



August 18, 2008

The Honorable Michael B. Mukasey
United States Department of Justice
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RE: Comments on Department of Justice – Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities—Notice of Proposed Rulemaking, 73 Fed. Reg. 34566, June 17, 2008 (CRT Dockets No. 105 and 106)

Caroline Fredrickson
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Dear Attorney General Mukasey:

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The American Civil Liberties Union (“ACLU”) commends the Department of Justice (“the Department”) for promulgating rules¹ adopting the 2004 Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (2004 ADAAG). The adoption of the 2004 ADAAG will make these guidelines legally enforceable. While many of the Department’s proposed rules will increase accessibility, some will unfortunately and unnecessarily have negative results, and will ensure that discrimination on the basis of disability continues in both governmental and private places. The ACLU’s comments primarily address the rules implementing Title II of the Americans with Disabilities Act, which prohibits discrimination by state and local governments.

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¹ The Department has issued two proposed rules modifying current regulations regarding the Americans with Disabilities Act of 1990 (ADA). Title II, 42 U.S.C. §12131, *et. seq.*, is addressed in Nondiscrimination on the Basis of Disability in State and Local Government Services, 73 Fed.Reg. 34466, (proposed June 17, 2008) (to be codified at 28 CFR § 35)(hereinafter *Proposed Title II Regulations*). Title III, 42 U.S.C. §12181, *et. seq.*, is addressed in Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 73 Fed.Reg. 34508, (proposed June 17, 2008) (to be codified at 28 CFR § 36). In conjunction with these proposed rules, the Department published “Appendix A, Analysis of the Proposed Standards” (the “ANPRM”) (analyzing the 2004 ADAAG), and “Appendix B: Initial Regulatory Assessment” (analyzing HDR/HLB Decision Economics Inc., Initial Regulatory Impact Analysis of the Proposed Revised Regulations Implementing Titles II and II of the ADA, Including Revised ADA Standards for Accessible Design, Final Report, May 9, 2008, *available at* <http://www.ada.gov/NPRM2008/ria.htm> (hereinafter RIA)).

The ACLU is a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. The ACLU consists of more than half a million members, countless activists and supporters, several national projects, and 53 affiliates nationwide. The ACLU has been active in protecting the rights of people with disabilities for over 35 years. At the dawn of the disability rights movement the ACLU challenged the institutionalization of people with mental illness in cases in Alabama (*Wyatt v. Rodgers*, *Wyatt v. Stickney*),² New York (*Willowbrook State School on Staten Island*, Index No. 72 Civ. 356, 357 (JRB))³ and Florida (*O'Connor v. Donaldson*, 422 U.S. 563 (1975)). In recent years the ACLU has participated in landmark litigation under the Americans with Disabilities Act (“ADA”) including *Bragdon v. Abbott*, 524 U.S. 624 (1998); *Sutton v. United Airlines*, 527 U.S. 471 (1999); and *Chevron v. Echazabal*, 536 U.S. 73 (2002). The ACLU has been extensively involved in addressing the need of prisoners, including access to effective health care for all prisoners, particularly those with psychiatric disabilities, as well as addressing the need for improved physical accessibility in correctional facilities. See, e.g., *Langford v. Schweitzer*, No. 92-13 (D. Mont.); *Flynn v. Doyle*, No. 06-CV-537-RTR (E.D. Wis. filed May 1, 2006). The ACLU also played a national leadership role in drafting and negotiating the ADA of 1990.

Nondiscrimination by Local and State Governments: Reliability of the Regulatory Impact Analysis (RIA)

Question 1:

The Department seeks input on the costs and benefits of certain 2004 ADAAG items that according to the RIA will have incremental cost that exceed benefits by more than \$100 million. The Department notes that it:

leaves open the possibility of seeking further consideration by the Access Board of particular issues raised by the 2004 ADAAG based on disproportionate costs and compared to benefits and public comments. The Access Board did not have the benefit of our RIA or public comment on our RIA as it pertains to the 2004 ADAAG.

