2006) (rejecting argument that Congress was required to show history of discrimination in higher education in particular); *accord Bowers*, 475 F.3d at 555.

Following *Lane* and *Association for Disabled Americans*, this Court should determine the congruence and proportionality of Title II within the entire "class of cases" involving the provision of public facilities. *See Lane*, 541 U.S. at 531. And it should do so in light of the many fundamental and otherwise vital rights that Title II protects in this context, regardless of whether the particular plaintiffs here claim to have been deprived of them. *See* Br. in Supp. of Mot. to Dismiss at 29 n.7.

C. The Rights At Stake In This Context Are Important Ones That Have Long Been Denied To Individuals With Disabilities

In addition to enforcing the constitutional guarantee against irrational disability discrimination, Title II "seeks to enforce a variety of other basic constitutional guarantees, infringements of which are subject to more searching judicial review." *Lane*, 541 U.S. at 522-523. For example, the accessibility of courthouses at issue in *Lane* implicated the exercise of the Due Process Clause, the Confrontation Clause, the Sixth Amendment right to a representative jury, and the First Amendment right of the public to access trial proceedings. *Id.* at 523.

Similarly important constitutional rights are implicated where a government fails to make accessible its public facilities. "The appropriateness of remedial measures must be considered in light of the evil presented." *City of Boerne*, 521 U.S. at 530. Title II was enacted "against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights," *Lane*, 541 U.S. at 524-525. In particular, evidence before Congress demonstrated systematic failure by municipalities to provide accessible public facilities. It also demonstrated that, as a result, individuals with disabilities regularly were burdened in their exercise of fundamental rights as well as basic civil participation.

As a result of the isolation and invisibility of individuals with disabilities – isolation and invisibility that have been perpetuated by government policies and practices – public facilities in this country historically have been constructed without the needs of disabled individuals in mind. One study commissioned by Congress found in 1967 that "virtually all of the buildings and facilities most commonly used by the public have features that bar the handicapped." *See* National Commission on Architectural Barriers to Rehabilitation of the Handicapped, *Design For All Americans* 3 (1967).[7] And despite the passage of state and federal legislation aimed at this problem, progress has been slow. As *Lane* observed, one report before Congress noted that, as of 1980, a full seventy-six percent of "public services and programs housed in state-owned buildings were inaccessible to and unusable by persons with disabilities." 541 U.S. at 527 (citing United States Comm'n on Civil Rights, *Accommodating the Spectrum of Individual Abilities* 39 (1983) (*Spectrum*)).[8] Often, the result was the denial of, or serious burden on, the exercise of fundamental rights. Testimony before Congress, as well as by individual stories submitted to the Task Force on the Rights and Empowerment of Americans with Disabilities – a body appointed by Congress that took written and oral testimony

[7] This report is available at http://www.eric.ed.gov/PDFS/ED026786.pdf.

[8] This report is available at http://www.eric.ed.gov/PDFS/ED236879.pdf.

from numerous individuals with disabilities as to the obstacles they faced – illustrated these burdens. *See Lane*, 541 U.S. at 527 (relying on Task Force's "numerous examples of the exclusion of persons with disabilities from state judicial services and programs").[9]

For example, individuals with disabilities experienced extensive discrimination in voting, largely as a result of the physical inaccessibility of polling places. Congress was told of "people with disabilities who were forced to vote by absentee ballot before key debates by the candidates were held," S. Rep. No. 116, 101st Cong., 1st Sess. 12 (1989) (*Senate Report*). One voter was "told to go home" because the voting machines were "down a flight of stairs with no paper ballots available"; another time, that voter "had to shout my choice of candidates over the noise of a crowd to a precinct judge who pushed the levers of the machine for me, feeling all the while as if I had to offer an explanation for my decisions." *Equal Access to Voting for Elderly & Disabled Persons: Hearings Before the Task Force*

[9] This brief cites certain submissions compiled by the Task Force and submitted to Congress. These submissions (along with many others) were lodged with the Supreme Court in *Board of Trustees of the University of Alabama* v. *Garrett*, 531 U.S. 356 (2001), and many of them were catalogued in Appendix C to Justice Breyer's dissent in that case. Justice Breyer's dissent cites to the documents by State and Bates stamp number, *see Garrett*, 531 U.S. at 389-424, a practice we follow in this brief. The documents cited herein also are attached for this Court's convenience in an addendum to this brief.

on Elections of the House Comm. on House Admin., 98th Cong., 1st Sess. 45 (1984).[10] A vast number of Task Force submissions confirmed the ubiquity of such burdens on "the right to exercise the franchise in a free and unimpaired manner," a right that "is preservative of other basic civil and political rights" such that any alleged infringement "must be carefully and meticulously scrutinized." *Reynolds* v. *Sims*, 377 U.S. 533, 561-562 (1964).[11]

Similarly, evidence before Congress demonstrated that inaccessible public buildings prevented individuals with disabilities from participating in public meetings, accessing government officials and proceedings, and otherwise fully

[10] The persistence of this problem ultimately led Congress to enact further protections in the Help America Vote Act of 2001. For example, one witness testified of having to rely on poll worker assistance to cast ballots in both Massachusetts and California, while "the poll worker attempted to change my mind about whom I was voting for. * * * [T]o this day I really do not know if they cast my ballot according to my wishes." *Help America Vote Act of 2001: Hearing Before the House Comm. on the Judiciary*, 107th Cong., 1st Sess. 15 (2001).

[11] One Delaware woman submitted a lengthy chronicle of her efforts to vote – including crawling for more than an hour – in two supposedly accessible locations that in fact could not accommodate her electric wheelchair. DE 307-309. An Indiana woman said she "would like to vote again" but had not been able to do so for more than a decade because of inaccessible polling places. IN 653. A Montana man was made to "sit out on the street and fill out a voting form" because his polling place, the city's performing arts center, was inaccessible for wheelchairs. MT 1027. And a blind woman was refused instructions as to the operation of a voting machine. AL 16. Among the many other instances of such discrimination collected by the Task Force, *see*, *e.g.*, AR 155 (physical barriers prevented citizens from voting); DE 303 (inaccessible voting machines); ND 1175 (voting buildings inaccessible).

exercising the right to petition for redress of grievances that is fundamental to "[t]he very idea of a government, republican in form." *United States* v. *Cruikshank*, 92 U.S. 542, 552-553 (1875); *see Romer* v. *Evans*, 517 U.S. 620, 633 (1996) (Constitution prohibits laws making it "more difficult for one group of citizens than for all others to seek aid from the government"). The Illinois Attorney General testified that he had received "innumerable complaints" regarding "people unable to meet with their elected representatives because their district office buildings were not accessible or unable to attend public meetings because they are held in an inaccessible building." *Americans with Disabilities Act of 1989: Hearings Before the Senate Comm. on Labor and Human Res. and the Subcomm. on the Handicapped*, 101st Cong., 1st Sess. 488 (1989) (*May 1989 Hearings*).

For example, one woman testified that she had to "crawl up three flights of circular stairs" to reach the room where "all public business is conducted by the county government." May 1989 Hearings 663. Another wheelchair user tried three times in a year to testify before state legislative committees, and each time he "was thwarted by a narrow set of Statehouse stairs, the only route to the small hearing room." IN 626. And a man who used a wheelchair went to city hall to lobby for more sidewalks, but could not get into the building, which could be accessed only by steps. WI 1758. Evidence before Congress indicated that such

stories were common.[12] Moreover, while this lawsuit focuses on barriers to individuals who use wheelchairs, evidence before Congress indicated that individuals with other disabilities similarly faced obstacles in exercising their constitutional right to participate in government.[13]

As *Lane* documented, individuals with disabilities long have been shut out of inaccessible courthouses, depriving them of a number of fundamental rights

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[12] A California woman complained that her county's administration building had only one wheelchair-accessible bathroom – on the fifth floor. Meanwhile, the building's elevator buttons were "so high, many wheelchair users can reach only the lower buttons." The result, she said, was that "emergency trips to the restroom are virtually impossible." CA 246. A New York woman reported that, when in Albany visiting her state legislators, she "had to wait 45 minutes to access an elevator which ended up being a freight elevator not meant for people." NY 1119. In a New York village, public meetings were held in a second floor meeting room "with only stairs for access." NY 1129. *See* also H.R. Rep. No. 485, 101st Cong., 2d Sess., Pt. 2, 40 (1990) (because village "could not see fit to put a ramp in * * * physically disabled people were never able to get into that town hall"); OK 1283 (citing "[n]umerous public meetings in inaccessible facilities"); ND 1175 (inaccessible council meetings); AL 17 (inaccessible restrooms in state house); AK 41 (inaccessible restrooms in state legislative information office); ND 1183 (architectural barriers at county and city buildings); OH 1216 (state, county and city buildings not accessible); OK 1275 (state government held meeting at hotel with inaccessible restrooms); VA 1654 (restrooms in government buildings not easily accessible); VA 1680 (public buildings lack ramps and library is not accessible by wheelchair); VA 1681 (public buildings not accessible).

[13] *See, e.g.*, SC 1457 (no interpreters for individuals with hearing impairments at government meetings); OK 1282 (same); VA 1671 (same); UT 1571 (most public buildings inaccessible for individuals without use of hands, because doors have round knobs instead of levers); VT 1633 (public building had no mechanism for warning people with hearing impairment that there was fire).

attendant to judicial proceedings. Moreover, local courthouses often house other important public services that also have been denied to those who cannot physically access them. *See, e.g.*, WY 1786 (wheelchair user unable to obtain marriage license because courthouse was inaccessible).

Likewise, evidence before Congress showed that inaccessible public education facilities regularly denied individuals with disabilities educational opportunities. As one witness testified:

> When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was a fire hazard. I was forced to go into home instruction, receiving one hour of education trice a week for 3 1/2 years.

Senate Report 7. Task Force submissions and testimony before Congress detailed numerous other instances of inaccessible school facilities. Given the centrality of schools in community life, such inaccessibility had a variety of consequences for individuals with disabilities, including denial of an education alongside their peers,[14]

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[14] *See Americans with Disabilities Act of 1989: Hearing Before the House Subcommittee on Select Education*, 100th Cong., 2d Sess. 77-78 (1988) *(October 1988 Hearing)* (student with mobility issues precluded from attending public high school by requirement that every student be able to attend classes "in three buildings with at least three floors in each building"); *Americans with Disabilities Act of 1989: Hearing Before the House Subcomm. on Select Education*, 101st Cong., 1st Sess. 67 (1989) (high school told student who used wheelchair that he would have "to be bused to a special school 20 miles away because the two-level school at Spencer had no elevator"); *see* ID 543 (school only recently, and only reluctantly, "allow[ed] our first person in a wheelchair to attend regular classes," and still was not fully

(continued…)

parents' inability to attend parent-teacher conferences and otherwise exercise their parental rights,[15] and denial of the opportunity to influence education policy.[16]

The inaccessibility of government buildings denied individuals with disabilities many other essential government services and rights, evidence before Congress demonstrated. One individual was unable to take a driver's license exam "because it was down a flight of stairs." ND 1170. Many individuals with disabilities could not access their local libraries, *see* ND 1192, social service agencies, *see* AZ 131; AR 145, or homeless shelters, *see* CA 216.

Finally, the inaccessibility of public facilities denied individuals with disabilities access to a variety of public activities such as parks, museums, and sporting events. As one Task Force submission observed, individuals with disabilities often face particular difficulties accessing recreation facilities precisely because such facilities are "assumed to be not as important as many other areas in our work-oriented society." NC 1155. Indeed, the city explicitly asserts here – years after Title II's passage should have settled the question – that there is "minimal

(…continued)
accessible); KY 711 (public university held classes in inaccessible classrooms notwithstanding enrollment of wheelchair user, who had to be carried up three flights of stairs by classmates).

[15] *See* AR 154; CT 285-286.

[16] *See* IL 574 (PTA meetings held at inaccessible school).

benefit[]" in ensuring that individuals with disabilities can access picnic tables and swimming pools. *See* Br. in Supp. of Mot. to Dismiss 40.

While access to any one event or facility may not implicate any fundamental constitutional right, the systematic denial of access to the same recreation pursuits as others both results from and perpetuates the state-sponsored isolation and segregation of individuals with disabilities that has plagued our country for so long. It makes it difficult to ensure "that families function as cohesive units," "that social relationships are initiated and cemented," and that individuals with disabilities otherwise are integrated fully into society. NC 1155. Being systematically shut out of facilities otherwise open to the public rendered individuals with disabilities second-class citizens in their own communities. *See Olmstead* v. *L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999) (unnecessary exclusion of individuals with disabilities from community "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life"). The isolation and stigma thereby officially created was a harm of constitutional magnitude that Congress was entitled to remedy and prevent. *See Hibbs*, 538 U.S. at 737 (in enacting the Family Medical Leave Act, Congress properly "sought to ensure that family-care leave would no longer be stigmatized as an inordinate drain on the workplace caused by female employees, and that employers could not evade

leave obligations simply by hiring men"; the statute "attacks the formerly state-sanctioned stereotype that only women are responsible for family caregiving, thereby reducing employers' incentives to engage in discrimination by basing hiring and promotion decisions on stereotypes").

For example, one Utah couple could not access a football field to watch their grandson play, an auditorium to watch their daughter perform, or the senior citizens' meals and functions held at a local school. UT 1613. A six-year-old girl with a hearing impairment was denied placement in a municipal swim class. WI 1751-1752. Lack of accessible facilities routinely shut individuals with disabilities out of public swimming pools. *See, e.g.*, CT 294-295; OK 1298; TX 1521. Municipal parks enforced "no dog" rules against even children with visual impairments who needed guide dogs, *see May 1989 Hearings* 488, and parks had inaccessible bathrooms and other features. *See, e.g.*, AZ 111-112; HI 480; OH 1218; OK 1271. And individuals with disabilities regularly were excluded from watching sporting events that were central to their local communities. *See, e.g.*, MI 874 (officials at Michigan State University were "neglectful of continuing requests received from handicappers for access, reasonable seating, both in number and quality, and accommodations" with respect to football stadium); OH 1240

(wheelchair user unable to attend sporting events at state university with his wife and children even though he was a student there).

Instead, governments often shunted individuals with disabilities into separate, more limited recreation programs. *See*, *e.g.*, NC 1155 (person with visual impairment denied access to public parks and recreation program; "he was told that there were 'blind programs' and that he should go there"); KS 704-705 (wheelchair user unable to sit with his family, relegated to "handicapped accessible" suite at city-owned sports facility); *Americans with Disabilities Act of 1989: Hearing Before the House Subcomm. on Select Education*, 101st Cong., 1st Sess. 74 (1989) (*October 1989 Hearing*) (wheelchair user cannot sit next to his family at sporting event). One paraplegic Vietnam veteran, told by his doctor that swimming would be his "best therapy," was relegated to a "kiddie pool" not deep enough for him to swim by a park commissioner who told him: "It's not my fault you went to Vietnam and got crippled." *See Americans with Disabilities Act of 1989: Hearings on H.R. 2273, Before the Subcomm. on Civil & Constitutional Rights of the House Comm. on the Judiciary*, 101st Cong., 1st Sess. 51 (1989) (*House Judiciary Hearing*).

