

## **WACDA’S MARINERS APPEAL**

By Sierra Paola

Ninth Circuit oral arguments for WACDA’s appeal with the Disability Rights Law Center of Landis, et al v. WA State MLB Stadium PFD, et al. are set to take place virtually the afternoon of December 10th.

WACDA Founder, Conrad Reynoldson, authored a piece about the case which was featured in the most recent installment of the Federal Bar Association Civil Rights Law Section Newsletter. The piece, entitled “Seattle Baseball Fans Stuck at the ‘Back of the Bus’ When it Comes to Wheelchair Accessible Seats”, spelled out the inconsistencies in the trial court’s decision which found T-Mobile Park to be ADA compliant despite the fact that the stadium had “significantly limited seating choices and that the lion’s share of seats



*WACDA appeals the court’s decision that the Mariners’s home stadium is ADA compliant.*

available to [wheelchair users] at the Park are in less than ideal locations.”

In the article, Reynoldson recounts general guidelines followed by most courts in accessibility cases which is that the Americans with Disabilities Act requires a comparable experience events at assembly areas for wheelchair users as for members of the general public. In the Mariners appeal, the appellants allege that T-Mobile Park’s lack of comparable sightlines prevents them and other wheelchair users from receiving a comparable experience as other patrons. Wheelchair users also have fewer options for seating loca-

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*The 9th Circuit Court of Appeals will begin hearing oral arguments in December.*

tions and prices. In fact, there are only eight total wheelchair accessible seats anywhere close to the field in T-Mobile Park.

The District Court’s finding that the seating arrangement at T-Mobile Park is sufficiently dispersed is inconsistent with the findings of other courts regarding assembly area accessibility. Other courts have made it clear that seating arrangements that result in tokenism and ghettoization are not ADA compliant. In other words, it is unacceptable under the ADA to designate a few wheelchair accessible seats in better seating areas while clustering the rest in the last row or other undesirable areas. That this is exactly what T-Mobile has done with its wheelchair accessible seating, which is why WACDA is bringing this appeal. Stay tuned for further information on how to watch the oral arguments live. Otherwise oral arguments are available to watch afterward on the Ninth Circuit’s YouTube channel here.

## **ROQUE V. SHA** By Rachel Pollard

Plaintiff Tony Roque is quadriplegic and lives in an apartment owned and operated by the Seattle Housing Authority (SHA). Mr. Roque filed a lawsuit against SHA on April 30, 2020, claiming that SHA violated the Fair Housing Act by refusing to grant him a reasonable accommodation, and that SHA illegally and intentionally discriminated against him on the basis of his disability.

Mr. Roque relies on an in-home caregiver to assist him in numerous activities of daily living. The apartment is located in a busy urban neighborhood where on-street parking is not consistently available. The streets are located within in a zone which limits street parking to two hours, and Mr. Roque’s caregivers must work with him in the apartment well beyond the parking time limits. One of Mr. Roque’s caregivers began parking in the apartment’s parking garage, which is restricted to residents and building employees. She was able to park in the garage without incident until March 4, 2020, when SHA towed her car. As a result, Mr. Roque emailed his building property manager and requested per-



*The Raven Terrace is a public housing building in the Yesler community.*

mission for his caregiver to continue parking in the garage. SHA treated his request as a request for a reasonable accommodation and forwarded it to the Housing Authority’s ADA Committee. SHA denied Mr. Roque’s request.

Public entities, such as Seattle Housing Authority, are required to make reasonable modifications in their policies and practices to avoid discrimination on the basis of disability.

On June 12, 2020, The US Department of Justice Civil Rights Division submitted a Statement of Interest on this case. The Statement addresses the Court’s Order to Show Cause on whether the Court should convert its Temporary Restraining Order into a preliminary injunction. The Statement of Interest addressed two legal questions raised by SHA in opposition to Mr. Roque’s reasonable accommodation request: 1) whether a housing provider can ever be required to provide a parking space for the caregiver of a resident with a disability as a reasonable accommodation under the FHA; and 2) whether a housing provider may deny a requested accommodation solely because it might provide a benefit to a resident with a disability that is not available to other residents.

The DOJ has found that under the FHA, a parking space for a caregiver of a resident with a disability may be a necessary accommodation under certain circumstances. Additionally, the Statement of Interest states that a reasonable accommodation may not be denied solely because it would provide Mr. Roque with a benefit not available to other residents.

WACDA, on behalf of Mr. Roque, moved for a Preliminary Injunction on August 25, 2020 to ensure that his caregivers will be able to park in the garage at minimum for the remainder of the case. The parties currently await the decision on



*The Americans with Disabilities Act (ADA) already covers website accessibility.*

the Preliminary Injunction. Trial is set to take place on September 13, 2021.

## **ONLINE ACCESSIBILITY ACT** By Sierra Paola

Disability rights advocates must be wary of proposed changes to existing disability rights legal protections, as often these amendments are thinly veiled attempts by lobbyists to strip people with disabilities of their rights under the law and conferred to them by courts. The Online Accessibility Act H.R. 8478 is no exception. This bill, which seems on its surface to even be adding rights for individuals with disabilities in regard to online accessibility, actually makes it much for difficult for private plaintiffs to assert their rights and bring actions for online inaccessibility in court.

