IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-01814-ODS-MJW

DEBBIE ULIBARRI, *et al.*,

Plaintiffs,

v.

CITY & COUNTY OF DENVER,

Defendant.

PLAINTIFFS' SUGGESTIONS RE:
ORGANIZATIONAL AND ASSOCIATIONAL STANDING

In compliance with this Court's order of December 22, 2011 ("December 22 Order," ECF 352), Plaintiffs, through their counsel, hereby submit their Suggestions re: Organizational and Associational Standing.

BACKGROUND

Plaintiffs Colorado Cross Disability Coalition ("CCDC") and Colorado Association of the Deaf ("CAD") bring claims against Defendant the City and County of Denver (the "City") under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* ("ADA" or "Title II"), and section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (the "Rehab Act"). Both entities assert associational standing to bring claims on behalf of their members, Second Amd. and Supplemental Cmplt, ECF 48, ¶¶ 83, 92-95 (CCDC), 96, 105-108 (CAD), as well as organizational standing to assert claims on their own behalf, *id*. ¶¶ 83-91 (CCDC), 96-104 (CAD).

ARGUMENT

I. CCDC and CAD Have Associational Standing

This Court was correct in the December 22 Order: CCDC and CAD have associational standing. *See id.* at 3 n.4. To demonstrate such standing, an organization must show: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *Roe No. 2 v. Ogden*, 253 F.3d 1225, 1230 (10th Cir. 2001) (quoting *Hunt*); *Colo. Cross-Disability Coal. v. Abercrombie & Fitch Co.*, 2011 WL 2173713, at *6 (D. Colo. June 2, 2011) (holding that CCDC had demonstrated associational standing under Title III of the ADA).

Here, Plaintiffs will present evidence that individual Plaintiffs Sarah Burke and Roger Krebs are members of CCDC and CAD, and that both have standing to sue in their own right. It is not necessary that all of the organizations' members be affected or stand to benefit from the requested injunction. *See Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am. v. Brock*, 477 U.S. 274, 284 (1986) (holding that union had associational standing because "among [its] members" were many affected individuals); *see also Roe No. 2*, 253 F.3d at 1230 (holding that entity had associational standing when one member had demonstrated standing). Plaintiffs will also present evidence that the interests that both organizations seek to protect through this lawsuit are germane to their respective purposes of promoting the rights of people with disabilities (in the case of CCDC) and of deaf people specifically (in the case of CAD). *See, e.g.,* Reiskin Decl. ¶ 4-5 (ECF 229-59); Pfau Decl. ¶ 4-5 (ECF 229-60).

Here, CCDC and CAD seek an injunction requiring the City to implement policies to provide effective communication to deaf and hard of hearing detainees and to properly accommodate detainees with diabetes. This injunctive relief will not require the participation of each individual member. *See Colo. Cross-Disability Coal.*, 2011 WL 2173713, at *6 (holding that claim for injunctive relief under Title III of the ADA would not require individual participation of CCDC's members). When an association "seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." *Warth v. Seldin*, 422 U.S. 490, 515 (1975). Accordingly, many cases have held that entities have associational standing to seek injunctive relief designed to ensure that those of their members who are injured will benefit. *See, e.g., Neighborhood Action Coal. v. City of Canton, Ohio*, 882 F.2d 1012, 1017 (6th Cir. 1989) (holding that association had standing to see injunctive relief "because any injunctive relief granted would inure to the benefit of all members of the association actually injured."); *Ability Ctr. of Greater Toledo v. Lumpkin*, 2011 WL 767878, at *10-11 (N.D. Ohio Feb. 28, 2011) (holding that association had standing because the requested injunction would benefit its constituents); *E. Paralyzed Veterans Ass'n, Inc. v. Veterans' Admin.*, 762 F. Supp. 539, 546 (S.D. N.Y. 1991) (holding that association had standing where it challenged systemic failures in policies and practices).

This Court was thus correct that associational standing is a path that justifies injunctive relief in this case. ECF 352 at 3 n.4.[1] It is also one that, as the Supreme Court has explained,

[1] This Court stated that associational standing "is probably the only path . . . to (continued...)

has advantages both to the individuals represented and "to the judicial system as a whole." *Brock*, 477 U.S. at 289.

