

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 13-cv-02760-PAB-MJW

COLORADO CROSS-DISABILITY COALITION,
a Colorado non-profit organization,

Plaintiff,

v.

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado,

Defendant.

**RESPONSE TO DEFENDANT’S MOTION TO DISMISS THE DEMAND FOR
INJUNCTIVE RELIEF**

The Colorado Cross-Disability Coalition (“CCDC”), by and through undersigned counsel, hereby submits its response to Defendant’s Motion to Dismiss the Demand for Injunctive Relief filed by the Regional Transportation District (“RTD”).

INTRODUCTION

CCDC has standing in this case because the Complaint and declarations submitted with this response set forth allegations showing CCDC meets all of the jurisdictional standing prerequisites set forth in *Tandy v. City of Wichita*, 380 F.3d 1277 (10th Cir. 2004).

CCDC’s complaint explains the long history between it and RTD, which itself, in part, explains why CCDC has alleged that it is suffering a continuing injury and is under a real or immediate threat of being injured in the future. *Id.* RTD has repeatedly failed to implement and comply with policies it claims will bring it into compliance with the fixed route bus service requirements of Title II of the Americans with Disabilities Act (“Title II” or “ADA”). *See* 42

U.S.C. § 12131; 49 C.F.R., pt. 37. CCDC has representational standing to bring this case on behalf of itself and associational standing as a representative of its members. *See Colo. Cross-Disab. Coal. v. Abercrombie & Fitch Co.*, No. 09-CV-02757-WYD-KMT, 2011 WL 2173713 (D. Colo. June 2, 2011) (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). Despite whatever policy changes RTD claims to be making, RTD's past and ongoing practices demonstrate years of noncompliance with the service requirements under Title II. RTD's motion must be denied.

BACKGROUND

In 2000, CCDC brought a lawsuit against RTD for multiple ADA violations, resulting in a Consent Decree that remained in place for five years. Compl. Intro. ¶¶ 11-14. The Court's order in that case, *Taylor et al. v. the Regional Transportation District*, 00-Z-981 (D. Colo. 2000), required extensive bus operator training, equipment inspections, regular maintenance of wheelchair lifts, recording, monitoring, documentation, and it included a dispute resolution process and operator discipline for failures to comply. Compl. Intro. ¶¶ 11-14. After the Consent Decree expired, CCDC members began experiencing discrimination again: bus operators would tell waiting passengers who use wheelchairs that the bus was full or the wheelchair securement areas were full when they were not. *Id.* at ¶¶ 15, 18; Compl. General Allegations (hereinafter "Gen.") ¶¶ 46-48.

The requirement of having the securement areas in buses is so that passengers who use wheelchairs can use the bus like everyone else. *See* 49 C.F.R. § 37.5(a) ("No entity shall discriminate against an individual with a disability in connection with the provision of transportation service."). Under the regulations, RTD is permitted, but not required, to have fold-down seats in the securement locations. 49 C.F.R. § 38.23(d)(2). RTD has chosen to have fold-down seats on its buses. The service regulations set forth directions regarding what bus

operators are to do when a passenger using a wheelchair needs to board the bus, and someone who does not need to use the securement area is occupying that space:

When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask . . . persons to move in order to allow the individual with a disability to occupy the seat or securement location[.]

49 C.F.R. § 37.167(j)(1). This is where RTD’s failures begin. Bus operators do not follow this rule. They open the door and say to the waiting passenger who uses a wheelchair, “The wheelchair spots are full. You’ll have to catch the next bus.” This results either in a passenger in a wheelchair being left at a bus stop to wait for the next bus or that passenger having to argue with the bus operator over whether the people in the securement area need to be there. As set forth in the Complaint, this is a very common occurrence despite RTD’s policies. Compl. Gen. ¶¶ 5, 10, 20-29, 46-48, 66-67, 72-79, 86-91, 102-107.

