

# **Physical Barriers to Accessibility for Individuals with Disabilities**



**A Report of the  
Washington Advisory Committee to the  
U.S. Commission on Civil Rights**

**March 2024**

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia and several U.S. territories. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## **Washington Advisory Committee to the U.S. Commission on Civil Rights**

The Washington Advisory Committee to the U.S. Commission on Civil Rights submits this briefing report regarding physical accessibility for individuals with disabilities. The Committee submits this report as part of its responsibility to study and report on civil-rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference from February to June 2023.

The report begins with a brief background of the issue to be considered by the Committee. It then identifies primary findings as they emerged from the testimony. Finally, the Committee conveys its recommendations for addressing the civil rights concerns identified in this report. This report is intended to focus specifically on the failure of state and private entities to provide access to public and private spaces. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted unanimously by the Committee on December 14, 2023.

### ***Washington Advisory Committee to the U.S. Commission on Civil Rights<sup>1</sup>***

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## **Table of Contents**

<b>Executive Summary .....</b>	<b>4</b>
<b>Background .....</b>	<b>6</b>
<b>Overview of Testimony .....</b>	<b>11</b>
<b>Findings .....</b>	<b>12</b>
<b>Recommendations .....</b>	<b>20</b>
<b>Appendix .....</b>	<b>24</b>
<b>Appendix A – Panel Agendas, Minutes, and Presentation Slides.....</b>	<b>25</b>
<b>Appendix B – Hearing Transcripts .....</b>	<b>27</b>
<b>Appendix C – Written Testimony .....</b>	<b>28</b>

## **Executive Summary**

The Washington Committee identified physical barriers to accessibility for people with disabilities as a critical issue for ensuring that the civil rights of all Washington citizens are protected. The leadership and advocacy of Committee member, Conrad Reynoldson, was instrumental in the Committee understanding how important this issue was in the state of Washington.

The report highlights several prominent themes related to physical accessibility challenges in Washington state. Firstly, individuals with disabilities face significant obstacles, including incomplete sidewalks, a lack of curb cuts, and inaccessible transportation, leading to unsafe circumstances. This reveals discrepancies in ADA compliance despite the longstanding presence of the Rehabilitation Act and Americans with Disabilities Act.

There is inconsistency across counties within the state, with varying levels of investment in accessibility. While urban centers benefit from concentrated resources, rural communities, particularly in the northern parts of the state, experience limited physical accessibility and express a need for more community resources.

The report also emphasizes a lack of dedicated funding for ADA compliance, resulting in under-investment, unfunded projects, and incomplete improvements.

Lastly, enforcement challenges are highlighted, with a heavy reliance on individual lawsuits and complaints, imposing emotional burdens and financial stress on people with disabilities. Communities historically disadvantaged are more likely to distrust government and are less likely to report accessibility issues.

The Committee's recommends full-state resource mapping. The enforcement system's complexity, involving multiple federal and state agencies, contributes to confusion and a burdensome complaint process, discouraging individuals from filing complaints.

Limited public knowledge about ADA mandates and inadequate training for compliance further compound the challenges. Lastly, the Committee wants to highlight the importance of community engagement, particularly through Accessible Communities Advisory Committees (ACACs). Engaging individuals directly impacted the barriers to physical accessibility is the best way to improve access in Washington.

The Committee urges both federal and state government prioritize and enforce the groundbreaking Americans with Disabilities Act (ADA).

Alexes Harris

Chair of the Washington Advisory Committee to the U.S. Commission on Civil Rights

## **Summary of Findings**

Finding I: Physical access continues to be a challenge for individuals with disabilities in Washington state. Even though the Rehabilitation Act and Americans with Disabilities Act has been in existence for decades, localities are not fully complying with accessibility standards in public spaces.

Finding II: Physical accessibility is not consistent throughout Washington state, as each distinct county has varying levels of investment in accessibility for individuals with disabilities.

Finding III: There is a lack of dedicated funding to meet current ADA compliance standards; this lack of funding limits both improvements to existing infrastructure and new projects to expand access.

Finding IV: Enforcement of ADA compliance is largely dependent on individual lawsuits and individual complaints filed by affected individuals.

Finding V: Because of the complaint-driven nature of the remedy process, authorities do not respond equitably to inadequate physical access.

Finding VI: Multiple federal and state agencies issue regulations, provide technical assistance, and enforce different sections of the ADA. This siloed enforcement system leads to confusion as to which agency is responsible for enforcing compliance, and where complaints should be filed.

Finding VII: Public knowledge is very limited regarding ADA mandates and requirements. In addition, many professionals responsible for compliance lack appropriate training resulting in continued confusion and inadequate compliance.

Finding VIII: Policymakers who emphasize community engagement are more likely to ensure equitable physical accessibility in Washington State.

## **Background**

In Washington, 1,273,876 adults have a disability. This equates to 1 in 5 adults in the state.<sup>2</sup> Of that population, 8% have a mobility-type disability, defined as serious difficulty walking or climbing stairs.<sup>3</sup>

More than 30 years after the passage of the landmark Americans with Disabilities Act (ADA), progress has been made.<sup>4</sup> However, physical accessibility for individuals with disabilities remains a serious challenge. Many places of public accommodation are still not fully compliant with legal requirements.<sup>5</sup> Sites of public accommodation include a wide range of locations that serve the public, such as restaurants, hotels, theaters, pharmacies, doctor’s offices, libraries, etc.<sup>6</sup>

In a report released in 2021, the Disability Mobility Initiative found that across Washington state, people “from cities of all sizes and areas, both rural and urban, all reported facing fundamentally similar barriers because of gaps and barriers in our mobility networks.”<sup>7</sup> When asked to name the biggest barrier to getting where you need to go in your community, the most frequent answer was the poor condition or absence of sidewalks, followed closely by problems with curb cuts, crosswalks, and intersections. Many communities have no sidewalks at all; existing sidewalks are often filled with cracks and bumps or are incomplete, ending suddenly with no warning or accessible cues, turning into gravel, and dumping people into the street.<sup>8</sup>

Where sidewalks do exist, curb cuts — the small ramps cut into sidewalks, typically at intersections to allow access to crosswalks — may be absent or may be too narrow or steep with large bumps or “lips” on the edge, out of compliance with current ADA standards.<sup>9</sup> This interrupts the sidewalk network, creating hostile, dangerous conditions, and barriers.<sup>10</sup>

Infrequency, poor scheduling, and poor connections in public transportation make using transit onerous. As a result, disabled individuals will delay or even skip necessary trips like doctor

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<sup>2</sup> Centers for Disease Control and Prevention, Disability and Health Prevention, *Disability Impacts Washington*, 2022, p. 1 <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/washington.html>

<sup>3</sup> Ibid.

<sup>4</sup> Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327 (codified as 42 U.S.C. § 12101 et seq).

<sup>5</sup> Hamberger, Suzanne. “Americans with Disability Act (ADA) Awareness Day.” Clincierge.

<https://www.clincierge.com/americans-with-disabilities-act-ada-awareness-day/> (accessed September 30, 2022); 28 C.F.R. § 36.201–36.399 (2024).

<sup>6</sup> Americans with Disability Act National Network, FAQs, *What are Public Accommodations*, 2023,

<https://adata.org/faq/what-are-public-accommodations#:~:text=Places%20of%20public%20accommodation%20include,schools%2C%20and%20day%20care%20centers;42%20U.S.C.%20%2412181;28%20C.F.R.%20%2436.104.>

<sup>7</sup> “Transportation Access for Everyone: Washington State,” Disability Rights Washington, accessed September 30, 2022, <https://www.disabilityrightswa.org/wp-content/uploads/2021/09/DMI-Research-Paper-Final.pdf>

<sup>8</sup> Ibid.

