



**OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS**

July 26, 2021

**Via E-Mail AND U.S. Mail**

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
H-232, The Capitol  
Washington, DC 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204, The Capitol  
Washington, DC 20515

The Honorable Charles Schumer  
Senate Majority Leader  
U.S. Senate  
S-221, The Capitol  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
S-230, The Capitol  
Washington, DC 20510

**Re: Support for the All Stations Accessibility Program Act of 2021**

Dear Congressional Leaders:

On the 31<sup>st</sup> anniversary of the landmark Americans with Disabilities Act, the undersigned Attorneys General urge Congress to enact the All Stations Accessibility Program Act of 2021 (“ASAP Act”) to assist State and local governmental authorities in providing accessible public transportation to individuals with disabilities.

The Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, is a comprehensive civil rights law designed to give people with disabilities equal access to all aspects of society. It was signed into law on July 26, 1990 and amended on September 25, 2008. In enacting the ADA, Congress found that historically, society has tended to isolate and segregate individuals with disabilities, and discrimination against individuals with disabilities persists in critical areas such as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.<sup>1</sup> Individuals with disabilities encounter discrimination through architectural,

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<sup>1</sup> 42 U.S.C. §§ 12101 (a)(2) and (3).

transportation, and communication barriers, as well as failures to modify existing facilities and practices.<sup>2</sup> In the ADA, Congress set forth the goal of assuring individuals with disabilities equality of opportunity, full participation, independent living, and economic self-sufficiency.<sup>3</sup> The purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and to provide strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.<sup>4</sup>

While progress has been made since the ADA was enacted, much work remains to ensure individuals with disabilities can fully participate in all aspects of society, particularly in making sure every American can use public transportation systems. Despite the ADA becoming law over 30 years ago, the Federal Transit Administration has reported that nearly 20 percent of all public transit stations were not ADA accessible as of 2019.<sup>5</sup> According to the Department of Transportation, 12.19% of people with disabilities reported having difficulty getting the transportation they need, as compared to only 3.32% of people without disabilities reporting difficulties.<sup>6</sup> Among the types of difficulties cited, 33.5% of people with disabilities expressed that they have no or limited access to public transportation.<sup>7</sup> Additionally, 16.85% of people with disabilities stated that their disability makes public transportation hard to use.<sup>8</sup>

The basis for these disappointing statistics may lie in the latitude the ADA provides to public entities regarding retrofitting existing facilities built before the ADA was enacted. All of the activities, services, and programs of public entities, including public transportation provided by State and local governments, are covered by Title II of the ADA and its implementing regulations.<sup>9</sup> Public entities have an ongoing obligation to ensure that individuals with disabilities are not excluded from participation in, or denied the benefits of, their activities, services, or programs because the public entity's facilities are inaccessible to them.<sup>10</sup> The ADA Standards for Accessible Design ("Standards"), originally published in 1991 and updated in 2010, set the minimum standards for what makes a facility accessible and are used when determining if a public entity's programs or services are accessible under the ADA.<sup>11</sup> While there is no "grandfather clause" in the ADA that exempts existing facilities built before the ADA was enacted, the ADA allows public entities to defer architectural changes to existing facilities where other solutions to provide program access are feasible and the architectural changes would

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<sup>2</sup> *Id.* § 12101 (a)(5).

<sup>3</sup> *Id.* § 12101 (a)(7).

<sup>4</sup> *Id.* §§ 12101(b)(1) and (2).

<sup>5</sup> See U.S. Department of Transportation, Federal Transit Administration, [The National Transit Database \(NTD\)](http://www.transit.dot.gov/ntd), available at [www.transit.dot.gov/ntd](http://www.transit.dot.gov/ntd).

<sup>6</sup> See U.S. Department of Transportation, Bureau of Transportation Statistics, Data Analysis (Nov. 30, 2011) available at [www.bts.gov/archive/publications/freedom\\_to\\_travel/data\\_analysis](http://www.bts.gov/archive/publications/freedom_to_travel/data_analysis).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See 42 U.S.C. §§ 12131-12165; 28 C.F.R. Part 35.

<sup>10</sup> 28 C.F.R. § 35.149.

<sup>11</sup> See 28 C.F.R. § 35.151.

pose an undue financial burden.<sup>12</sup> The ADA requires only that public programs and services be accessible to people with disabilities when viewed in their entirety,<sup>13</sup> not that each existing facility necessarily be made accessible.<sup>14</sup> As a result, state and local governments faced with financial constraints have not always been able to budget to make their legacy transportation systems fully accessible.