When this happened in 2007, CCDC staff and members demanded RTD take action to remedy these ADA violations. Compl. Intro. ¶¶ 15-18. RTD promised to improve and sent CCDC its new policies designed to fix the problem. *Id.* ¶ 19. CCDC devoted time and resources to working with RTD to resolve these issues. Compl. Gen. ¶¶ 36, 45, 49. For a period of time, CCDC received fewer complaints about this issue, but a rash of similar problems occurred in 2010. *Id.* ¶¶ 47, 113, 114. And then again in 2012. *Id.* ¶¶ 48, 53-61. Each of these times when CCDC received large numbers of complaints from its members, CCDC staff -- including its Executive Director and Legal Program Director -- had to take time and address RTD failures to comply with the law. *Id.* ¶¶ 45, 49, 62.

Each time RTD claimed it would make the changes needed to comply. *See, e.g., id.* ¶ 50. Paragraphs 53-62 of the Complaint Allegations section provide extensive detail regarding RTD’s purported changes in 2012 and CCDC’s involvement. For example, in 2012, RTD claimed: it

was providing “initial and refresher training of operators as well as outreach to the community” regarding the securement location policies, *id.* ¶ 52; it provided a memo to all operators explaining the need to accommodate passengers who use wheelchairs and mandating that the operator report all incidents when a passenger using a wheelchair was not boarded, *id.* ¶ 53-54; it gave operators detailed instructions regarding what to do if the bus seems crowded and there is a waiting passenger who uses a wheelchair at the bus stop, *id.* ¶ 54; it required that operators request that passengers occupying the securement areas vacate those seats and move to a seat behind the securement areas, *id.* These policies also required operators: to contact a dispatcher and required that the operator wait until cleared by a dispatcher or supervisor and that operators must relay that information to the waiting passenger in a wheelchair, *id.*; to take affirmative steps to convey identifying information for the driver and the vehicle in case the passenger wanted to complain to RTD, *id.*; and to provide a courtesy bus transfer, *id.* The memo advised operators that the video recordings on the bus are sometimes used to confirm the bus operators were following proper procedures and that operators should enter a preprogrammed data message “ADA PAX PASS-UP” which “will place the request for assistance on a high priority level, meaning that the call would be handled ahead of other routine calls.” *Id.* ¶ 56. Operators were allegedly required to report the issue to dispatchers and do so in the presence of the waiting passenger in a wheelchair. *Id.* ¶¶ 57-58. The problem with the letter and the 2013 policies is that they promise everything the 2012 policies did, but the 2012 policies did not work. *Compare* Compl. Gen ¶¶ 52-62 *with* Motion to Dismiss, Exh. A.

RTD has been made fully aware of the fact that passengers who use wheelchairs have been denied access to the securement areas. In a memo to all operators Alice Osner, General Superintendent of Transportation, stated:

There has been an increase in complaints from customers who use mobility devices regarding the availability of space in the priority seating/securement area. Many people choose to sit in the priority seating area because it affords more room for their belongings or their strollers. This can cause conflicts when the bus is full and people are asked to move because a customer with a mobility device wishes to ride. You may be able to mitigate a potential conflict by politely reminding people as they board that you may need to request the priority seating for a customer using a mobility device. Make sure to follow RTD's policy, and please do your best to encourage cooperation of all passengers when you are required to ask someone to move from the priority seating area.

Compl. Gen. ¶ 59.

If these 2012 policies (or, for that matter, the 2007 policies or the 2010 policies) had been implemented and followed, RTD might be in compliance with 49 C.F.R. § 37.167. But, as is replete throughout the Complaint, RTD did not follow those regulations, and passengers who use wheelchairs were either left at the bus stop or had to argue their way onto the bus. Compl. Intro. ¶¶ 15, 18, 21, 22; Gen. ¶¶ 10, 21, 23-29, 46-48, 59, 64-67, 72-79, 86-91, 102-107.

