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Subject: Urgent SB 1166 information

To Arizona Senators and Other Parties Involved with SB 1166:

Psychiatric Service Dog Partners (PSDP) is a 501(c)(3) nonprofit dedicated to advocating for justice and responsibility for all parties where the use of service dogs is concerned. We have constituents nationally, including in Arizona.

We received late notice of the bill under consideration, and have thus written this comment only one day before the next meeting during which SB 1166 will be considered (2/8/16), so please forgive any omissions of custom or brevity. Our hope is to bring our state and federal advocacy experience and subject matter expertise to bear on the issue before the Natural Resources Committee in very short order, so that major concerns may be addressed before the bill continues along the path toward being cemented into law. We are sending this message to each senator on the committee.

We initially want to recognize and applaud the proposed changes to §11-1024 of the Arizona Revised Statutes that tighten up the current statutes to be in line with the Department of Justice's (DOJ's) revised Americans with Disabilities Act (ADA) regulations. Our organization worked with Michigan legislators last year to help them do the same. They wisely decided to tie their bills' service animal provisions—especially the "service animal" definition—to the federal regulations by specific reference, ensuring they would not need to update their laws again whenever the DOJ next updates the ADA regulations.

We recommend every state follow this type of lead when revising service animal related definitions, unless the state has a particular interest in giving broader rights or protections than those federally available (we appreciate states such as yours affording service animal in training protections). This is an area in which states cannot abridge the rights protected at the federal level without losing enforceability and creating confusion, so providing either equal or greater rights protection are the only practical options.

Our primary cluster of concerns relates to the topics of the largest statute addition in SB 1166: documentation for and marking of service animals. In the section below, we address this proposal through an introductory sampling of fairly independent arguments against these requirements. We find these arguments comparatively compelling, but in the section that follows the one below, we'll provide the strongest argument by demonstrating how the statute addition contravenes federal law.

Independent reasons against certification, registration, and marking

We understand that legislators have enormous responsibility in making important decisions across the gamut of public life, each informed vote or bill drafting requiring them to either

become or consult with subject matter experts. The DOJ had the decided advantage of a great breadth and depth of public feedback when developing its current service animal regulations. There are many hot-button issues those good people deftly navigated with the assistance of many stakeholder groups and individuals, stacked with years of expertise development. In such a process, our all-volunteer peer advocacy group is able to offer perspectives that sometimes contrast with resource-rich service animal programs, whose interests inexorably and somewhat understandably exceed disability rights.

Unfortunately, it has appeared that those with a business interest in certification and registration have pushed this issue hard in recent years, using emotional appeals to elicit kneejerk support of registration, certification, or ID as a panacea when it comes to preventing the intentional and unintentional mislabeling of pets as service animals. This is unfortunate because it is no panacea. Such requirements not only place an undue burden on service animal users—especially the thousands of responsible owner-trainers whose service animals allow them to engage in the world in basic ways they otherwise couldn't—but the requirements don't achieve the intended goals in practice.

The more complicated the requirements are made, the more burdensome they are to the people for whom barriers should be removed. But no matter how complicated they are, experience shows that documentation requirements are easily evaded or faked by those few bad apples determined to game the system. The Department of Transportation (DOT) is currently revising the Air Carrier Access Act (ACAA) regulations, because they tried complex documentation requirements for half a decade to prevent fraud, and all it accomplished was to make it so people with disabilities have worse barriers to travel, and more money went into the pockets of opportunistic businesses who gladly provided the materials the regulations required.

A service animal is considered an assistive device, like a wheelchair or a prosthetic limb. It's a part of how a person with a disability is able to go out and try to do what everyone else takes for granted. We do not believe someone should have to acquire, carry, or show paperwork or special gear merely to go out in public to access basic goods and services the way they need to, whether the person is in a wheelchair, has a prosthetic limb, or uses a service animal.