Proposed Title II Regulations at 34470. Revisiting the 2004 ADAAG in light of comments to the Notice of Proposed Rulemaking (NPRM) is unnecessary and would delay needed improvements in accessibility. The Department sought direct input to the 2004 ADAAG during its creation, and the public had opportunity to comment at the time. The

² *Wyatt v. Stickney*, 344 F.Supp. 373 (M.D.Ala.1972) (standards for people with mental illness), *aff'd in relevant part*, 503 F.2d 1305 (5th Cir. 1974); *Wyatt v. Stickney*, 344 F.Supp. 387 (M.D. Ala. 1972) (standards for people with developmental disabilities), *aff'd in relevant part*, 503 F.2d 1305 (5th Cir. 1974). The consent decree is reproduced at *Wyatt v. Wallis*, No. 3195-N, 1986 WL 69194 (M.D. Ala. Sept. 22, 1986). See also *Wyatt v. Rodgers*, 892 F. Supp. 1410 (M.D. Ala. 1995) (concerning violations of the *Wyatt* standards at the Eufaula Adolescent Center, a facility for adolescent children), *appeal dismissed as moot on other grounds*, 92 F.3d 1074 (11th Cir. 1996).

³ *New York State Ass'n for Retarded Children v. Pataki*, E.D.N.Y., Index No. 72 Civ. 356, 357 (JRB). See *New York State Ass'n for Retarded Children, Inc., et al. v. Carey, et al.*, 393 F.Supp. 715 (E.D.N.Y. 1975) (approving consent decree).

Department's RIA is so substantially flawed that its consideration could not helpfully inform the Access Board in its considerations.⁴

Nondiscrimination by Local and State Governments: Access to Court

Question 4:

Access to courts on an equal basis is a fundamental right guaranteed by the Constitution. The Department admirably lists many of the inadequacies of the RIA in failing to account for intangible benefits of the proposed rules requiring accessible witness stands and access to courtroom elements for attorneys and others who use wheelchairs. As the Supreme Court noted, "ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts." *Tennessee v. Lane*, 541 U.S. 509, 512 (2004). In *Lane*, that court recognized the long history of violating the Constitution's due process guarantee by discriminating against people with disabilities in the administration of justice. The public's faith in the fair administration of justice is a priceless commodity. The RIA fails to account for this, and other benefits.

The RIA asserts that the rules requiring accessibility in courtrooms have "a fairly large negative NPV [net present value] (-\$517 M) primarily due to the large capital costs for Accessible Attorney Areas and Witness Stands (-\$302 M). Since visits to these facilities are fairly low in comparison to other facility groups, benefits do [not] have as much opportunity to accumulate." RIA at 56. This narrow monetary analysis, however, ignores important considerations such as the value of disabled court employees and the interests of justice being served by a fully accessible court facility.

First, the RIA by all appearances, fails to consider the monetary and economic value of the employment of people with disabilities in court, but instead focuses on "time-savings" to people with disabilities. The 2004 ADAAG would require that all court "elements" be accessible to people with disabilities and particularly addresses wheelchair users' needs. Without these stations being accessible, people with disabilities are unable to work in courthouses, whether as clerks, reporters, attorneys, or judges. Such employment has a substantial economic value that is not incorporated in the cost/benefit ratio. In upholding the ADA's constitutionality in *Lane*, the Supreme Court considered this very issue. One of the two named plaintiffs in the case, Beverly Jones, a "certified court reporter, alleged that she has not been able to gain access to a number of county courthouses, and, as a result, has lost both work and an opportunity to participate in the judicial process." 541 U.S. at 514. Creating a means of access to the court, but not an area for Ms. Jones to work, would fail to resolve a basic issue on which the Supreme Court upheld the ADA. Similarly, a trial attorney using a wheelchair requires access to all of these elements. While lack of access to some elements might be addressed on an *ad hoc* basis, access to the witness area, the jury box, and judge's bench for side bar are necessary elements for that attorney to do his or her job. The failure of the RIA to account for the actual economic value of employment of

⁴ The serious flaws of the RIA are described in more detail in the comments submitted by the Disability Rights Education and Defense Fund (DREDF), the National Disability Rights Network (NDRN), and other disability rights attorneys and advocates. The ACLU seconds those observations.

people with disabilities in courts is a stunning failure that completely undermines its assertion.