In short, the systematic exclusion of individuals with disabilities from public facilities – even those devoted "only" to recreation – effectively cuts those

individuals off from their own communities and greater society. The isolation and stigma thereby officially created amounts to harm of constitutional magnitude. *See Olmstead*, 527 U.S. at 600; *Hibbs*, 538 U.S. at 737; *Association for Disabled Ams.*, 405 F.3d at 958.

Moreover, evidence before Congress indicated that this pervasive inaccessibility of public facilities frequently was due to irrational discrimination, such that it would fail even rational basis scrutiny. Although cost is the reason most often given for not constructing facilities in an accessible manner, evidence before Congress demonstrated that, in truth, it is not significantly more expensive to construct accessible facilities.

One report before Congress concluded that "the cost of barrier-free construction is negligible, accounting for only an estimated one-tenth to one-half of 1 percent of construction costs." *Spectrum* 81.[17] Indeed, as the General

[17] Among the sources for this conclusion was the federal Office of Facilities, Engineering and Property Management, which recommended that project cost estimates be increased by one-half of one percent to ensure barrier-free construction. Between this low estimate and "partially duplicative state and federal requirements" that already required some degree of accessibility, the regulations implementing the Rehabilitation Act of 1973 – which imposed the same requirements on recipients of federal funds as are at issue here – concluded that implementation cost for governments was "insignificant." *See* Department of Health, Education and Welfare, *Proposed Rules: Nondiscrimination on the Basis of Handicap*, 41 Fed. Reg. 20,333 (May 17, 1976).

Accounting Office found, incorporating accessibility features in new construction "may even result in cost savings" compared with inaccessible design. Comptroller General of the United States, *Further Action Needed to Make All Public Buildings Accessible to the Physically Handicapped* 87 (1975) (*GAO Report*); *see id.* at 87-91 (giving specific examples of cheap or even cost-saving accessible design).[18] Modifying existing buildings is more expensive, costing an estimated "3 percent of a building's value" for "full accessibility," but still is a relative bargain in light of the economic value generated by providing independence to individuals with disabilities, who then require substantially less government assistance.[19] *Spectrum* 81, 88. The bottom line, Congress was told, was that "the cost of discrimination far exceeds the cost of eliminating it." *Joint Hearing on H.R. 2273, the Americans*

[18] This report is available at http://archive.gao.gov/f0402/096968.pdf.

[19] Moreover, making facilities accessible often increases their usefulness for all individuals, not just those with disabilities. *See*, *e.g.*, *October 1989 Hearing* 111 (widened doorways and enlarged elevators not only permitted wheelchair access, but also allowed easier moving of heavy equipment); *Americans with Disabilities Act of 1988: Joint Hearing Before the Senate Handicapped Subcomm. and House Select Education Subcomm.*, 100th Cong., 2d Sess. 65-66 (1988) (lowered drinking fountains can be used by children as well as wheelchair users); *Field Hearing on Americans with Disabilities Act Before the House Subcomm. on Select Education*, 101st Cong., 1st Sess. 25 (1989) (making high school accessible to wheelchairs also would permit attendance by able-bodied students who sprained ankles or suffered other temporary injuries); *October 1989 Hearing* 11 (elevators permit greater access not only to wheelchair users, but also to pregnant women and children).

with Disabilities Act of 1989: Hearing Before the House Subcomms. on Select Educ. & Employment Opportunities, 101st Cong., 1st Sess. 57 (July 18, 1989).

Accordingly, the impediment to accessibility was "not so much real costs, but perceptions about costs." *See* Advisory Commission on Intergovernmental Relations, *Disability Rights Mandates: Federal & State Compliance with Employment Protections & Architectural Barrier Removal* 87 (1989);[20] *see id.* at 88 (citing "fear of high costs"). Public officials failed to make buildings accessible, not because of rational cost-benefit analysis, but rather after decision-making plagued by "ignorance about the lives and needs of persons with disabilities and the negative impact that barriers have on them." *Id.* at 87; *accord GAO Report* 92 ("Since the cost of eliminating barriers is not significant, limited progress in eliminating barriers may be due in part to a lack of commitment by Government officials."). Public entities exaggerated the expense of making facilities accessible and overlooked simpler solutions.

With respect to existing facilities, projected costs of making public services accessible often were "overestimated and contrary to common sense and practicality." *Spectrum* 70. For example, building managers complained of being required to "tear out their plumbing and install a new drinking fountain" to

[20] This report is available at http://www.library.unt.edu/gpo/acir/Reports/policy/a-111.pdf.

accommodate individuals with disabilities, when they can "install a five-dollar cup dispenser instead." *See* National Council on Disability, *The Americans with Disabilities Act: Ensuring Equal Access to the American Dream* 13 (1995).[21] As one witness observed, those who make a good-faith effort to accommodate generally find that their costs are minimal, but "[i]f they don't want them, the accommodations go right through the ceiling." *The Americans with Disabilities Act of 1989: Joint Hearing Before the House Subcomms. on Employment Opportunities and Select Education*, 101st Congress, 1st Sess. 23 (Sept. 13, 1989). He noted that one university spent $1 million for a ramp that proved useless "because it is made out of marble and it is as slippery as an ice rink," whereas a major corporation "made their whole national headquarters accessible for $7,600." *Ibid.* One wheelchair user observed that the town's curb cuts ended "a couple of inches above the roadway," making them useless, whereas driveways were cut "down to the roadway": "It is hard to believe that there is more consideration for cars than people, but it certainly looks that way." NJ 1072.

Other anecdotes before Congress demonstrated that irrationality and blatant discrimination were responsible for much of the pervasive inaccessibility of public facilities and other public services. In response to complaints that one city hall was

[21] This report is available at http://www.eric.ed.gov/PDFS/ED380931.pdf. For another telling of this anecdote, *see October 1989 Hearing* 145.

inaccessible, a city manager said that he "runs this town" and "no one is going to tell him what to do." AK 73. One state transportation agency, in response to complaints about inaccessible bus service, said: "Why can't all the handicapped people live in one place and work in one place? It would make it easier for us." *October 1988 Hearing* 62. One town declined to consult with individuals with disabilities or other qualified people before building what was billed as a "handicapped ramp," with the result that it wasted money on a worthless structure. *May 1989 Hearings* 663-664.[22] Another town claimed to a newspaper that it would cost $500 more to build a curb with a ramp, prompting a rebuttal letter from a cement contractor. TX 1483. And the director of an architectural firm specializing in accessible design testified that most architects and builders would rather invest time and money seeking a variance from accessibility requirements than find out how to comply. *October 1988 Hearing* 104.

[22] Experience since passage of the ADA has further shown that threat of litigation pursuant to the ADA often is the only way to force towns to take what prove to be simple, reasonable steps to avoid harms of constitutional magnitude. For example, one city provided no means for a candidate for city council who was in a wheelchair to access a platform to address citizens until the Civil Rights Division intervened. At that point, the city "agreed to acquire a portable ramp for the platform." *See* United States Dep't of Justice, Civil Rights Div., Disability Rights Section, *Enforcing the ADA: A Status Report from the Dep't of Justice*, Oct.-Dec. 2001, at 9, available at http://www.ada.gov/octdec01.pdf; *accord*, *e.g.*, *id.*, July-Sept. 1997, at 7 (settlement to make a state general assembly accessible).

Accordingly, *Lane* properly rejected the very argument made by the city – that the failure to remove physical barriers to access can always be justified by cost. *See* Br. in Supp. of Mot. to Dismiss 28, 40. Tellingly, the city is forced to rely on Justice Rehnquist's dissent for that proposition, which was rejected by the *Lane* majority.

D. Title II Is A Congruent And Proportional Response To The Pattern Of Discrimination It Remedies

Title II's measured and focused remedies are a congruent and proportional response to the pattern of irrational discrimination that Congress documented in this context. Title II is carefully tailored to (1) require that municipalities make such physical modifications as are necessary for their public services to be accessible to individuals with disabilities, preventing the denial of many fundamental rights and facilitating the integration of individuals with disabilities into society; and (2) require that new facilities or alterations be made accessible to individuals with disabilities, a step that adds little to costs. At the same time, it does not require municipalities to take any unreasonably costly steps or fundamentally alter the programs and services they offer. In short, in this context as in others, Title II is "a reasonable prophylactic measure, reasonably targeted to a legitimate end." *Lane*, 541 U.S. at 533.

As *Lane* concluded with respect to access to courts and judicial services, the "unequal treatment of disabled persons" with respect to physical access to public facilities has a "long history, and has persisted despite several legislative efforts to remedy the problem." *Lane*, 541 U.S. at 531. "Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this 'difficult and intractable proble[m]' warranted 'added prophylactic measures in response.'" *Ibid.* (quoting *Hibbs*, 538 U.S. at 737). Animating Title II's accessibility requirements is the view that "[j]ust as it is unthinkable to design a building with a bathroom only for use by men, it ought to be just as unacceptable to design a building that can only be used by able-bodied persons." *House Judiciary Hearing* 163 n.4. That is because "[i]t is exclusive *designs*, and not any inevitable consequence of a disability that results in the isolation and segregation of persons with disabilities in our society." *Ibid.*

Nevertheless, "[t]he remedy Congress chose is * * * a limited one." *Lane*, 541 U.S. at 531. Title II requires public entities to make only "'reasonable modifications' that would not fundamentally alter the nature of the service provided." *Id.* at 532. It does not require them "to compromise their essential eligibility criteria." *Ibid.* Nor does it require them to "undertake measures that

would impose an undue financial or administrative burden * * * or effect a fundamental alteration in the nature of the service." *Ibid.*

In particular, as *Lane* specifically noted, Title II and its implementing regulations require compliance with specific architectural standards only for public facilities built or altered after 1992. *See* 28 C.F.R. § 35.151; *Lane*, 541 U.S. at 532. By contrast, for "older facilities, for which structural change is likely to be more difficult, a public entity may comply with Title II by adopting a variety of less costly measures, including relocating services to alternative, accessible sites and assigning aides to assist persons with disabilities in accessing services." *Lane*, 541 U.S. at 532 (citing 28 C.F.R. § 35.150(b)(1)). "Only if these measures are ineffective in achieving accessibility is the public entity required to make reasonable structural changes." *Ibid.* "And in no event is the entity required to undertake measures that would impose an undue financial or administrative burden, threaten historic preservation interests, or effect a fundamental alteration in the nature of the service." *Ibid.*

These requirements directly remedy the long history of unconstitutional discrimination against individuals with disabilities in this context, *i.e.*, discrimination based on irrational stereotypes about and animus towards those individuals. Congress had extensive evidence demonstrating that complying with

accessible architectural standards adds only minor costs to new construction and that existing facilities often require only minor renovations to make public services accessible. It also had an enormous record of public officials nonetheless refusing to take such steps, even where such refusal resulted in the denial of important rights and services to individuals with disabilities.

Under such circumstances, Congress was entitled to ensure that public officials make rational and fair decisions about public facility construction and modification. The risk of unconstitutional treatment was sufficient to warrant Title II's prophylactic response. *See Hibbs*, 538 U.S. at 722-723, 735-737 (in light of many employers' reliance on gender-based stereotypes, Congress's requirement that all employers provide family leave was congruent and proportional response). And Congress was entitled to "enact prophylactic legislation proscribing practices that are discriminatory in effect, if not in intent, to carry out the basic objectives of the Equal Protection Clause." *Lane*, 541 U.S. at 520.

Congress's response was well targeted to the problem it faced. Title II requires that public officials provide *real* justifications for failing to make newly constructed or altered facilities accessible – that is, justifications based on actual, not imagined, cost or administrative difficulties. It thus takes direct aim at the invidious, class-based stereotypes that otherwise are difficult to detect or prove.

And by requiring that existing facilities be made accessible to the extent necessary to ensure access to public services, Congress directly protected a number of fundamental rights, including those at issue in *Lane*.

Congress was entitled to do more than simply ban overt discrimination in this context. Not only can such "subtle discrimination" be difficult to prove, *see Hibbs*, 538 U.S. at 736, but such a limited remedy would have frozen in place the effects of public officials' prior official exclusion and isolation of individuals with disabilities. That discrimination rendered such individuals invisible to government officials and planners and created a self-perpetuating downward spiral of segregation, stigma, and neglect. "A proper remedy for an unconstitutional exclusion * * * aims to eliminate so far as possible the discriminatory effects of the past and to bar like discrimination in the future." *United States* v. *Virginia*, 518 U.S. 515, 547 (1996) (internal quotation marks omitted); *see Hibbs*, 538 U.S. at 736. The remedy for segregation is integration, not inertia.

While providing individuals with disabilities with long-denied access to public facilities thus is a legitimate aim of Fourteenth Amendment legislation on its own, ensuring such access also is an essential piece of the ADA's larger purpose: ameliorating the enduring effects of this Nation's long and pervasive discrimination against individuals with disabilities. Such discrimination was not limited to a few

discrete areas (such as access to public facilities), but rather constituted the very "kind of 'class or caste' treatment that the Fourteenth Amendment was designed to abolish." *Plyler* v. *Doe*, 457 U.S. 202, 216 n.14 (1982). For example, from the 1920s to the 1960s, the eugenics movement labeled persons with mental and physical disabilities as "sub-human creatures" and "waste products" responsible for poverty and crime. *Spectrum* 18 n.5, 20; *accord Lane*, 541 U.S. at 535 (Souter, J., concurring); *see also Olmstead*, 527 U.S. at 608 (Kennedy, J., concurring) (observing that individuals with mental disabilities "have been subject to historic mistreatment, indifference, and hostility"). Those decades of officially compelled isolation, segregation, and discrimination rendered persons with disabilities invisible to government officials generally as well as to those who designed and built facilities for public and private entities alike. They also gave rise to and continue to fuel discrimination borne of stereotypes, fear, and negative attitudes towards those with disabilities.

Title II's requirements with respect to public facilities are part of a broader remedy to a constitutional problem that is greater than the sum of its parts. The inaccessibility of public facilities has a direct and profound impact on the ability of people with disabilities to integrate into the community, literally excluding them from attending community events, voting, working, and many other activities. This

exclusion, in turn, feeds the irrational stereotypes that lead to further discrimination by public and private entities alike. *Cf. Olmstead*, 527 U.S. at 600 (segregation of individuals with disabilities "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life"). In his testimony before Congress, Attorney General Thornburg explained that ending this spiral required "increase[d] contact between and among people with disabilities and their more able-bodied peers." *House Judiciary Hearing* 196. Accordingly, what was needed was "a comprehensive law that promotes the integration of people with disabilities into our communities, schools and work places." *Ibid.*

Title II's requirements, as applied to public facilities, are a vital part of that comprehensive law. They directly ameliorate past and present discrimination by ensuring that the needs of persons previously invisible to architects, contractors, and others responsible for such facilities are now considered. And they ensure that individuals with disabilities are sufficiently integrated into society to take advantage of the other rights ensured by the ADA.