In addition, CCDC members who use wheelchairs have submitted complaints to RTD about the securement area issues in 2013. RTD does not respond or provide any indication of what action was taken. Compl. Gen. ¶¶ 72.o, 73.r, 75.l, 78.y, 79.n, 79.t, 87.k, 88.y, 91.j, 102.j (nearly all asking RTD for a written response). For those CCDC members who use wheelchairs that take the time to gather the needed information to file a complaint and who actually submit a complaint, it is little comfort to them that RTD will do something to solve the problem if RTD fails to respond to their complaints. Finally, the best evidence of whether an operator complied with the ADA's service requirements regarding boarding passengers who use wheelchairs and making securement locations available is the recordings on the buses. *See id.* ¶ 55. Because of the prior lawsuit and the Consent Decree's enforcement mechanisms, CCDC members became aware of the importance of requesting recordings in order to determine how operators and passengers interacted during any given incident. Compl. Gen. ¶ 11. Those recordings are not

maintained for very long. *Id.* ¶ 9. CCDC members who use wheelchairs routinely and quickly asked that RTD preserve recordings of the incidents about which they complained. *Id.* ¶¶ 11, 14, 72.l, 73.o, 75.h, 77.q, 78.o, 79.m, 79.p, 88.x, 89.cc; *see also* ¶ 55. RTD did not make the requested recordings available to the individuals requesting them until CCDC’s attorneys requested them. *Id.* ¶¶ 15-17, 75.j, 78.o-p, 79o-q, 88.x-z, 108-110. Of great concern to CCDC is the fact that RTD commonly reports the recording is “inoperable” or otherwise not functioning properly. *Id.* ¶¶ 78.s, 79.q-s, 110.

Four years of reporting the same complaints in the face of policies that should have solved the problem was enough. If RTD had followed its own policies in 2012, no passenger using a wheelchair should ever have been told, “The bus is full.” Passengers should never have to argue with the driver over whether the people in the securement areas need to be there. The 2012 policies would have required the driver to talk to the people in the securement areas and, if they could not be vacated, the driver would have called the dispatcher. The driver would have offered a transfer, arranged for alternative transportation or otherwise informed the waiting passenger of what the dispatcher said. That never happened. For those incidents where CCDC members who use wheelchairs actually boarded the bus, they never should have had to argue with the bus driver to do so.

ARGUMENT

I. Applicable Legal Standards

a. The ADA and Section 504

Under Title II, “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. §

12132; *see also* 29 U.S.C. § 794. The ADA has a specific statutory section that addresses the provision of public transportation. RTD’s fixed route system buses must be “readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.” 42 U.S.C. § 12142. Part 38 of the Department of Transportation regulations addresses ADA Accessibility Specifications for Transportation Vehicles. So that individuals who use wheelchairs who cannot transfer to another seat may use the bus system, each bus is required to have two wheelchair locations that contain securement devices. *See generally* 49 C.F.R. § 38.23(d). These locations are required to be placed as near the accessible entrance (wheelchair lift or ramp) and shall be large enough to accommodate a wheelchair (at least clear floor space of 30 inches by 48 inches). 49 C.F.R. § 38.23(d)(2). As noted above, “Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area[.]” *Id.* (Emphasis added.) RTD has chosen to have them.

The regulations specify what entities must do when an individual who requires the use of the securement area enters the bus and there are persons who do not need the securement area occupying the areas. “[T]he entity shall ask persons to move in order to allow the individual with a disability to occupy the seat or securement location[.]” 49 C.F.R. § 37.167(j)(1). The regulations also provide, “The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.” 49 C.F.R. § 37.167(j)(3). These regulations only address people occupying the securement areas. Nothing in the ADA regulations addresses equipment such as strollers, grocery carts, etc.

RTD has made repeated attempts at setting forth policies that look like these regulations on paper, but they do not achieve the result required by the ADA in practice. As noted, there are only two locations on any bus that a person who uses a wheelchair can use. In addition, for

many individuals who use wheelchairs, public transportation is their only option. *See, e.g.*, Decl. of Julie Reiskin (“Reiskin Dec.”) ¶ 6; Decl. of Douglas Howey (“Howey Dec.”) ¶¶ 8-9. All other individuals identified in RTD’s latest policies – those with strollers, packages, large items, baggage, skis and snowboards – can sit elsewhere and may have many other options for transportation.