The ASAP Act will provide competitive grants dedicated to the purpose of assisting State and local governments in eliminating accessibility barriers at legacy rail fixed guideway public transportation systems.<sup>15</sup> Legacy rail fixed guideway public transportation systems are defined as any that were in operation before the effective date of the ADA in July 26, 1990, and include commuter rail systems that use stations or facilities for passenger use. The Secretary of Transportation may make grants to assist eligible entities in financing capital projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems by increasing the number of existing rail stations that meet the new construction Standards. The program would appropriate \$10 billion over 10 years, or at least \$1 billion annually. Each grant for a project will be for 90 percent of the net cost of the project, with the recipient providing additional local funds. The appropriated funds may not be used to upgrade a station or facility for passenger use that is already accessible to and usable by individuals with disabilities. However, an eligible recipient may use the grant to upgrade a station or facility for passenger use that is not accessible even if the related service, program, or activity, when viewed in its entirety, is readily accessible and usable. An eligible recipient of a grant will be required to adopt a plan committing to maximize accessibility for passenger use for individuals with various disabilities including: individuals with physical disabilities; sensory disabilities; and intellectual or developmental disabilities. The plan must also address equity of service to all riders regardless of income, age, race, or ability, taking into account historical and current service gaps for low-income riders, older individuals, riders from communities of color, and riders with disabilities.

Accessible public transportation is essential in ensuring individuals with disabilities have equal access to all aspects of society in order to lead full and meaningful lives. Studies indicate that individuals with disabilities continue to face challenges particularly in procuring employment and housing. A report released by the U.S. Bureau of Labor Statistics indicates that in 2020, only 17.9 percent of persons with a disability were employed, as compared to 61.8 percent of persons without a disability.<sup>16</sup> While data on both groups for 2020 reflect the impact of the coronavirus pandemic, across all age and educational attainment groups, persons with disabilities were reported as much less likely to be employed than those without disabilities. A 2015 national survey conducted by the Kessler Foundation found that 25.6% of non-working job seekers with disabilities identified a lack of transportation as the main barrier to finding a

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<sup>12</sup> 28 C.F.R. § 35.150 (b)(1).

<sup>13</sup> 28 C.F.R. § 35.150 (a).

<sup>14</sup> 28 C.F.R. § 35.150 (a)(1).

<sup>15</sup> See S. 1680, H.R. 3317 (117<sup>th</sup> Congress).

<sup>16</sup> See U.S. Department of Labor, Bureau of Labor Statistics, News Release USDL-21-0316, [Persons with a Disability: Labor Force Characteristics — 2020 \(Feb. 24, 2021\)](https://www.bls.gov/news.release/pdf/disabl.pdf), available at [www.bls.gov/news.release/pdf/disabl.pdf](https://www.bls.gov/news.release/pdf/disabl.pdf).

job.<sup>17</sup> Individuals with physical disabilities also face obstacles in finding accessible housing, which is in short supply nationally.<sup>18</sup> The challenges individuals with disabilities face in procuring meaningful employment and accessible housing is compounded when available jobs and accessible housing units are not connected to accessible public transportation. The continuing existence of transportation barriers constitutes the very discrimination which the drafters of the ADA found denies people with disabilities the “opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.”<sup>19</sup>

Public transportation systems are essential to connecting individuals with disabilities to jobs, housing, opportunities, and equal access to all aspects of society. As state Attorneys General tasked with protecting the rights of our constituents, we ask Congress to make this nation truly accessible to all people by passing the ASAP Act. The ASAP Act will assist States and local governments in complying with the federal and state disability rights regulations which state AGs enforce. We encourage Congress to continue the important work it began 31 years ago, and help fulfill the promise of the Americans with Disabilities Act to provide individuals with disabilities equality of opportunity, full participation, independent living, and economic self-sufficiency in our great nation.

Respectfully,



KWAME RAOUL  
Illinois Attorney General



ROBERT BONTA  
California Attorney General



PHILIP J. WEISER  
Colorado Attorney General

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<sup>17</sup> Kessler Foundation, National Employment and Disability Survey 2015 Executive Summary, available at [https://kesslerfoundation.org/sites/default/files/filepicker/5/KFSurvey2015\\_ExecutiveSummary.pdf](https://kesslerfoundation.org/sites/default/files/filepicker/5/KFSurvey2015_ExecutiveSummary.pdf) (last visited July 16, 2021).

<sup>18</sup> Rob Warnock, *How Accessible Is the Housing Market?*, Apartment List Blog (February 19, 2020), at 3, available at: <https://www.apartmentlist.com/research/how-accessible-is-the-housing-market>.

<sup>19</sup> 42 U.S.C. § 12101 (a)(8).

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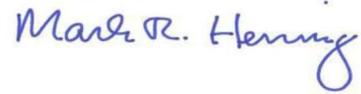
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