> [A]n association suing to vindicate the interests of its members can draw upon a pre-existing reservoir of expertise and capital. "Besides financial resources, organizations often have specialized expertise and research resources relating to the subject matter of the lawsuit that individual plaintiffs lack." These resources can assist both courts and plaintiffs.

Id. (internal quotations omitted).

II. CCDC and CAD Have Organizational Standing.

A. Entities May Have Standing to Assert Their Own Interests -- and Not Just Those of Their Members -- under Title II and The Rehab Act.

As this Court noted in its December 22 Order, the Supreme Court has held that organizations may have standing to assert their own interests under the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 *et seq.*, when they can show that they have been harmed by the challenged practice. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), *cited in* ECF 352 at 2. This Court distinguished *Havens*, however, on the ground that the FHA "was not limited to persons, so organizations and entities were Congressionally-permitted grievants. In contrast, the Americans with Disabilities Act . . . protects qualified persons with disabilities, and provides remedies for aggrieved 'persons.'" *Id.* at 2 (citing *Havens*, 455 U.S. at 372-78).

In the December 22 Order, this Court invited Plaintiffs to submit additional briefing, noting that Plaintiffs had not previously presented the Court with cases demonstrating that the organizational plaintiffs had organizational standing. ECF 352 at 3, 4-5. Plaintiffs respectfully

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[1](...continued)
justify an injunction." Plaintiffs respectfully disagree that it is the only path. *See infra* at 4-9.

submit that the cases below demonstrate that organizational standing under *Havens* may extend to entities bringing claims under Title II and the Rehab Act for their own injuries.

While this Court is correct that the substantive provisions of Title II and the Rehab Act protect "qualified individual[s] with . . . disabilit[ies]," 42 U.S.C. § 12132; 29 U.S.C. § 794(a), *see* ECF 352 at 2, it is the language of those statutes' enforcement provisions on which courts rely in holding that organizational standing is available. Crucially, the language of the enforcement provisions of Title II and the Rehab Act is very similar to that of the FHA: all three extend a private right of action to "persons." The language of the FHA and the Rehab Act is almost identical, granting rights of action to "an aggrieved person" and "any person aggrieved," respectively. 42 U.S.C. § 3613(a)(1)(A); 29 U.S.C. § 794a(a)(2). Under Title II, such rights are granted to "any person alleging discrimination." 42 U.S.C. § 12133. In each case, "person" has been widely interpreted to include entities as well as human beings.

A number of cases have explained that "the enforcement provisions of the ADA and [the Rehab Act] do not limit relief to 'qualified individuals with disabilities.' Rather, the ADA grants the right to relief to 'any person alleging discrimination on the basis of disability,' . . . and the [Rehab Act] extends remedies to 'any person aggrieved' by unlawful discrimination." *Addiction Specialists, Inc. v. Twp. of Hampton*, 411 F.3d 399, 405 (3d Cir. 2005) (citing *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 334-35 (6th Cir. 2002) and *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 47 (2d Cir. 1997)[2]). "'Any person' may include individuals as well as entities." *Addiction Specialists*, 411 F.3d at 405.

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[2] *Superceded on other grounds as stated in Zervos v. Verizon New York, Inc.*, 252 F.3d 163, 171 n.7 (2d Cir. 2001).

One of the plaintiffs in *Raver v. Capitol Area Transit*, 887 F. Supp. 96 (M.D. Pa. 1995), was a non-profit corporation that (among other things) advocated for accessible mass transit. *Id.* at 97. As here, the defendants argued that the non-profit was "not itself a person with a disability, and so [was] not entitled to bring an action under the ADA." *Id.* The court disagreed, relying on the similarities in the language of the enforcement provisions of Title II and the FHA to hold that the non-profit had standing.

> Due to the similarity of the language, we think that the same principle applies to the ADA. An "aggrieved person" under the FHA, *i.e.* a "person who claims to have been injured by a discriminatory housing practice," is analogous to a "person alleging discrimination on the basis of disability" under the ADA. In neither case need the person alleging discrimination be the person discriminated against. In order to have standing, then, [the non-profit] need only be a person who has suffered the minima of injury in fact under Article III of the Constitution. *Cf. Havens Realty Corp.*, 455 U.S. at 372.