The bottom line is that, in this context, Title II's remedial scheme is not "out of proportion to a supposed remedial or preventive object." *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62, 86 (2000) (citation omitted). Rather, it is "responsive to, or

designed to prevent, unconstitutional behavior." *Ibid.* Accordingly, it is valid Section Five legislation.

The city's arguments to the contrary rely on reasoning from the *Lane* dissents that the majority never adopted and that, in many respects, is flatly inconsistent with the majority opinion. *See* Br. in Supp. of Mot. to Dismiss 34-35; Reply Br. 15. It is true that Justice Rehnquist, in dissent, would have found that Congress had no authority to require access to public buildings generally. *See Lane*, 541 U.S. at 550 (Rehnquist, J., dissenting). But the *Lane* majority rejected the logic underlying that conclusion, finding that Title II is valid Section Five legislation as applied to courthouses even where lack of access would not result in the deprivation of any constitutional liberty. Likewise, it is true that Justice Scalia, in dissent, would have jettisoned the congruent-and-proportional framework entirely and restricted Congress's Section Five authority only to enforcement of actual Fourteenth Amendment violations. *See id.* at 565 (Scalia, J., dissenting). His view, too, is not controlling law.

Similarly baseless is the city's argument that *Lane*'s reasoning applies only to that narrow set of cases in which plaintiffs are actually deprived of a fundamental right. *See* Br. in Supp. of Mot. to Dismiss 32; Reply Br. 14. Quite to the contrary, as Justice Rehnquist observed in his dissent, the *Lane* plaintiffs were *not* actually

deprived of any fundamental rights, because they could access the courthouse, albeit with assistance. *See Lane*, 541 U.S. at 546-547 (Rehnquist, J., dissenting); *id.* at 553 (noting that, even as limited to the courthouse context, Title II requires accessibility without regard to whether anyone has been deprived of due process or any other fundamental right). That made no difference, nor should it have. The question was whether Congress confronted and remedied a history of unconstitutional discrimination in enacting a broad statute, not whether particular applications of that statute remedied such discrimination.

Nor does *Lane* purport to limit Congress's Section Five authority to remedy a history of unconstitutional treatment to those contexts in which the rights that have been denied are "fundamental" and so receive heightened scrutiny. It undoubtedly is easier to show the requisite history of unconstitutional treatment in such contexts, but *Lane* itself points to instances in which individuals with disabilities have suffered discrimination that receives rational basis scrutiny, such as in zoning decisions and public education. *See Lane*, 541 U.S. at 525. And the Eleventh Circuit, in subsequently holding that Title II is valid Section Five legislation in the context of public education, reaffirmed that what triggers Congress's authority to pass prophylactic legislation is the history of discrimination and the importance of the right at issue, not whether alleged deprivation of that right receives heightened

scrutiny. *See Association for Disabled Ams.*, 405 F.3d at 957-958. Far from acknowledging that binding precedent, the city asks this Court instead to adopt the analysis of decisions that are no longer good law even in their own circuits. *See* Br. in Supp. of Mot. to Dismiss 37 (relying on *Hale* v. *King*, 624 F.3d 178 (5th Cir. 2010),[23] *withdrawn and replaced*, 642 F.3d 492 (5th Cir. 2011)); *id.* at 38 (relying on *Alsbrook* v. *City of Maumelle*, 184 F.3d 999 (8th Cir. 1999) (en banc), inconsistency with *Lane* recognized, *Klingler* v. *Department of Revenue*, 455 F.3d 888, 892 (8th Cir. 2006).

At its core, the city's argument is that this Court should adopt the cramped view of Congress's Section Five authority that the Supreme Court rejected in *Lane* and *Hibbs* and the Eleventh Circuit rejected in *Association for Disabled Americans*. This Court instead should follow controlling precedent, which requires that Congress's Section Five authority be upheld here.

[23] There is no basis for the city's contention that the original decision in *Hale* remains a valid statement of the Fifth Circuit's position on the issue merely because the revised decision did not reach the question of whether Title II is proper Section Five legislation. *See* Br. in Supp. of Mot. to Dismiss 37 n.11. Tellingly, the revised Fifth Circuit opinion vacated the district court decision finding Title II not to be congruent and proportional legislation and instructed the district court to reconsider the issue should it arise again, thus clarifying that the issue was not resolved even for that case, let alone as precedent for other cases. *See Hale*, 642 F.3d at 503-504.

III

TITLE II IS VALID COMMERCE CLAUSE LEGISLATION

While this Court need not reach this question if it concludes that Title II is valid Section Five legislation, Title II also is a valid exercise of Congress's Commerce Clause authority. As the Supreme Court reiterated in *Gonzales* v. *Raich*, 545 U.S. 1 (2005), there are three "general categories of regulation in which Congress is authorized to engage under its commerce power." *Id.* at 16. First, Congress can "regulate the channels of interstate commerce." *Ibid.* Second, it can "regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce." *Id.* at 16-17. And finally, Congress can "regulate activities that substantially affect interstate commerce." *Id.* at 17. Title II, whether looked at as a whole or as applied here, is valid under the third category.[24]

A. Title II Regulates Activities That Substantially Affect Interstate Commerce

Title II regulates economic activity that substantially affects interstate commerce, and so it is valid Commerce Clause legislation, as a whole and as applied here.

[24] In many of its applications, such as where it requires accessible streets, sidewalks, and transportation, Title II also regulates the channels and instrumentalities of interstate commerce. In the interest of brevity, because no such application is at issue here, this brief does not address the question.

Title II directly regulates the activity of public entities, much of which – including the activity at issue here – has a direct effect on interstate commerce. At issue here is Title II's regulation of the design and construction of physical facilities. Facility construction and design is "plainly an economic enterprise," and so the Commerce Clause permits Congress to regulate it. *Rancho Viejo, LLC* v. *Norton*, 323 F.3d 1062, 1068-1069 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 1218 (2004). The city may not itself be a commercial entity, but it can and does participate in this commercial marketplace. *See, e.g.*, *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U.S. 564, 586 & n.18 (1997) (nonprofit nursing homes and hospitals can engage in activity that substantially affects interstate commerce); *EEOC* v. *Wyoming*, 460 U.S. 226, 243 (1983) (regulation of public entities as employers was valid Commerce Clause legislation).

The city makes no argument that design and construction of facilities is not economic activity that substantially affects interstate commerce, and such an argument would be unavailing. Indeed, Congress regularly exercises its Commerce Clause authority to mandate national design and construction standards with respect to certain projects, just as it did here. *See, e.g.*, *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 166-167 (1978) (involving federal law regulating the design and construction of oil tankers). Moreover, in reviewing the validity of Commerce

Clause legislation, a court's task "is a modest one." *Raich*, 545 U.S. at 22. The court "need not determine" whether the regulated conduct, "taken in the aggregate, substantially affect[s] interstate commerce in fact, but only whether a 'rational basis' exists for so concluding." *Ibid.*

It makes no difference whether the city's particular design and construction activities have such an effect. For example, *Slingluff* v. *Occupational Safety & Health Review Commission*, 425 F.3d 861, 867 (10th Cir. 2005), upheld the Secretary of Labor's determination that "construction is in a class of activity which as a whole affects interstate commerce," such that occupational safety standards constitutionally may be applied to any company in the construction business. It rejected a small stuccoing company's argument that the company's activity had no such effect; it was sufficient that "the economic activity of stuccoing/construction, as an aggregate, affects interstate commerce." *Ibid.*; *accord United States* v. *Ho*, 311 F.3d 589, 602 (5th Cir. 2002) (asbestos removal is "very much a commercial activity in today's economy"), *cert. denied*, 539 U.S. 914 (2003).

Accordingly, because facility design and construction, as a "class of activities," substantially affects interstate commerce in the aggregate, Congress may regulate all such activity, even that which does not affect interstate commerce. *Raich*, 545 U.S. at 17-18. Congress need not predict case by case whether and to

what extent particular activities in the regulated class will contribute to those aggregate effects. *Id.* at 22; *accord United States* v. *Maxwell*, 446 F.3d 1210, 1215 (11th Cir.), *cert. denied*, 549 U.S. 1070 (2006). And in any event, the inaccessibility of the facilities at issue here has a direct effect on commerce. The city appears to concede the economic effect of refusing to sell admissions tickets to the park to individuals with disabilities. *See* Reply Br. 20. Yet it denies such an economic effect where the same individuals contend that the park's inaccessibility bars them. It can do so only by denying the very premise of the claim and asserting that the challenged facilities *do* provide "ample program access." *Id.* at 21.

Title II thus regulates economic activity that has a substantial effect on interstate commerce, in this application and in many others where it regulates public entities' activities that are part of a national market, such as public housing, universities, hospitals, transportation services, and utilities. But in any event, it would be valid Commerce Clause legislation regardless, because it is an "essential part" of the ADA's "larger regulation of economic activity" that, "viewed in the aggregate, substantially affects interstate commerce." *See United States* v. *Lopez*, 514 U.S. 549, 561 (1995). Title II's inclusion in a larger statutory scheme distinguishes it from the statutes struck down in *Lopez* and *United States* v. *Morrison*, 529 U.S. 598 (2000), both of which regulated only a single activity that

was not fundamentally economic. *See Maxwell*, 446 F.3d at 1216 n.6; *accord United States* v. *Paige*, 604 F.3d 1268, 1273 (11th Cir.), *cert. denied*, 131 S. Ct. 333 (2010).

There can be no serious question that much of the ADA directly regulates commercial activity, including Title I (employment) and Title III (public accommodations), and so constitutes valid Commerce Clause legislation. *See, e.g.*, *United States* v. *Mississippi Dep't of Pub. Safety*, 321 F.3d 495, 500-501 (5th Cir. 2003) (Title I is valid Commerce Clause legislation). It is well established that Congress may mandate anti-discrimination by private entities under its Commerce Clause authority, due to the disruptive effects that even local discriminatory acts have on the interstate commercial system. *See Katzenbach* v. *McClung*, 379 U.S. 294, 299-300 (1964) (upholding Civil Rights Act of 1964's requirement that restaurants serve food without discrimination); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241 (1964) (upholding Civil Rights Act's requirement of anti-discrimination in public accommodations). Here, Congress specifically found that remedying discrimination against individuals with disabilities would save billions of dollars that unnecessarily were spent on "expenses resulting from dependency and nonproductivity." 42 U.S.C. § 12101(a)(8).

As Congress found, many of Title II's protections, including those at issue here, are essential if individuals with disabilities are to realize the full benefits of that commercial regulation, such as by working or patronizing private businesses. *See*, *e.g.*, H.R. Rep. No. 485, 101st Cong., 2d Sess., Pt. 2, 37 (1990) (without transportation, individuals with disabilities are prevented from working or otherwise being "integrated and mainstreamed into society"). So long as Congress had a "rational basis" for drawing the conclusion that Title II is an "essential part" of this regulatory scheme, Title II is valid Commerce Clause legislation, regardless of whether it regulates activity that directly affects interstate commerce. *See Raich*, 545 U.S. at 22-24; *accord id.* at 37 (Scalia, J., concurring) ("Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."). Given the extensive legislative history described in the previous Section as to the need for accessible public services, Congress easily had a rational basis for so concluding.

As described in greater length in the previous section, Congress compiled an enormous volume of evidence indicating that governmental discrimination interfered with the economic participation and self-sufficiency of individuals with disabilities. Without ending this discrimination and requiring accessible public services (including but not limited to those at issue here), Congress could not ensure

that individuals with disabilities could fully enjoy the benefits of non-discrimination in employment and public accommodations. While "the absence of particularized findings does not call into question Congress' authority to legislate" under the Commerce Clause, "congressional findings are certainly helpful in reviewing the substance of a congressional statutory scheme, particularly when the connection to commerce is not self-evident," and so courts should consider such findings "when they are available." *Raich*, 545 U.S. at 21.[25]

Moreover, Congress could rationally conclude that permitting discrimination by public entities would undermine private compliance with the ADA. Title II often applies to government services that have private-sector counterparts, including the facility design and construction at issue here. Requiring private entities, but not public providers, to bear the costs of accommodating individuals with disabilities would place private providers at a competitive disadvantage, discouraging them from voluntary compliance with Title III's requirements. For example, a private recreation facility may be less likely to make its services accessible if a nearby public facility is under no such requirement.

[25] It is unclear on what basis the city asserts that Congress failed to make such findings, *see* Br. in Supp. of Mot. to Dismiss 42 n.14, in light of the legislative history and explicit congressional finding regarding the economic cost of disability discrimination described above.

Finally, Congress understood that elimination of discrimination in employment under Title I and public accommodations under Title III required changing attitudes. When public entities do not provide for participation by persons with disabilities, they contribute to the stereotypical attitudes and ignorance that Congress found at the core of much of the discrimination it targeted in Titles I and III. *See Olmstead*, 527 U.S. at 600 (government discrimination against individuals with disabilities "perpetuates unwarranted assumptions that people so isolated are incapable or unworthy of participating in community life"). Congress could rationally conclude that changing the practices of public entities was vital to changing behavior in the commercial marketplace. *Cf. Paige*, 604 F.3d at 1273-1274 (upholding ban on purely intrastate production of child pornography, partly on the ground that it "would cause some persons to cease all involvement in the possession or production of child pornography," thus indirectly affecting interstate commerce).

It is thus irrelevant whether Title II applies to some non-economic activities of public entities. "A complex regulatory program * * * can survive a Commerce Clause challenge without showing that every single facet of the program is independently and directly related to a valid congressional goal. It is enough that the challenged provisions are an integral part of the regulatory program and that the

regulatory scheme when considered as a whole satisfies this test." *Hodel* v. *Indiana*, 452 U.S. 314, 329 n.17 (1981); *accord Lopez*, 514 U.S. at 561.

Accordingly, courts have found that Congress acted within its Commerce Clause authority in enacting the Fair Housing Amendments Act (FHAA), Pub. L. No. 100-430, 102 Stat. 1619 (1988) (42 U.S.C. § 3604). Like Title II, the FHAA prohibits disability discrimination by public entities, in order that individuals with disabilities can participate fully in the housing marketplace. As the Fifth Circuit concluded, the link between the regulated activity and commerce "is direct. We do not need to pile 'inference upon inference' to see that by refusing to reasonably accommodate the disabled by discriminatory zoning laws, there will be less opportunity for handicapped individuals to buy, sell, or rent homes." *Groome Res. Ltd.* v. *Parish of Jefferson*, 234 F.3d 192, 215 (5th Cir. 2000). Title II similarly ensures that public discrimination does not deprive individuals with disabilities of the opportunity to partake fully in interstate commerce, and so it too is valid Commerce Clause legislation.