Second, as the Department notes, there are substantial intangible benefits to accessibility, for attorneys, witnesses, and parties; with and without disabilities. In inaccessible courtrooms, witnesses with disabilities, whether parties or third parties, can be placed at a substantial disadvantage. The Department notes that everyone in the courtroom might be placed at communications disadvantage, but for both witnesses and attorneys, the intangible disadvantages of inaccessible courtrooms go further. Where an attorney with a disability is prevented from operating in a courtroom in the same manner as an attorney without a disability, that attorney, and his or her client, can be placed at a substantial disadvantage. That attorney might also not have the benefit of being able to interact more closely with the jury. When such interaction is permitted, it can be a useful trial technique and should not be available only to the able-bodied attorney. Requiring witnesses and attorneys to operate under different procedures could also serve to undermine their credibility and perceived competence relative to other attorneys and witnesses in the same trial. Jury members might be prejudiced against an attorney or witness with a disability due to increased delay caused when that person has to take additional time to maneuver through *ad hoc* arrangements used in inaccessible courtrooms. The result of these intangible difficulties could have real economic and other costs, whether the result of lost civil suits, or years in jail. In other cases, this differential treatment may actually redound to the benefit of the person with a disability and to the expense of others. One can imagine a situation where a plaintiff in a personal injury suit testifies from a wheelchair outside of a witness box, the jury spends days focused on the wheelchair, and proceeds to rule against the alleged tortfeasor. Whether any such decision is correct, the defendant in such a case may believe that the plaintiff had an unfair advantage. Therefore, whether the inaccessible courtroom prejudices or benefits the person with a disability in an individual case, undermining the public's perception of the fair administration of justice is an incalculable loss for which the RIA utterly fails to account.

For these reasons, we oppose revisiting this element with the Access Board and urge the Department to adopt it as drafted.

Nondiscrimination by Local and State Governments: Detention and Correctional Facilities

The ACLU has extensive experience addressing the needs of prisoners with disabilities. The Department proposes adding a new § 35.152 to clarify the application of Title II of the ADA to detention and correctional facilities. As the Department notes, “many detention and correctional facilities have too few or no accessible cells and shower facilities to meet the needs of their inmates with mobility disabilities.” Proposed Title II Regulations at 34494. This is due in part to the age of the nation's correctional facilities, but it is compounded by the changing demographics of the prison population. In its introduction to the new rule, the Department notes five frequent problems for inmates with disabilities. Unfortunately, the ACLU concurs in this diagnosis of the problems faced by inmates with disabilities. Each of these has been an issue in current or recent litigation. The ACLU therefore complements the Department for many of the proposals related to prison

accessibility. A number of these proposals will substantially improve accessibility for prisoners with disabilities.

Proposed Addition of 28 C.F.R. § 35.152(a):

Proposed addition § 35.152(a) states that state and local government agencies that “are responsible for the operation or management of detention and correctional facilities, either directly or through contracts or other arrangements,” must comply with the Title II regulation.

The ACLU supports the apparent intent of the Department’s proposal to clarify state and local government obligations. The Department’s comments, as well as existing precedent, make clear that these obligations extend to private correctional facilities. *See, e.g., Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2004); *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003); *Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175 (10th Cir. 2003). However, the actual language of the amendment could be reworded to ensure that this intent to include private correctional facilities is effected.

Proposed Addition of 28 C.F.R. § 35.152(b)(2):

The Department also proposes adding a new § 35.152(b)(2) to clarify that state and local governments must ensure that prisoners with disabilities “are housed in the most integrated setting appropriate to the needs of the individuals.” Under the new provision, “unless it is appropriate to make an exception for a specific individual,” among other things, state and local governments “[s]hould not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would ordinarily be housed.”

The ACLU strongly supports that aspect of the proposed amendment that clarifies that the Title II integration mandate applies to state and local corrections agencies and the facilities in which they house inmates under their jurisdiction. *See Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206 (1998); *Olmstead v. L.C.*, 527 U.S. 581 (1999). As the Department notes, these decisions establish that state and local correctional agencies are subject to the ADA’s requirement to provide programs, services, or activities in the most integrated setting appropriate. However, as the Department also acknowledges, inmates with disabilities continue to allege, and to actually be, segregated on the basis of their disabilities and to be excluded from participation in prison programs. *See, e.g., Langford v. Schweitzer*, No. 92-13 (D. Mont.); *Flynn v. Doyle*, No. 06-CV-537- RTR (E.D. Wis. filed May 1, 2006); *Johnson v. Los Angeles Cty. Sheriff’s Dept.*, No. 2:08-cv-03515-DDP-JTL (C.D. Ca. filed May 29, 2008) (inmates with physical disabilities allege being placed in inaccessible cells, being excluded from access to common areas due to access barriers, and being excluded from access to programs and services because of access barriers and failures to accommodate in these programs).⁵ *See also, J.D. v. Nagin*, No. 07-9755, 2008 WL 2522127 (E.D. La. June 20, 2008) (class of juvenile detainees with mental health disabilities allege that they are denied access to special education services); Complaint,

