IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-00807-REB-CBS

JULIANNA BARBER, by and through her next friend, MARCIA BARBER, et al.,

Plaintiffs,

v.

STATE OF COLORADO, DEPARTMENT OF REVENUE, et al.,

Defendants.

PLAINTIFFS' MOTION TO RECONSIDER AND TO ALTER JUDGMENT

Pursuant to Fed. R. Civ. P. 59(e), Plaintiffs, by and through their attorneys, hereby submit their Motion to Reconsider and to Alter Judgment. In its May 14, 2007, Order Granting Defendants' Motion for Summary Judgment, the Court made factual findings that are in significant dispute, and ultimately granted summary judgment to Defendant based on its holding that as a matter of law, Defendants did not act with deliberate indifference because "[a]n accommodation that would have required defendants to willfully ignore or violate the law is per se not reasonable." (Order Granting Defs.' Mot. for Summ. J. ("Order") at 4.)

As set forth below, and with all due respect, this holding was in manifest error and was based on an argument not made by Defendants. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504"), requires recipients of federal financial assistance to make reasonable accommodations for persons with disabilities. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 ("Title II") -- which both

parties and the Court agree "'impose[s] identical obligations' and, thus is construed similarly" to Section 504 (Order Granting in Part and Denying in Part Defs.' Mot. to Dismiss at 3)[1] -- applies a similar requirement to public entities. Numerous courts have found that public entities -- either under Section 504 or Title II -- are required to provide an otherwise reasonable accommodation even when doing so would be contrary to a statute, regulation or ordinance. Further, there is substantial evidence that Defendants knew that they were obligated to provide the requested accommodation regardless of whether it violated state law. Plaintiffs respectfully request that the Order and subsequent judgment be vacated, and that a trial date in this case be set.

Background

Colo. Rev. Stat. § 42-2-106(b), as it read in 2004, explicitly prohibited anyone other than a licensed parent, stepparent or guardian from supervising the driving of a minor with an instruction permit. See Colo. Rev. Stat. § 42-2-106(b) (2004). As a result, Plaintiff Marcia Barber, who is blind, contacted Steve Tool, then the Senior Director for the Colorado Division of Motor Vehicles, and requested the accommodation of designating her father to supervise her daughter Julianna's driving. (See Pls.' Mem. in Opp'n to Defs.' Mot. for Summ. J. ("Pls.' Opp'n") at 2.)[2]

Mr. Tool thought that this was a reasonable request, and he twice consulted with the Attorney General's Office to see if Ms. Barber's request could be granted. (Id. at 2-

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[1] See also Mem. Br. in Support of Defs.' Mot. to Dismiss at 5-6.

[2] All citations to Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment incorporate by reference all record cites on the cited pages.

3.) On both occasions, he was told that the requested accommodation would be denied. (Id.)

Ms. Barber subsequently spoke with Colorado Attorney General John Suthers. There is a significant factual dispute concerning what was said during that call. Defendants claim that Mr. Suthers offered Ms. Barber the option of signing a "limited delegation of authority" that would not relinquish parental rights. (Mem. Br. in Support of Defs.' Mot. for Summ. J. ("Defs.' Br.") at 6.) Ms. Barber denies that Mr. Suthers made this offer (Pls.' Opp'n at 4), and Plaintiffs submitted substantial evidence that contradicts Defendants' characterization of the call, including:

- a letter from the Attorney General's Office written before the call, denying Ms. Barber's request, and stating that only a guardian, defined as "a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person," could supervise Julianna's driving (id. at 3);
- testimony by Mr. Suthers that he did not "know of a guardianship, a true guardianship, other than a formal guardianship," (id. at 4);
- a letter written by Ms. Barber to Mr. Suthers immediately after the call, to which Mr. Suthers did not respond, repeating her request that he "[a]llow[ ] [her daughter] to drive with a parent-delegate such as an uncle or grandfather" (id. at 4-5); and
- a subsequent letter from the Attorney General's Office that unequivocally stated that, under section 42-2-106(b), it is critical that young drivers be

under the direct and immediate supervision of someone with "full parental authority," (id. at 5).