The city's argument to the contrary relies on a misreading of *Morrison*, a case that it suggests stands for the broad proposition that remedying local acts of discrimination is not within Congress's Commerce Clause authority, effectively overruling *Heart of Atlanta*. *See* Br. in Supp. of Mot. to Dismiss 42-43; Reply Br.

19-20. But the law at issue in *Morrison* did not broadly remedy gender discrimination. Rather, it narrowly banned gender-motivated, violent local crimes that typically involve no direct economic transaction of any kind and have no more economic effect in the aggregate than any other crimes of violence or any other regulation of families. *See* 529 U.S. at 615-616. Accordingly, the Court reasoned that upholding such a law under the Commerce Clause power could "completely obliterate the Constitution's distinction between national and local authority." *Id.* at 615.

Such reasoning is inapplicable here. The ADA is sweeping anti-discrimination legislation that, among other things, directly regulates commercial transactions. Title II is an integral part of the ADA's overall scheme, and it directly regulates commercial activity such as the design, construction, and maintenance of facilities at issue here. Whatever the outer limits of Congress's Commerce Clause authority may be, Title II does not approach them.

B. Title II Does Not Regulate Inactivity

The city makes little attempt to show that Title II does not satisfy the requirements for valid Commerce Clause legislation set forth above. Indeed, it does not even cite *Raich* or the test announced therein, let alone try to apply it. Rather, it relies primarily on the argument that Title II is invalid Commerce Clause

legislation because it regulates "inactivity," *i.e.*, it penalizes the city for failing to act. *See* Br. in Supp. of Mot. to Dismiss 44-48; Reply Br. 20-23. This Court need not decide whether the Commerce Clause authority admits to limitations of this nature, because Title II does not, in fact, regulate anything that could be characterized as "inactivity."

Title II regulates public entities that are actively providing public "services, programs, or activities," mandating that individuals with disabilities may not "be excluded from participation in or be denied the benefits of" such activity. 42 U.S.C. § 12132. It bars public entities from actively "subject[ing] to discrimination" individuals with disabilities. *Ibid.* And it requires public entities that are newly constructing a facility or altering an existing facility to make that facility or the altered portion "readily accessible." 28 C.F.R. § 35.151(a). In each application, it is the public entity's action that subjects it to regulation, not its inaction.

Here, any obligations that Title II may impose on the city to make facilities accessible stem from either (1) the need to access those facilities to participate in services, programs, or activities housed inside; or (2) the city's act of newly constructing or altering those facilities. *See, e.g.*, *Kinney* v. *Yerusalim*, 9 F.3d 1067, 1073 (3d Cir. 1993) ("Congress felt that it was discriminatory to the disabled to

enhance or improve an existing facility without making it fully accessible to those previously excluded."), *cert. denied*, 511 U.S. 1033 (1994). If the city takes no covered action with respect to the park – that is, neither uses it to provide a public service, program, or activity nor alters it – plaintiffs' allegations do not state a Title II claim.

IV

JUSTICE DEPARTMENT REGULATIONS AUTHORITATIVELY CONSTRUING TITLE II ARE ENFORCEABLE UNDER TITLE II'S PRIVATE RIGHT OF ACTION

The city also errs in asserting that the plaintiffs, in suing under Title II's private right of action, may not enforce compliance with Title II's implementing regulations.

As the city concedes, *see* Br. in Supp. of Mot. to Dismiss at 50, Title II's broad anti-discrimination mandate is privately enforceable. *See Barnes* v. *Gorman*, 536 U.S. 181, 184-185 (2002). And where, as here, regulations validly interpret that mandate as applied to specific situations, requirements set forth in those regulations are as enforceable as the statutory language itself. *Alexander* v. *Sandoval*, 532 U.S. 275, 284 (2001). Indeed, because such regulations "authoritatively construe" the statute, it is "meaningless to talk about a separate cause of action to enforce the regulations apart from the statute." *Ibid.* There can be no independent analysis of

the enforceability of the regulations, because "[a] Congress that intends the statute to be enforced through a private cause of action intends the authoritative interpretation of the statute to be so enforced as well." *Ibid.*

Sandoval found that the regulation at issue in that case did *not* authoritatively construe the statute and so could not be enforced through the statute's private right of action. At issue in *Sandoval* were regulations adopted pursuant to Section 602 of the Civil Rights Act that banned disparate-impact discrimination. The regulations thus exceeded the prohibitions of Section 601 of the Civil Rights Act, which bans only intentional discrimination, rather than authoritatively construing them. Accordingly, it was irrelevant that Section 601's requirements are enforceable through a private right of action. 532 U.S. at 280-281. Instead, the disparate-impact regulations could be enforced only if Section 602, the separate statutory provision authorizing the promulgation of those regulations, similarly conferred a private right of action, and *Sandoval* held that it did not. *Id.* at 288-289.

Here, however, the regulations at issue are fully consistent with the statutory provision that is enforceable through a private right of action, and so *Sandoval* provides that the regulations are enforceable. The city does not contend that the substantive regulations at issue here fail to validly construe Title II, and such an argument would be unsuccessful. Title II broadly provides that "no qualified

individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The regulations at issue, while more specific than the statutory language, are fully consistent with it, as well as statutory language making clear that among the bill's intended effects was remedying "the discriminatory effects of architectural, transportation, and communication barriers," including the "failure to make modifications to existing facilities." 42 U.S.C. § 12101(a)(5); *see Tennessee* v. *Lane*, 541 U.S. 509, 531 (2004) ("Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility.").

Moreover, Congress specifically called for the Justice Department to promulgate the regulations in question. *See Shotz* v. *City of Plantation*, 344 F.3d 1161, 1179 (11th Cir. 2003). It instructed the Attorney General to implement Title II by promulgating regulations that set forth public entities' specific duties pursuant to Title II's broad mandate. 42 U.S.C. § 12134(a). And it directed the Attorney General, in writing those regulations, to make them consistent with specific rules the Department of Justice and the Department of Health, Education, and Welfare had adopted in earlier regulations to implement Section 504 of the Rehabilitation Act. *See* 42 U.S.C. § 12134(b). Congress's mandate that such standards be promulgated

gives those standards the force of law, just as if Congress had written them into the statute. *Helen L.* v. *DiDario*, 46 F.3d 325, 332 (3d Cir.), *cert. denied*, 516 U.S. 813 (1995); *accord Shotz*, 344 F.3d at 1179.

Because the substantive regulations construing Title II thus are valid interpretations of the statutory mandate, which itself is enforceable in a private right of action, they are enforceable through that right of action. Accordingly, those appellate courts that have squarely decided the issue have held that a violation of these implementing regulations is enforceable through a suit under Title II. *See Ability Ctr. of Greater Toledo* v. *City of Sandusky*, 385 F.3d 901, 910 (6th Cir. 2004); *Chaffin* v. *Kansas State Fair Bd.*, 348 F.3d 850, 858 (10th Cir. 2003). Contrary to the city's suggestion, *see* Br. in Supp. of Mot. to Dismiss 63, no appellate decision holds that any of Title II's substantive regulations cannot be enforced pursuant to Title II's private right of action.[26]

[26] The one regulation cited in this case that does not conform to this analysis is the requirement in 28 C.F.R. § 35.150(c)-(d) that public entities create transition plans for making required structural changes by a specified deadline (that has long since passed). This regulation is more administrative than substantive, for which reason courts have held that it, unlike the other regulations at issue here, does not directly implement the non-discrimination mandate and therefore is unenforceable in a private suit. *See, e.g.*, *Lonberg* v. *City of Riverside*, 571 F.3d 846, 850-851 (9th Cir. 2009), *cert. denied*, 131 S. Ct. 78 (2010). We take no position on whether the transition plan requirement is privately enforceable.

The city does not engage with the analysis required by *Sandoval*, but instead relies almost entirely on dicta in an Eleventh Circuit decision that has been withdrawn and replaced. *See* Br. in Supp. of Mot. to Dismiss 52-64 (repeatedly quoting from *American Ass'n of People with Disabilities* v. *Harris*, 605 F.3d 1124 (11th Cir. 2010), *withdrawn and replaced*, 647 F.3d 1093 (11th Cir. 2011)). In *Harris*, the district court found that the defendants had violated only an implementing regulation and not Title II itself. *See id.* at 1131. On appeal, the Eleventh Circuit originally held that the district court erred by "no mention of enforcing [the regulation] through the ADA; rather, it treated [the regulation] as creating a freestanding right to sue." *Id.* at 1135 n.24. Additionally, the Court held that, in any event, the defendants' conduct did not violate the regulation. *Id.* at 1136-1137.

The original decision in *Harris* did not explicitly decide whether a plaintiff may allege a violation of Title II as authoritatively construed by the implementing regulations, a situation not before it. But it contained dicta – issued without the benefit of briefing on the question from the parties[27] – that could be read to suggest that 28 C.F.R. § 35.151(b), which requires that existing public facilities be made

[27] There is no basis for the city's assertion that the issue "was directly presented to the court, briefed by the parties, and considered at length." *See* Br. in Supp. of Mot. to Dismiss 63.

accessible when they are altered, may not be enforceable in an action brought under Title II. This dicta directly conflicted with *Sandoval*, the appellate courts that have squarely considered the issue, and the Eleventh Circuit's own prior statement that the substantive regulations implementing Title II validly construe the statutory mandate. *See Shotz*, 344 F.3d at 1179; *Shotz* v. *Cates*, 256 F.3d 1077, 1079-1081 (11th Cir. 2001). Accordingly, the panel withdrew that decision and replaced it with one that did not in any way support the city's arguments here.

Undeterred, the city asks this Court to follow the withdrawn *Harris* opinion, contending that the withdrawn opinion "remains instructive and persuasive" and that it "provides a clear indication of what would happen should the [Eleventh Circuit] confront the issue in a proper case." *See* Br. in Supp. of Mot. to Dismiss 54, 62. But the Eleventh Circuit *has* resolved this issue. In *Shotz*, the court held that Title II's private right of action permits a cause of action alleging a violation of 28 C.F.R. § 35.150(a), which requires that services be "readily accessible." Relying on this regulation, it rejected the defendants' argument that a Title II violation requires the complete denial of access to a service. *See* 256 F.3d at 1080.

The *Harris* court withdrew its original decision not only because that decision's dicta was erroneous but also because it conflicted with the Eleventh Circuit's prior caselaw – caselaw that, with the original *Harris* decision withdrawn,

once again is binding on this Court. Moreover, the city cites no precedent for relying on a withdrawn decision for any purpose.

CONCLUSION

The city's motion to dismiss should be denied.

Respectfully submitted this the 27th day of January 2012,

JOYCE WHITE VANCE
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

This is to certify that, on January 27, 2012, a copy of the foregoing has been served by electronically filing the foregoing with the Clerk of the Court via the CM/ECF system, which will send notification of the filing to all attorneys of record.

/s/ Lloyd C. Peeples
LLOYD C. PEEPLES, III

ADDENDUM

Case No. 5:11-CV-03273-CLS
McBay v. *City of Decatur*
ADDENDUM

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Table of Contents (continued)

A blind woman, a new resident to Alabama, went to vote and was refused instructions on the operation of the voting machine.

A hospital refused to allow an interpreter to accompany a deaf patient in the examination room.

Is this reasonable accommodation or discrimination?

These examples cannot be answered with the rhetoric of reasonable accomodation but rather must be dealt with as an issue of discrimination.

Even the published standards and guidelines which established the use of the access symbol and which were adopted by the Architectural and Transportation Barriers Compliance Board, the American National Standards Institute and by State Fire Marshals--even these standards--are discriminatory. These minimum guidelines provide access for disabled people who have full range of motion and use of their upper arms and shoulders.

Today medical and technological advances allow many people with quadriplegic disabilities, which include limited arm extension, the opportunity to enter the work force. However, minimum guidelines prevent these same individuals from using switches, electrical outlets, thermostats, tissue and towel dispensers and racks, restroom facilities, and the

list could go on and on and on. That's discrimination.

For instance, these guidelines present three basic designs for restroom stalls and show three respective methods of wheelchair transfers. One design is recommended as providing access to the majority of disabled people. However this design, which requires more floor space, is rarely chosen by architects, contractors and owners. The cheaper design is almost uniformly chosen. This discriminatory choice, based on economics not equality, restricts many people with quadriplegic disabilities from using restroom facilities. Discrimination based on disability must stop.

A personal reference to make a point: I have to drive home to use the bathroom or call my husband to drive in and help me because the newly renovated State House in which I work is not accessible to me. It's accessible to paraplegic, but not quadriplegic, staff and visitors. I can't sue the State because it complied with minimum standards, and I stress the word minimum.

But is this reasonable accommodation? Can you picture Senator Dole as a quadriplegic working under these conditions? Can you imagine the phone call? . . . "Hi Elizabeth, honey, I've gotta go. Can you rush down and help me?"

A-3 (12)

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

I have been involved in the field of rehabilitation for 18 years. Each day I am surprised by some incident of discrimination towards persons with disabilities. The latest incident was this morning in finding the bathrooms in the STATE legislative operation office are not accessible. Is this a good example for the legislators?

signed Kathe Matias

address: 4100 Spenard
Anchorage, AK 99517

tel: (907) 243-5600

SEPTEMBER 24, 1988

MR. JOHNNY ELLIS
STATE REPRESENTATIVE
3111 C STREET
SUITE 455
ANCHORAGE, AK. 99503

DEAR REPRESENTATIVE ELLIS:

RE: HANDICAPPED ACCESSIBILITY TO CITY OF SEWARD BUILDINGS

We have major problems in Seward, regarding accessibility to City and State buildings for the handicapped and disabled. For Example: There is no accessibility to Seward City Hall, the museum, (which is downstairs) and the Ray building, (which is 3 stories high, and has very narrow stairways) and numerous other City and State buildings for the handicapped. This is DEPLORABLE!

Another problem in Seward is: There are no parking spaces available in the downtown business district, marked handicapped. We definitely need them. Seward Mayor Harry Gieseler, stated that we don't need any handicapped parking in the downtown business district. I feel 2 handicapped parking spaces on each side of the street, is not asking to much to comply with. We have designated areas for taxi cabs.

Another problem, in Seward, is lack of enforcement, of people who are not handicapped, parking in handicapped places. I have pictures of City of Seward Officals, who are not handicapped, parking in marked areas, for the handicapped. I have other documentation supporting my accusations, in the form of letters, from citizens of Seward.

Seward Police Chief Louie Bencardino and Lt. Don Earl are informed about the situation, but refuse to enforce the law according to Senate Bill 78.

Seward City Manager Darryl Schaefermeyer and Mayor Gieseler and Representative Bette Cato are insensitive to the needs of the handicapped and disabled, especially accessibility to City and State buildings in Seward.

For Example: When Seward resident, Mrs Harmon (wher husband is handicapped) approached City Manager, Mr. Schaefermeyer, in his office about this problem, he replied "That he runs this town (meaning Seward) and no one is going to tell him what to do."