⁵ Attached as Exhibit A are copies of reports filed in Langford and Johnson detailing the conditions faced by prisoners with disabilities in these cases.

Hecker v. California Dep't of Corr. & Rehab., No. 2:05-cv-02441-LKK-JFM (E.D. Cal.) (class of prisoners with psychiatric disabilities, some in segregated facilities, alleges that they are denied access to educational and vocational programs provided to other prisoners). We hope the Department's clarification will spur states and localities to implement the decade old requirements outlined in *Yeskey* and *Olmstead*.

The ACLU opposes that portion of the proposed regulation, however, that creates an express exception from the integration mandate where the correctional agency believes it "appropriate to make an exception for a specific individual." Based on the ACLU's experience with correctional systems and prison management, in the absence of neutral oversight based on objective standards, prison personnel would use this authority excessively. Under the Department's proposal, correctional authorities, in the face of all too frequently inaccessible prisons, could simply ignore their obligations under the integration mandates of *Olmstead* and 28 C.F.R. § 35.130(d). This provision should be modified to integrate input from the inmate (and Department action enforcing the integration mandate).

Question 45:

One part of the answer to achieving their required integration mandate is having a sufficient number and distribution of accessible cells. The Department notes that system wide, according to Bureau of Justice Statistics, 2% of prisoners use mobility aids, and that in some facilities well over 2% of inmates use wheelchairs. If 2% of the entire system's inmates require some level of accessibility features, there would need to be perfect distribution of inmates to prevent inmates from being placed in inaccessible cells and facilities. The 2% requirement therefore is quite clearly too low to ensure that inmates with disabilities are not placed in inaccessible cells or transferred to otherwise inappropriate facilities. The inadequacy of the 2% requirement is further highlighted by the aging of the prison population. Unfortunately, we are unable to provide a specific higher number. Scoping of the cells should not be done on a facility wide basis, but should instead provide distributions of locations relevant to programs to ensure that prisoners with disabilities actually have access to those programs. Moreover, having a higher percentage of accessible cells will better accommodate prison administrators' needs for flexibility, while satisfying their requirements to provide to inmates with disabilities accessible cells, in an integrated manner, with equal access to programs.

Question 46:

The ACLU supports the flexible approach outlined in Question 46, with reservations. Not every inmate with a disability will need all the accessibility features required by the Standards. This approach allows public entities to meet the needs of inmates with disabilities in an expedient and cost effective manner. However, as noted above in the discussion of 28 C.F.R. § 35.152(b)(2), the inmate's input should be required to prevent inappropriate segregation on the one hand, from placement in inaccessible and otherwise inappropriate locations on the other.

Question 47:

The dispersion of cells required under Advisory 232.2 of the 2004 ADAAG, in conjunction with an adequate number of accessible cells so as to provide a cushion, is a necessary prerequisite to preventing prisoners with disabilities from being placed in improper security classification locations, as well as ensuring integration as mandated by Sec. 35.152.

No Proposed Change to 28 C.F.R. § 35.170:

In the discussion accompanying the proposed amendments, the Department states that it has decided not to propose an exhaustion requirement exclusively for prisoners. The Advance Notice of Proposed Rulemaking proposed a modification of the regulation to require prisoners alleging Title II violations to file an administrative complaint with the Department prior to filing an ADA lawsuit, in order to satisfy the exhaustion requirement in the Prison Litigation Reform Act (PLRA).

The ACLU strongly supports the decision not to amend the regulation to add an exhaustion requirement. As the Department has noted, it believes there are substantial accessibility problems in the nation's prisons. Requiring prisoners to file complaints with the Department, typically in addition to grievances with the prison, would serve no function under the ADA, and would not advance the interests underlying the PLRA. Such an exhaustion requirement, in addition to those imposed by state and local corrections agencies, would fall particularly hard on prisoners with psychiatric disabilities, and would only prolong the period wherein prisoners suffer in dangerous, inaccessible conditions.

