Department of Justice

STATEMENT OF

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BEFORE THE

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"AMERICANS WITH DISABILITIES ACT AT 20 —
CELEBRATING OUR PROGRESS, AFFIRMING OUR COMMITMENT"

PRESENTED

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Thomas E. Perez
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Good afternoon, Chairman Nadler, Ranking Member Sensenbrenner, and Members of the Subcommittee.

Thank you for the opportunity to appear before you as we approach the twentieth anniversary of the Americans with Disabilities Act (ADA). I am honored to be here today with former Attorney General Thornburgh, whose tenacity, leadership, and dedication was instrumental in advancing the civil rights of people with disabilities and ultimately the passage of the ADA.

From our nation's founding, individuals have organized to fight for their civil rights, incrementally working their way out from under the weight of immoral laws, misguided social mores, and irrational fears, facing dozens of defeats for each victory. But each victory, however small, was motivation enough to keep them moving, to continue to make the case for equal rights. And so it has been for individuals with disabilities in our nation. Individuals with disabilities faced every day the indignities of not being able to enter public buildings or get on a public bus, and they were denied job and educational opportunities — until the passage of the Americans with Disabilities Act.

As we prepare to celebrate two decades of ADA enforcement, we must salute the people of this nation who live with disabilities, as well as their advocates, people like Justin Dart, Evan Kemp, and Pat Wright, who worked tirelessly to ensure that the civil rights of people with disabilities would be both recognized and protected by our nation's laws. We owe so much to these civil rights leaders who worked to shape not only policy, but also, and as importantly, perception.

In the two decades since its enactment, the ADA has revolutionized the way society thinks about individuals with disabilities, and it has transformed the way that people with

disabilities live in communities. The ADA has literally opened millions of doors — and opportunities — for individuals with disabilities across this nation. In communities across this country, we see people with disabilities at work, in grocery stores, in town hall meetings, at the movies, at sporting events, in restaurants and doctor's offices, or on the sidewalks simply going about their daily lives.

As the head of the Civil Rights Division, I have the distinct honor of leading enforcement of this critical law — a law that represents principles and goals no less important or far-reaching than the landmark civil rights laws of the 1960s. The Civil Rights Division has led the way for people with disabilities to live, work, and play in cities and towns across America. We have accomplished a great deal since the signing of the ADA, but we also know that we have unfinished business ahead.

Civil Rights Division Enforcement of the ADA

In the first few years after the ADA's enactment, the Civil Rights Division was successful in establishing important disability rights principles in a wide range of areas, including expanding access to the built environment, addressing HIV/AIDS discrimination, ensuring access to health care by people who are deaf or have hearing loss, and accommodating children with disabilities in child care programs.

Our settlement agreements with the Atlanta Committee on the Olympic Games ensured that sports venues being constructed for the 1996 Olympics and Paralympics were accessible to people with disabilities. This series of agreements articulated the Department's position that wheelchair seating locations must provide a line of sight to the playing field comparable to that of the other seating, and established a new benchmark — the provision of a line of sight over standing spectators, enabling those who use wheelchairs, for the first time, to continue to see the field of play even when other spectators in front of them stood up during the event. These agreements also required that non-spectator areas, including locker rooms, be fully accessible, reinforcing the concept that persons with disabilities would be active participants in sport, not just spectators. Not only are these facilities still in use today, but the principles established in these agreements have become the basis for accessible stadium design across the country.

Our participation as amicus in a private lawsuit helped to determine that individuals who have asymptomatic HIV are to be considered persons with a disability under the ADA. The case involved a dentist who had refused to provide routine oral care for a woman who had admitted that she was HIV positive, even though both the Centers for Disease Control and Prevention and the American Dental Association had clearly stated that patients with HIV infection can and should be safely treated in dental offices where universal precautions are utilized. The case was ultimately decided in the U.S. Supreme Court case of *Bragdon v. Abbott*, where the court agreed with the Department that asymptomatic HIV status met all the requirements under the statutory definition of a disability.