Also Representative Bette Cato, at a State teleconference, (which I have a tape of.) stated, "There is nothing I can do for you Mrs Harmon as a Representative, This is a City of Seward internal matter." I feel Representative Bette Cato is down right just passing the buck.

In closing; I want a complete INVESTIGATION of the entire City of Seward Officials that would become involved in this matter, and also as to what happen to the $150,000 that was allocated to the City of Seward, for accessibility to Seward City Hall, for the handicapped and disabled.

If Mr. Schaefermeyer and Mayor Gieseler and Representative Bette Cato, are not compassionate enough to hear and act upon the urgent concerns and needs of the handicapped and disabled in Seward, then they should ALL RESIGN IMMEDIATELY!!!

A2-12

704 East Peppertree
Apache Junction, Arizona 85219

7-8-88

Justin W. Dart
Chairperson Congressional Task Force on Disabilities
907 6th Street, S.W.
Suite 516C
Washington, D.C. 20024

Dear Mr. Dart

Re; "Isn't there a law that protects me?"
Americans with Disability Act of 1988.

I am an individual confined to a electric wheelchair and I believe that this act is very essential to all disable people. There is alot to be improved on in the field of health insurance, accessibility, employment, and recreation. If I wrote every situation and bad occurrance this letter would be a novel so I will not do that. The important thing I have noticed since my accident is that there are alot of people that are willing to help in any way they can. I will mention some areas that need attention and with the help of this new act they will be done correctly.

I was a Vocational Rehabilitation (voc. rehab.) client since earily 1980. As a client voc. rehab. told me that they will help me with my education and van modifications. The education went well but the van modifcations were a sore issue. They helped me modify a Dodge van which was done in the summer of 1980. The first time I looked at the equipment especially the lift I voiced my opinion that the lift chosen would not be safe for a person of my size. This sparked a six year diagreement with the Department of Economic Security which is over Vocational Rehabilitation.

During this six year period I could not find but one organization to help represent me for voc. rehab. thought I was a angry individual and taking out my frustrations on every thing. The organization that helped represent me was the Maricopa Advisory Council and if was't for them my concerns would of gone unnoticed. The issue that I was concerned about was my physical safety for the lift that was installed in my van was unsafe the very day placed in service. It only took six years to prove that point. If it took six years to prove such a basic issue how long would it of taken voc. rehab. to solve a more life threatening situation. Attacted are some documentations that prove my ordeal.

The above situation shows the need for closer monitoring of federal and state agencies that help disable individuals. To insure that the safety and well being of the the client is always first in any program.

Also I would like to mention that I enjoy camping, fishing, and the natural resourses America has to offer. This privilege

#2-12(2)

should be enjoyed by all disable, elderly, and able bodied people. The reason that I am bring this up is that I have gone to many federal and state forest recreation sites that the toilet facilities, pathes, camp sites, and general consideration were lacking. I know that the forest services are tring to change things, but if they would consult a disable person before they build building, paths, and facilities. This would help for years to come so all can enjoy nature and recreational sites ensuring accessibility for all. Also there should be regulations to help insure this accessibility. Because when it comes down to it we disable individuals are people with feelings and needs like every body else. So if you have any questions or need help in drafting this act please contact me. Thank you for time and look forward for a complete passage of this long needed act.

Sincerely

Joe Escobar

Joe Escobar
(602) 982-7430

A2-56

00131

1922 W. Turney
Phoenix, AZ 85015
June 29, 1988

Dear Congressman Udall,

I write in response to the Americans with Disabilities Act of 1988. I have had juvenile rheumatoid arthritis for 32 years and have experienced discrimination on numerous occasions.

To list just a few: heavy doors — too heavy to open standing up with weakened arms and hands let alone seated from a wheelchair. These heavy doors are even at wheelchair entrances.

Steps (no ramps or Elevator) in restaurants, bars and social service agencies. I visit agencies as part of my job and because I am still ambulatory, (after 4 joint replacements) I can perform the task but not if I used a wheelchair all the time.

I have had great difficulty getting good health insurance after going off Medicare.

Ten years ago, I was absolutely refused Entrance in a dress shop in a mall because "the store was crowded and my wheelchair might bump people and racks" That came from the store manager.

Isn't there a law that protects me?

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

① State Government offices and practices are far lacking private industry in providing accessibility for handicapped people Eg: Many offices recently constructed or modified buildings are leaving many barriers and in fact not in conformance with ANSI - This in Human Services offices in particular. Many clients cannot use them appropriately. Employment of Disabled people are also lagging behind in the same area in most State agencies.

(over)

signed Ed Baxter

address: 605 N Rock
Sheridan, Ark 72150

tel:

(19)

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

① Inabilty to understand emergency broadcasts on television because it is not closed captioned.

② Hearing impaired employes of Post Office not being provided interpreter or other assistance for communication in training or personel procedures.

③ Deaf employe training 3 supervisors over a period of 30 years, but not being considered himself because couldnt use phone.

④ Car insurance company charging a higher rate due to disabled driver.

⑤ Hearing impaired parents or disabled parents of non-disabled children have not had accessibilty to public school i.e., meetings and conferences.

signed Kenneth W Musteen

address: KEN MUSTEEN, President
ARK. Rehabilitation Assn.
7 Birchwood Dr.
Benton, AR 72015

tel:

(18)

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

It concerns me greatly that many citizens cannot exercise their right or carry out their responsibility of participating in the election process simply because of physical barriers. How can disabled people have clout with our elected officials when they are aware that many of us are prevented from voting?!

signed Carol Cate

address: P.O. Box 3781
Little Rock, Ar. 72203

tel: 501-682-6707

We disabled people also face discrimination in other modes of Transportation. When I, and some of my clients, have attempted to ride the the Greyhound bus lines, we have been told that we could not travel on their buses without an attendant. This is true even if the disabled person is perfectly capable of traveling alone. Therefore, if we want to travel alone, we are banned from using one of the most economical means of transportation. In addition, the Greyhound company discriminates against those in wheelchairs by not having lift-equipped buses.

Another incident of discrimination happened to me when I recently went to the Long Beach airport. I made arrangements with United Airlines to get assistance on and off the plane at that airport. The customer representative approved these arrangements. When I got to the airline ticket counter, the actual carrier turned out to be United Express. The agent at the ticket counter told me that, even though I had made prior arrangements, they had no facilities to assist me into the plane.

However, my experience pales in comparison to that of a client of mine, on her recent trip from Los Angeles to Tokyo. When she confirmed her travel arrangements with United Airlines to travel alone, an airline employee assured her that these plans would be satisfactory. My client was not informed by the airline employee that she was not allowed to travel without an attendant until she was actually on the plane! In addition, when she arrived at her layover destination, her daughter was required to lift her into an airport wheelchair, instead of the airline personnel doing it. Finally, for the majority of the two-hour layover, she was forced to sit in a chair in the airport waiting area. This was extremely difficult to do because of the balance problem related to her disability. She was not allowed to use an airport wheelchair because, she was told by an airport employee, it might be required for another purpose. Although, there were many available in the wheelchair concession stand.

A number of our agency's clients have been discriminated against by various businesses in the area. One of them was denied access to a store simply because she was in a wheelchair. Another client was denied access to a fast-food restaurant because she was also in a wheelchair.

Another area where our clients have experienced discrimination is in the area of housing. One client was denied the opportunity to rent an apartment simply because of a mobility impairment. In addition, another one of our clients who is in a wheelchair was denied the possibility of renting an apartment, even though she was willing to do any accessibility modifications herself.

The homeless disabled that we serve have also faced great discrimination in our community. Many of the shelters in our area, which are supposed to be accessible to all types of disabilities, have refused to serve those in wheelchairs. The staff at these shelters have said that those who use wheelchairs could not be accomodated in cases of emergency. However, during times of calm, these places are supposed

CA 84

Carol T. Rauqust
26724 Lauderdale Ave.
Hayward, CA 94545
415-785-8414
6 October, 1988

To Whom it May Concern

RE: Americans with Disabilities Act of 1988
==)) Barriers to Accessibility Testimony

1. Electric pedestrian street crossing buttons are often mounted on light poles near busy intersections. Many cities allow newspaper vending machines to be chained to these light poles, creating an impossible barrier for people in wheelchairs. One such case in point is at the intersection of Sleepy Hollow and Tennyson in Hayward. This intersection is used heavily by people using Kaiser Hospital, many of whom use wheelchairs. I am forced to cross the street without benefit of the extra time afforded by the button because I cannot reach it.

   The same problem obtains when these buttons are on poles where there is no curb ramp, such as the one I encountered this weekend in Sacramento. This one is located in a very busy intersection near the Capital Plaza Holiday Inn. Here several freeway off-ramps and on-ramps (from I-5) merge with heavily traveled city streets. I had to wait until I could attract the attention of other pedestrians to push the button for me.

2. The only wheelchair accessible restroom in the Alameda County Administration Building (1221 Oak Street, Oakland) is located on the top (5th) floor. The elevator buttons are so high, many wheelchair users can reach only the lowest buttons. Thus, emergency trips to the restroom are virtually impossible.

3. During my last flight out of San Francisco Airport - June 1988 - I got caught in the elevator because the buttons inside are too high.

4. There is a very real need for curb ramps to bear a warning if they constitute the only way on or off of a sidewalk. It is totally unreasonable that a wheelchair user should have to waste an all too limited energy resource to circling any downtown city block merely to discover that there is no way to get off on the opposite side.

5. The State sponsored RIDES program which links potential car-poolers together is still not wheelchair accessible. During the recently threatened need to find an alternative way to work - if BART went on strike- my choices were unacceptably meager. I felt that my employment was in real jeopardy.

6. The Service International Employees Union, Western Regional Women's Conference last weekend went on record last weekend as endorsing and strongly urging passage of the Americans with Disabilities Act of 1988 and all similar legislation.

Conn. T

My name is Lynda Hanscom. I am chairperson of ADAPT of Ct. ADAPT stands for American Disabled for Accessible Public Transportation. I am also the Community Educator for the Disability Network of Eastern Ct., an Independent Living Center.

I have been disabled my entire life and I have dealt with discrimination my entire life. I am writing to ask for your support in passing the Americans with Disabilities Act of 1988. Discrimination is everywhere for people with disabilities. I'd like to share a few examples from my own experience.

I live in a small town 11 miles outside of Hartford. Before I worked at the Disability Network, I was a computer programmer at a major insurance company in Hartford for almost three years. Although there are frequent buses and several van pools in my area that go into the city, none of them are accessible. As a result, I spent thousands of dollars every year paying someone to drive me to and from work in my van. During the time I worked at this company (which, I might add, claimed to be an Equal Opportunity Employer), I asked over and over that the ladies room be made accessible. For years I was told they were having meetings to discuss the issue. In the meantime I was to continue to ask a co-worker to escort me. The final straw was when I found out, that despite excellent reviews and one of the highest outputs of work, I was the lowest paid programmer in my catagory.

Housing is another example. Finding an affordable apartment in Connecticut is difficult enough. Finding an affordable first-floor apartment that can meet my needs by simply adding a ramp is nearly impossible. After searching for months, I finally did find such an apartment. After doing a credit check and all, the owner called and we made an appointment to sign the lease. When I went to sign the lease, the owners said they had changed their minds about renting to me because I use a wheelchair and they felt this would increase their liability. I told them discrimination in Connecticut was against the law. I did not know at the time, and fortunately neither did they, that single and two-family homes were exempt. In other words, legally they had every right to discriminate against me because I use a wheelchair. We agreed at the time that if I could prove they had no extra liability I could rent the apartment. I did prove this to them and I now live in that apartment.

My last example has to do with my son's school. My son is seven years old and does not have a disability. His school is two blocks from our home. The only entrance I can get into is the entrance to the gym. To get to the administrative offices, the nurse's office, or my son's classroom requires using the elevator. This would not be a problem except that you need a key to use the elevator. I contacted the principal of the school and then the superintendent to get a key. They both told me that they had no legal obligation to provide me with a key. I told

Cont'd pg. 2

them I wanted access to the school just like any other parent and I could not understand what the problem was. Their lawyer sent me a letter stating that for security reasons they could not allow me to have a key. It doesn't make any sense to me that able-bodied parents have access to their children but to give me access to my child is a security risk.

In closing, I repeat discrimination against persons with disabilities is an everyday occurance. The Americans with Disabilities Act is neccessary and long overdue.

Lynda Hanscom
21 Walnut St
Manchester, Ct 06040
h 203-643-4452
w 823-1898

"Center for Special Populations"--something which Reese has never heard of within the department.

To provide some background, Reese stated that she had applied for acceptance into the Ph.D. program last year. She said that Camaione telephoned her during the summer, and she came to the University in August 1985, as a graduate assistant. She received the department's memo dated August 16, 1985, to all graduate assistants. It outlined the general requirements of the position as well as her specific assignments. The latter were stated in the memo as, "ESLS 205, Fall, and assist Prof. Shivers in Therapeutic Rec. research." (See Attachment D.) [Reese stated that, according to Camaione, this memo was her "contract".]

Since swimming is physically beneficial to her, Reese stated, she tried on numerous occasions to participate in the Swimming for the Disabled classes which are offered in the department's Fitness for Life Program. She said, however, that Brundage Pool is inaccessible to her. She has a prosthetic hip with arthritic side-effects, and is unable to use either the steps (which are set into the pool wall) or the pool lift, since the latter uses a sling which could cause her hip to become dislocated. Since she walks with a cane, she is very fearful of falling as a result of slippery floors in the pool/showers area. (There are no non-skid mats there.) Reese said that when she would mention her frustration about not being able to swim, Shivers would tell her that her Ph.D. was the important thing, and that swimming was a "personal need". She said that at no time did he give her the impression that her failure to participate in swimming would cause her to be considered as deficient in her performance as a graduate assistant.

According to Reese, she had hoped to do some assisting in these swimming classes, as well as to participate as a student. She said that the graduate student who teaches those classes, Janet Ponichtera, also

shares an office with her. At the beginning of the academic year, Reese stated, Ponichtera appeared to be very enthusiastic about Reese's desire to take part in the Swimming for the Disabled classes. However, when she expressed her disappointment in finding the pool inaccessible, she said Ponichtera "took it personally" and became huffy. At one point, Reese said, she suggested to Ponichtera that perhaps a group of people who have various physical handicaps could go through the area to evaluate its accessibility. She said that Ponichtera "hit the ceiling", angrily telling Reese that she had checked it all out herself while seated in a wheelchair and felt sure that there were no problems. Ponichtera also told her that she didn't know why Reese was "so different" from other disabled people, who did not find the pool to be inaccessible.