The Online Accessibility Act adopts the doctrine of “exhaustion of administrative remedies” which means that no individual may bring a claim for violation of the statute in court until they have complied with all the agency reporting requirements and processes. This bill would require people with disabilities who have a complaint regarding online

accessibility to first give notice to the owner of the website or application and then be forced to wait an additional 90 days file a complaint with the Department of Justice. The Department of Justice then gets 90 days to file the complaint with the Attorney General, who in turn receives 180 days to investigate. Only after the completion of the Attorney General's investigation may the individual file a complaint in court. In all, a person with a disability would have to wait up to 360 days from the moment they face discrimination online until they could file suit in court. Administrative remedy requirements like this have chilling effects on private civil rights enforcement and allows the inaccessibility and discrimination to continue for nearly a year longer than if the individual could file their complaint in court from the outset as they currently can.

Additionally, most federal circuit courts have found that the Americans with Disabilities Act (ADA) already requires web accessibility. This bill would only apply to a very small subsection of technology. For example, it does not provide a cause of action against inaccessible workplace software, kiosks, websites and applications used by employees in their jobs. Because this law is so narrow it leaves many current and future technological advancements immune from accessibility requirements under the ADA.

In summary, this bill is not needed and would only serve to impair the right to accessible technology that is essential to our modern lives. If you want to preserve the rights of all individuals to access the internet and other technologies regardless of disability, we urge you to write to your Representative in Congress and tell them why they should not support H.R. 8478.



*The proposed bill would limit individuals' ability to bring online accessibility action in court.*

## **LUNCH 'N' LEARN**

By Rachel Pollard

As part of WACDA's initiative to educate the public and advocate for disability rights, legal interns Sierra and Rachel uploaded several videos this year known as "Lunch 'n' Learns." Visit our YouTube channel to learn more about specific laws and policies as they relate to individuals with disabilities.

### **Assembly Area: 2010 ADA Standards**

This presentation discusses the Department of Justice guidelines for Title II and Title III of the Americans with Disabilities Act. These standards set forth the requirements for newly designed, constructed, or altered places of public accommodation, such as stadiums, movie theaters, and concert venues. Learn about what constitutes a place of public accommodation and the regulations they must abide by.

## **Effective Communication & Web Accessibility**

Nowadays, web access is essential as more companies have come to rely on web and other digital services. This shift means consumers are moving away from buying things in person or over the phone to conducting business digitally. Unfortunately, the rapid development of the internet and technology has meant that many websites and apps have not been designed with people with disability accessibility in mind. This presentation will dive into the various ways in which people with disabilities are excluded from this major marketplace shift, and how to break down these barriers by increasing access to these services for people with disabilities.

## **FHAA**

Fair Housing Amendments Act or FHAA was passed in 1988 to significantly expand the scope of the original legislation and strengthen its enforcement mechanisms. The FHAA now prohibits discrimination on the basis of race, religion, color, sex or national origin as well as persons with disabilities and families with children in housing sales, rentals, or financing. This presentation covers how the FHAA works, the types of housing facilities covered, and the key prohibited actions.

## **HAPPY HOLIDAYS**

By Conrad Reynoldson, Founder and VP

This year has not been what any of us expected and has provided us many new challenges to overcome. As the holidays approach, we are reminded just how different this year will be. Celebrations of love and joy will look unlike they ever have before for so many people around the world. While gatherings to share in the light of this season may be going virtual this year, this will not be the way of things forever. Take time this



*Wearing a mask, staying home, and social distancing are the best ways to spread cheer this Christmas season.*

holiday season to reflect on the year to come and how we can all do our best to spread compassion - not the virus - by wearing a mask and social distancing. Instead of visiting family, stay home and create new traditions in the spirit of caring and generosity such as donating to charities whose mission you believe in, like Washington Civil & Disability Advocate. This year, let us put technology to its best use by gathering and giving together!

No matter how you celebrate this year, may you find love, kindness, and joy surround you. We are sending the warmest wishes to you and your families from everyone here at Washington Civil & Disability Advocate. Merry Christmas and happy holidays!

## WACDA'S NEWEST GUARDIAN

By WACDA Staff

Savannah Almond is the newest member of the WACDA team and is a budding young legal mind. Before joining the WACDA team, Savannah was a student of the Southern Methodist University Paralegal Studies program in Dallas, Texas. She graduated Cum Laude from The University of Texas at Arlington in 2019 with a BA in Interdisciplinary Studies and dual minors in Business Administration/German Language. As a person with a disability, Savannah understands firsthand how important equal rights and equal opportunities can be. When she is not busy supporting the WACDA legal team, she enjoys sewing, cooking, gardening, and rock climbing.



### About WACDA:

Washington Civil & Disability Advocate is guided by the simple but powerful proposition that all lives have equal dignity and worth. As a result, this organization is committed to providing legal services to people with disabilities without charging attorney fees. Washington Civil & Disability Advocate is committed to an “all of the above” approach to increasing accessibility and inclusion in Washington state and, in addition to litigation, assists with disability education and awareness efforts, including informing the disability community on disability rights.

For further information, to be placed on the WACDA mailing list, request this newsletter or other materials in an alternate format, or make comments or suggestions about WACDA publications or web pages, contact us at:



4115 Roosevelt Way NE  
Suite B  
Seattle, WA 98105  
office@wacda.com  
www.wacda.com  
(206) 428-3558

Founder and VP: Conrad Reynoldson