Another early ADA precedent came from our settlement agreement requiring all 32 acute care hospitals in Connecticut to provide sign language and oral interpreters for patients and companions who are deaf or hard of hearing. This case also established the principle that the ADA's coverage extends to "companions" who are deaf or hard of hearing — a parent, spouse or other party expected to communicate with medical staff about a patient. Subsequent settlements with Laurel Regional Hospital in Maryland and Inova Fairfax Hospital in Virginia further refined this principle and set the standards for the provision of effective communication at hospitals and doctors' offices nationwide.

Over the years, we have entered into a number of settlements with child care providers who have refused to modify policies for children with disabilities. For parents of children with disabilities, finding child care has been a daunting challenge. Child care providers routinely refused to modify policies to allow staff to assist children with disabilities in administering a finger prick test for a child with diabetes, knowing how and when to use an Epi-pen for a child with a severe food allergy, overseeing a child with asthma who uses an inhaler, or allowing a child who needs diapering because of a disability to remain with his age group rather than being relegated to remaining with much younger children who are not yet toilet-trained. In one case, a day care provider refused to modify a policy that prohibited staff from assisting children in taking their own asthma medication, thus forcing the children's parents to face a difficult choice: either go to the center to administer their child's medication themselves, risk allowing the child to go without his or her medication, find another center as a last resort, or have one of the parents quit a job to stay at home with the child. It is hard to believe how difficult it has been to get child care providers to understand and accept their obligations to provide care for children with disabilities on an equal basis with other children. Yet we continue to pursue a number of cases against those providers today.

Changing Attitudes

Changing hearts and minds and is the ultimate measure of success for civil rights laws, and the ADA is no different. In the past 20 years we have begun to see attitudes toward people with disabilities improve. But stereotypes, myths, and irrational fears still exist, resulting in continued exclusion and segregation of people with disabilities.

These irrational fears and stereotypes have resulted in continued discrimination against people with HIV and AIDS, for example. The Civil Rights Division recently settled a lawsuit involving an egregious case of discrimination against a family with a young child who is HIV positive. After several difficult months of struggling with the father's cancer diagnosis, the family booked a four-week summer vacation at a family-style RV resort in Alabama to spend quality time together while allowing the father to commute to nearby Mobile to continue his ongoing treatments. The family selected the resort because it has a three-acre lake, nature trails, gardens, an indoor pool, a gift shop, several Victorian buildings, and a Victorian steam-powered narrow gauge train that circles the resort — a perfect vacation spot for a two-year old who loves swimming and trains. On the day the family arrived, the mother casually mentioned to a staff person that their child had HIV. Later that day, the manager approached the parents, told them

that the child could not use the swimming pool or showers, and refused to accept their explanations that HIV cannot be spread in pools or showers. The family was so devastated by the manager's attitude that they checked out of the resort early the next morning. I regret that I have to report that the father passed away not long after we took his deposition. Ultimately, as a result of our lawsuit, the resort agreed to adopt non discrimination policies, provide training to its staff, and pay $36,000 to the family and a $10,000 civil penalty to the United States.

Individuals who use service animals also routinely face negative attitudes and a lack of understanding about how they rely on service animals to live independent lives. We recently settled a lawsuit against an attorney in Colorado who had scheduled a deposition in his offices, but then barred the woman being deposed, her husband, and her attorney from entering his offices because the woman, a veterinarian, was accompanied by her service animal that assists her with mobility and balance issues associated with a traumatic brain injury and other conditions. The attorney eventually agreed to adopt an ADA-compliant service animal policy, post the policy, undergo training himself and provide training for his staff on the ADA, and report any future allegations of discrimination to the Division. He also paid $30,000 in compensatory damages to the complainant, $10,000 in compensatory damages to her husband as a person associated with a person with a disability, and a $10,000 civil penalty to the United States.