Nondiscrimination by Local and State Governments: Safe Harbor

Section 35.150(b)(2):

The ACLU strongly opposes the Department proposal to create a safe harbor for public entities that allegedly complied with the 1991 ADAAG from having to comply with elements of the 2004 ADAAG, and apparently all future regulatory changes. Such a safe harbor is not needed and is inappropriate for several reasons. There is no statutory basis for adding such an automatic exemption for facilities that allegedly comply with the 1991 Standards. As the Department notes, public entities already have substantial protection and flexibility under the program accessibility requirements of Title II. However, in a number of areas, the 2004 ADAAG changes reflect a further understanding after 15 years of experience of what features allow individuals with disabilities to achieve effective access. Instead of the Department's proposed approach, the ACLU endorses the approach proposed by the National Disability Rights Network and DREDF. Under this approach, past efforts at compliance should be considered as one factor in the program access analysis. Such an approach appropriately balances the needs for usable accessibility on the part of individuals with disabilities while at the same time recognizing past efforts at compliance on the part of public entities.

Nondiscrimination by Local and State Governments: Play Areas and Recreation Facilities

Question 7:

The ACLU strongly opposes a “safe harbor” exemption for public entities for specific compliance with the 2004 ADAAG requirements for play areas and recreation facilities. Safe harbor is particularly inappropriate for areas for which there were no earlier standards. A public entity can not demonstrate that it was in compliance with 1991 Standards with regards to play areas and recreation facilities when in fact there were no specific requirements. While public entities were required to provide access generally, the elements of accessible play areas and recreation facilities were not established. Concerns about burdens on public entities are already addressed through the program access, alterations and/or readily achievable standards. Because of the overall lack of access to play areas and recreation facilities, and the factual variability with regards to distribution of them, a case by case analysis remains the appropriate measure.

Playgrounds are particularly local in nature. This allows children to reach them on their own safely. The proposed safe harbor would continue the current state of affairs – where there are too few local playgrounds available to children with disabilities. In part because there were no regulatory requirement for play areas, development of accessible playgrounds has lagged behind advance made in other areas. This proposal will have the effect of continuing the limited availability of play areas to children with disabilities, limiting opportunities for play in an integrated setting, and requiring children to travel further away from their homes

Question 24:

The ACLU believes that a flexible standard with a list of factors is the appropriate approach to determining program accessibility. The Department’s alternative formulation – “a reasonable number, but at least one” – fails to consider actual program accessibility as measured by actual access by children to accessible play areas. The Department’s proposed standard would likely have the effect of allowing localities to establish only one accessible play area. In many cases, children would not have actual access to it because of factors such as distance from home, availability of transportation, and other factors. Instead, the standard should take note of these factors, as well as a comparison of features available at accessible and inaccessible play areas.

Question 27:

The ACLU opposes the Department’s proposed safe harbor for existing play areas less than 1,000 square feet. Such a proposal fails to consider program accessibility, economic factors that indicate whether improved accessibility is in fact achievable, distribution of and access to local parks, and other factors. Some municipalities’ park systems, such as those in New York City, are comprised primarily of small parks, with larger parks with larger play areas being far-flung. Under the Department’s proposal, even if no accessible public transportation existed, these small parks could remain inaccessible while the

neighborhood's residents have no means to get to another accessible public park. This clearly fails the requirement of program accessibility to consider all factors. In smaller municipalities, all play areas may be of a small size. Since program accessibility under Title II does not require every location to be accessible, a broader set of factors than merely the play area's size needs to be considered. As with the standard proposed in Question 24, this proposal would too likely continue the situation status *quo ante* of too few and too widely dispersed accessible play areas.

Question 32:

The ACLU opposes the Department's proposal to exempt unaltered pools with less than 300 linear feet of pool wall from section 242.2 of the 2004 ADAAG (which would instead grant an exemption from its standard rule by requiring only one means of access). As noted:

the Access Board assumed that pools with less than 300 feet of linear pool wall would represent ninety percent (90%) of the pools in public high schools; forty percent (40%) of the pools in public parks and community centers; and thirty percent (30%) of the pools in public colleges and universities.