Raver, 887 F. Supp. at 98; *see also Liberty Res., Inc. v. Se. Pa. Transp. Auth.,* 155 F. Supp. 2d 242, 249 n.16 (E.D. Pa. 2001) ("[T]he enforcement provision of the ADA . . . broadly refers to 'any person,' not solely disabled individuals." (Quotation omitted.)), *vacated as moot*, 54 Fed. Appx. 769 (3d Cir. 2002).

Many of these cases rely -- in extending Title II and Rehab Act standing to aggrieved entities -- on the fact that the language of the enforcement provisions of those two statutes extends standing to the full breadth of Article III. *See, e.g., A Helping Hand, LLC v. Baltimore County, MD*, 515 F.3d 356, 363 (4th Cir. 2008); *MX Group*, 293 F.3d at 334-35; *Innovative Health*, 117 F.3d at 47; *Liberty Resources*, 155 F. Supp. at 249-50. This is significant because while the Tenth Circuit has not spoken directly to the question of organizational standing under Title II and the Rehab Act, it has explicitly held that standing under those two statutes extends to

the full breadth of Article III. *Tandy v. City of Wichita*, 380 F.3d 1277, 1287 (10th Cir. 2004). While *Tandy* addressed tester rather than organizational standing, this holding means that any plaintiff that meets the test for Article III standing may assert a claim. *See Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1497 (10th Cir. 1995) (holding that where standing extends to the full limits of Article III, a plaintiff only need show that it has satisfied the three-part test for constitutional standing under *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). As explained below, CCDC and CAD meet this standard. *See infra* at 9-10.

In addition to the cases cited above -- which find organizational standing under the ADA and Rehab Act based on an analysis of their similarities to the FHA -- a number of other cases have simply held -- without in-depth analysis -- that entities bringing claims under Title II and/or the Rehab Act have standing to assert their own claims. *See, e.g., Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 n.2 (2d Cir. 2002) (holding that a non-profit social service organization had organizational standing under the FHA, Title II, and the Rehab Act; citing *Havens*); *Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1115 (9th Cir. 1987) (holding that organization of deaf people had standing under Rehab Act); *Veterans for Common Sense v. Nicholson*, 2008 WL 114919, at *2 (N.D. Cal. Jan. 10, 2008) (holding that organizations of veterans had standing under the Rehab Act; citing *Havens*); *Behavioral Health Servs. v. City of Gardena*, 2003 WL 21750852, at *8 (C.D. Cal. Feb. 26, 2003) (holding that organization providing rehabilitation services had organizational standing under Title II and the Rehab Act; citing *Havens*); *Nat'l Org. on Disability v. Tartaglione*, 2001 WL 1231717, at *4 (E.D. Pa. Oct. 11, 2001) (holding "those Plaintiffs who are advocacy organizations have standing because they have alleged the expenditure of significant resources in

fighting Defendants' conduct;" citing *Havens*); *Access Living of Metro. Chicago v. Chicago Transit Auth.*, 2001 WL 492473, at *3 (N.D. Ill. May 9, 2001) ("This court agrees with the majority of courts which have considered this issue and finds that organizations serving the needs of disabled persons have standing to bring claims under the ADA if they meet Article III's standing requirements, though they are not themselves individuals with disabilities;" citing *Havens*).

Based on the authorities above, Plaintiffs respectfully submit that -- providing they introduce evidence of harm caused by the City's discrimination -- CCDC and CAD have standing under Title II and the Rehab Act.

B. CCDC and CAD are Within the Zone of Interests Protected by the Statute.

Last year, the Supreme Court held that the "person aggrieved" language conveys standing to anyone injured who "falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Thompson v. N. Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011) (internal quotations omitted). The "zone of interests" standard only denies a right of review

> if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit. The test is not meant to be especially demanding; in particular, there need be no indication of congressional purpose to benefit the would-be plaintiff.

