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**WRITTEN TESTIMONY OF THE COLORADO CROSS-DISABILITY COALITION (CCDC) AND KEVIN WILLIAMS  
(CCDC CIVIL RIGHTS LEGAL PROGRAM DIRECTOR) IN OPPOSITION TO HB 21-1035**

To: The Honorable Members of the House Public Health Care Committee  
From: Kevin W. Williams, Civil Rights Legal Program Director, Colorado Cross-Disability Coalition  
Date: March 16, 2021  
Re: Written Testimony in Opposition to HB 21-1035, "Expecting Mothers' Relief Act"

**I. BACKGROUND AND PERSONAL EXPERIENCES:**

I submit this written testimony on behalf of myself and the Colorado Cross-Disability Coalition (CCDC) in opposition to HB 21-1035. CCDC is a statewide membership organization run both by and for people with disabilities whose mission and purpose is to promote social justice on behalf of people with all types of disabilities. I am an individual with the disability who requires the use of a motorized wheelchair for ambulation, and I drive a van with a side-loading wheelchair ramp for my wheelchair. As such, I require the use of accessible parking, including adjacent access aisles, to be able to get in and out of my vehicle. I generally require the use of a van accessible parking space which has an 8 feet wide access aisle adjacent to the parking space to have sufficient room to enter and exit my vehicle, but the law requires that only one in six of all available accessible parking spaces must be van accessible, so I have been able to make it work if I only have the standard 5 feet wide access aisle available.

CCDC represents numerous individuals with disabilities who also need to use accessible parking and adjacent access aisles. Because this bill has the likely consequence of reducing the number of available accessible parking spaces, van accessible parking spaces and access aisles for individuals with disabilities who need them throughout the state of Colorado, I and CCDC oppose the bill. In Section II, I explain why Colorado is subjecting itself to legal liability if it chooses to move forward with passing this bill.

I have used a wheelchair for almost 35 years and have driven a vehicle with a side-loading ramp or wheelchair lift and adaptive driving equipment and have required accessible parking and access aisles for most of that time. I am the Civil Rights Legal Program Director for CCDC and have worked as an attorney for CCDC enforcing the civil rights of people with disabilities for almost 24 years. Our legal program has litigated hundreds of cases involving the Americans with Disabilities Act and other civil rights laws protecting the rights of people with disabilities. I am personally familiar with the need for available accessible parking for people with disabilities, and I am well-versed in the federal and state law requirements pertaining to accessible parking for

people with disabilities, including those requirements under Colorado law. CCDC has filed lawsuits against numerous parking lots and other facilities providing parking for non-compliance with the Americans with Disabilities Act (ADA) and other disability rights statutes that address accessible parking. For purposes of this testimony, I will only refer to the ADA.

HB 21-1035 seeks to create a new and unusual definition of disability that includes the last trimester of a person's pregnancy through the first two months after the person gives birth. It seeks to have the State of Colorado create a new pregnancy-based parking placard for use by such pregnant persons. It actually seeks to include such persons in the definition of "disability." CCDC has some concerns that by doing so, Colorado would be creating law based on paternalistic attitudes about the abilities of pregnant persons who do not have other complications that actually meet the definition of disability under the ADA. Furthermore, the bill seeks to amend Colo. Rev. Stat. § 42-3-204 which would allow such persons to park in all reserved accessible and van accessible parking spaces throughout Colorado. Once a "pregnant person" (the terminology used in the bill) obtains the placard, that individual would have no other restrictions against using any designated accessible or van accessible parking space at any facility or building whether it is operated by a government entity or private entity since the bill amends the state statute to allow this to occur. Because federal law mandates a certain number of accessible spaces, van accessible spaces and access aisles be provided as well as making sure that government entities modify their programs, services and activities to ensure that they are accessible to individuals with disabilities which includes parking, and because those designated spaces are limited and in high demand already, CCDC and I oppose adding new classifications of individuals to the definition of pregnancy when such individuals do not meet the definition of disability under the ADA.