Stereotypes are at the very core of another problem we routinely encounter — exclusionary zoning and other practices that make it difficult or impossible to find appropriate locations for facilities that provide services for people with disabilities, particularly facilities for individuals with mental illness or intellectual disabilities, or for people recovering from drug or alcohol abuse. These denials are invariably based on negative public attitudes and unfounded fears that individuals who need these services will pose a threat to the neighborhood. We recently settled a case in Virginia involving a woman who has worked for many years as a one-to-one aide for children with disabilities at a local private school and who wanted to sign up with a local non-profit agency to provide foster care in her home for two adults with intellectual disabilities. The woman was told by her town that she needed a Special Use Permit, and she applied for it. But the permit was denied after a hearing at which townspeople expressed unfounded concerns about the people she would be caring for, including the fear that they might pose a danger to her neighbors. We negotiated with the Town to grant the permit, provide ADA training for the Town Manager, Town Council and members of the Town's Planning Commission, and pay $60,000 to the complainant in compensatory damages.

It is not just old ways of thinking that need to be changed, but also old ways of doing things. The City of Philadelphia has more than 1,200 polling places, many of which have historically been located in inaccessible private residences, local stores, restaurants, and other small businesses, making it virtually impossible for voters with mobility disabilities to vote in person in their own precinct. Last year we reached a creative and forward-looking settlement agreement with Philadelphia. The City has hired an independent expert to assess the accessibility of nearly half the City's polling places and make recommendations to make them accessible, and the Division has taken up the task of evaluating the accessibility of the remaining

polling places. We have worked together to make existing polling places accessible, to make temporary modifications to inaccessible polling places so that they are accessible on Election Day, and to find alternative accessible locations for those polling places that cannot be made accessible. Accessibility is now a major criterion in the City's selection of new polling places. People with disabilities will now be able to exercise one of the most fundamental rights we have, by going to the polls and casting their votes alongside their neighbors. I believe this agreement will serve as a common-sense model for communities large and small in every corner of our country.

Olmstead Enforcement

When it comes to care for many individuals with disabilities, institutionalization has long been the default choice for providing services. Yet for those individuals who could be better and more appropriately served in their communities, isolation in an institutional setting deprives them of the ability to make even the most basic decisions about their lives — simple decisions you and I make every day, such as when and what to eat, when to use the restroom, when to go to bed, and when and how often to visit with family members. Institutional isolation denies these individuals access to all of the work, recreation, and community opportunities people without disabilities take for granted.

In 1999, the Supreme Court's decision in *Olmstead v. L.C.* recognized that the unjustified isolation of individuals with disabilities in institutional settings violates the ADA. *Olmstead* established that Title II of the ADA requires that people with disabilities must be offered the opportunity to receive services in their communities when appropriate, and that it is an independent violation of the law to unnecessarily segregate them from society. Many in the disability rights community view the *Olmstead* decision as their own *Brown v. Board of Education*.

Yet ten years after the landmark decision, tens of thousands of Americans with disabilities are still unnecessarily and unconstitutionally confined in institutions, some with unspeakably dangerous conditions. That's why last year, President Obama marked Olmstead's 10th anniversary by proclaiming the Year of Community Living. Under his leadership, the Division has made it a priority to enforce the integration mandate of the ADA, one of the biggest challenges remaining as we prepare to celebrate the 20th anniversary.

We have filed lawsuits against the States of Georgia, Arkansas, and New York and participated in additional lawsuits against the States of Connecticut and Illinois, challenging their failure to provide community-based services, which forces people with disabilities to live in institutions rather than in their communities with appropriate supports. We also supported challenges to North Carolina and California decisions to alter the way these states administer services to people who have been living in the community for many years with appropriate supports but who now, after the changes, will face the risk of institutionalization.