Reese said that early in the Fall Semester, she sought assistance from Rita Pollack, Coordinator for Disabled Student Services. In October 1985, Pollack wrote to Prof. Camaione regarding the Brundage Pool accessibility. While not specifically naming Reese, the issues raised in Pollack's memo were those about which she had expressed concern--lack of privacy in the dressing area, slippery floors, and access into the pool. Pollack's memo also offered some possible solutions. (See Attachment E.) Reese said that nothing was done to address these issues. In March, 1986, she wrote to President John Casteen describing the problems of accessibility that she had encountered. She said that Camaione told her recently that Carol Wiggins, Vice President for Student Affairs and Services, and Rita Pollack had called him to say that dressing stalls were soon to be installed and to thank him for his cooperation in getting this done. He alluded to Reese that it "makes a difference when the President [gets involved]". (Reese said that, while stalls will certainly be welcomed, the issue of the slippery floor has yet to be addressed.)

(3) 162

DE-27

F 00303

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

1 Inability to Vote. TOTAL inaccessability to voting machines. Handicapped facilities do not exist in my area despite news coverage saying the contrary.

Even handicapped parking is not suitable for one with a Van & Lift.

(See Testimony given 9/26/88 in Wilmington

signed Mary Cutler Staughon

address: Bus. - 1010 N. Union St., P.O. Box 5297
Wilmington, DE 19808

tel: 302-658-4445 (W)
302-656-1446 (H)

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WILMINGTON, DELAWARE 19808
(302) 658-4445

VOTING DISCRIMINATION

Private enterprise may do as it chooses. If a building is not accessible to me, I shall do me business elsewhere.

Viewing life as a taxpayer, tax supported public enterprises must be accessible to all. Most distressing, to me, has been the experience of voting.

Prior to the last general election, recalling previous experience, I phoned the election board in response to a news item indicating that disabled persons could be re-assigned, if necessary, to more accessible voting locations. The comment thrown out to me was,"yes, you may or may not be changed,and we can't tell you exactly where - it may be over thirty miles away. Are you familiar with back roads?". I indicated that I did not do well driving more than 20 miles at a time, and I was then told of evening voting hours at the election board prior to election day.

I rejected the latter due to parking problems(spaces inadequate for my wheelchair equipped van) and incidents of evening intercity crime.

Determined to vote, I opted for my assigned polling place. Listed as handicapped accessible, it has a ramp one building story high and too steep for my electric chair. There is also a special handicapped entrance (unmarked) going directly to the voting area after one navigates a wheelchair up a step. Impossible.

I chose the easy way - "walking" with two canes up 8 steep stone steps (taking 30 min) and "walking to the machine (25 min.) Holding on to machine, I beat on the levers with a cane to move them. Getting back to my van was not any easier.

This past summer school board elections were held in a different location described as handicapped accessible. Cheerfully, I followed paper signs around the parking lot to the special entrance. The depressed side walk was

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broken-up, so I crawled out of my chair and spent 20 min. getting to the solid area. I approached the entrance to find the doors not properly balanced and a lack of strength to open them. By continual pulling with my chair in reverse for another 20 min., I opened a door. Once inside, I faced a board laid over 8 steps - impossible to navigate. I ended up crawling with arms and dragging legs while trying to pull chair up the ramp. After an exhausting 45 min, I rested before trying trying the next set of doors with the same difficulty as the first except due to lack of space, I now had to keep chair from going back down the ramp. Beating on the door did not bring help.

Once on the main floor, signs pointed to the voting area at the other end of the building. Arriving at the destination extremely weak and apparently looking as bad, several people came rushing to me and said I should have come in first and gotten someone to help me with my chair. At this point, I was uncertain as to who had brain damage.

At last, I voted with the aid of my canes. How wonderful to exercise this important act.

My exit pattern was the same except the descent was faster on the ramp, and the wall at the bottom firm enough to resist the crash.

Absentee ballot? No! Why spend more tax money when I am able to vote in a normal manner. I run a business, shop in stores and engage in volunteer work. Why can't I vote without barriers?

I plan to vote again this November. I shall take the entire day off from work and probably a week to recover.

My complaint is two-fold:

1. Why publish lies about accessibility?

2. Why should I be barred from exercising one of the most important rights that this country offers. Is my tax money only for those with perfect health? If so,let

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the courts rule that all those with the slightest physical problem be excluded from voting, paying taxes, and living. Let's at least be honest.

Respectfully submitted,

Mary Custis Straughn

Mary Custis Straughn

(28)

00480

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

I recently used a public restroom at a State Park. There was a handicapped stall available, but was inaccessible. A drain in the floor was depressed so low in the floor, reaching the handicapped stall was impossible because a wheelchair would either have tipped over or gotten stuck in the drain. The passageway to the stall was exactly one wheelchair in width.
Also absence of curb cutouts in Chinatown make shopping there a real problem if you're in a wheelchair.

signed Beth Sauer

address: 104 B 1st St.
Honolulu, Hawaii
96818-4901

tel: 808 422-7074

(1) Education

00543

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

ID 20

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

~~Was~~ I had to fight teachers to allow our first person in a wheel chair to attend regular classes. This was 3 yea ago! We still do not have electric doors or restrooms in every building that are accessable to a handicapped person.

signed Sandra Russo - Mampa High School Transiti Coordinator

address: 203 Lake Lowell
Mampa, Id. 83651

tel:

IL 8

1st Congressional District
Congressman Charles Hayes

Dear Congressman Hayes,

I am an American with a mobility desibility from Polio. And suffer daily with discrimination, in housing, finding accessible restaurants, the curb cuts, the inaccessible washrooms. Hotels you encounter with revolving doors, you can't enter.

The public schools which are inaccessible for wheel chairs, so you ~~can~~ can attend PTA meetings.

Buses which are inaccessible for travel from city to city, for persons in electric scooters. I encourage you to consider Americans with Disabilites Act.

Thank you in advance

Gloria Washington #1608
4800 S. Lake Park
Chicago, Illinois 60615

and made the decision to terminate him.

Personnel and privacy laws prevent him from identifying the dismissed candidate publicly or discussing the circumstances surrounding the man's situation, Furnas said.

But trooper-trainees can be dropped from the 17-week class at the Indiana Law Enforcement Academy at Plainfield at any ing a background check recommended against letting him continue in the selection process.

Candidates for the state police go through a lengthy winnowing process, and Furnas noted that about 1,500 candidates applied for the 60 openings in the current recruit class.

The 1,500 candidates were given a screening test that narrowed the field to 1,100. Crimi- process, after the polygraph tests and before the medical and psychological tests.

"It won't be a difficult task for them to assume because they do that kind of task with our promotions and the filling of our non-police positions," Furnas said.

According to information obtained by *The Star*, the candi- date's file but did n last week that stat tives doing the check had recomm dropped from the cess. That recomm later overruled, th was not sure yet b

"I assumed that far, that everythir der," Furnas said.

30(40)

STAR STAFF PHOTO / FRANK ESPICH

Stephen Olson, Indianapolis, voices a complaint during a forum at which handicapped people could speak out about the discrimination they have faced.

Disabled

★ Continued from Page 1

Stricken with severe headaches, dizziness and nausea, Wright said an area hospital that employs her now wants to be rid of her although her symptoms are controlled with medication.

Marchelle Hunt, 37, Indianapolis, lost her job as a junior accountant when she was forced to use a freight elevator with heavy metal doors to get to her second-floor office.

The effort depleted her strength, and she was forced to leave despite a good work record. "Being able to keep the job is a primary concern," Hunt said from her wheelchair.

An Indianapolis college student spoke of the problems he encountered trying to earn an advanced degree.

David Hornik said his 3.87 grade point average dropped when he was denied the services of a note taker because he complained too often.

"We don't need favors; we just need fair treatment," Hornik said. "Would any of you want to wear a sign around your neck saying what's wrong with you?"

Dart said he was optimistic about passage of the disabilities act although Congress might be in session for only a few more months.

Bill Raney, a 42-year-old from Anderson, was less optimistic about the chances for a sweeping anti-discrimination measure.

"It all boils down to one thing — how much will it cost? I'm all in favor of this, but if it's not practical it's not going to work. It's all politics."

Raney, who has been in a wheelchair for 12 years, tried three times last year to testify before state legislative committees.

And three times, he was thwarted by a narrow set of Statehouse stairs, the only route to the small hearing room.

But Dart said the forums on disability discrimination were opportunities to make the nation listen.

"We've got to create a tidal wave of advocacy. . . . Only together, shall we overcome."

Burni

★ Continued fr

time," he said Mon

"But, even ther slime like this ru doing this sort of further emphasizes a strong task force get these people pu

Scott County plagued by an u rate of arson fires several years.

The latest inci July 18 when Ma find one of his th ing from his driv two others ablaze. found in an isolate while later, also bu

While two of hi Cadillacs — were Martin was abl Toyota Land Cr briefly. It has sinc but Martin still tal faction in being a for a day or two.

"I put plastic so I could sit in some paint and v on the sides. It w my 'one-finger sal ple who did this."

Evans and Joh were arrested late ter they allegedly Scottsburg gasolin out paying for the pumped.

A subsequent auto uncovered a longing to Martin stolen from the ment of one of his

Despite the ev Evans nor Johns ing with investiga

And that's frus tin, who wants to three of his cars duced to burned-o

"That's forem right now," he sa able to rest unt this happened."

Candidate	Cash	Receipts	PACS	Spent	Deb

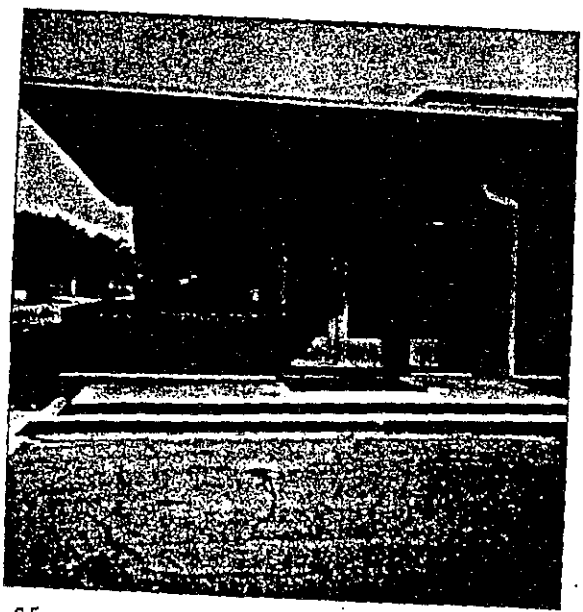
(22)

00653

Mr. Dart

I would like to vote again, I have not been able to vote since 1978, I refuse to vote, I own my home, I work a 40 hr a week job, I do Pay tax, I have gone thru all the cards, I know. Pilots observe the Rules they expect me to vote at.

Name
Mrs. Linda L Mavens
2423 Vine St
New Castle, Indiana 47362
317-529-2906



25

00704

KA-5(1)

TO: Justin Dart, Chairperson
National Task Force on the Rights and Empowerment Of Americans with Disabilities

FROM: Jeffery Paul Drake
9205 Santa Fe Lane
Overland Park, Kansas 66212
(913) 381-4650
Disability: Multiple Sclerosis, diagnosed 4/81

SUBJECT: Testimony, Americans With Disabilities Act Forum
7/14/88, Holiday Inn/KCI Airport

The following incident occurred an March 13, 1988 at Kemper Arena located in Kansas City, Missouri.

My family and I attended a Comets indoor soccer game with a group from my son's day care center. I was using my wheelchair and was palced in a partially glass enclosed suite designated as "handicapped accessible". This suite was located several sections away from my family and group. When I arrived I was positioned in the corner farthest fron the only door in the suite. Shortly before the start of the game several attendants from a local care center arrived with approximately eleven (11) patients. The patients were, for the most part, seated in wheelchairs. However, one patient was prone on a gurney.

The room was not very large, approximately 6' wide by 20' long, and this many people caused a dangerous over crowding situation. It was not possible for me to exit the suite in order to use the restroom. Needless to say, egress during an emergency would have been impossible.

When I inquired about the over crowding I discovered that the arena had several similar suites but these were closed. The reason for the closure was to accommodate several group birthday parties sponsored by the Comets. I was told that these suites were ideal for the group parties due to location and space available for tables and chairs. Had all suites been available the over crowding would not have been occurred.

On March 14, 1988 I contacted the Office Of Mayor in Kansas City, Missouri

KA-5(2)

and spoke to the liasion who deals with issues concerning the disabled in the city. Upon presenting my complaint I was told that the City had no authority to correct this situation since the event was sponsored by and the responsibility of the Kansas City Comets. This even though the building is owned by the City.

To date this practice continues as of the date of my testimony.

Sincerely

Jeffery Drake

00711

KY120

Ken Duncan
2116 Cherokee Parkway
Louisville, Ky. 40204

My name is James Kenneth Duncan, my neck was broken sixteen (16) years ago at the C. 5-6 level. I have a disability and I use an electric wheelchair as a tool for freedom and independence. Compared to friends and other people with disabilities I have been very lucky (if lucky can be used to discribe anyone who has been discriminated against), the discrimination I have faced is the kind of discrimination those of us with disabilities face everyday.

To attend a class at the University of Kentucky I was forced to use a loading ramp, to get in and out of a building, whose grade was so steep that someone had to hold on to the back of my chair so I could safely go down it and someone to push me up the ramp after class because my electric chair would not pull it. Once inside someone had to unlock an elevator,usually with garbage in it, so I could get to class. At the University of Louisville a professor did not like the accessible classroom we were assigned, so he had my classmates carry me up three flights of stairs to a classroom he liked, this was not only dangerous but humiliating. During a fire drill I was carried down stairs because the only ramp was on the other side of the building. At a movie theater in E-town I was put in a small office or I could not watch the show, at restaurants in Louisville I have been moved back into dark corners and while shopping with friends I have been ignored or treated like, beause I have any disability, I must have a speach, hearing and mental disability. Then of course usually I am forced to ride on busy streets because there are no curbcuts or the curbcuts are not up to code.

There is acessible public housing people with physical disabilities cannot rent because "able bodied"people are renting them or they are not on an accessible fixed bus route, of course many of these so called accessible apartments are not up to code. Finally being treated as less than equal or human is the worst discrimination.

Solutions - courts accept we are covered under the fourteenth amendment, make public transit and common carriers provide accessibility that is not unequal, demeaning or humiliating. Build adaptable housing, both public and private, with adaptable public housing prioritized for people with physical disabilities and recognize us as <u>people</u> with disabilities, respect our abilities and don't put up barriers to our independence.

2. Douglas Weaver is not historically responsible for the inaccessibility and lack of Stadium seating; the situation has existed since the construction of the Stadium during the 1930's. Nor did the Fact-Finders conclude that Douglas Weaver "willfully discriminated" against handicappers in this regard, as the Complainants allege. The Fact-Finders defined "willfully" in this context as purposeful intent to discriminate. However, the fact-finders did conclude that the University has a commitment to provide reasonable accommodation to members of the University community, in this case, to all students.

Failure to do so is de facto discrimination. In this regard, the Fact-Finders find Douglas Weaver and the Department of Intercollegiate Athletics neglectful of continuing requests received from handicappers for access, reasonable seating, both in number and quality, and accommodations.