The 2013 policies recite, “The rationale behind this policy is to ensure RTD is complying with Federal regulations regarding accessible transportation.” Mot. to Dismiss Ex. A, at 3, ECF No. 9-1. RTD’s policies seem focused on ensuring every person regardless of the need for the use of the wheelchair securement area has equal access to the securement area. That is not what the ADA requires. The ADA requires that all passengers, including passengers who use wheelchairs, have equal access to the bus.

b. Federal Rule of Civil Procedure 12(b)(1)

This Court has described the standards applicable to reviewing a motion to dismiss under Rule 12(b)(1) in several recent cases:

Dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) is appropriate if the Court lacks subject matter jurisdiction over claims for relief asserted in the complaint. Rule 12(b)(1) challenges are generally presented in one of two forms: [t]he moving party may (1) facially attack the complaint’s allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests. When resolving a facial attack on the allegations of subject matter jurisdiction, the Court must accept the allegations in the complaint as true. To the extent [RTD] attacks the factual basis for subject matter jurisdiction, the Court may not presume the truthfulness of the factual allegations in the complaint, but may consider evidence to resolve disputed jurisdictional facts. Reference to evidence outside the pleadings does not convert the motion to dismiss into a motion for summary judgment in such circumstances. Ultimately, and in either case, plaintiffs have the burden of establishing subject matter jurisdiction because they are the party asserting jurisdiction.

E.E.O.C. v. JBS USA, LLC, 794 F. Supp. 2d 1188, 1198-99 (D. Colo. 2011) (quotations and internal citations omitted).

It is uncertain which form of attack RTD poses, but in any event, CCDC has standing.

c. CCDC Has Established Standing In This Case.

(1) CCDC has suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by the relief requested. *Tandy*, 380 F.3d at 1283.

i. The Complaint Sufficiently Alleges Injury-in-Fact.

Plaintiff CCDC is a non-profit disability-rights advocacy organization. Compl. Gen. ¶ 26. When these persistent service violations occur, CCDC is damaged and must act. Many CCDC members who use wheelchairs have only RTD to use as their everyday source of transportation. For example, CCDC's Executive Director, Julie Reiskin requires a wheelchair and uses RTD nearly every day, has been late to meetings, has had to take off her work time to file complaints with RTD about her own incidents and about the problems of other members. Reiskin Dec. ¶¶ 7-8. CCDC members identified in the Complaint are regular RTD users. *See* Ex. 1-4. RTD refusing to board passengers who use wheelchairs injures CCDC. Repeatedly, top CCDC staff, including CCDC's Legal Program Director and program staff, have had to drop what they were doing and address RTD's failures to comply.

Even submitting a complaint to RTD is time consuming. In order for a complaint to even be investigated, passengers must provide the time, date, route number, bus number, block

number and more. RTD claims it cannot process complaints without that information. The complaint process makes it likely that many complaints are not investigated.¹

CCDC members have demonstrated how the injury is concrete and particularized. Each of the members who uses a wheelchair and rides RTD on a regular basis has been subjected to discriminatory treatment. CCDC's members and the organization itself are damaged each time RTD fails to comply with the regulations. The injury to CCDC is having to stop and address the issue repeatedly so its members can get to work and school like everyone else and because CCDC has to constantly remind RTD that it is not complying with the ADA. "Past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury. *Tandy*, 380 F.3d at 1283. On four separate occasions over a span of six years, CCDC has had to stop what it was doing to report numerous continuing complaints about conduct that RTD allegedly addressed in prior policies. Each time, RTD's response is to draft policies that are very similar to those it had before. Doing so is in and of itself an admission that the past policies did not work.

The Complaint sets forth policies RTD said it implemented in 2012; however, CCDC members who use wheelchairs find themselves and others experiencing exactly the same failures by RTD as occurred prior to the 2012 policies. A defendant's "ongoing history of not following its own stated . . . procedures ma[kes] necessary" an injunction. *Moeller v. Taco Bell Corp.*, 816 F. Supp. 2d 831, 861 (N.D. Cal. 2011) (quoting *United States v. Laerdal Mfg. Corp.*, 73 F.3d 852, 857 (9th Cir. 1995)). RTD now bases its claim that violations will not recur in the future on

¹ *But see* Compl. Gen. ¶¶ 103-107. RTD's files show that since 2007, at least 100 passengers have complained about securement areas being used improperly by people who don't need them without RTD operators doing anything.

new policies that require bus operators to do exactly what the policies promised and failed to deliver since the end of the Consent Decree from the prior lawsuit. *Id.* Nothing has changed.