It is shocking and frustrating, 11 years after *Olmstead*, to see bureaucratic decisions that continue to ignore the rights of people with disabilities. Take the case of Michele Haddad. She was riding her motorcycle when she was hit by a drunk driver in September of 2007, resulting in quadriplegia. Ms. Haddad, the mother of two grown sons, was able to return home following months of hospital and rehabilitation stays, but needed help with her basic daily activities, including bathing, dressing, eating, and toileting. With the daily assistance of her family, she was able to stay in her Jacksonville, Florida, home, in the community she loved, until a change in her family situation occurred this past March. Her son, who recently graduated from college, pitched in and assisted her with these very personal daily care needs, but he does not live in the area and will need to return home soon. When Ms. Haddad notified the State that she would need community-based services to fill this void, she was told that she would have to enter a nursing home for 60 days before she would be eligible to receive service in the community, even though she had applied for services and had been on the waiting list since 2007. The Division joined in her case, arguing for a preliminary injunction requiring the state to provide services for Ms. Haddad while her case is pending, and I am happy to report that the court agreed. But this should not be the way America does business. We have made progress since *Olmstead*, but there are still too many people like Michelle Haddad in too many institutions living away from their homes, families, and friends through absolutely no fault of their own. We will continue to push forward with aggressive enforcement on this front.

Education, Voluntary Compliance and Mediation

Enforcing the ADA is, at the very least, a full-time task. The Division has responsibility for ensuring the accessibility of programs and services of more than 80,000 units of state and local governments and well over seven million businesses. From the very beginning of the Division's enforcement program, we have understood that the key to making America accessible was encouraging voluntary compliance, choosing whenever possible to achieve compliance cooperatively, without the cost and hostility of litigation. We firmly believe that if covered entities understand the law's requirements, then they are more likely to take affirmative steps to comply. We also believe when people with disabilities understand the ADA, they become better advocates and effect change within their own communities, whether it is their local government or a downtown restaurant.

Project Civic Access is one example of our cooperative approach. Under this initiative, we reach out to towns and cities and conduct compliance reviews cooperatively with local governments, working together to identify barriers and develop plans for bringing programs and activities into compliance with the ADA. We have reached 180 agreements to date with local governments in all 50 states and the District of Columbia. These agreements address all aspects of civic life, including courthouses, libraries, parks, theaters and stadiums, and emergency shelters, as well as voting, emergency preparedness, emergency shelters, website access, and effective communication in law enforcement and 9-1-1 services. This initiative has improved the lives of millions of people with disabilities in communities throughout the country.

The framers of the ADA were wise in requiring each Federal agency with enforcement responsibility to undertake a concomitant responsibility — the provision of technical assistance to let covered entities understand their responsibilities and to let persons with disabilities understand their rights. We have taken this challenge very seriously. The Department's unparalleled ADA Technical Assistance Program has, since 1990, helped millions of people understand the ADA and how it applies to their specific situation. The highly utilized ADA Information Line and ADA website serve as the primary points of contact by the nation's public who turn frequently to the Department for accurate and timely information about complying with the ADA. In a typical week we answer 1,000 calls from businesses, government officials, persons with disabilities, and concerned citizens, and every week www.ada.gov receives more than 1.5 million hits. We reach out to and conduct training on the ADA for thousands of people every year at national and regional conferences, and even answer questions at state fairs. We have developed more than 100 publications and videos to explain specific provisions of the ADA. Most recently, we created a 17 minute video to dispel myths and educate employers about employing people with disabilities, published a document specifically for returning service members with disabilities to help them understand their rights under the ADA and where to turn for additional information and assistance, and soon we will jointly publish with the Department of Health and Human Services guidance on accessible medical equipment.

Finally, our ADA Mediation Program has helped the Civil Rights Division resolve ADA complaints more effectively, efficiently, and equitably, using a voluntary alternative dispute resolution approach. Since January 2001, we have successfully completed more than 2,000 mediations. Carried out through a partnership between the Federal government and the private sector, the program has greatly expanded the reach of the ADA and the speed with which violations are resolved at minimum expense to the government. The program also empowers people with disabilities who participate in mediation. Unlike traditional enforcement methods, mediation places responsibility squarely on the shoulders of both parties who, with the help of one of the program's 400 professional mediators, determine both the process and the outcome of the mediation. This cooperative approach preserves, rather than severs, the relationship between the parties, which is especially important for individuals in rural areas who have few options for carrying out business, leisure, or government activities.