3. The Chairperson of the Fact-Finding Committee consulted with Mr. Frederick Dearborn, Technical Assistance Coordinator, U.S. Department of Education, Office of Civil Rights, Chicago, with regard to the applicability of Section 504 of The Federal Rehabilitation Act of 1973, Subpart C, Program Accessibility, which Claimants Caro and Martell cited in support of their allegations. While the ADJB usually does not attempt to render interpretation of Federal law, pursuant to Subpart 84.7 of that Act, the ADJB has been authorized to carry forth the University's responsibility to provide due process regarding complaints alleging any action prohibited under such Federal regulations. Mr. Dearborn advised that while the University did not have any legal responsibility in programs, activities, or buildings not receiving Federal

(11)

This is a copy of a Letter Sent to Local, State Federal which includes MT Congress representa

MT-47

Wayne C. Patterson
404 5th St. S.W.
Great Falls, MT 59404
June 9, 1988

Dear Sir:

For the past seven years I have been confined to a wheelchair and I have had to deal with issues related to being disabled . Since my disability I have completed a rehabilitation program that included a college degree and I am now presently employed as a state employee who was hired not on his disability but on his abilities. I have felt that the past seven years have been times of difficulty and I have overcome many obstacles that involved inaccessibility to the disabled. I ran into an obstacle that I have not encountered in the seven years and something that I have taken for granted and that was the right to vote at an accessible pole site. In the past the poling place within my district.#39 has been totally inaccessible to wheelchairs, that being the Performing Art Center owned by the City of Great Falls and a poling place operated by the County of Cascade and the State of Montana. I had, in the past, been told that I could vote on an absentee basis at the county court house and have done so when various voting sessions were presented. This time I was not allowed to vote at the court house and was told that I had to go to the Performing Arts Center because that is in my voting district which is still totally unaccessible to wheelchairs.

Because voting is a right in this country I felt very discriminated against by being told that I had to vote at an inaccessible poling place and I do feel it is my right as a citizen who does vote in this country; to demand that if I am required to vote in a particular poling site that it be totally accessible to not only myself but to other disabled Americans.

I feel so strongly about this issue that I have sent copies of this letter to various city, county and state and federal officials with the hope that by November, I will no longer have to be discriminated against and treated as a second class citizen who has to sit out on the street and fill out a voting form so I can fulfill my constitutional right to vote.

Sincerely,

Wayne C. Patterson

Wayne C. Patterson
Very able, disabled person

Copy Exhibit (4)

01077

Shirley Frederick
61 Franklin Avenue
Hawthorne, N. J. 07506
427-4145

Dear Mayor Graves;

Enclosed is a copy of the letter I sent to the Social Security Office on Van Houten Street in Paterson.

I particularly wish to draw your attention to the references to the curb-cuts. Both the ones that were not there, and the problem I found with the one that was.

Since other people who use wheelchairs also have to go to that particular office it seems to me that it would be a kindness for the City of Paterson to make sure that they can at least reach the building.

The curb-cut I did encounter ended a couple of inches above the roadway. Had I tried to go down that cut my back would have been severely jarred causing severe pain.

What I do not understand is why a curb-cut should end up in the air and a driveway goes down to the roadway. It is hard to believe that there is more consideration for cars than people, but it certainly looks that way.

I will appreciate your looking into this problem. As Mayor of Paterson I believe that you can make sure these problems are corrected. I understand that you are a very caring man so I am sure you will <u>want</u> to be sure that corrections are made.

Where curb-cuts end too high it should be a simple matter to make a small macadam rise to meet, and go across, the end of the concrete curb-cut.

Where curb-cuts do not exist, as next to the parking garage on Van Houten Street, one should definately be installed so that people to not have to wheel out in the street as I had to do. This is dangerous and potentially life threatening.

I thank you for your attention to this matter.

Sincerely,

Shirley Frederick

Shirley Frederick

8. I went to two separate restaurants, one you had to sit at the bar because all the main seating was upstairs, not to mention the restrooms! The second one we had to access the dining room via the kitchen. The waiter then put a straw in my husband's drink without asking first.

9. An organization for people with disabilities was holding a bowlathon to raise money for people with disabilities, however the bowling alley was inaccessible when one of the participants who is disabled mentioned the problem, they said we could bowl separately in an accessible alley.

10. I went to a workshop and needed to use the phone but it was too high to reach. During my lunch break I discovered that lunch was inaccessible and I had to ask for assistance. As a result of this inconvenience I had to have a different menu from what I had previously selected which was not on my special diet.

11. When shopping I find it very difficult to access the merchandise and fitting rooms. As a result I am forced to bring clothes home and bring them back if they don't fit.

12. While in Albany visiting our state legislators we had to wait 45 minutes to access an elevator which ended up being a freight elevator not meant for people.

13. I sat on a housing committee and had to constantly remind members to pick accessible locations to meet.

Mrs. Debbie Bonomo

Mrs. Debbie Bonomo
244-1 Community Manor Drive
Rochester, NY 14623

Just last summer I tried to attend the openning concert in a summer festival. I found all the handicapped parking spots at the main entrance covered for preferred patrons. The lot I was sent to did access a nice level entrance and two rows of seats in the auditorium, but there was no way to get to the box office if I had needed tickets. The Assistant Director of the festival thought they were in compliance with all applicable laws and would do nothing. Fortunately the Director of the facility did not agree and stopped the covering of Handicapped parking spots at the main entrance. This episode was clearly an attempt to segregate disabled in preference of special patrons.

The list goes on. In my own village, the public meetings are held in a second floor meeting room with only stairs for access and the local post office is not ramped, handicapped must ring a bell at the back door for service. A large number of the voting sites in this county are not fully accessible.

Again many thanks for cosponsoring this bill.

Sincerely,

Suzanne Legge

cc: Victoria Wilson
Daniel Patrick Moynihan
Matthew McHugh
Sherwood L. Boehlert
Disabled but Able to Vote
Justin Dart
National MS Society Action Alert

(6) Good afternoon Mr. Dart. My name is Dr. Charles Bullock and I am speaking this afternoon on behalf of persons with disabilities about discrimination in recreation.

In legislation and oversight hearings recreation is often not included explicitly because it is assumed to be not as important as many other areas in our work-oriented society. Almost anyone would testify however, to the importance, no the essentialness, of recreation and leisure in their lives. It is during recreation and leisure pursuits that self-worth is affirmed and reaffirmed, that families function as cohesive units, that minds and bodies are rejuvenated and revitalized. It is through involvement in freely chosen recreation, that social relationships are initiated and cemented. If any of us did not have access to these opportunities, we would feel less fulfilled as members of the world in which we live.

Yet, many persons with disabilities do not have access to a wide range of opportunities. The discrimination in this case is subtle yet nonetheless present. The discrimination to which I refer is discrimination caused by separate, special recreation programs. No doubt such "special population" programs were begun to provide more recreation services to persons with disabilities. Yet, over time they have limited opportunities and have caused even more discrimination.

For example, in a public parks and recreation program, when a person who is visually impaired asked to be part of their regular programs, he was told that there were "blind programs" and that he should go there. In another public facility when staff were encouraged to update their advertising to be more inclusive ~~of all people~~ and to be prepared to serve

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

Individuals I have worked with at Options have been forced to live in segregated 202 Housing Projects instead of integrated Community Apartments that are much less cost to the government. There are other individuals that are denied medical service because of only having Medical Assistance, denied jobs because of their disability, not provided adequate information in order to obtain benefits, cut off Social Security for making only $600.00, denied money assistance for modification to a vehicle in order to acquire transportation, denied access to take a drivers license exam because it was down a flight of stairs & denied appropriate equipment to help them live independently because of the type of third party payers they have.

signed Jay Johnson - Executive Director

address Options - Interstate Resource Center for Independent Living
Holiday Mall - 211 Peters Ave
East Grand Forks MN 56721

tel:

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

Curbs - Not being able to take a walk.

Handicapped Parking - Keeping able bodied people out of these parking places.

Polling Places - inaccessable Bldgs. where people in certain wards have to vote.

Cty + Government Meetings - inaccessable council meetings

Revolving gates to get in stores - Movie theaters

Transportation (Pubic) - None in many communities in N.D.

SSI + SSDI Being cut (amount) when a minimum wage got is being tried.

signed Liana Fauerbach

address: 510-10th St. S.W.
Jamestown, ND 58401

tel:

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A VOTE FOR JUSTICE.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

- architectural barriers at voting places and
- architectural barrier of state, Federal, county & City buildings
- lack of housing options for physically disabled on fixed income
- poor incentive for work - by Soc. Sec. and welfare programs. Disabled are encouraged to remain on benefit roles rather than become productive tax payers.
- Inequality of medicare waiver programs for disabled who desire to attend college who need to have a personal care attendant

signed Jack Heyne

address: 409 W. Blvd
Bismarck ND

tel: 701-224-0451

Some specific incidents of discrimination I have suffered are as follows:

1) I have always had difficulty finding a job, despite my academic honors, perseverence, conscientiousness, and ability to work more than full-time. I gnerally have to submit more than 100 resumes before I can locate a job. Hospitals are the only work sites which are routinely wheelchair-accessible and my opportunities in colleges and universities, where I would prefer to work, are restricted by lack of access. I have also been discriminated against by hiring committees who feel that my professional interests in psychosocial aspects of disabilities somehow make me unsuitable for working with a non-disabled clientele, as if the psychological functioning of disabled and nondisabled individuals were completely different.

2) While living in federally funded housing in Carbondale, IL in the early 1980's, I was told that I was restricted to parking only in handicapped parking spaces, even if other parking spots were closer to my apartment. I pressed charges successfully against the housing project, and the ruling was reversed, but not before the manager had alleged that I was "too handicapped" to live in the modified housing if I could not walk from the more distant parking.

3) The post office in Richmond, IN, has 9 tables at standing height, but none at wheelchair height, and when requested to put one in, they claimed they had "no room"! They also refused to put chairs in the lobby for the partially mobile, claiming lack of space and requirements to nail the chairs down!

4) I am essentially barred from New York City, although I freguently visit family in the suburbs, by municipal laws which restrict handicapped parking to those who live or work in the City. Public transit is largely inaccessible, and if I cannot park my car, I have no way to get around the City.

5) While teaching at Earlham College in Richmond, IN, I was ostracized because of my protest of the College's lack of affirmative action for the disabled and lack of access. I was directly told by the academic dean that "Those people (the disabled) should go elsewhere." Campus elevators were locked.

6) My community library is inaccessible. Doctors in Richmond, IN, routinely refused to make their offices accessible.

7) I could not get handicapped parking privileges in Illinois, although seriously mobility-handicapped, because I did not at that time meet their very limited criteria of eligibility: wheelchair or crutch user, amputee, or complete loss of use of limb.

8) As a current staff psychologist at the Cleveland VA Medical Ctr., I am shocked by the lack of access in a federal facility. The only modified restrooms are 5 floors down from my office, there is a serious lack of signage to facilities for the disabled, and many work stations and offices are too small, or set at the wrong height, to accommodate a wheelchair. There is no handicapped parking at the regional medical education building, and the handicapped parking for the hospital in general is inadequate, too restricted in availability, and often blocked by snow or broken glass. It is clear that professionals in the building are not expected to be wheelchair users. I cannot even get my wheelchair into the EEO office!

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A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

Federal, State, County, City Buildings Not Accessible To The Handicapped.

signed Clyde Carter Vice. President Paralyzed Veterans of America

address: 1349 East 90th
Cleve, Ohio 44106

tel:

votejust.2
votejust

01218

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

I have seen both public and private social services agencies which are not wheelchair accessible, w/ lame excuses about social workers going to the clients rather than let the clients be treated as other "normal" clients, + come to the

I have advocated for reliable public transportation in my home community, for persons w/ disabilities, and still nothing has been done. The same story goes for fair housing w/ accessibility, not lumped in w/ senior citizens, or mentally retarded, and for access to public recreation, such as movie theaters, bowling alleys, municipal pools, and parks.

signed Elora Rogers

address: 1771 Center Blvd.
Springfield, Oh. # 45506

tel: 513-324-5388

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A VOTE FOR JUSTICE.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

Due to lack of access to buildings at Ohio University, I have had to drop classes.

Due to improper posting of handicap parking signs I have had to unload from my van into oncoming traffic, miss events because no ~~parking~~ handicap parking spaces were provided, even though the State & City knows that spaces are supposed to be allocated to handicap individuals. Cities seem to think that curb cuts are not necessary because of costs and because of this many parts of town are not accessable to me since I am in an electric wheelchair.

Many sporting events at Ohio Univ. are not accessable to my wheelchair so I am not able to share these events with my children and wife even though I am a O.U. student.

signed [signature]

address: 4660 Pleasant Hill Road
Athens, Ohio 45701

tel: 614-592-2636

P. 7

Our city council recently voted to provide funds to build an olympic size pool at a local college to be used for a special event while refusing to provide funds for public transportation sufficient to prevent the cutting of service

Most of the city ~~park~~ park facilities claim to have accessible rest rooms but they can not be used by people in wheel chairs due to the position of the stalls.

01275

OK-53

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A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

- My insurance company threatened to not renew my auto insurance because I purchased a van w/ a wheelchair lift. I was at the time on the "safe driver" rated.
- At a state government meeting I recently attended the hotel had no restroom facilities to accomodate individuals using wheelchairs.

signed Barbara J Sommer

address: 11912 Silver Sun Dr
Oklahoma City OK 73162

tel: (405) 557-7122 wk
(405) 728-7889 hm

(23)

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votejust

01282

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

JOB DISCRIMINATION IS LIKELY THE #1 COMPLAI
I HAVE BEEN PASSED OVER FOR JOBS THAT I HAVE E
QUALIFIED FOR BECAUSE I AM HEARING IMPAIRED. ON-
JOB ATTITUDES DISPLAYED BY COWORKERS OR SUPERVIS
TENDS TOWARD PATERNALISM AS A NORM.
INSURANCE COMPANIES OFTEN ARE DISCRIMINATORY
I KNOW OF NO INSURANCE COMPANY THAT PROVIDES
INTERPRETER WHEN A DEAF PERSON GOES TO A DOCTOR
AND NOT EVEN STATE INTERPRETER SERVICES PAY FO
INTERPRETERS FOR DEAF PEOPLE WHO REQUIRE PSYCHIATR
SERVICES OVER A LONG TIME.
I HAVE BEEN FRUSTRATED IN PHONE COMMUNICATIONS
TDD MACHINES BECAUSE SO LITTLE TRAINING IS GIVEN TO PU
SERVICES STAFF AND NO EFFORT HAS BEEN MADE TO EDUC
THE PUBLIC SECTOR RE THE NEED AND/OR USE OF SU
DEVICES. PUBLIC AWARENESS SHOULD BE A PRIMARY
PRIORIT

signed William L. Erickson

address: RT 1, BOX 32 Q
WASHINGTON, OK. 73093

tel: (405) 288-6740 TDD ONLY

P.S. WHERE ARE THE INTERPRETERS AT POLITICAL FUNCTIONS AT ALL LEVELS?