There are behavior standards for service animals, as detailed in the ADA regulations and SB 1166/§11-1024. These standards are what is relevant for service animal access: *behavior, not belongings*. We have personally seen putative service dogs of all origins seriously misbehave (including those from large national programs). We should avoid giving *any* service animal handler the impression that a dog that has been certified or registered—perhaps more likely when the dog is from a large program—has any less of an obligation to meet the behavior standards already set by the law.

People are already confused or ignorant about service animal laws. We believe the best remedy is education, not more burdens or bureaucracy. Businesses need to know that they can *and should* disallow significantly misbehaving animals, whether they are claimed as service animals or not. They should be taught to record activities leading up to and including any disputes, in order to reduce their legal and public image liabilities. We do not believe there should be *more* service animal law thrown at businesses, creating further confusion and a wider education gap. Existing law can work if people are educated about it, but it won't work to make more of something people don't know about.

We also are opposed to barriers to free travel of persons with disabilities among states. If a Nevadan service animal user wants to visit Arizona, will this be illegal without the quite specific equipment and paperwork required in the proposed law? This sort of unwelcoming law is the conspicuous culprit in keeping our convention dollars out of certain states, and

results in community "travel advisories" against these states for fear of unjust punishment.

No one in the service animal community likes to be told by lawmakers what equipment they have to use with their dog. This highly personal decision is influenced by factors as varied as individuals' disabilities and personal preferences. Some service animal teams work best with a particular harness, some work best unmarked. The question of what gear to use—or what markings must be on that gear—should be up to the handler. Legislating gear requirements is akin to insurance companies telling patients what drugs they have to take, contrary to their doctor's best treatment plan!

Conflict with federal regulations and guidance

We believe certification, registration, and gear requirements not only create undue burdens, but they also don't actually achieve the goals they set out to: it's a lose-lose. We wrote at length about this in response to a draft of Michigan's HB 4521 last year.

If you sit with the above sampling of the available arguments and you're not persuaded—if you're dead-set that these requirements will actually achieve your goals without fatal drawbacks—our next resort must be to alert you that federal regulations and guidance do not allow states to abridge civil rights in these ways. The changes to the statutes proposed in §11-1024(L)(5) and §11-1024.01 (reproduced below, in which additions are in all-caps) are contrary to CFR 28 §§35–36. We detail this following the reproduction of the problematic additions of SB 1166.

§11-1024(L)(5)

"Service animal" means any dog or miniature horse that is individually trained AND CERTIFIED to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Service animal does not include other species of animals, whether wild or domestic or trained or untrained.

§11-1024.01.

Service animals; certification and registration; identification; definitions

A. A SERVICE ANIMAL SHALL BE CERTIFIED BY AND REGISTERED WITH A STATEWIDE OR NATIONWIDE SERVICE ANIMAL REGISTRATION ORGANIZATION THAT REQUIRES AT LEAST ONE YEAR OF INITIAL TRAINING AND ANNUAL TESTING TO MAINTAIN CERTIFICATION AND REGISTRATION WITH THE ORGANIZATION.

B. A SERVICE ANIMAL IN A PUBLIC PLACE SHALL WEAR A VEST THAT DISPLAYS THE FOLLOWING INFORMATION:

1. THE NAME OF THE PERSON WHO TRAINED THE SERVICE ANIMAL.
2. THE NAME OF THE ORGANIZATION THAT CERTIFIED THE ANIMAL AS A SERVICE ANIMAL.
3. THE REGISTRATION NUMBER PROVIDED BY THE ORGANIZATION THAT CERTIFIED THE ANIMAL AS A SERVICE ANIMAL.

C. A SERVICE ANIMAL'S HANDLER SHALL CARRY A SERVICE ANIMAL IDENTIFICATION CARD WHEN IN A PUBLIC PLACE WITH A SERVICE ANIMAL. THE IDENTIFICATION CARD SHALL CONTAIN THE FOLLOWING:

1. THE WORDS "CERTIFIED SERVICE ANIMAL".
2. A PHOTOGRAPH OF THE SERVICE ANIMAL.
3. THE NAME OF THE SERVICE ANIMAL.
4. THE NAME OF THE SERVICE ANIMAL'S HANDLER.
5. THE REGISTRATION NUMBER PROVIDED BY THE ORGANIZATION THAT CERTIFIED THE ANIMAL AS A SERVICE ANIMAL.