In its Order, the Court found, as a factual matter, that "Attorney General John Suthers . . . proposed several options that would have allowed Julianna's grandfather to supervise her driving until such time as the statute could be amended." (Order at 4.) The Court granted summary judgment to Defendants on the ground that they did not act with deliberate indifference because "[a]n accommodation that would have required defendants to willfully ignore or violate the law is per se not reasonable." (Id. at 4.)

Defendants in their summary judgment brief did not make this argument. Indeed, the Defendants did not argue that the requested accommodation was unreasonable for any reason. (See generally Defs.' Br. at 11-19.)

Had Defendants argued that they did not act with deliberate indifference because the accommodation was per se unreasonable, Plaintiffs would have demonstrated as a matter of law that an accommodation that is contrary to state law is not per se unreasonable, as set forth below. Further, Plaintiffs would have submitted and argued substantial evidence demonstrating that Defendants knew at the time that they denied the accommodation that the accommodation was not unreasonable simply because it would have required Defendants to violate section 42-2-106(b).

First, Mr. Suthers testified in his deposition that he knew that under the Supremacy Clause, there are times when "federal law trumps state law," and that the ADA requires states to provide reasonable modifications of their policies. (Dep. of John Suthers at 11-12, Exhibit 1 hereto.) Indeed, it is reasonable for the people of Colorado

to expect their attorney general and his staff to know this basic principle of constitutional law.

Further, at the time of her request, Ms. Barber, and later her attorney Mr. Mendez, repeatedly informed Defendants that they were required by the ADA to provide the accommodation despite the provisions of section 42-2-106(b), and they provided Defendants with legal authority demonstrating that this was the case.

By letter dated December 2, 2004, Ms. Barber informed Mr. Tool that under the ADA, "'[a] public entity must reasonably modify its policies, practices or procedures to avoid discrimination.'" (Stipulations ¶¶ 20-21 and attached document P0003 (Pls.' Opp'n Ex. 1).) She attached section II-3.6100 of the Department of Justice's Technical Assistance Manual for Title II, which provides two examples in which accommodations are required even though they contradict existing statutes or ordinances.

After Ms. Barber's telephone call with Mr. Suthers, she sent him and Robert Dodd (an attorney with the Attorney General's Office) a letter dated January 25, 2005 informing them that she had spoken with a representative of the Department of Justice, who told her that "the ADA CAN override state statutes . . ." (Stipulations ¶¶ 22-23 and attached document P0005 (emphasis in original).)

On February 3,2005, Mr. Mendez sent a letter to Mr. Dodd stating that the ADA required Defendants to provide a reasonable modification of the requirements of section 42-2-106(b). (Id. ¶¶ 24-25 and attached document P0006-10.) Mr. Mendez also cited the section from the Technical Assistance Manual cited above. (Id.)

Argument

I. The Standards of Rule 59(e) Are Met.

A motion for reconsideration filed within ten days of an order granting summary judgment is treated as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). Comm. for the First Amendment v. Campbell, 962 F.2d 1517, 1523 (10th Cir. 1992). Proper grounds for granting such a motion include correcting manifest errors of law, id., or that "the court has patently misunderstood a party, has made a decision outside the adversarial issues presented, [or] has made a mistake not of reasoning but of apprehension . . ." Gregg v. Am. Quasar Petroleum Co., 840 F. Supp. 1394, 1401 (D. Colo. 1991).

Rule 59(e) applies here for three reasons. First, to the extent that the Court relied on its factual determination that "Attorney General John Suthers . . . proposed several options that would have allowed Julianna's grandfather to supervise her driving until such time as the statute could be amended" (Order at 4), that is a disputed issue of fact and under Fed. R. Civ. P. 56, it was a manifest error of law to make that factual determination. Second, the legal basis for the Court's Order -- that Ms. Barber's requested accommodation was unreasonable -- was not argued by the parties and thus "was outside the adversarial issues presented." Finally, as demonstrated below, the holding that "[a]n accommodation that would have required defendants to willfully ignore or violate the law is per se not reasonable" constitutes a manifest error of law.