<sup>9</sup> Disability Rights Washington. “Reynoldson et all v. City of Seattle,” 2018.

<https://www.disabilityrightswa.org/cases/reynoldson-v-city-of-seattle/>; 28 C.F.R. § 36.304.

<sup>10</sup> Los Angeles Mayor, *Willits V. City of LA Sidewalk Settlement Announced*, 2015, p.1.

<https://www.lamayor.org/willits-v-city-la-sidewalk-settlement-announced>

visits; in addition, they are less likely to take the kind of discretionary trips that people with easy access to transportation may take for granted, like visiting friends or family, or having a night out. In many interviews performed by the Disability Mobility Initiative, people frequently cited the lack of weekend transportation service as a significant barrier, particularly in rural and outlying areas.<sup>11</sup> People noted that not all errands, appointments, and other needs can be completed during the week, especially when the travel time required to complete an errand on limited transit schedules is considerable time, compared to what would be a quick trip by car.<sup>12</sup>

In 2015 Disability Rights Washington filed a lawsuit, *Reynoldson et al v. City of Seattle*,<sup>13</sup> asking a federal court to help in ensuring that the City of Seattle makes its streets safe and accessible for people with mobility disabilities. In 2017, a settlement agreement was entered into, laying out a plan for Seattle to fulfill the promise of the ADA furthering equal access to people with disabilities who live, work, or travel to Seattle.<sup>14</sup>

The settlement requires the city to build or fix 1,250 curb ramps each year for the next 18 years. That's 22,500 curb ramps total.<sup>15</sup> The agreement also requires the city to improve how it accepts complaints about ramps from disabled residents. The city agrees to make "its best efforts" to investigate curb-ramp requests within 30 days and to fix them within 12 months.<sup>16</sup>

The Accessible Communities Act, which was passed in Washington State in 2010, supports communities in becoming more accessible to people with disabilities.<sup>17</sup> The act supported the creation of Accessible Communities Advisory Committees (ACACs), which are county-based groups of citizens with a diverse range of disabilities and experiences<sup>18</sup> who advise on disability

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<sup>11</sup> "Transportation Access for Everyone: Washington State," Disability Rights Washington, accessed September 30, 2022, <https://www.disabilityrightswa.org/wp-content/uploads/2021/09/DMI-Research-Paper-Final.pdf>

<sup>12</sup> Ibid.

<sup>13</sup> The Committee wants to disclose that one of the members of the Committee, Conrad Reynoldson, was the named plaintiff in the litigation. While Reynoldson's involvement in the litigation helped bring the issue of physical accessibility to the Committee's attention, the Committee has no connection to the litigation or the following consent decree. *Reynoldson et al v. City of Seattle*, No. 2:15-cv-01608, 2015 WL 13633915 (W.D. Wash. Oct. 8, 2015).

<sup>14</sup> Disability Rights Washington. "Reynoldson et al v. City of Seattle," 2018 <https://www.disabilityrightswa.org/wp-content/uploads/2017/10/ReynoldsonConsentDecree.pdf>; *Reynoldson et al v. City of Seattle*, No. 2:15-cv-01608, 2017 WL 5890271 (W.D. Wash. Nov. 1, 2017).

<sup>15</sup> David Gutman, "Settlement: Seattle to Rebuild Thousands of Sidewalk Curb Ramps Over Next 18 Years," *The Seattle Times*, July 17, 2017. Accessed September 30, 2022. [https://www.seattletimes.com/seattle-news/transportation/settlement-seattle-to-build-thousands-of-sidewalk-curb-ramps-over-next-18-years/?utm\\_content=buffer927e0&utm\\_medium=social&utm\\_source=facebook.com&utm\\_campaign=owned\\_buffer\\_fm](https://www.seattletimes.com/seattle-news/transportation/settlement-seattle-to-build-thousands-of-sidewalk-curb-ramps-over-next-18-years/?utm_content=buffer927e0&utm_medium=social&utm_source=facebook.com&utm_campaign=owned_buffer_fm). *Reynoldson et al v. City of Seattle*, No. 2:15-cv-01608, 2017 WL 5890271 (W.D. Wash. Nov. 1, 2017).

<sup>16</sup> Ibid.

<sup>17</sup> "What Is a County Accessible Community Advisory Committee (ACAC)." Accessible Communities. Accessed December 2023. <https://accessiblecommunities.wa.gov/inclusive-communities/accessible-community-advisory-committees>. Accessible Communities Act, SB 5902, 2010 Leg., 61<sup>st</sup> Sess. (Wash. 2010), 2010 Wash. Laws 215. <https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/GCDE/ACA%20act.pdf>

<sup>18</sup> Elizabeth Gordon, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, February 8, 2023. Transcript, p. 4 (hereafter *Transcript I*); Dave Reynolds, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 27, 2023. Transcript, p. 11 (hereafter *Transcript III*). Wash. Rev. Code §§ 36.01.301, 50.40.071 (2011).



accessibility issues. The goal of ACACs was to include individuals with disabilities at all levels of planning of facilities, activities, and services.<sup>19</sup>

The Accessible Communities Act created a fund of money for projects in their communities that seek to improve access for people with disabilities.<sup>20</sup> Funding for these projects comes in part from individual parking fines related to accessible parking spots.<sup>21</sup> As of the time of the testimony heard by the committee, there are 14 ACACs in Washington State.<sup>22</sup> Projects funded by the ACACs are carried out in conjunction with county and local businesses.<sup>23</sup>

## Federal Law

A number of federal laws prohibit discrimination in public institutions, including:

- Section 1 of the 14<sup>th</sup> Amendment to the U.S. Constitution, which prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws.”<sup>24</sup>
- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, in places of public accommodation, including in institutions of public education.<sup>25</sup>
- The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in places of public accommodations, including public and private schools

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<sup>19</sup> “What Is a County Accessible Community Advisory Committee (ACAC).” Accessible Communities. Accessed December 2023. <https://accessiblecommunities.wa.gov/inclusive-communities/accessible-community-advisory-committees>,

<https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/GCDE/ACA%20act.pdf>. Accessible Communities Act, SB 5902, 2010 Leg., 61<sup>st</sup> Sess. (Wash. 2010), 2010 Wash. Laws 215.

<sup>20</sup> “What Is a County Accessible Community Advisory Committee (ACAC).” Accessible Communities. Accessed December 2023. <https://accessiblecommunities.wa.gov/inclusive-communities/accessible-community-advisory-committees>,

<https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/GCDE/ACA%20act.pdf>. Wash. Rev. Code § 50.40.071 (2011).

<sup>21</sup> Gordon Testimony, *Transcript I*, p. 23; Reynolds Testimony, *Transcript III*, p. 13,

“What Is a County Accessible Community Advisory Committee (ACAC).” Accessible Communities. Accessed December 2023. <https://accessiblecommunities.wa.gov/inclusive-communities/accessible-community-advisory-committees>, Engrossed Substitute Senate Bill 5902, 2010, 5902 <https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/GCDE/ACA%20act.pdf>. Wash. Rev. Code § 46.19.050 (2011).

<sup>22</sup> Gordon Testimony, *Transcript I*, p. 4

<sup>23</sup> Reynolds Testimony, *Transcript III*, p. 11-12.

<sup>24</sup> “14<sup>th</sup> Amendment,” Cornell University Law Institute, accessed September 30, 2022, <https://www.law.cornell.edu/constitution/amendmentxiv>; U.S. Const. amend. XIV, § 1.

