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Federal Court Takes A Step Forward In Ensuring That People With Disabilities Have Equal Access To Public Functions And Services

Date: 06/20/02

The U.S. Court of Appeals for the 9th Circuit ruled that public sidewalks are a "service, program or activity of [a] city within the meaning...of the ADA". In doing so, one of the nation's most influential courts that covers an enormous part of the country (its jurisdiction includes California, Washington State, Oregon, Arizona, Montana, Idaho, Nevada, Alaska, and Hawaii) has ruled that governments have a duty under the federal Americans with Disabilities Act (ADA) to ensure that public pathways are free of obstructions and defects that would preclude their use by people with disabilities.

Accessible sidewalks are critical to millions of persons with mobility and/or vision disabilities. According to 1994 National Health Interview Data, an estimated 7.4 million Americans rely on devices to compensate for mobility impairments -- 4.8 million use canes, and more than two million Americans use wheelchairs and walkers. As they age, people increasingly report health and mobility problems and rely more and more on sidewalks for their transportation. Walking is reported to be the second most likely mode of transportation for persons age 65 and older. An AARP survey revealed, more than one-fifth of people over age fifty with disabilities complained that poor

sidewalks hinder their mobility, as did more than one-third of those over age 75.

A group of citizens with disabilities who live in Sacramento filed a class action suit against the City, alleging violations of the ADA. In its recent ruling, the 9th Circuit refused to throw out Barden v. City of Sacramento et al., ruling instead that the case raised a viable legal issue and should proceed to trial to be decided on its merits.

AARP had joined a "friend of the court" brief with the Western Center for Disability Rights, that pointed out that the ADA requires that all public services and conveyances be accessible to people with disabilities. As a key part of daily life in cities, sidewalks are critical public services and must be covered by the ADA. The brief noted that Sacramento has been delinquent in clearing its sidewalks of obstructions such as utility lines, tree roots, and blockages such as benches, rendering its sidewalks unusable by people with disabilities. AARP's brief pointed out that the ADA was enacted in order to ensure that people with disabilities were afforded the same opportunities at work, in recreation, and in transportation as people without disabilities.

AARP argued that failure to maintain such critical public infrastructure as sidewalks runs contrary to the letter and intent of the law. The 9th Circuit seemed to agree, taking issue with the City's arguments that sidewalks are not a part of the governmental functions envisioned to be covered by the ADA. The court ruled that "attempting to distinguish which public functions are services, programs or activities and which are not would disintegrate into needless 'hair splitting' arguments."

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