II. There Are Disputed Issues of Fact as to What Mr. Suthers Said During His Call with Ms. Barber.

In its Order, the Court determined that, during his call with Ms. Barber, Mr.

Suthers "proposed several options that would have allowed Julianna's grandfather to supervise her driving until such time as the statute could be amended." (Id. at 4.) As set forth above, however, Ms. Barber denies that Mr. Suthers made suggestions that would not have required her to give up parental rights. There is substantial evidence to support this contention, including letters from the Attorney General's Office, written both before and after the call with Mr. Suthers, stating that only someone with full parental authority could supervise Julianna's driving. (See Pls.' Opp'n at 3-5.)

It is unclear to Plaintiffs whether the Court relied on its determination concerning Mr. Suthers' alleged proposals in granting summary judgment to the Defendants. To the extent that it did so, that was manifestly erroneous under Rule 56 because there are material issues of disputed fact as to what Mr. Suthers did, or did not, propose.

III. Ms. Barber's Requested Accommodation Was Not Per Se Unreasonable Because It Required The Defendants To Act In Violation Of Colo. Rev. Stat. § 42-2-106(b).

Respectfully, this Court's determination that "[a]n accommodation that would have required defendants to willfully ignore or violate the law is per se not reasonable" (Order at 4), constitutes a manifest error of law.

A. Interpretation and Enforcement of Colo. Rev. Stat. § 42-2-106(b) is a Program or Activity of Defendants, Covered by Section 504.

Section 504 applies to any program or activity receiving federal financial assistance. 29 U.S.C. § 794(a). "Program or activity" is defined to include "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or local government." Id. § 794(b)(1)(A). Similarly, Title II -- which "impose[s] identical obligations" to Section 504 -- applies to "anything a public

entity does." "Preamble to Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. pt. 35 app. A at 517 (2002). Both statutes thus apply to the interpretation and enforcement of state and local laws, regulations, and ordinances. Accordingly, those statutes' requirement that public entities must make reasonable accommodations for individuals with disabilities[3] applies to the enforcement of state statutes such as Colo. Rev. Stat. § 42-2-106(b).

For example, in Innovative Health Systems, Inc. v. City of White Plains, the First Circuit addressed the question whether municipal zoning was covered by Section 504 and Title II. 117 F.3d 37, 44-45 (2d Cir. 1997) (vacated on other grounds). It held that the term "activity" in Section 504 means a "natural or normal function or operation." Id. at 44 (internal quotations omitted). It then relied on the precise section from the Technical Assistance Manual that Ms. Barber cited to Mr. Tool and Mr. Suthers in affirming the district court's conclusion that "[z]oning enforcement actions, including the enactment of ordinances, and any administrative processes, hearings, and decisions by zoning boards, fall squarely within the category of 'policies, practices, or procedures' mentioned in the regulations." Innovative Health Sys., Inc. v. City of White Plains, 931 F. Supp. 222, 233 (S.D.N.Y. 1996); see Innovative Health, 117 F.3d at 45-46 (citing Technical Assistance Manual § II-3.6100). See also, e.g., Crowder v. Kitagawa, 81 F.3d 1480, 1485 (9th Cir. 1996) (holding that a Hawai'i statute governing quarantine of animals entering the state was a policy, practice or procedure governed by Title II);

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[3] See, e.g., Chaffin v. Kan. State Fair Bd., 348 F.3d 850, 857 (10th Cir. 2003) (holding reasonable accommodations required by Section 504); 28 C.F.R. § 35.130(b)(7) (Title II regulations).

Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Res., 19 F. Supp. 2d 567, 573-74 (N.D. W. Va. 1998) (holding that "the law and the regulations [of West Virginia] qualify as an 'activity' within the scope of the ADA."); Heather K. v. City of Mallard, 946 F. Supp. 1373, 1387 (N.D. Iowa 1996) (holding that "the City's regulation of open burning is a program, service, activity, or benefit for and on behalf of its citizens that is within the scope of Title II of the ADA.").