<sup>25</sup> The United States Department of Justice, Civil Rights Division, *Types of Educational Opportunities Discrimination*, 2022, 42 U.S.C. § 2000d *et seq.*, (hereinafter The U.S. Department of Justice, *Types of Educational Opportunities Discrimination*) <https://www.justice.gov/crt/types-educational-opportunities-discrimination>. Civil Rights Act of 1964 (Title VI), Pub. L. 88-352, 78 Stat. 241 (codified as 42 U.S.C. § 2000d *et seq.*)

and daycare centers.<sup>26</sup> These ADA standards apply to new construction of places of public accommodation.<sup>27</sup>

- The Uniform Act protects the public right of way. Public right of way includes trains, sidewalks, roads, and other paths of transportation, which must be made accessible to the public.<sup>28</sup>
- The Architectural and Transportation Barriers Compliance Rules dictate that public rights of way used by pedestrians that are constructed, leased, or built with funds from federal, state, and local governments must be accessible and usable to people with disabilities.<sup>29</sup>

## State Law

The Washington State Law Against Discrimination declares that “practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.”<sup>30</sup>

The law also declares that “full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement,” free from discrimination because of disability or the use of a trained dog guide or service animal, “is recognized as and declared to be a civil right,” enforceable by an administrative complaint or a civil action for damages.<sup>31</sup>

In buildings which serve as places of public accommodation, old buildings may be “grandfathered in,” meaning that the building would not need to meet current building accessibility requirements.<sup>32</sup> Conversely, new construction or substantial remodel of an existing

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<sup>26</sup> The United States Department of Justice, Civil Rights Division, *Types of Educational Opportunities Discrimination*, 2022, 42 U.S.C. § 2000d *et seq.*, (hereinafter The U.S. Department of Justice, *Types of Educational Opportunities Discrimination*) <https://www.justice.gov/crt/types-educational-opportunities-discrimination>. Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327 (codified as 42 U.S.C. § 12101 *et seq.*).

<sup>27</sup> U.S. Access Board, *Guide to the ADA Accessibility Standards*, 2010, <https://www.access-board.gov/ada/guides/chapter-2-new-construction/>; Wash. Rev. Code § 36.401 (2010).

<sup>28</sup> U.S. Department of Transportation, *Federal Highway Administration*, “Introduction to Right-of-Way Requirements and the Uniform Act, August 2012, <https://www.fhwa.dot.gov/federal-aidessentials/companionresources/06rowuniformact.pdf>; Uniform Act, Pub. L. 91-646, 84 Stat. 1894 (codified as 42 USC Ch. 61) (amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 246).

<sup>29</sup> Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, 88 Fed. Reg. 53604 (Sept. 7, 2023) (codified at 36 C.F.R. § 1190) <https://www.federalregister.gov/documents/2023/08/08/2023-16149/accessibility-guidelines-for-pedestrian-facilities-in-the-public-right-of-way>.

<sup>30</sup> Wash. Rev. Code § 49.60.010.

<sup>31</sup> Wash. Rev. Code §§ 49.60.040(10), 49.60.30.

<sup>32</sup> Washington State Human Rights Commission, *Guide to Disability and Washington State Nondiscrimination Laws* (2012) at p. 14 [https://www.hum.wa.gov/sites/default/files/public/publications/Disability\\_Q\\_and\\_A.pdf](https://www.hum.wa.gov/sites/default/files/public/publications/Disability_Q_and_A.pdf)

building needs to meet current accessibility standards.<sup>33</sup> Washington’s current accessibility standards in state building codes require that for any new construction, curb cuts must be built for roads which have sidewalks, paths, or other pedestrian pathways.<sup>34</sup> Of course, new construction in Washington must also meet ADA accessibility guidelines.<sup>35</sup>

The Washington Legislature “has enacted a broad definition of disability that increases protections for persons with medical, psychological, and other impairments. The Washington definition is different from the definition found in the Americans with Disabilities Act (ADA) – it is broader, covers more medical conditions, and is not restricted to a condition that substantially limits a major life activity. Temporary conditions, including pregnancy-related disabilities or people recovering from alcohol or drug addictions, can be included under the protections.”<sup>36</sup>

In the state of Washington disability is defined as:<sup>37</sup>

- a) The presence of sensory, mental, or physical impairment that:
  - (i) Is medically cognizable or diagnosable; or
  - (ii) Exists as a record or history; or
  - (iii) Is perceived to exist whether or not it exists in fact.
- b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.
- c) For purposes of this definition, “impairment” includes, but is not limited to:
  - (i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or
  - (ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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<sup>33</sup> Washington State Human Rights Commission, *Guide to Disability and Washington State Nondiscrimination Laws* (2012) at p. 14, <https://www.hum.wa.gov/sites/default/files/public/publications/Disability%20Q%20and%20A.pdf>

<sup>34</sup> Wash. Rev. Code § 35.68.075.

<sup>35</sup> Wash. Rev. Code § 36.401 (2010).

<sup>36</sup> Washington State Human Rights Commission, *Guide to Disability and Washington State Nondiscrimination Laws* (2012) at p. 2, <https://www.hum.wa.gov/sites/default/files/public/publications/Disability%20Q%20and%20A.pdf>.

<sup>37</sup> Wash. Rev. Code § 49.60.050(7).

## **Overview of Testimony**

The Washington Advisory Committee is composed of Washington citizens who sought to explore the issue of physical accessibility in Washington for individuals with disabilities from an open-minded and neutral posture. During a series of online panels, the Committee heard from academic experts, community advocates, state government officials, and individuals directly affected by accessibility policies. The agendas, minutes, and presentation slides for these panels can be found in Appendix A. In addition, the Committee invited broad participation through written testimony. Written testimony was accepted until Friday, July 28, 2023, when the official record was closed.

The Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives. The Committee made many outreach attempts over several months to engage diverse perspectives, soliciting their participation at the public panels, through written testimony, and/or by joining a Committee meeting.

The Committee heard many witnesses testify concerning unequal treatment and discrimination against individuals with disabilities other than those that involve mobility issues. However, despite its importance, this testimony was not under the scope of the current report, and thus does not appear in the findings below.

## **Findings**

The section below communicates the observations and conclusions of the Committee based on the testimony received in the course of its investigation. While the Committee has not independently verified each assertion and members are not experts on the topic at hand, a diverse and balanced selection of panelists was chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or firsthand experience with the relevant issues.

In keeping with its duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,<sup>38</sup> the Washington Advisory Committee submits the following findings to the Commission.

### **Finding I: Physical access continues to be a challenge for individuals with disabilities in Washington state.<sup>39</sup> Even though the Rehabilitation Act and Americans with Disabilities Act has been in existence for decades, localities are not fully complying with accessibility standards in public spaces.<sup>40</sup>**

Transportation remains largely inaccessible to individuals with disabilities because of incomplete sidewalks, lack of curb cuts, and inaccessible train or bus systems.<sup>41</sup> One part of an individual's trip may be accessible, such as an accessible bus stop, while another is not, such as an inaccessible sidewalk.<sup>42</sup> This often forces people with disabilities into unsafe circumstances,

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<sup>38</sup> 45 C.F.R. § 703.2 (2018).

<sup>39</sup> Gordon Testimony, *Transcript I*, p. 3; Himes Testimony, *Transcript III*, p. 7; Anna Zivarts, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, February 8, 2023. Transcript, p. 11 (hereafter *Transcript I*); Katie Warden, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 26, 2023. Transcript, p. 5 (hereafter *Transcript II*); Andrew Washburn, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 26, 2023. Transcript, p. 8 (hereafter *Transcript II*); John Day, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 26, 2023. Transcript, p. 11 (hereafter *Transcript II*).