Proposed Title II Regulations at 34487. The effect of this proposal is particularly egregious at public high schools. There is no basis in the ADA or other law for exempting ninety percent of high school pools from being made accessible. Power lifts can be purchased for between \$1500 and \$4500. School systems and localities have available to them fundamental alteration and program accessibility as defenses to actions. The regulations seem to justify the exemption based on a fear of serial litigation. Such a consideration, in light of the cost of accessibility, is an inadequate justification for the Department and all but ensures that ninety percent of public high school pools, and significant numbers of other public pools, will remain inaccessible.

Nondiscrimination by Local and State Governments: Administrative Changes

Proposed Change to 28 C.F.R. § 35.171(a)(2)(i):

The Department proposes amending § 35.171(a)(2)(i) to permit agencies receiving complaints for which they lack jurisdiction to refer such complaints either to the appropriate agency or to the Department of Justice. The current rule provides only for referral to the Department.

The ACLU supports this proposed change. This is a more efficient means of directing Title II complaints to the appropriate enforcing agency and will ensure that complaints are received by the appropriate agency more quickly. The proposed amendment makes an initial referral to the Department unnecessary. However, because of the Department's expertise in accessibility, the ACLU proposes that this be clarified so that the Department is copied on all referrals between agencies.

Proposed Changes to 28 C.F.R. §§ 35.171(a)(2)(ii), 35.190(e):

Where a complaint is filed with the Department, but the Department does not have jurisdiction under section 504 to process the complaint or is not the agency designated in the Title II regulation to process the complaint, the Department proposes an amendment to give it discretion to retain the complaint for investigation. Currently, the Department must refer the complaint to the appropriate agency.

The ACLU supports this proposed amendment as a more efficient means of processing Title II complaints. As with the proposed change to 28 C.F.R. § 35.171(a)(2)(i), this proposal would improve efficiency and allow needed investigations to begin more expeditiously.

Proposed Change to 28 C.F.R. § 35.172(a):

The Department proposes amending § 35.172(a) to state that agencies enforcing Title II “shall investigate complaints.” The regulation currently provides that agencies “shall investigate each complete complaint.”

The ACLU adamantly opposes this proposed change. In its comment to the proposed amendment, the Department explains that, since the Title II regulation went into effect in 1991, it has “received many more complaints ... than its resources permit it to resolve,” and that the amendment is intended to give enforcing agencies the discretion to investigate only those complaints that they believe implicate “the most critical matters.” Proposed Title II Rule Change at 34499. If the Department is overloaded, it should seek additional resources to address the additional complaints, not reduce civil rights enforcement for people with disabilities. Access to private attorneys or other means of enforcement is extremely limited. The Department should not exacerbate inadequate Title II enforcement by minimizing its obligations. Frequently, the enforcing agency cannot know whether a complaint does or does not involve “critical” matters until it has made at least some effort to investigate the complaint. Complaints that clearly lack merit can be disposed of quickly. Finally, by minimizing its own role, the Department may in fact encourage more private litigation, with the entire set of alleged negative consequences to which the Department has pointed in other parts of the proposed rules. The current administrative remedies provided by the Department and other agencies can obviate the need for “burdensome” litigation.

Access to the activities of government is a fundamental right protected under the Due Process Clause of the 14th Amendment. The Department of Justice should not tolerate governmental discrimination at the local, state or federal level.

Proposed Change to 28 C.F.R. § 35.172(b):

The Department proposes amending § 35.172(b) to provide that agencies enforcing Title II may conduct compliance reviews of state and local government agencies when they have information “indicating a possible failure to comply with the nondiscrimination requirements” of Title II.

The ACLU supports this proposed amendment. The proposal gives the Department and other enforcing agencies authority to address Title II violations in the same manner in which they can currently address Title III issues. The Department has frequently conducted effective Title III compliance reviews of public accommodations without receiving a formal complaint. A number of these compliance reviews have resulted in settlement agreements which have improved accessibility at a broad array of Title III entities. This compliance review authority could be used to examine the programs, services, and activities of state and local governments and advance accessibility and integration.

The ACLU appreciates the opportunity to submit this written statement, compliments the Department on many of its proposals, and urges the Department to improve the flaws in its proposed rules as outlined above.

Sincerely,



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