In both my personal capacity as (1) a person with the disability who requires driving a vehicle with a ramp or lift and who needs the use of the required accessible parking spaces access aisles Title II of the ADA<sup>1</sup> requires and (2) as an attorney who represents numerous people who are

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<sup>1</sup> 42 U.S.C. § 12132 ("Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."); 42 U.S.C. § 12134(a) (requiring the Attorney General to promulgate regulations); *see* accessibility regulations published as [2010 Standards for Accessible Design](#), which consist of the 2004 ADAAG (located at 36 C.F.R. pt. 1191, apps. B and D) and the requirements contained in 28 U.S.C. § 35.151, provided at § 208 (setting forth the scoping requirements explaining the minimum number of accessible and van accessible parking spaces and access aisles required to be provided to enable individuals with disabilities to have what the ADA requires in order to ensure that parking is not denied to people with disabilities and people with disabilities are not discriminated against), §§ 501-503 (setting forth the technical specifications for accessible and van accessible parking spaces and access aisles). For analysis and commentary on the 2010 ADA Standards for Accessible Design, *see* 28 C.F.R. pt. 36, app. B. It is important to note that the accessibility regulations promulgated by the Department of Justice are intended to be the minimum standards for accessibility to provide equal accessibility for people with disabilities. *See, e.g.*, 36 C.F.R. pt. 1191, app. B §§ 208.2 (minimum number of accessible parking spaces), 502.2 (minimum width of accessible parking spaces and van accessible parking spaces), 502.3.1 (minimum width open access aisle serving accessible and van accessible parking spaces). Nothing prevents a state from exceeding the requirements of the ADA, but a state must not reduce the minimum requirements of the ADA without being subject to legal liability which is what this bill will do. *See* Colo. Rev. Stat. § 42-3-204 (explaining all of the types of placards and plates currently available and what

similarly situated, I must oppose this bill that has the effect of reducing required accessible parking and allowing it to be used by those who do not have disabilities. This bill creates a further impediment to the availability of accessible parking, van accessible parking and access aisles.

This bill seems very problematic to implement and enforce unless the professional who provides the written statement regarding a “Pregnancy-Based Identifying Placard” or the department that creates the form for the professional has a way of knowing with certainty when the beginning of the last trimester of pregnancy or the first two months after giving birth will occur in order to ensure that the placard is used, made available and then dispensed with only during this very specific timeframe. Otherwise, individuals using these new placards (which is unlawful in the first place) might be taking up parking needed by individuals with disabilities for a longer time than is contemplated by the language of the bill. Administrative creation of such a placard and enforcement of such a placard will be complicated at best. This bill will cause an already overburdened system of distribution of accessible license plates and placards and varying types of plates and placards to be complicated by adding yet one more type which must be monitored for compliance to ensure that individuals are not abusing the privilege of using accessible parking beyond the time limits required by the bill.

Although I could provide hundreds of examples of how difficult it has been for me personally to find and use accessible parking, anecdotally, just last week, because of the lack of available accessible parking and access aisles, I could have missed my first COVID-19 vaccination. I drive MY van from my wheelchair and use a vehicle with extensive adaptive equipment unusable by untrained individuals which eliminates valet parking as an option, I had to circle the area with accessible parking spaces with access aisles at UCHHealth three times before finding any available parking spaces with an access aisle for my ramp. Often, it is has been my personal experience that accessible parking spaces with adjacent access aisles simply are not available -- most frequently at medical facilities -- but at other many other parking areas as well. If I cannot find an accessible parking space with an access aisle to accommodate my ramp, I am left with two options: (1) I can drive around the area of the parking lot that does not have accessible parking spaces and see if there are two non-accessible parking spaces and angle my van so that I have room to let my ramp down and be able to get in and out of my van; or (2) leave without getting the services I came for. The first option often makes me very late for an appointment. The second option completely denies me the opportunity to use the programs, services and facilities I came to the facility to use. In the case of getting a scheduled COVID-19 vaccination, it is easy to see why either of these options causes significant problems. Those of us who drive who have disabilities under similar circumstances as me often must leave much earlier than non-disabled individuals to get to appointments because of these problems. For example, is a practicing

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information is required to obtain each, the penalties associated with misuse of these many different kinds of placards and plates, etc.) Adding this category of nondisabled persons would complicate an already overburdened system. In fact, In an “AUDIT REPORT: Agency for Human Rights and Community Partnerships Disability Parking Enforcement Program, dated August 2016, the [audit found there were inadequate spaces and an inadequate enforcement of Denver's disability parking program.](#)

attorney mostly in federal court, when I have hearings in court, I must leave much earlier than a non-disabled person would need to in order to find any available parking in the downtown area so I am not late for court. Therefore, if the State of Colorado passes this bill providing pregnant persons with the ability to use the limited and inadequate supply of accessible parking spaces, van accessible parking spaces and access aisles (particularly since the bill does not specify that such pregnant persons have a disability), my access to parking will be further diminished. Also, as will be explained, the ADA places specific requirements on what constitutes an accessible parking space. For example, either 5 feet wide access aisles or 8 feet wide access aisles for vans with lifts or ramps are required so that individuals who use wheelchairs or other types of mobility equipment have sufficient room to get in and out of their vehicles. Five to eight feet wide access aisles or much larger parking spaces with five feet wide access aisles are required feature of accessible parking for those of us who use wheelchairs who must exit our vehicles using ramps or lifts, not needed by persons who are pregnant. This is one of numerous other reasons why required designated accessible parking should not be used by individuals who do not have a disability-related need for the spaces.