<sup>40</sup> Gordon Testimony, *Transcript I*, p. 4; Tim Fox, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, February 8, 2023. Transcript, p. 8 (hereafter *Transcript I*); Warden Testimony, *Transcript II*, p. 5; Washburn Testimony, *Transcript II*, p. 8; Himes Testimony, *Transcript III*, p. 7; Jo Anne Simon, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 27, 2023. Transcript, p. 5 (hereafter *Transcript IV*). Rehabilitation Act of 1973, Pub. L. 93-113, 97 Stat. 394, codified as 29 U.S.C. § 701 et seq); Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327 (codified as 42 U.S.C. § 12101 et seq).

<sup>41</sup> Gordon Testimony, *Transcript I*, p. 15; Krystal Monteros, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 27, 2023. Transcript, p. 9 (hereafter *Transcript III*).

<sup>42</sup> Gordon Testimony, *Transcript I*, p. 15; Elaine Stefanowicz, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 26, 2023. Transcript, p. 4 (hereafter *Transcript II*); Day Testimony, *Transcript II*, p. 11; Monteros Testimony, *Transcript III*, p. 8.

such as traveling in roads designed only for vehicle use.<sup>43</sup> In addition, physical access in transportation is inconsistent between localities.<sup>44</sup>

People with disabilities are four times more likely not to drive a car, and thus rely on accessible pedestrian infrastructure.<sup>45</sup> However, infrastructure in Washington heavily favors cars, continuing to put people with disabilities in dangerous situations.<sup>46</sup>

The *Seattle Times* estimates that 50% of sidewalks do not meet ADA standards.<sup>47</sup> Approximately 2% of sites of public accommodation in the United States are up to ADA standards.<sup>48</sup>

Even when localities have attempted to meet ADA standards, they are often built to incorrect specifications and/or are not correctly maintained and can be dangerous for users.<sup>49</sup> For example, when curb cuts are incorrectly built at the wrong angle, wheelchair users may be thrown out of their wheelchair and into traffic.<sup>50</sup> Similarly, overgrowth of grass may make sidewalks unusable.<sup>51</sup>

ADA guidelines state that new public transportation vehicles and stations must be accessible; however, there is no requirement that old vehicles and stations implement accessibility requirements until the time that other renovations are made, leaving an old stock of inaccessible vehicles.<sup>52</sup>

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<sup>43</sup> Zivarts Testimony, *Transcript I*, p. 11; Gordon Testimony, *Transcript I*, p. 15

<sup>44</sup> Gordon Testimony, *Transcript I*, p. 3; Gordon Testimony, *Transcript I*, p. 4; Gordon Testimony, *Transcript I*, p. 5; Fox Testimony, *Transcript I*, p. 8; Fox Testimony, *Transcript I*, p. 9; Zivarts Testimony, *Transcript I*, p. 11-12; Gordon Testimony, *Transcript I*, p. 15; Stefanowicz Testimony, *Transcript II*, p. 4; Warden Testimony, *Transcript II*, p. 5; Day Testimony, *Transcript II*, p. 10-12, 16; Stefanowicz Testimony, *Transcript II*, p. 15; Himes Testimony, *Transcript III*, p. 4; Monteros Testimony, *Transcript III*, p. 7-9.

<sup>45</sup> Zivarts Testimony, *Transcript I*, p. 10

<sup>46</sup> Zivarts Testimony, *Transcript I*, p. 10-12. 2

<sup>47</sup> David Kroman. "WA faces an epidemic of inaccessible sidewalks." *The Seattle Times*. October 3, 2022 <https://www.seattletimes.com/seattle-news/transportation/wa-faces-an-epidemic-of-inaccessible-sidewalks/>

<sup>48</sup> Allison Spector, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, February 8, 2023. Transcript, p. 6 (hereafter *Transcript I*); Conrad Reynoldson, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 27, 2023. Transcript, p. 9 (hereafter *Transcript IV*); Carri Becker, Private Enforcement of the Americans with Disabilities Act Via Serial Litigation: Abusive or Commendable?, 17 HASTINGS WOMEN'S L.J. 93, 99 (2006).

<sup>49</sup> Monteros Testimony, *Transcript III*, p. 9; Fox Testimony, *Transcript I*, p. 13; Gordon Testimony, *Transcript I*, p. 5; Gordon Testimony, *Transcript I*, p. 15; Himes Testimony, *Transcript III*, p. 19

<sup>50</sup> Zivarts Testimony, *Transcript I*, p. 11; Monteros Testimony, *Transcript III*, p. 9

<sup>51</sup> Spector Testimony, *Transcript I*, p. 6; Fox Testimony, *Transcript I*, p. 8; Fox Testimony, *Transcript I*, p. 9; Fox Testimony, *Transcript I*, p. 13; Fox Testimony, *Transcript I*, p. 14; Gordon Testimony, *Transcript I*, p. 15; Monteros Testimony, *Transcript III*, p. 8-9.

<sup>52</sup> Day Testimony, *Transcript II*, p. 11; Washington State Human Rights Commission, *Guide to Disability and Washington State Nondiscrimination Laws*, 2012, <https://www.hum.wa.gov/sites/default/files/public/publications/Disability%20Q%20and%20A.pdf>

Lack of independent physical accessibility in communities has rippling impacts on other forms of accessibility, such as access to employment, social community, goods and services, education, healthcare, and overall programmatic accessibility.<sup>53</sup>

**Finding II: Physical accessibility is not consistent throughout Washington state, as each distinct county has varying levels of investment in accessibility for individuals with disabilities.**<sup>54</sup>

Many accessibility resources are concentrated in urban centers or in the southwestern part of Washington.<sup>55</sup> Physical accessibility remains limited in rural communities, and community members from these areas express a desire for more community resources and supports in northern parts of Washington State.<sup>56</sup>

**Finding III: There is a lack of dedicated funding to meet current ADA compliance standards; this lack of funding limits both improvements to existing infrastructure and new projects to expand access.**<sup>57</sup>

Many grant scoring mechanisms are not incentivized to award support to ADA-related projects.<sup>58</sup> This leads to under-investment in physical access improvements, perpetuating the insufficient physical access infrastructure in Washington State for people with disabilities.<sup>59</sup>

According to the representatives of the Washington municipalities who testified, specific federal ADA-related grants are not available to them.<sup>60</sup> Thus, requests to comply with ADA standards are in competition with other infrastructure improvements for funding.<sup>61</sup> Grant applications for

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<sup>53</sup> Gordon Testimony, *Transcript I*, p. 4; Fox Testimony, *Transcript I*, p. 9; Fox Testimony, *Transcript I*, p. 14; Gordon Testimony, *Transcript I*, p. 15; Gordon Testimony, *Transcript I*, p. 16; Stefanowicz Testimony, *Transcript II*, p. 4; Day Testimony, *Transcript II*, p. 10; Monteros Testimony, *Transcript III*, p. 8, 15; Simon Testimony, *Transcript IV*, p. 5; Leigh Spruce, Written Testimony submitted via email to the Washington Advisory Committee to the U.S. Commission on Civil Rights (hereafter cited as Spruce Written Testimony).

<sup>54</sup> Gordon Testimony, *Transcript I*, p. 3

<sup>55</sup> Harley Draven, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, February 8, 2023. Transcript, p. 25 (hereafter *Transcript I*).

<sup>56</sup> Draven Testimony, *Transcript I*, p. 25; Zivarts Testimony, *Transcript I*, p. 18; Gordon Testimony, *Transcript I*, p. 3

<sup>57</sup> Himes Testimony, *Transcript III*, p. 5-7, 15.