First, with respect to training, RTD is required to train drivers to “proficiency” to comply with the regulation “and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.” 49 C.F.R. § 37.173. “A well-trained workforce is essential in ensuring that the accessibility-related equipment and accommodations required by the ADA actually result in the delivery of good transportation service to individuals with disabilities.” 49 C.F.R. Part 37, App. D, at 538. Here, RTD put all of the regulatory language in its 2012 policies. Compl. Gen. ¶ 52 (“copies of material that we’re presently using at RTD in our initial and refresher training of operators”) and ¶ 53 (“All passengers with or without disabilities, are to be treated with the highest degree of respect and concern for safety”). Yet CCDC members who use wheelchairs continued to experience operators who said the bus was full before ever doing any of the steps required in the regulations or RTD’s policies. *Id.* ¶ 54.

Second, only RTD has the documentation and individual employees needed to testify regarding what did or did not happen in training. Third, passengers who use wheelchairs who are waiting on a sidewalk for a bus cannot hear and see everything that happens on the bus. The ADA service regulations require drivers check the securement areas and that there be communication between the driver and passengers occupying the securement areas. 49 C.F.R. § 37.167(j)(1). The best evidence of whether the operators did or did not comply with RTD policies and the regulations is the recordings. Yet RTD has refused to produce them, or they have been rendered inoperable. *See, e.g.*, Compl. Gen. ¶¶ 75h-j, 78.q-x, 79m-q, 88x-z.

Once again, passengers who use wheelchairs routinely have operators stop and say they do not have room to board them on that bus. The operators haven't bothered to look. This Court can infer from these routine occurrences that RTD has failed either in its training or in its follow up disciplinary action when RTD drivers have acted inappropriately. *See, e.g., Henrietta D. v. Bloomberg*, 331 F.3d 261, 290 (2d Cir. 2003) (past wrongs coupled with evidence of some recent violations of the same law supported an inference that there were likely to be violations of a similar nature in the future). RTD has had policies in place that should solve the problem, but those policies and training aren't working. The principal reason for bus operator non-compliance must be RTD's lack of training or failure to investigate and discipline operators. *See Martin v. Metro. Atlanta Rapid Transit Auth.*, 225 F. Supp. 2d 1362, 1378 (N.D. Ga. 2002) (plaintiffs' evidence that drivers do not comply requires bus company to show it provided adequate training, complaint follow-up, and driver discipline, if necessary). The case at bar also differs from the facts in *Midgett v. Tri-Cnty. Metro. Transp. Dist. of Oregon*, 254 F.3d 846, 850 (9th Cir. 2001). In this case, CCDC alleges both that RTD has implemented the same training and operations policies it suggests it will implement in 2013, but that RTD has failed to produce results that ensure passengers who use wheelchairs are provided access to the securement areas. In addition, CCDC alleges the 2013 policies make it more likely passengers who use wheelchairs will be left at the curb. For example, RTD's 2012 policies required drivers to contact dispatch if a passenger refused to move, and the 2013 policies confuse the issue: If someone requests access to "Priority Seating/Seurement Area," "no further action is necessary if they refuse or fail to comply with your request," Mot. to Dismiss, Ex. A at 1; the 2012 policies make written reports mandatory, and the 2013 policies do not.

RTD's claim that this case should be dismissed because it has new policies is similar to employers who defend punitive damages claims in employment discrimination cases by arguing good-faith compliance. In such cases, an employer may defeat the claim through evidence showing good faith compliance with the antidiscrimination law. *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 544 (1999). For an employer to avail itself of the defense, an employer must at least, 1) adopt antidiscrimination policies; 2) make a good faith effort to educate its employees about these policies and the statutory prohibitions; and 3) make good faith efforts to enforce an antidiscrimination policy. *McInnis v. Fairfield Communities, Inc.*, 458 F.3d 1129, 1138 (10th Cir. 2006) (citing *Cadena v. Pacesetter Corp.*, 224 F.3d 1203, 1210 (10th Cir. 2000) (emphasis added) (quotations omitted)).