(24)

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votejust

01283

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

- Numerous public meetings in inaccessible facilities
- Numerous Agency clients refused employment because of a disability
- Many other instances, too numerous to mention. Approximately 3 to 4 yrs of working with persons with disabilities.

C. Owen Pollard

signed C. OWEN Pollard

address:
2607 SHORERIDGE AVE.
NORMAN, OK, 73072

tel:
405-329-0404

(30)

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

- Community swimming pools, built with federal grant money, are not accessible to persons with mobility impairments.
- There are simply not enough interpreters for the deaf in rural areas. If a person is deaf in rural Oklahoma the available ~~of~~ an interpreter takes a long time to arrange.
- There are people with mental retardation ~~the~~ who reside ~~which~~ at large state institutions who could be transferred to group homes, now their parents do not want them to leave that institution.

(over)

signed Reana Robertson

address: 1805 Gingham
Enid Ok 73703

tel:

Discriminatory Experiences

1) Lack of telephone accessibility (No way of contacting about wro numbers or something wrong w/ call

2) Lack of interpreters in hospitals

3) Being unable to contact local (all), state (most of them) and federal (many of them) government agencies because they do not have TDDs

4) Government meetings/gatherings that do not provide interpreter

5) Television and movies denied us because they lacked captioni Also, HBO scrambled captioning shows, expecting us to bu a decoder to descramble that for $200.00. Very unfair!!

6) Job opportunities — so far for three times at three differe places, hearing person got hired over me because of my deafness that made the other person (hearing) better quali fied than I was. Even the government jobs (I have a Ma degree.

7) Library does not have TDD - Also, not even the fire dept. or th police dept.

8) Insufficient aids to deaf persons from any government agenc

park the car and come back after her. No parent in his right mind would leave a child in front of a hospital in that area of town without supervision. I made a complaint to the Fed. Govt. Consequently they put two parking spaces closer to the hospital, had to ramp some places and cut curb cuts so a chair could get across the street. The parking space is still too far from the door for the disabled. The place that the parking spaces were before we were told was on too much of a slope for handicapped parking. This was true but all that would have had to have been done was to fill these up to level with asphalt. I still am not satisfied with this place. The next time you come to Dallas I could show you this place. I have pictures somewhere at home.

At the Trade Mart in Dallas we went to an America Airlines event one Sunday. the Handicapped Parking is on the second row of the parking area. In oder to get to this place one must get into the street in order to roll around to this place. Amber was in her chair that day. It was raining and water was rolling down the street with bumper to bumper cars. This is a very dangerous situation. Not only that, the handicapped parking was not marked with the international symbol.

Last year the City of Irving widened a street next to my property. They did ramp the curbs, however, the failed to move the light pole in the middle of the sidewalk. Hardly accessable. I contacted my new city counselman and the ramp was moved (after it had already been poured).

The city did a lot of sewerag pipe replacements last year. They had to tear up curbs all over town. When they redid the curbs they did not make them accessable. We were told that the city could decide if they had to be accessable. They "lied" to the paper and said it would costs $500 more to pour a ramp than it would a regular curb. I got one of my cement contractor friends to write me a letter saying that it would costs the same amount of money. The city was really "T'D" off at that letter I can guarantee you. They lie in the paper and make it look like the disabled are costing society extra money when in fact it is the same.

The DART buses leave a lot to be desired in the Dallas area. Irving has none whatsoever that are accessable. Handicapped transportation is unreliable, and not accessable in a lot of cases. DART contracted with a company that had bought a lot of the little yellow handicapped buses from the school system. The buses have lifts (sometimes they don't work). These buses were designed for children and big people can not get their heads in the door. They were limited to travel 40 times per month (20 times each way). That does not even give one enought time to go back and forth to work. One young lady has had to ask the Spina Bifida Assn. to pay for her transportation after she runs out of tokens on Handiride because she has no way to work. There has to be advance notice in order to ride these buses, and this is not acceptable especially if one gets sick and has to go to the doctor or whatever.

I will close this now as I know you'r tired of reading this. However, I will write you with specifics. I do have names of parents who have children with discrimination problems and I will be contacting these parents.

Thanks again for all of your work for the rights of the disabled.

Mary L. Tatro

Mary L. Tatro
Phone 214 909 9939 work 214 570 3838 home

B) el have had "physical" exams for a jobs which consists of an interview in the lobby by a nurses aide.

C) Voc. Services: After entering college with assistance ~~from the State VR agency~~, el was told that my major of political science, was not acceptable to my VR counselor. Because" if el didn't get a job right out of school, they weren't going to help me".

D) My first voc. rehab. counselor was indignant when el turned ~~out~~ down the "perfect job" for me. An assembly ~~and~~ line worker at Hush puppy shoes. el wanted a degree in college, & couldn't see how that job would meet my career goals.

4. Recreation:

el hold a national swimming record in the National Wheelchair Olympic games. However, this was achevied inspite of having trouble locating both public & private accessible pools & athletic programs. Many of the new sports & fitness facilities are not accessible. This effectively discriminates against persons with disabilities in participating in fitness & physical wellness programs.

01571

315 East 1950 South
Bountiful, Utah 84010
20 August 1988

Mr. Justin Dart, Chairman
Task Force on the Rights and
Empowerment of Americans with Disabilities

Dear Mr. Dart:

Being a bilateral arm amputee, I have some serious concerns regarding conditions facing handicapped citizens of the United States. The Federal Government and most states have done a commendable job of eliminating architectural barriers for those with ambulatory handicaps, providing television closed captions for the hearing impaired, and providing audible signals at traffic intersections and braille warnings in buildings for the sightless.

There is, however, one area that has not received sufficient attention and that is the area concerning the barriers that continually confront individuals who have lost or lost the use of their hands or arms. An example is the fact that in most public buildings the door-opening hardware, especially on internal doors, consists of round knobs instead of levers. Other problems that face the upper-extremity handicapped are such things as the design of pay telephones, vending machines, packaging and many consumer products.

It would be appreciated if some attention could be directed toward this neglected area.

Sincerely,

Edwin V. Rawley

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votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

No one will take the reasponsibility to make the Public High School and the swimming facilities accessible to the public. When we did not have access to the football field to watch our grandson play, to the auditorium to see our granddaughter perform, to the Public Municipal Pool to get the prescribed therapy for my leg, or to the Senior Citizens nightly meals and functions held at the school, we sent a complaint to the U.S. Architectural and Transportation Barriers Compliance Board. They replied, "...we have determined that the ATBCB has no jurisdiction..." because the District did not use Federal grants or loans. They referred us to the Office of Civil Rights, OCR. OCR visited and reported that only specific areas were under their jurisdiction. Ogden City School District wrote June 8, 1988 that they would make specific changes by Sept 1, 1988. We were informed that they would apply for a grant to do so. None of the 8 listed changes were completely finished according to Utah rules and regulations. We can now attend the Senior Citizens Dinners. However, we still can not attend the games, have access to the auditorium by the main entrance to the office, or use the Public Municipal Swimming facilities. They made token changes. For example they wrote that they would, "...set back all door-stop bars at entrances to the main high school building, the English wing and the science wing;" and said they would ramp at least one primary entrance as required by ATBCB. However, rather than ramp the main entrance and set back the door-stop bars they painted them! As the District's Designated School for the Handicapped, I feel sure that the Handicapped Students must also be discriminated against on the basis of handicap. We support the Americans with Disabilities Act of 1988.

cc: Ogden City Schools, Supt West
Ogden City Council, Mayor Goff

signed [illegible]

address: [illegible]

tel:

One more notification, public buildings are not save for Deaf people. For example, a few years ago, I was with a deaf peer in a public building when my Hearing Ear dog got restless, so, I asked it if there was something wrong and it the very excited. I told my Deaf peer to follow it - Sure enough there was a fire in the building. My dog saved our lives. All public buildings should have a brighter flashing light when an emergency comes up . The lights that they have now are too small to make us aware of any danger.

Motels, Hotels, or Inns should installed, a fire light, phone light and a caption box in every room for us to be able to enjoy our stay like everyone else.

Please feel free to contact me for any comments. Thanking you in advance for your consideration.

Sincerely,

Mary Jeanne Bouchard

Mary Jeanne Bouchard
Co-Coordinator
Deaf Program

/ns

(12) 556 01654

1. NOT INFORCING THE LAW WHERE A/B PEOPLE PARK IN H/P/

2. PUBLIC REST ROOMS IN GOV.T. BUILDING NOT DESIGNED FOR GOOD ACCESSIBILITY.

3. RAMPS IN BLDG. TO STEEP FOR HP TO OPEN THE DOOR.

4. TO MAKE THE PUBLIC MORE TO UNDERSTAND THAT EVEN ONE HP SHOULD HAVE THE SAME OPPORTUNITY AS A AP WOULD HAVE.

5. THAT HP'S ARE PHYSICALLY HANDICAPPED NOT MENTAL.

William B. Wantassen
110 AUSTIN AVE.
STAUNTON, VA.
24401

VA-63

6004 Pine Street
Richmond, Virginia
23223-3543
October 17, 1988

Congressman Thomas J. Bliley, Jr.
House of Representatives
213 Cannon - House Office Bldg.
Washington, DC 20515

RE: Americans with Disabilities Act - H. R. 4498

Dear Congressman Bliley,

I'd like to introduce myself. My name is Richard B. Goode and I am a hearing impaired constituent from the Cedar Fork precinct.

I encourage you to support the Americans with Disabilities Act (H. R. 4498). I am in strong support of H. R. 4498 and I feel that this bill will assure me equal protection against the discrimination I face every day of my life.

I am profoundly deaf and do not have verbal means of communication. I must depend of telecommunication devices, written communication, sign language or an interpreter in order to conduct my affairs.

I would like to tell you about some of the experiences I have had with discrimination:

- I have been treated unfairly in dealing with my boss. I really feel that I have no choice and I will continue to be treated in this manner since the only thing I can do is quit my job. The job market does not provide for the deaf/hearing impaired employee.

- When I have hear about a possible job opportunity, it has taken weeks to arrange for an interpreter and the job was filled by the time I tried to schedule the interview.

- I have had a rough time with agencies like Social Security, postal services and state agencies. They treated me with no more than respect. I feel like they give me a cold shoulder because I am deaf. They know that they must deal with me but once I am out of sight, I am also out of their minds. These agencies almost never takes the action they assured me would be done.

- Federal, state and local government meetings do not provide for any interpreters. The only way I can understand what is going on at these meetings is to take a family member with me to interpret for me.

01680

votejust.2
votejust

A VOTE FOR JUSTICE.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

I am in a wheelchair and I live weber city, virginia but I have to use the public buildings in Gate city which have no ramps, als in order for me to use the Scott county ~~the~~ Library are not accesible for wheelchair users, no curb cuts. Other buildings, treasurers office, main courthouse. There are not enough jobs for handicapped persons and evaluation centers in this part of the state, the closest evaluation center and Job Training facility is 250 miles away from me and as for as job Training I feel I was descriminated against because the evaluators said I could not be trained & Job. We also need more vans with lifts that go door to door.

Sincerely. Yours,

signed Kimberly L Broadwater

address: 111A Park Street
Weber City, Virginia 24251

tel:

votejust.2
votejust

L

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

1. I use a wheelchair for mobility and many public buildings and restaurants in Lee County are not accessible. Also there are no curb cuts so that I can travel independently in my community.
2. There is limited para transit service in Lee County. We need more transportation.
3. There is no housing available to wheelchair users in Lee County. This needs to be addressed.

LESTER ALLEN
ROUTE 1 BOX 75-A
Duffield, Virginia 24244

signed _____

address:

tel:

01751

WI-52

Sue Tarrell
1516 E. Newport
Milw. 53211

Milwaukee,
WISCONSIN

IN NM
stack

This is a Discrimination Diary I kept for one week for my daughter. Megan is 6 years old, profoundly deaf, and uses sign language.

June 1988

6-20 I decide to sign Meg up for swim lessons in Milw. Public Schools Rec program. She would be in the same class with her 8 yr. old hearing ("normal") sister. Since Meg would need an interpreter I call Central office to request one. I was told "unless I can show them the exact law that says they have to do it, no interp. I tell him about 504, not our policy he says.

6-21 I tried to sign Megan up anyway at Riverside H.. I explain I tried to get an interpreter but was refused. I explain how the class could be adapted for Megan. The man in charge said to me "I think she would be better off in the handicapped classes." I explained the H.C classes are only once/wk for 4 wks. This is 5 dys/wk for 2 wks., and Megan's deafness has nothing to do with her ability to swim. He restated his opinion. I leave in a fury and near tears. Why should swim lessons be a battle?

6-22 Meg goes to the zoo for a 1 day camp. Her interpreter was there waiting Megan had a great time! When I first called to sign

DISCRIMINATION DIARY
of Ken Burns

June 27, 1988

I went to a big department store and asked for some information. The woman didn't pay attention to me. She pretended she didn't hear me. People don't want to take the time to listen. If they did, there wouldn't be so much complaining.

The new driver on the van does that. He doesn't listen. When I wanted to go to "Best Buy," he didn't listen. He brought me home instead, because that's where he had picked me up.

I went to City Hall to find out about progress on the issue of putting in sidewalks throughout the community. I couldn't get into the building because there are three steps going up to the front door and two steps going down on the inside. We (those who use wheelchairs) stayed outside the front door. We put up signs saying that we couldn't get in. They didn't have microphones and loud speakers so we couldn't find out what was going on inside, and we couldn't speak.

There are no sidewalks outside my door. I can't go outside to take a breath of fresh air because if I did, my wheelchair would get stuck in the ground. It keeps me from going to the store to do my personal shopping. I have to order a van to take me to the store and that way, again, I get no fresh air or see how warm the sun is. With sidewalks, I could drive my chair to the store and do my personal shopping. That way, I could enjoy the beautiful weather and enjoy driving in my chair. I have to take the van just to go one block and it costs money.

If I want to go to the front door of the Grand Mall, there is no place for the van to park. We have to go a block and a half down the street to get out and then go all the way back to get inside.

Once, when I was out, I had to go to the bathroom and I had a female aide with me. I went to a nearby McDonald's and asked the person cleaning tables to check to see if there was any other man in the bathroom. There was no one. Fortunately, there was a lock on the door and so my attendant was able to help me use the bathroom in privacy.

(15) Carlo Koidenhoven 2672 Jefferson Laramie, WY 01786 Wy

I am in support of Americans with Disabilities Act.

I was unable to get a marriage license because the County Courthouse was not accessible to someone in a wheelchair

- many years after my request the courthouse was made accessable.

Linda Koidenhoven - I suggest ADA

I have numerous allergies & find that when I'm in rooms filled with cigarette smoke, I must leave or suffer severe headaches & sinus problems. Discrimination against the handicapped is not limited to a lack of wheelchair ramps or interpretors for the deaf - those with respiratory disorders or allergies are often denied access to places because of the prevalence of smoke.