<sup>58</sup> Himes Testimony, *Transcript III*, p. 6

<sup>59</sup> Himes Testimony, *Transcript III*, p. 6

<sup>60</sup> Himes Testimony, *Transcript III*, p. 5, 15; citing National Rural Transit Assistance Program, *Funding Considerations*, 2021, [https://www.nationalrtap.org/Toolkits/ADA-Toolkit/funding-considerations#:~:text=Although%20the%20Federal%20Transit%20Administration%20\(FTA\)%20does,also%20provide%20state%20funding%20for%20ADA%2Drelated%20expenses.](https://www.nationalrtap.org/Toolkits/ADA-Toolkit/funding-considerations#:~:text=Although%20the%20Federal%20Transit%20Administration%20(FTA)%20does,also%20provide%20state%20funding%20for%20ADA%2Drelated%20expenses.)

<sup>61</sup> Himes Testimony, *Transcript III*, p. 18

infrastructure projects often prioritize other city needs over physical accessibility projects.<sup>62</sup> Funding for these grants typically comes from both federal and state governments.<sup>63</sup>

As a result, many ADA-related projects remain unfunded and uncompleted.<sup>64</sup>

Even in cases where grants are approved for ADA-related infrastructure projects, municipalities still need to supply a match of 20% of the grant amount.<sup>65</sup> This can be a great financial stress to grantees.<sup>66</sup>

Once a structure is already built, ADA-compliant modifications are expensive.<sup>67</sup> Without specific grants for ADA-related projects, resulting in a lack of resources, municipalities adopt long timelines to update key infrastructure. This results in further delaying access for people with disabilities.<sup>68</sup> Small businesses may be overwhelmed by the cost of ADA compliance.<sup>69</sup> Many small businesses operate on tight profit margins, and the cost of ADA alterations may be devastating to their stability.<sup>70</sup> There is a common perception that investment in physical accessibility and inclusion is complicated and too costly.<sup>71</sup>

#### **Finding IV: Enforcement of ADA compliance is largely dependent on individual lawsuits and individual complaints filed by affected individuals.<sup>72</sup>**

Witnesses testified that requiring individuals to file lawsuits or complaints imposes an undue emotional burden on people with disabilities.<sup>73</sup> Due to the confusion of where to take complaints, individuals frequently called numerous agencies with little recourse, which can be frustrating and

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<sup>62</sup> Himes Testimony, *Transcript III*, p. 18.

<sup>63</sup> Himes Testimony, *Transcript III*, p. 5-6, 15, 18-19; citing National Rural Transit Assistance Program, *Funding Considerations*, 2021, [https://www.nationalrtap.org/Toolkits/ADA-Toolkit/funding-considerations#:~:text=Although%20the%20Federal%20Transit%20Administration%20\(FTA\)%20does,also%20provide%20state%20funding%20for%20ADA%2Drelated%20expenses](https://www.nationalrtap.org/Toolkits/ADA-Toolkit/funding-considerations#:~:text=Although%20the%20Federal%20Transit%20Administration%20(FTA)%20does,also%20provide%20state%20funding%20for%20ADA%2Drelated%20expenses).

<sup>64</sup> Himes Testimony, *Transcript III*, p. 18; Spector Testimony, *Transcript I*, p. 17.

<sup>65</sup> Himes Testimony, *Transcript III*, p. 5; Austin Landis, “As the ADA turns 32, Biden admin, releases \$343 million for accessible transit upgrades”, *Spectrum News*, July 26 2022, <https://ny1.com/nyc/all-boroughs/news/2022/07/25/biden-admin-releases-accessible-transit-funds>; [Fiscal Year 2024 Competitive Funding Opportunity: All Stations Accessibility Program, 88 Fed. Reg. 83587 \(Nov. 30, 2023\)](#).

<sup>66</sup> Himes Testimony, *Transcript III*, p. 5, 19.

<sup>67</sup> Gordon Testimony, *Transcript I*, p. 6; Zivarts Testimony, *Transcript I*, p. 18.

<sup>68</sup> Spector Testimony, *Transcript I*, p. 6; Himes Testimony, *Transcript III*, p. 5.

<sup>69</sup> Philip Stillman, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 27, 2023. Transcript, p. 11 (hereafter *Transcript IV*), Stephanie Grimoldby, “Chicago Small Businesses Targeted by ADA Lawyers Feel Cost of Compliance”, *Forbes*, April 11 2016, <https://www.forbes.com/sites/legalnewsline/2016/04/11/chicago-small-businesses-targeted-by-ada-lawyers-feel-cost-of-compliance/?sh=3d93ed60774e>.

<sup>70</sup> Stillman Testimony, *Transcript IV*, p. 12.

<sup>71</sup> Gordon Testimony, *Transcript I*, p. 3; Stillman Testimony, *Transcript IV*, p. 11.

<sup>72</sup> Reynoldson Testimony, *Transcript IV*, p. 8; Warden Testimony, *Transcript II*, p. 15.

<sup>73</sup> Naomi Marteeny, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 26, 2023. Transcript, p. 26-27 (hereafter *Transcript II*); Warden Testimony, *Transcript II*, p. 15.



discouraging.<sup>74</sup> The committee heard testimony of individuals working tirelessly to improve a point of access in their own lives for months, such as advocating for physically accessible sidewalks to access a bus.<sup>75</sup> Since the onus of complaint is on individuals, people with disabilities calling for support or complaints are often in crisis situations, feeling their voices are not heard in previous attempts.<sup>76</sup>

The dependence on complaints to enforce the ADA creates a lack of accountability or protection for people with disabilities.<sup>77</sup> Some witnesses stated that complaint-driven law created incentives for over-litigation.<sup>78</sup>

The ADA has a provision that permits the court to award attorney's fees to the prevailing plaintiff; this means that where a place of public accommodation is found to violate the ADA, the owner is to pay the attorney's fees of the person with a disability (the plaintiff).<sup>79</sup> Due to the *Buckhannon* decision in 2001,<sup>80</sup> the prevailing party must achieve a judicial imprimatur of success, such as an enforceable judgment on the merits or a consent decree; in other words, there must be a finding that the defendant was "out of compliance" before attorney's fees can be awarded.<sup>81</sup>

In other states, "notice and cure" legislation has been proposed which requires that the place of public accommodation be given notice of non-compliance and a timeline to comply before a related lawsuit is filed.<sup>82</sup> This can create a financial incentive for defendants to fix the complaint issue as quickly as possible before a judgment to avoid liability for attorney's fees.<sup>83</sup> Places of public accommodation out of compliance may more quickly become accessible due to the pressure to fix anything out of compliance.<sup>84</sup> However, because it would avoid a judicial finding of non-compliance, such legislation would prevent the attorney representing the person with a disability from being paid.<sup>85</sup> As a result, fewer attorneys would be willing to provide representation, unless they took the case pro bono.<sup>86</sup> Due to this decrease in legal representation,

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<sup>74</sup> Warden Testimony, *Transcript II*, p. 22; Washburn Testimony, *Transcript II*, p. 26; Marteeney Testimony, *Transcript II*, p. 26

<sup>75</sup> Monteros Testimony, *Transcript III*, p. 9

<sup>76</sup> Warden Testimony, *Transcript II*, p. 15; Marteeney Testimony, *Transcript II*, p. 26; Monteros Testimony, *Transcript III*, p. 9

<sup>77</sup> Reynoldson Testimony, *Transcript IV*, p. 10; Marteeney Testimony, *Transcript II*, p. 26

<sup>78</sup> Stillman Testimony, *Transcript IV*, p. 11; Simon Testimony, *Transcript IV*, p. 15

<sup>79</sup> Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327 (codified as 42 U.S.C. § 12205); Reynoldson Testimony, *Transcript IV*, p. 8; Simon Testimony, *Transcript IV*, p. 15.