RTD has claimed to have policies in place that comply with the DOT regulations since, at least 2007. RTD has told CCDC that it has "trained" all of its bus operators and "implemented" these policies. RTD fails to apprehend the true problem, however: after a prior lawsuit and Consent Decree that expired in 2005, and CCDC's attempts to work with RTD on the same issues in 2007, 2010, 2012 and 2013, RTD continues to discriminate against passengers who use wheelchairs. RTD's "new" policies are a rehashing of what they have claimed to do in the past. "[E]ven if an employer[] adduces evidence showing it maintains on paper a strong non-discrimination policy and makes good faith efforts to educate its employees about that policy, a plaintiff's claim should not be dismissed if the plaintiff alleges the defendant failed to adequately address the 'violations of which it was aware.'" *McInnis*, 458 F.3d at 1138 (quoting *Cadena*, 224 F.3d at 1210). The mere existence of a policy is not enough to establish good faith if there is evidence that employees disregarded it, failed to investigate complaints or failed to take

appropriate disciplinary action against the offending employee. *See Ogden v. Wax Works, Inc.*, 214 F.3d 999, 1010 (8th Cir. 2000).

What RTD is doing his not working. The Complaint more than adequately demonstrates that. RTD's proposed policies will not change that. RTD cannot use its new policies as the reason for dismissal when the evidence shows it does not comply with its policies, and those new policies provide even less protection against discrimination. RTD should also not be given the benefit of its governmental decision making when it has demonstrated repeatedly its policies don't work. What is needed here, as was the case in 2000, is a strong injunction with training provided by people actually affected, monitoring to ensure compliance, and disciplinary action taken against bus operators who do not comply.

ii. The Injury Is Traceable to RTD's Conduct.

The Complaint alleges that RTD and its contractors have failed to comply with the ADA and its regulations implementing the transportation requirements and its own policies. *See* Compl. Parties ¶ 34. RTD is liable for the actions of its contractors that violate the ADA. 49 C.F.R. § 37.23. To satisfy the traceability requirement, the injury must not result from the independent action of some third party not before the court). *Tandy*, 380 F.3d at 1283 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). CCDC's alleged injury is fairly traceable to RTD's challenged conduct. The threat of bus operators not boarding passengers who use wheelchairs or not boarding them until the passenger argues over whether the securement areas are occupied by those who need them is traceable to RTD's alleged failure to implement the ADA's service requirements.

iii. The Injury Will Be Redressed By the Relief Requested.

CCDC seeks an injunction that will guarantee the ADA's nondiscrimination mandate is enforced. "It can scarcely be doubted that, for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress." *Tandy*, 380 F.3d at 1285 (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167,185-186 (2000)). Both injunctive and declaratory relief can effectively abate RTD's injurious conduct and prevent its recurrence. It is therefore likely, and not merely speculative, that an injunction or a declaratory judgment would remedy CCDC's injury in fact. CCDC has standing to seek prospective relief.

CONCLUSION

CCDC itself and on behalf of its members is being subjected to an ongoing injury because RTD's failure to implement the ADA's service requirements has not changed. Its members who use wheelchairs are still experiencing the same problems on RTD buses. The injury has been caused by RTD's failure to implement and comply with its own policies. Despite what RTD's policies say, RTD bus operators do not make the securement areas accessible to passengers who use wheelchairs. Only an injunction that requires them to do so will be sufficient to ensure securement areas are accessible to passengers who need them.

DATED: December 27, 2013.

Respectfully Submitted,

/s/ Kevin W. Williams

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will provide electronic service to the following:

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Derrick Black

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/s/ Kevin W. Williams

Colorado Cross-Disability Coalition

Legal Program Director

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 13-cv-02760-PAB-MJW

COLORADO CROSS-DISABILITY COALITION,
a Colorado non-profit organization,

Plaintiff,

v.

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado,

Defendant.