Interpretation and enforcement of Colo. Rev. Stat. § 42-2-106(b) is a "natural or normal function or operation" of Defendants Division of Motor Vehicles and, thereby, the Department of Revenue of which it is a part. These acts are therefore programs or activities of Defendants, covered by Section 504.

B. Section 504 requires Defendants to make Reasonable Accommodations for Individuals with Disabilities in the Interpretation and Enforcement of Colo. Rev. Stat. § 42-2-106(b).

Because the interpretation and enforcement of Colo. Rev. Stat. § 42-2-106(b) is a program or activity of a recipient of federal funding, covered by Section 504, it is subject to that statute's reasonable accommodation requirement. There is substantial and unanimous support for the proposition that a public entity is required to provide an otherwise reasonable accommodation even when doing so would be contrary to a regulation, ordinance or statute.

For example, in Fisher v. Oklahoma Health Care Authority, 335 F.3d 1175, 1177 (10th Cir. 2003), the Tenth Circuit addressed whether the State of Oklahoma would be required to make reasonable accommodations in its Medicaid prescription regulations. It concluded that the reasonableness of the requested accommodation was a question

of fact and reversed the trial court's summary judgment in favor of the state. Id. at 1184.

In Helen L. v. DiDario. 46 F.3d 325, 327 (3d Cir. 1995), a disabled nursing home resident argued that the Department of Public Welfare (DPW) violated Title II by requiring that the resident receive services in a nursing home rather than through an attendant care program in her own home. DPW contended that the programs were funded on two separate lines of its budget, that the state constitution prohibited it from moving funds from one line to another, and that, as a result, the requested accommodation was unreasonable. Id. at 338. The court rejected this argument:

> It is not now up to us to invent a funding mechanism whereby the Commonwealth can properly finance its nursing home and attendant care programs. However, the ADA applies to the General Assembly of Pennsylvania, and not just to DPW. DPW can not rely upon a funding mechanism of the General Assembly to justify administering its attendant care program in a manner that discriminates and then argue that it can not comply with the ADA without fundamentally altering its program.

Id.

Similarly, in Crowder, a class of blind people who used guide dogs challenged Hawai'i law that requiring quarantine for all animals entering the state. 81 F.3d at 1481-82. The plaintiffs proposed modifications to the quarantine requirement, but the district court granted summary judgment holding that it could not consider the proposed modifications because the state legislature had already considered the issue. See id. at 1485. The Ninth Circuit rejected this reasoning:

> [I]n virtually all controversies involving the ADA and state policies that discriminate against disabled persons, courts will be faced with legislative (or executive agency) deliberation over relevant statutes, rules and regulations.

> The court's obligation under the ADA and accompanying regulations is to ensure that the decision reached by the state authority is appropriate under the law and in light of proposed alternatives. Otherwise, any state could adopt requirements imposing unreasonable obstacles to the disabled, and when haled into court could evade the antidiscrimination mandate of the ADA merely by explaining that the state authority considered possible modifications and rejected them.
>
> We are mindful of the general principle that courts will not second-guess the public health and safety decisions of state legislatures acting within their traditional police powers. However, when Congress has passed antidiscrimination laws such as the ADA which require reasonable modifications to public health and safety policies, it is incumbent upon the courts to insure that the mandate of federal law is achieved.

Id. (citation omitted). The court reversed the grant of summary judgment, holding that there were triable issues of fact concerning the reasonableness of the plaintiffs' proposed modifications. Id. at 1485-86.

The plaintiffs in Innovative Health Systems, a substance abuse treatment program and its clients, brought suit under Section 504 and Title II challenging the defendants' refusal to permit the program to relocate to a different zoning district. 931 F. Supp. at 229-30. The defendants argued that the plaintiffs' request to relocate was unreasonable because doing so would violate the city zoning ordinance. Id. at 239. The court held that notwithstanding the zoning ordinance, "[w]hether an accommodation or modification allowing [plaintiffs' requested relocation] is 'reasonable' is clearly a question of fact that cannot be resolved on this motion to dismiss for failure to state a claim." Id., aff'd in pertinent part 117 F.3d at 44-45.