<sup>80</sup> *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598 (2001).

<sup>81</sup> Reynoldson Testimony, *Transcript IV*, p. 8; Simon Testimony, *Transcript IV*, p. 15

<sup>82</sup> Reynoldson Testimony, *Transcript IV*, p. 8; <https://www.nar.realtor/americans-with-disabilities-act-ada>

<sup>83</sup> Reynoldson Testimony, *Transcript IV*, p. 8; Stillman Testimony, *Transcript IV*, p. 17

<https://www.nar.realtor/americans-with-disabilities-act-ada>

<sup>84</sup> Stillman Testimony, *Transcript IV*, p. 19

<sup>85</sup> Reynoldson Testimony, *Transcript IV*, p. 9; Simon Testimony, *Transcript IV*, p. 15

<sup>86</sup> Reynoldson Testimony, *Transcript IV*, p. 9; Simon Testimony, *Transcript IV*, p. 15

fewer cases raising compliance issues will be brought, resulting in more limited enforcement of ADA provisions.<sup>87</sup>

The current litigation-dependent system also rewards serial litigators who strategically file multiple complaints in order to make money from settlements.<sup>88</sup> Some small businesses fear they will be unfairly targeted for litigation, limiting small business development.<sup>89</sup>

Testimony included a description of California's program of Certified Access Specialists (CASp), which allows small businesses to be inspected and certified as ADA-compliant, identifying compliance issues while offering protection from litigation.<sup>90</sup>

**Finding V: Because of the complaint-driven nature of the remedy process, authorities do not respond equitably to issues of physical access.**

Due to the complaint-driven nature of the ADA and Washington state law, only individuals with resources and capacity are able to bring complaints and get relief from barriers to mobility.<sup>91</sup> Communities that have been historically disadvantaged or who distrust government are less likely to reach out to government officials regarding accessibility issues than more integrated counterparts.<sup>92</sup> Thus, communities that complain more may not be the sites of the greatest need.<sup>93</sup> An alternative approach would gather information regarding physical accessibility through full-state resource mapping, for example mapping out all curb cuts or lack thereof in Washington.<sup>94</sup>

Most agencies do not have the capacity to investigate individual complaints.<sup>95</sup> This makes litigation the main form of recourse for individuals, which is another barrier for many people with disabilities.<sup>96</sup> The Committee heard alternative approaches, such as the proactive state

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<sup>87</sup> Reynoldson Testimony, *Transcript IV*, p. 10

<sup>88</sup> Stillman Testimony, *Transcript IV*, p. 11; Simon Testimony, *Transcript IV*, p. 15

<sup>89</sup> Stillman Testimony, *Transcript IV*, p. 12 <https://instituteforlegalreform.com/blog/small-businesses-targeted-with-ada-lawsuits/>

<sup>90</sup> Certified Access Specialist Program Best Practices Manual, *State of California Department of General Services*, Division of the State Architect, 2021, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEWjbf\\_fwqyAAxVTmIkEHVioAdkQFnoECCEQAQ&url=https%3A%2F%2Fwww.dgs.ca.gov%2F-%2Fmedia%2FDivisions%2FDSA%2FPublications%2Fcasp%2FCASp\\_Manual.pdf&usq=AOvVaw23OQw8RsW5sPb\\_mN9cxIcS&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEWjbf_fwqyAAxVTmIkEHVioAdkQFnoECCEQAQ&url=https%3A%2F%2Fwww.dgs.ca.gov%2F-%2Fmedia%2FDivisions%2FDSA%2FPublications%2Fcasp%2FCASp_Manual.pdf&usq=AOvVaw23OQw8RsW5sPb_mN9cxIcS&opi=89978449)

<sup>91</sup> Spector Testimony, *Transcript I*, p. 7; Marteeny Testimony, *Transcript II*, p. 26

<sup>92</sup> Spector Testimony, *Transcript I*, p. 7

<sup>93</sup> Spector Testimony, *Transcript I*, p. 7

<sup>94</sup> Zivarts Testimony, *Transcript I*, p. 21

<sup>95</sup> Simon Testimony, *Transcript IV*, p. 15; Day Testimony, *Transcript II*, p. 22

<sup>96</sup> Simon Testimony, *Transcript IV*, p. 15; Reynoldson Testimony, *Transcript IV*, p. 9

legislation adopting ADA protections without the need for a complaint, as many entities focus more on state law than federal law compliance.<sup>97</sup>

**Finding VI: Multiple federal and state agencies issue regulations, provide technical assistance, and enforce different sections of the ADA.<sup>98</sup> This siloed enforcement system leads to confusion as to which agency is responsible for enforcing compliance, and where complaints should be filed.<sup>99</sup>**

The ADA is very broad, and many different agencies have overlapping jurisdictions within the ADA.<sup>100</sup> Due to this confusing landscape, many people with disabilities are uncertain where to take complaints of ADA violations.<sup>101</sup> For example, an individual making a complaint regarding lack of accessibility on a public train may not know whether to take said complaint to the city, to the Washington Department of Transportation, Department of Justice, etc.

Once a complaint has been successfully filed with an agency, it may or may not fall within the receiving agency's jurisdiction.<sup>102</sup> If it is not, complaints may be referred out of the agency or marked as "closed" without additional action, leading to the common perception by the public that complaints are rarely addressed.<sup>103</sup> Agencies like the Washington Department of Transportation cannot investigate isolated incidents, again leading to the perception that complaints are not addressed.<sup>104</sup> However, because the DOJ and other federal agencies hold a deep knowledge of ADA law; they are able to serve as "coordinating agencies" and connect complainants to the proper agency with relevant jurisdiction.<sup>105</sup>

The complaint process itself is burdensome, and individuals prefer not to file their own complaint.<sup>106</sup> Some fear retribution for a complaint or do not know what language to use.<sup>107</sup> In

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<sup>97</sup> Simon Testimony, *Transcript IV*, p. 6; Mike Padden, testimony, *Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights*, June 27, 2023. Transcript, p. 7 (hereafter *Transcript IV*); Padden Testimony, *Transcript IV*, p. 14

<sup>98</sup> Washburn Testimony, *Transcript II*, p. 9; Spector Testimony, *Transcript I*, p. 20; Day Testimony, *Transcript II*, p. 21; Warden Testimony, *Transcript II*, p. 22; Himes Testimony, *Transcript III*, p. 5

<sup>99</sup> Marteeny Testimony, *Transcript II*, p. 27; Warden Testimony, *Transcript II*, p. 22; Washburn Testimony, *Transcript II*, p. 26

<sup>100</sup> Spector Testimony, *Transcript I*, p. 20; Washburn Testimony, *Transcript II*, p. 9; Day Testimony, *Transcript II*, p. 21; Warden Testimony, *Transcript II*, p. 22; Himes Testimony, *Transcript III*, p. 5. Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327 (codified as 42 U.S.C. § 12101 et seq).

<sup>101</sup> Warden Testimony, *Transcript II*, p. 22; Washburn Testimony, *Transcript II*, p. 26

<sup>102</sup> Spector Testimony, *Transcript I*, p. 20; Washburn Testimony, *Transcript II*, p. 23

<sup>103</sup> Warden Testimony, *Transcript II*, p. 22; Washburn Testimony, *Transcript II*, p. 23

<sup>104</sup> Day Testimony, *Transcript II*, p. 22; Simon Testimony, *Transcript IV*, p. 15

<sup>105</sup> Washburn Testimony, *Transcript II*, p. 20, 26; Himes Testimony, *Transcript III*, p. 5; Monteros Testimony, *Transcript III*, p. 17; Simon Testimony, *Transcript IV*, p. 15. Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327 (codified as 42 U.S.C. § 12117).