DECLARATION OF DOUGLAS HOWEY

I, Douglas Howey, declare and affirm as follows:

1. I am over eighteen years of age and competent to make this declaration.
2. I am a member of the Colorado Cross-Disability Coalition.
3. I submit this Declaration in support of Plaintiffs' Response to Defendant's Motion to Dismiss the Demand for Injunctive Relief in the case of *Colorado Cross-Disability Coalition v. Regional Transportation District*, 13-cv-02760-PAB-MJW.
4. I have been using RTD since 1989.
5. From 1995-2012, I used RTD as my commuting choice.
6. In May of 2012, I became paralyzed and now require the use of a wheelchair when commuting.
7. Several medical conditions prevent me from driving.
8. My family cannot afford a wheelchair accessible van, and I do not have someone

available to drive me much of the time.

9. RTD is my only means of transportation now.

10. I have used Access-a-Ride, but I am able to use the fixed route bus system when weather permits.

11. In good weather, I use four to eight RTD buses approximately every day, and I use RTD five to six days per week approximately.

12. In bad weather, I use four to eight buses approximately each week.

13. I will continue using RTD approximately the same amount now and in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 27, 2013.

/s/ Douglas Howey
Douglas Howey

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 13-cv-02760-PAB-MJW

COLORADO CROSS-DISABILITY COALITION,
a Colorado non-profit organization,

Plaintiff,

v.

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado,

Defendant.

DECLARATION OF JULIE REISKIN

I, Julie Reiskin, declare and affirm as follows:

1. I am over eighteen years of age and competent to make this declaration.
2. I am the Executive Director of the Colorado Cross-Disability Coalition.
3. I submit this Declaration in support of Plaintiffs' Response to Defendant's Motion to Dismiss the Demand for Injunctive Relief in the case of *Colorado Cross-Disability Coalition v. Regional Transportation District*, 13-cv-02760-PAB-MJW.
4. I have been using RTD for over twenty years.
5. During all of that time, I have required the use of and have used a motorized wheelchair for mobility.
6. RTD is my only means of transportation now.
7. I use RTD five to seven days each week.
8. I use approximately four to twelve buses every day.

9. I will continue using RTD approximately the same amount now and in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 27, 2013.

/s/ Julie Reiskin
Julie Reiskin

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 13-cv-02760-PAB-MJW

COLORADO CROSS-DISABILITY COALITION,
a Colorado non-profit organization,

Plaintiff,

v.

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado,

Defendant.

DECLARATION OF PAUL STEWART

I, Paul Stewart, declare and affirm as follows:

1. I am over eighteen years of age and competent to make this declaration.
2. I am a member of the Colorado Cross-Disability Coalition.
3. I submit this Declaration in support of Plaintiffs' Response to Defendant's Motion to Dismiss the Demand for Injunctive Relief in the case of *Colorado Cross-Disability Coalition v. Regional Transportation District*, 13-cv-02760-PAB-MJW.
4. I have been using RTD for over twenty years.
5. During all of that time, I have required the use of and have used a motorized wheelchair for mobility.
6. RTD is my only means of transportation now.
7. I use RTD at least 4 days a week.
8. I use approximately two buses each time I use RTD.

9. I will continue using RTD approximately the same amount now and in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 27, 2013.

/s/ Paul Stewart
Paul Stewart

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 13-cv-02760-PAB-MJW

COLORADO CROSS-DISABILITY COALITION,
a Colorado non-profit organization,

Plaintiff,

v.

REGIONAL TRANSPORTATION DISTRICT,
a political subdivision of the State of Colorado,

Defendant.

DECLARATION OF PAMELA CARTER

I, Pamela Carter, declare and affirm as follows:

1. I am over eighteen years of age and competent to make this Declaration.
2. I am a member of the Colorado Cross-Disability Coalition.
3. I submit this Declaration in support of Plaintiffs' Response to Defendant's Motion to Dismiss the Demand for Injunctive Relief in the case of *Colorado Cross-Disability Coalition v. Regional Transportation District*, 13-cv-02760-PAB-MJW.
4. I have been using RTD for over twenty years.
5. During all of that time, I have required the use of and have used a motorized wheelchair for mobility.
6. RTD is my only means of transportation now.
7. I use RTD at least one day a week.
8. I use approximately two buses each time I use RTD.

9. I will continue using RTD approximately the same amount now and in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 27, 2013.

/s/ Pamela Carter
Pamela Carter