As a legal matter, this bill seeks (under past and current Colorado law) an unprecedented expansion of those who are entitled to use accessible parking and access aisles throughout the state of Colorado. It would allow anyone in possession of a “Pregnancy-Based Identifying Placard” to park in designated accessible parking spaces at all stores, public buildings of any kind and anywhere else required by the ADA to provide designated accessible parking.

It is the recommendation of CCDCC that if the state wishes to provide pregnant persons as defined in the bill different or closer parking, it may certainly do so; it simply may not do so at the expense of the needs of people with disabilities and the enforceable requirements of Title II of the ADA as explained in the next section.

## **II. LEGAL REASONS WHY THIS BILL DISCRIMINATES AGAINST PEOPLE WITH DISABILITIES:**

The bill subjects the state to liability for lawsuits for creating and having in effect a law that permits people who do not have disabilities to park in spaces required by law and needed by people who do have disabilities. Title II of the ADA prohibits public entities which include state and local governments from discriminating against people with disabilities. The bill seems to avoid the whole question of minimum requirements set forth in the regulations to and the applicability of the ADA by adding a new definition of “disability” or “disabled” purporting to suggest that the last trimester of a person’s pregnancy through the first two months after the person gives birth is a physical impairment that meets the standards of 23 C.F.R. § 1235.<sup>2</sup> However, (1) the purpose of the USPPD is “to provide guidelines to States for the establishment of a uniform system for handicapped parking for persons with disabilities to enhance access and the safety of persons with disabilities which limit or impair the ability to walk[;]”<sup>3</sup> and (2) the

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<sup>2</sup> See 23 C.F.R. § 1235 (Uniform System for Parking for Persons with Disabilities “USPPD”).

<sup>3</sup> 23 C.F.R. § 1235.1 (emphasis added).

ADA already defines disability which does not include a normal pregnancy without complications.<sup>4</sup> The bill does not explain how routine pregnancy without complications rises to the level of a physical impairment that substantially limits the ability of persons with disabilities which limit or impair the ability to walk. Furthermore, this bill seeks to amend Colo. Rev. Stat. § 42-3-204 which is entitled “Reserved parking for persons with disabilities—applicability--definitions--rules.” Both the statute this bill seeks to amend and the regulation upon which it relies for the conclusion that a pregnancy that has no other disabling conditions fails to recognize that both Colorado law and the federal regulation specifically apply to “persons with disabilities.” The USPPD provides a definition of “Persons with disabilities which limit or impair the ability to walk,” but the bill fails to explain how the last trimester of a person’s pregnancy through the first two months after the person gives birth meets these conditions or, more importantly, how this condition is a physical impairment that substantially limits a major life activity.<sup>5</sup> The bill opens up the possibility that the state of Colorado could later attempt to include any condition that does not meet the ADA definition of a disability in its distribution of parking license plates and placards for accessible parking spaces. This again would reduce the already inadequate availability of accessible parking for those of us who actually need it. If Colorado truly wants to meet the needs of individuals with disabilities, adding pregnancy to the definition of disability for the purpose of giving otherwise non-disabled individuals the right to use limited accessible parking is not the way to do so.

Most frequently, the question of whether pregnancy constitutes a disability under the ADA even after the expanded definition set forth in the ADA Amendments Act arises in cases addressing employment. Nevertheless, “While complications resulting from pregnancy may be classified as impairments under the ADA, pregnancy without more is not.”<sup>6</sup> Nothing in the bill suggests that persons with disabilities under the USPPD who are pregnant persons have complications that would rise to the level of creating a physical impairment that substantially limits one or more

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<sup>4</sup> 42 U.S.C. § 12102 (definition of disability under the ADA requires *et al.* a showing of a physical impairment that substantially limits one or more major life activity of an individual). It should be noted that the ADA definition of disability was expanded in the ADA Amendments Act of 2008, Public Law 110-325.

<sup>5</sup> See n.4 (lengthy definition of disability and extensive needed analysis which does not include normal pregnancy).