Clarke v. Sec. Indus. Assn., 479 U.S. 388, 399–400 (1987). CCDC's and CAD's claims are very closely related to the purposes of Title II and the Rehab Act. Both organizations have, as their mission, to combat discrimination against persons with disabilities and both provide services to deaf people, including counseling on discrimination issues. Both organizations have worked to

ensure that deaf people receive effective communication in their interactions with the City, including its police and sheriff departments. *See generally* Decl. of Julie Reiskin (ECF No. 229-59); Decl. of Jennifer Pfau (ECF No. 229-60).

Several cases have held that organizations such as these are within the "zone of interests" of the ADA and Rehab Act. *See, e.g., Procurador de Personas Con Impedimentos v. Municipality of San Juan*, 541 F. Supp 2d 468, 473 (D.P.R. 2008) (holding that the claim of a state agency that advocated for the rights of persons with disabilities concerning accessible sidewalks "falls firmly within the zone of interests the ADA and Rehabilitation Act protect"); *Access Living*, 2001 WL 492473, at *5 ("Congress also granted standing to sue to organizations such as Access Living under both the Title II of the ADA and the Rehabilitation Act."); *Liberty Resources*, 155 F. Supp. 2d at 250 n.17 (holding that the interest sought in that case -- that a local transit agency comply with the ADA and Rehab Act -- "is plainly within the zone of" the Rehab Act).

C. CCDC and CAD Will Introduce Evidence to Substantiate Their Injuries.

As this Court correctly points out, to have organizational standing, CCDC and CAD will have to prove at trial that they were injured by the City's discriminatory conduct. December 22 Order at 3 n.3. This requires that they show (1) injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) that the injury is fairly traceable to the challenged action; and (3) that the injury will be redressed by the relief requested. *Tandy*, 380 F.3d at 1283 (citing *Lujan*, 504 U.S. at 560-61). Plaintiffs intend to introduce evidence that will meet that standard. *See, e.g.,* Reiskin Decl. ¶¶ 7-12; Pfau Decl ¶¶ 7-15. This evidence was sufficient to survive summary judgment. Judge Miller concluded that "the organizational Plaintiffs have

established that they have suffered a concrete and particularized injury traceable to the alleged conduct of Denver and its agencies. Further, there is adequate evidence that the injury is actual and likely to recur in the future and can be redressed by the relief requested. . . . Because the organizational Plaintiffs have shown that this will require them to expend further resources, I conclude they have adequately demonstrated their standing to seek injunctive relief."). Order on Pending Motions, ECF 265 at 42. Plaintiffs respectfully submit that the evidence they will introduce at trial will more than support CCDC's and CAD's organizational injuries.

CONCLUSION

For the reasons set forth above, and based on evidence to be introduced at trial, Plaintiffs CCDC and CAD have both associational and organizational standing.

Respectfully submitted,

FOX & ROBERTSON, P.C.

By: /s/ Amy F. Robertson
Amy F. Robertson
104 Broadway, Suite 400
Denver, CO 80203
303.595.9700 (voice)
303.595.9705 (fax)
arob@foxrob.com

Paula Dee Greisen
Laura E. Schwartz
King & Greisen, LLP
1670 York Street
Denver, CO 80206
303.298.9878 (voice)
303.298.9879 (fax)
schwartz@kinggreisen.com
greisen@kinggreisen.com

Carrie Ann Lucas
The Center for Rights of Parents with Disabilities
P.O. Box 756
Windsor, CO 80550
720.363.1131 (voice)
970.818.9295 (fax)
clucas@disabledparentrights.org

Attorneys for Plaintiffs

Dated: February 2, 2012

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email address:

Suzanne A. Fasing, Esq.
Robert Wolf, Esq.
Denver City Attorney's Office
Litigation Section
201 W Colfax Ave, Dept 1108
Denver, CO 80202
dlefiling.litigation@ci.denver.co.us

By: /s/ Caitlin R. Anderson
Caitlin R. Anderson
Paralegal
Fox & Robertson, P.C.
104 Broadway, Suite 400
Denver, CO 80203
303.595.9700 (voice)
303.595.9705 (fax)
canderson@foxrob.com