<sup>106</sup> Washburn Testimony, *Transcript II*, p. 19; Warden Testimony, *Transcript II*, p. 15; Marteeny Testimony, *Transcript II*, p. 26

<sup>107</sup> Washburn Testimony, *Transcript II*, p. 19; Marteeny Testimony, *Transcript II*, p. 26

addition, geographic areas triggering the greatest number of complaints may not be areas with highest amount of need, because complainants vary in the capacity to make complaints due to socio-economic status, language access, etc.<sup>108</sup>

Unless there is a pattern associated with unequal treatment of individuals with disabilities, monitoring agencies will not have enough information to do an investigation.<sup>109</sup> Due to limited resources for investigation, agencies may choose cases with the highest amount of perceived impact.<sup>110</sup>

**Finding VII: Public knowledge is very limited regarding ADA mandates and requirements.<sup>111</sup> In addition, many professionals responsible for compliance lack appropriate training resulting in continued confusion and inadequate compliance.<sup>112</sup>**

Resources to assist communities in creating accessibility plans are not easy to locate and difficult to understand.<sup>113</sup> While larger cities may obtain adequate educational resources and may have a dedicated staff, smaller communities who lack dedicated resources will find ADA compliance more challenging.<sup>114</sup> The Department of Justice’s technical assistance materials are commonly accessed.<sup>115</sup>

Many small businesses or municipalities have the best intentions to provide ADA accessible facilities; however, they are often uncertain what compliance entails.<sup>116</sup> Small businesses rely on public ADA information that can be subject to interpretation and can lead to confusion.<sup>117</sup> Small business owners may struggle to understand the intricacies of compliance, leading to inadvertent

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<sup>108</sup> Zivarts Testimony, *Transcript I*, p. 21; Marteeny Testimony, *Transcript II*, p. 26

<sup>109</sup> Day Testimony, *Transcript II*, p. 22; Simon Testimony, *Transcript IV*, p. 15

<sup>110</sup> Washburn Testimony, *Transcript II*, p. 18; Day Testimony, *Transcript II*, p. 23

<sup>111</sup> Gordon Testimony, *Transcript I*, p. 5-6; Spector Testimony, *Transcript I*, p. 7, 20; Warden Testimony, *Transcript II*, p. 6; Washburn Testimony, *Transcript II*, p. 8

<sup>112</sup> Himes Testimony, *Transcript III*, p. 2-5, 15; Stillman Testimony, *Transcript IV*, p. 12; Gordon Testimony, *Transcript I*, p. 5-6, 16; Spector Testimony, *Transcript I*, p. 6-7, 17, 20; Zivarts Testimony, *Transcript I*, p. 18; Warden Testimony, *Transcript II*, p. 5-6, 15; Washburn Testimony, *Transcript II*, p. 7-10, 20; Day Testimony, *Transcript II*, p. 11-12; Monteros Testimony, *Transcript III*, p. 15; Reynolds Testimony, *Transcript III*, p. 16; Simon Testimony, *Transcript IV*, p. 4; Simon Testimony, *Transcript IV*, p. 5; Stillman Testimony, *Transcript IV*, p. 11-13.

<sup>113</sup> Stillman Testimony, *Transcript IV*, p. 11; Gordon Testimony, *Transcript I*, p. 5; Washburn Testimony, *Transcript II*, p. 8; Warden Testimony, *Transcript II*, p. 6

<sup>114</sup> Gordon Testimony, *Transcript I*, p. 6

<sup>115</sup> Washburn Testimony, *Transcript II*, p. 9; U.S. Dep’t of Justice, Civil Rights Division, Disability Rights Section (accessed Feb. 9, 2024) <https://www.justice.gov/crt/disability-rights-section>.

<sup>116</sup> Stillman Testimony, *Transcript IV*, p. 11

<sup>117</sup> Stillman Testimony, *Transcript IV*, p. 11, Stephanie Grimoldby, “Chicago Small Businesses Targeted by ADA Lawyers Feel Cost of Compliance”, *Forbes*, April 11 2016, <https://www.forbes.com/sites/legalnewsline/2016/04/11/chicago-small-businesses-targeted-by-ada-lawyers-feel-cost-of-compliance/?sh=3d93ed60774e>, Rob Gould et.al., “An ADA Knowledge Translation Center Research Brief”, Americans with Disabilities Act National Network, 2019, [https://adata.org/research\\_brief/research-brief-small-business-and-ada](https://adata.org/research_brief/research-brief-small-business-and-ada)

<sup>117</sup> Stillman Testimony, *Transcript IV*, p. 12 [https://adata.org/research\\_brief/research-brief-small-business-and-ada](https://adata.org/research_brief/research-brief-small-business-and-ada)

violations, or wasted resources.<sup>118</sup> Communities often lack the resources and capacity to send inspectors out to ensure that the construction meets ADA requirements, making it difficult to confirm legal compliance.<sup>119</sup> In situations of new construction within communities that have an ACAC, plans from small businesses may be submitted for review to some ACACs to ensure that new construction is ADA compliant.<sup>120</sup> Of course, this is only in communities that have established ACACs.

### **Finding VIII: Policymakers who emphasize community engagement are more likely to ensure equitable physical accessibility in Washington State.**<sup>121</sup>

A model of community engaged design, Accessible Communities Advisory Committees (ACACs), have been implemented successfully in some counties in Washington.<sup>122</sup> These ACACs fund ADA-related projects in their communities, can advise on new construction, and include people with disabilities in essential city planning.<sup>123</sup> While ACAC-funded projects may be small, such as the funding of a beach wheelchair in Fort Worden, ACACs promote greater physical access in Washington communities.<sup>124</sup>

The Committee identified increased community engagement as a crucial part of future accessibility development.<sup>125</sup>

### **Recommendations**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;<sup>126</sup> and (2) upon matters of mutual concern in the preparation of

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<sup>118</sup> Stillman Testimony, *Transcript IV*, p. 12

<sup>119</sup> Anna Zivarts, Written Testimony submitted via email to the Washington Advisory Committee to the U.S. Commission on Civil Rights (hereafter cited as Zivarts Written Testimony).

<sup>120</sup> Gordon Testimony, *Transcript I*, p. 4; Reynolds Testimony, *Transcript III*, p. 11

<sup>121</sup> Spector Testimony, *Transcript I*, p. 6; Zivarts Testimony, *Transcript I*, p. 21; Monteros Testimony, *Transcript III*, p. 17

<sup>122</sup> Accessible Communities, *County Advisory Committees*, <https://accessiblecommunities.wa.gov/county-advisory-committees>

<sup>123</sup> Gordon Testimony, *Transcript I*, p. 4; Reynolds Testimony, *Transcript III*, p. 11.

<sup>124</sup> The Leader, “Beach wheelchair is latest gain in accessibility”, 2023, <https://www.ptleader.com/stories/beach-wheelchair-is-latest-gain-in-accessibility,19966>

<sup>125</sup> Spector Testimony, *Transcript I*, p. 7; Zivarts Testimony, *Transcript I*, p. 21; Simon Testimony, *Transcript IV*, p. 4; Monteros Testimony, *Transcript III*, p. 17

<sup>126</sup> 45 C.F.R. § 703.2(b).

reports of the Commission to the President and the Congress.<sup>127</sup> In keeping with these responsibilities, and in consideration of the oral and written testimony received on this topic, the Washington Advisory Committee submits the following recommendations to the Commission:

The U.S. Commission on Civil Rights should send this report and issue a formal request to Congress and the President to pass legislation that:

1. Ear-marks funds specifically for ADA-related projects within the government's operations budget.
2. Create federal grants that are specifically designated for ADA projects of accessibility for public transportation improvement in each state.