Finally, in Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775, 777 (7th Cir. 2002), the plaintiffs brought suit under Title II (among other statutes) for the defendant's denial of a zoning variance to operate a community living facility.

The variance request was a "'flagrant violation'" of a city code prohibiting a community living facility from being located with 2,500 feet of another such facility. Id. at 780. The Seventh Circuit affirmed the district court's grant of partial summary judgment to the plaintiffs, finding as a matter of law and undisputed fact that the zoning variance -- the accommodation -- was reasonable despite the city code provision. Id. at 787-88. See also, e.g., Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown, 294 F.3d 35, 53 (2d Cir. 2002) ("[A] proper reasonable accommodation claim might assert that the zoning authority should have waived or modified its rule against elevators in residential dwellings to permit those who need them to use them and thereby have full access to and enjoyment of residences there."); Buckhannon, 19 F. Supp. 2d at 575 (holding that there was a fact issue as to whether allowing a group home for persons with disabilities to operate was a reasonable accommodation even though doing so would violate state laws and regulations requiring that residents possess the ability to remove themselves, physically, from situations involving imminent danger.); Trovato v. City of Manchester, 992 F. Supp. 493, 495-96, 499 (D.N.H. 1997) (holding as a matter of law that allowing the plaintiffs to build a paved parking space in front of their home was reasonable under Section 504 even though it violated a zoning ordinance's setback requirements.).

These cases demonstrate that Section 504's and Title II's reasonable accommodation mandates apply to a public entity's interpretation and enforcement of local and state regulations and statutes, and that public entities may be required to provide accommodations that might otherwise violate these regulations or statutes.

In this case, Colo. Rev. Stat. § 42-2-106(b), as it read in 2004, explicitly

prohibited anyone other than a licensed parent, stepparent or guardian from supervising the driving of a minor with an instruction permit. Colo. Rev. Stat. § 42-2-106(b) (2004). As a result, Ms. Barber requested the accommodation of designating her father to supervise her daughter's driving without making him Julianna's guardian.

This Court held that the requested accommodation was per se unreasonable because it would have required the Defendants to ignore or violate Colo. Rev. Stat. § 42-2-106(b). (Order at 4.) With all due respect, as demonstrated by the authorities cited above, this holding constituted manifest error. Section 504 requires public entities to make reasonable accommodations in their enforcement of local and state regulations and laws. An accommodation is thus not per se unreasonable simply because it contradicts or violates such laws or regulations.

This result is also dictated by the Supremacy Clause. Under the Supremacy Clause, a federal law preempts a state law "where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." California Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 581 (1987) (citations omitted). Numerous courts have held that Section 504 and Title II preempt state laws. See, e.g., Brinn v. Tidewater Transp. Dist. Comm'n, 242 F.3d 227, 232-34 (4th Cir. 2001) (holding that Supremacy Clause dictated that prevailing governmental plaintiff could recover under Section 504's attorneys' fee provision despite the fact that a state statute explicitly prohibited such recovery); South Dakota Farm Bureau, Inc. v. Hazeltine, 202 F. Supp. 2d 1020, 1042-43 (D.S.D. 2002) (holding that Title II preempted provision of state constitution where it was "impossible for the defendants to enforce and comply

with" the state constitution without violating Title II); Galusha v. New York State Dep't of Envtl. Conservation, 27 F. Supp. 2d 117, 124 (N.D.N.Y. 1998) (holding that where there was a possible inconsistency between Title II and state law, Title II trumped); Green v. Housing Auth., 994 F. Supp. 1253, 1257 (D. Or. 1998) (holding that Title II preempted Oregon state law concerning hearing ear dogs).