Emerging Issues and Challenges

Ensuring the civil rights of people with disabilities requires the ability to respond and adapt to change, and to focus on the novel issues of today and tomorrow. In the 20 years since the ADA was passed, technology has vastly changed the way we live our daily lives. Technological advances in the ways we communicate, learn, play and work have made life easier for all of us, including people with disabilities.

But new technologies can also pose significant challenges, and we must remain vigilant to ensure that as new devices are introduced, people with disabilities are not left behind. The rapid development of new technologies has made our lives more efficient, but many of these technologies from Web sites to cell phones, from ticket kiosks to e-books, remain either in whole

or in part inaccessible to people with disabilities, particularly those who are blind or have low vision, those with limited manual dexterity, and those who are deaf or hard of hearing.

We acted swiftly to respond to complaints we received about the use of the Amazon Kindle, an electronic book reader at several universities, and reached agreements with four universities participating in a pilot project to test the viability of using the Kindle DX in a classroom setting. These universities agreed not to purchase, recommend, or promote use of this or other electronic book readers unless the devices are fully accessible for students who are blind or have low vision or the universities provide a reasonable modification that ensures that blind individuals may access and acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use. Although the Kindle DX has a text-to-speech function for reading a book's content, the menu and navigation controls do not have this function, making it impossible for students who are blind to know which book they have selected or how to access the web browser and other functions. Last month, the Department of Education's Assistant Secretary for Civil Rights, Russlynn Ali, and I issued a letter to college and university presidents nationwide asking them to voluntarily ensure that their schools refrain from requiring the use of any devices that are not accessible to students who are blind or have low vision.

Meanwhile, the Department of Justice will soon publish new ADA Standards for Accessible Design, which we are updating to be more consistent with model building codes and industry standards in order to make compliance easier. The new Standards are consistent with guidelines issued previously by the Access Board, and which have been adopted by certain model building codes and industry standards. The new Standards will also cover certain types of facilities not currently covered, including swimming pools, playgrounds, and other recreational facilities, judicial facilities, and prisons. We also plan to issue new regulations for Title II and Title III of the ADA to clarify and refine many issues that have been raised over the past 20 years and to address new issues that have been raised since the original regulations were published in 1992.

We are also moving forward to issue advance notices of proposed rule-making, seeking public comment on four important issues:

- The captioning and video description of movies
- The provision of accessible equipment, including the provision of accessible medical equipment
- Making websites accessible for persons who are blind or have low vision, and
- How state and local government emergency call centers should address the use of 9-1-1 calls from voice, text, or video technologies, called Next Generation 9-1-1.

Looking Forward

As we celebrate the 20th Anniversary of the ADA, it is fitting that we take time to recognize the remarkable progress we have made in two decades. But no matter how vigorously

we enforce the law, we still face the challenge of attitudes and stereotypes that stigmatize disabilities; we still find buildings with barriers, city sidewalks without curb ramps, and local hospitals with no sign language interpreters to serve their patients who are deaf. We cannot forget that we still have unfinished business.

We see this unfinished business when the Civil Rights Division has to enforce the right of a family with an HIV positive child because the owner of an RV resort tells them that their two-year-old can't swim in the swimming pool. We see this unfinished business when we have to bring a case against an attorney who refuses to allow a woman with a service dog into his office. We see it when we must file a lawsuit to protect the rights of people with disabilities who are institutionalized because there are no community-based services in their own communities. And we see this unfinished business when we have to fight for the right of a social worker who is deaf to be hired doing a job for which she is eminently qualified because the government employer doesn't want to accommodate her with a part-time interpreter.

We should be proud of the progress made under the ADA, but we must now turn our attention to the next 20 years so that we can continue to create a nation where every individual has access to equal opportunity and equal justice, and where the promise of a future when people with disabilities participate in an American society as full and equal partners becomes a reality. We in the Civil Rights Division embrace this challenge and look forward, with great anticipation, to the next two decades.

Thank you and I look forward to responding to any questions that the Subcommittee Members may have.