The U.S. Commission on Civil Rights should send this report and issue a formal request to the Department of Justice and Department of Transportation:

1. The Department of Justice should be transparent with its data involving ADA compliance complaints. The public should be able to see the status of their complaints, whether the complaint is resolved or not, and to what agency the complaint is transferred.
2. The Department of Transportation and Department of Justice should offer ADA-only grants so that ADA is not in competition with other important infrastructure improvements for all grants.<sup>128</sup> Grants should mandate compliance training and clear and measurable timelines for becoming ADA compliant.
3. In addition to ADA-specific grants, other infrastructure grants issued by the Department of Transportation should update the block grant scoring systems so that issues involving physical accessibility are scored higher.<sup>129</sup>
4. All agencies with jurisdiction over the ADA should work together to develop more clear processes for ADA compliance. Investments should be made in making the current complaint avenues easier to navigate and more accountable to the public.

The U.S. Commission on Civil Rights should send this report and issue a formal request to the Washington State Legislature and Washington Governor to pass legislation:

- A. The Washington State Governor's Committee on Disability Issues and Employment should create a subcommittee that is responsible for and solely dedicated to ADA compliance for physical accessibility.

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<sup>127</sup> 45 C.F.R. § 703.2(c).

<sup>128</sup> Ibid.

<sup>129</sup> Himes Testimony, *Transcript III*, p. 18.

- B. Washington state should create the position of Chief Disability Officer who is dedicated to increasing and enforcing statewide ADA compliance.<sup>130</sup> This person should have authority over:
- a. Providing educational resources and guidance to local jurisdictions;
  - b. Holding these jurisdictions accountable when they are not making appropriate investments in improving their ADA compliance.
  - c. Guiding complainants throughout the complaint process. This may include “case managers” that assist complainants follow their cases or similar oversight.
- C. Washington State legislature should start a full audit of the accessibility of Washington public transportation to collect information on accessibility of all public rights of way. This could be a mapping of all transportation systems and pedestrians right of way in the state, rather than relying on complaints to ensure equity.<sup>131</sup>
- D. Washington State can offer certification for Certified Access Specialists as molded after California. Small businesses can apply for funding to pay for the CASC to look over plans for ADA accessibility requirements before undergoing any new construction.<sup>132</sup>
- E. Washington State should adopt the “Vision Zero” strategy to eliminate pedestrian traffic fatalities.<sup>133</sup>
- F. Ensure that larger localities within Washington have a designated staff position for coordinating and ensuring ADA compliance.
- G. Invest additional funding to:
- a. Focus on rural communities that require high levels of ADA accessibility investments.<sup>134</sup>
  - b. Create an accessibility fund for businesses to become compliant.<sup>135</sup>
  - c. Update older public transportation vehicles that cannot be made accessible and replace with new accessible ones
  - d. Mandate inspections to ensure the proper changes have been made to remove responsibility from citizens to report complaints of inaccessibility.

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<sup>130</sup> Simon Testimony, *Transcript IV*, p. 4.

<sup>131</sup> Zivarts Testimony, *Transcript I*, p.21

<sup>132</sup> Reynoldson Testimony, *Transcript IV*, p. 16.

<sup>133</sup> Himes Testimony, *Transcript III*, p. 4.

<sup>134</sup> Harley Testimony, *Transcript I*, p.25; Zivarts Testimony, *Transcript I*, p. 18; Gordon Testimony, *Transcript I*, p.

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<sup>135</sup> Simon Testimony, *Transcript IV*, p. 15.

The U.S. Commission on Civil Rights should send this report and issue a formal request to local government and municipalities to:

1. All municipalities should develop County Accessible Community Advisory Committee (ACACs).
2. Apply for any grants that allow them to improve their ADA compliance with regards to physical accessibility.
3. Access all resources from the federal and state government including technical guidance, training, and additional funds.



## **Appendix**

- A. Panel Agendas, Minutes, and Presentation Slides
- B. Hearing Transcripts
- C. Written Testimony

**Appendix A – Panel Agendas, Minutes, and Presentation Slides**

**Meeting Minutes & Presentation Slides can be accessed at:**

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL1BoeXNpY2FsIEFjY2Vzc2libGl0eQ%3D%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL1BoeXNpY2FsIEFjY2Vzc2libGl0eQ%3D%3D)

**Panel 1 Agenda**

*Wednesday, February 8<sup>th</sup> at 3:00pm PST*

- I. Welcome & Opening Remarks
- II. Panelist Remarks
  - a. Elizabeth Gordon, Executive Director at The Governor’s Committee on Disability and Employment
  - b. Allison Spector, ADA External Compliance Coordinator for WSDOT
  - c. Tim Fox, Partner at Fox & Robertson, an impact civil rights firm
  - d. Anna Zivarts, Director of Disability Mobility Initiative Program, Disability Rights Washington
- III. Q & A
- IV. Public Comment
- V. Adjournment

**Panel 2 Agenda**

*Monday, June 26<sup>th</sup> at 12:00pm PST*

- VI. Welcome & Opening Remarks
- VII. Panelist Remarks
  - a. Elaine Stefanowicz, Program Coordinator, County Accessible Community Advisory Committee
  - b. Katie Warden, JD, PhD, Director, Northwest ADA Center
  - c. Andrew Washburn, Civil Rights Program Specialist, Department of Justice, Civil Rights Division
  - d. John Day, Program Manager for Policy and Guidance, Federal Transit Administration, Office of Civil Rights
- VIII. Q & A
- IX. Public Comment
- X. Adjournment

### **Panel 3 Agenda**

*Tuesday, June 27th at 10:00am PST*

- I. Welcome & Opening Remarks
- II. Panelist Remarks
  - a. Gail Himes, ADA Coordinator, City of Tacoma
  - b. Krystal Monteros, Chair, Tacoma Area Commission on Disabilities
  - c. Dave Reynolds, Access 4 All Spokane
- III. Q & A
- IV. Public Comment
- V. Adjournment

### **Panel 4 Agenda**

*Tuesday, June 27th at 2:00pm PST*

- I. Welcome & Opening Remarks
- II. Panelist Remarks
  - a. Senator Mike Padden, Washington State Senate
  - b. Assemblymember Jo Anne Simon, New York State Assembly
  - c. Conrad Reynoldson, Attorney, Vice President and Founder, Washington Civil & Disability Advocate
  - d. Philip Stillman, Attorney, Stillman & Associates
- III. Q & A
- IV. Public Comment
- V. Adjournment

**Appendix B – Hearing Transcripts**

February 8, 2023, Online Panel Transcript (AKA Transcript I)

June 26, 2023, Online Panel Transcript (AKA Transcript II)

June 27, 2023, Online Panel Transcript (AKA Transcript III)

June 27, 2023, Online Panel Transcript (AKA Transcript IV)

Documents found at:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL1BoeXNpY2FsIEFjY2Vzc2libGl0eQ%3D%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL1BoeXNpY2FsIEFjY2Vzc2libGl0eQ%3D%3D)

**Appendix C – Written Testimony**

All written testimony can be found at:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL1BoeXNpY2FsIEFjY2Vzc2libG10eS9Xcm10dGVuIFRlc3RpbW9ueQ%3D%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dBL1BoeXNpY2FsIEFjY2Vzc2libG10eS9Xcm10dGVuIFRlc3RpbW9ueQ%3D%3D)

**Testimony submitted by:**

Leigh Spruce

Jayson Todd Morris

Anna Zivarts