IV. There Are Genuine Issues Of Material Facts As To Whether Defendants Acted With Deliberate Indifference.

In order to recover damages under Section 504, Plaintiffs must demonstrate that Defendants' conduct was intentional. Intentional conduct includes "deliberate indifference to the strong likelihood that pursuit of [Defendants'] questioned policies will likely result in a violation of federally protected rights." Powers v. MJB Acquisition Corp., 184 F.3d 1147, 1153 (10th Cir. 1999). In the context of a request for reasonable accommodation, intentional conduct occurs when the plaintiff "alerted the public entity to his need for accommodation," and the defendant's failure to act was "more than negligent, and involve[d] an element of deliberateness." Duvall v. County of Kitsap, 260 F.3d 1124, 1139 (9th Cir. 2001); see also Love v. Westville Corr. Ctr., 103 F.3d 558, 560 (7th Cir. 1996).

Here there exists a triable issue of fact as to whether Defendants' denial of Ms. Barber's requested accommodation was made with deliberate indifference. Mr. Suthers knew that where federal and state laws conflict, federal law trumps. Defendants were informed repeatedly by Ms. Barber and her attorney of their obligation under federal law to permit the requested accommodation, and were provided with legal authorities demonstrating this obligation. A reasonable jury could find that the Defendants'

continued refusal to permit the accommodation constituted deliberate indifference.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court grant Plaintiffs' motion for reconsideration, deny Defendants' motion for summary judgment and set the case for trial.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1A

The undersigned certifies that she sent an email to counsel for Defendants explaining the grounds for the present motion and asking whether Defendants would oppose. Defendants' counsel stated that Defendants oppose this motion.

Respectfully submitted,

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Dated: May 29, 2007

Certificate of Service

I hereby certify that on May 29, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email address:

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 05-CV-807-REB-CBS
JULIANNA BARBER, by and through her next friend, Marcia Barber; MADELINE BARBER, by and through her next friend, Marcia Barber; MARCIA BARBER; COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit corporation; and AMERICAN COUNCIL OF THE BLIND OF COLORADO, INC., a Colorado non-profit corporation,

Plaintiffs,

v.

STATE OF COLORADO, DEPARTMENT OF REVENUE; STATE OF COLORADO, DEPARTMENT OF REVENUE, DIVISION OF MOTOR VEHICLES; M. MICHAEL COOKE, in her official capacity as Executive Director of the Colorado Department of Revenue; and JOAN VECCHI, in her official capacity as Senior Director of the Colorado Division of Motor Vehicles,

Defendants.

DEPOSITION OF JOHN W. SUTHERS

PURSUANT TO NOTICE, the above-entitled deposition was taken on behalf of the Plaintiffs at the Attorney General's, 1525 Sherman Street, 5th Floor, Denver, Colorado, on August 11, 2006, at 10:03 a.m., before Dawn E. Eastman (Calderwood), Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public.

Q. Would the filing of the application be with a court?

A. In a formal guardianship, yes.

Q. Is there something other than a formal guardianship, to your knowledge?

A. Well, I think I know what you're driving at. And we'll need to discuss a conversation that I had with your client.

But I don't know of a guardianship, a true guardianship, other than a formal guardianship. But I certainly think there are ways to empower people for a limited purpose without going to court.

Q. All right. You are aware that the United States Constitution has a provision called the Supremacy Clause?

A. Yes.

Q. Generally speaking, under that clause, where a federal law conflicts with a state law, the federal law trumps the state law?

A. If there's a direct conflict, generally speaking, the Supremacy Clause would indicate -- if it's a matter of proper federal authority -- it would indicate that the federal law trumps the state law, that's correct.

Q. Do you know what the Americans with

Disabilities Act is?

A. Yes, I do.

Q. That's a federal law?

A. Yes.

Q. You would agree that the ADA -- strike that.

You know when I refer to the "ADA," I'm talking about the Americans with Disabilities Act?

A. Yes.

Q. And you would agree that's an important civil rights law?

A. Yes.

Q. You understand that under some circumstances, the ADA requires states to provide reasonable modifications of policies to persons with disabilities?

A. Yes.

Q. And you'd also agree that it's important that states comply with the ADA?

A. Yes.

Q. How did you first learn of the situation involving the Barbers?

A. I would think that I was handed a telephone message from someone in Colorado Springs,