<sup>6</sup> *Andrews v. Eaton Metal Products, LLC*, 20-CV-00176-PAB-NYW, 2020 WL 5821611, at \*7 (D. Colo. Sept. 8, 2020), report and recommendation adopted, 2020 WL 5815059 (D. Colo. Sept. 30, 2020) (emphasis added). See *Navarro v. Pfizer Corp.*, 261 F.3d 90, 97 (1st Cir. 2001) (pregnancy itself is not an impairment even though complications resulting from pregnancy may be impairments); see also *Wenzlaff v. NationsBank*, 940 F. Supp. 889, 890 (D. Md. 1996) (“With near unanimity, federal courts have held that pregnancy is not a ‘disability’ under the ADA”); *Gabriel v. City of Chicago*, 9 F. Supp. 2d 974, 980-81 (N.D. Ill. 1998) (holding that “pregnancy, absent abnormal or unusual circumstances, is not a disability”); see also 29 C.F.R. pt. 1630, app., Interpretive Guidance on Title I of the Americans with Disabilities Act (construing Section 1630.2(h) Physical or Mental Impairment) (even after the ADA Amendments Act, the EEOC has determined that pregnancy itself is not an impairment; “However, a pregnancy-related impairment that substantially limits a major life activity is a disability . . . .”)

major life activities.<sup>7</sup> Again, this bill seems to stem from an attitude regarding pregnancy that is outdated and out of step with the reality of the abilities of persons who are pregnant.<sup>8</sup>

Title II requires that regulations be developed to implement its requirements. The DOJ has done so by providing the minimum Standards for Accessible Design. Providing anything less than these minimum requirements is a violation of Title II. These minimum standards set forth what the DOJ defines as discrimination against people with disabilities in the provision of accessible parking and related services. Title II provides an enforceable standard under which people with disabilities may seek legal action against the State of Colorado for failing to comply with these minimum standards. In contrast, the USPPD merely encourages compliance with parking placards and license plates and has no enforcement mechanism whatsoever.<sup>9</sup> Colorado should not pass bills that discriminate against people with disabilities and invite lawsuits when it may simply create a separate avenue for pregnant persons to have parking spaces if it so chooses by not using those spaces required by law to be available to people with actual disabilities. The answer to accommodating pregnant persons is not to infringe upon the rights of people with disabilities but rather to create additional parking reserved for the intended purposes of the General Assembly and the people of Colorado if there is some need to do so.

## CONCLUSION

To ensure people with disabilities have equal access to parking, Title II of the ADA requires compliance with the regulations implementing that statute to set forth minimum standards for available parking for people with disabilities. Nothing in 23 C.F.R. § 1235 changes these

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<sup>7</sup> See n. 4.

<sup>8</sup> See, e.g., a March 12, 2021 article posted by abc NEWS: "[Ranks push back on criticism of pregnant women in the military: A Fox News host suggested pregnant women made a "mockery" of the U.S. military.](#)"

<sup>9</sup> Compare 42 U.S.C. § 12133 (providing a cause of action for a lawsuit for discrimination against people with disabilities) with USPPD (having no such enforcement provisions). These standards are broad enough to encompass discrimination in parking or public building access and do so by providing minimum requirements for people with disabilities. In contrast, the USPPD simply provides a list of suggestions a state might choose to use in the issuance of license plates or placards for parking for people with disabilities and impairments that impact the ability to walk. It is neither required nor referenced in the non-discrimination provisions of the ADA which was enacted after the passage of the USPPD, indicating the DOJ had full knowledge of the USPPD at the time the regulations were created.

The USPPD is purely hortatory. In recognizing principles of federalism and state sovereignty, Congress rendered state compliance with the USPPD completely voluntary. In contrast, the ADA expressly applies to the states through Congress's Fourteenth Amendment powers. The required regulatory minimum number of accessible parking spaces and van accessible parking spaces and access aisles that a state, its subdivisions and all public entities must provide for people with disabilities is far more likely to be upheld by a court than the unenforceable provisions of the USPPD. See *Dare v. California*, 191 F.3d 1167, 1172 (9th Cir. 1999) (comparing ADA regulations and USPPD and concluding the USPPD does not affect analyzing discrimination claims under the Title II regulations). Because pregnancy in and of itself is not a disability, and this bill attempts to carve out a portion of the minimum required available parking for people with disabilities, a legal challenge to the propriety of this new law under the ADA brought by people with disabilities who need those parking spaces and are required to have them would likely be successful.

minimum requirements. As a result, Colorado would be in violation of Title II of the ADA by enacting this bill and stripping away the already limited number of accessible and van accessible spaces available to people with disabilities who can demonstrate they meet the requirements of the ADA's definition of a person with the disability as well as the USPPD definition regarding persons with disabilities which limit or impair the ability to walk. Nothing prevents Colorado from providing separate spaces for persons who are pregnant if it so chooses, it simply can't use spaces designated for people with disabilities to do so.