D. FOR THE PURPOSES OF THIS SECTION, "PUBLIC PLACE" AND "SERVICE ANIMAL"

HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 11-1024.

Below we cite sections of Title 28 of the code of federal regulations (CFR) and guidance pertaining to state and local government (implementing Title II of the ADA), but the information runs parallel in the portions pertaining to places of public accommodation (implementing Title III of the ADA).

Recall that as we noted above, state and local governments can only provide protection greater or equal to that of the ADA regulations when it comes to service animals. As some people put it, the federal regulations establish the floor of rights, but states and local governments can set a higher ceiling:

§35.103 Relationship to other laws.

[...]

(b) Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

The definition of "public entity" in the quotation below includes "Any state or local government":

§35.136(f)

A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

This is a straightforward prohibition on the documentation and pursuant marking requirements in SB 1166. We can see the DOJ's reasoning when we look at this excerpt from the appendix:

Appendix A to §35, Subpart B. *Inquiries about service animals.*

Some commenters suggested that a title II entity be allowed to require current documentation, no more than one year old, on letterhead[...]These commenters asserted that this will prevent abuse and ensure that individuals with legitimate needs for[...]service animals may use them.[...]The proposal would also require persons with disabilities to obtain medical documentation and carry it with them any time they seek to engage in ordinary activities of daily life in their communities—something individuals without disabilities have not been required to do. Accordingly, the Department has concluded that a documentation requirement of this kind would be unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA.

We note that the Arizona statute affected by SB 1166 *currently* states:

§11-1024(L)(2)

"Discriminate" means discriminatory actions prescribed in section 41-1492.02 and includes:

[...]

(e) Requiring provision of identification for the service animal.

Requiring ID or documentation for service animals is consistently and straightforwardly analyzed in case law and agency guidance as discriminatory in our experience. It seems the current Arizona statute similarly recognizes this analysis as a simple consequence of Arizona's §41-1292.02 (pay particular attention to (E)(1) and (G)(1) therein). However, as a

necessary outcome of the registration/certification addition of §11-1024.10 proposed in SB 1166, (e) above is struckthrough in the bill. This strikes us as quite odd. The precedent in (e) (of an ID requirement being a clear instance of discrimination) is explicitly referenced as justified elsewhere. Yet not only is the proposal that ID be *allowed*, it's that ID is to be *required*. This 180 turns the widespread precedent on its head.

While we are very much in favor of service animals being well-trained to behave in various public settings—and of course to do disability-mitigating work or tasks—we are not in favor of legislating any specific standards that may easily exclude individuals in unimagined but deserving situations, or that may serve to advance the financial interests of a type of business only to the detriment of persons with disabilities. Relatedly, the DOJ also reasons beyond ruling out documentation requirements, coming out decidedly against incorporating specific training requirements into regulations:

Appendix A to §35, Subpart B. *Training requirement.*

Certain commenters recommended the adoption of formal training requirements for service animals. The Department has rejected this approach and will not impose any type of formal training requirements or certification process, but will continue to require that service animals be individually trained to do work or perform tasks for the benefit of an individual with a disability. While some groups have urged the Department to modify this position, the Department has determined that such a modification would not serve the full array of individuals with disabilities who use service animals, since individuals with disabilities may be capable of training, and some have trained, their service animal to perform tasks or do work to accommodate their disability. A training and certification requirement would increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.

Some commenters proposed specific behavior or training standards for service animals, arguing that without such standards, the public has no way to differentiate between untrained pets and service animals. Many of the suggested behavior or training standards were lengthy and detailed. The Department believes that this rule addresses service animal behavior sufficiently by including provisions that address the obligations of the service animal user and the circumstances under which a service animal may be excluded, such as the requirements that an animal be housebroken and under the control of its handler.

Finally, the DOJ has provided consistent guidance that there are no specific identifying gear requirements for service animals. The latest guidance came in the form of a nine-page Q&A in July of 2015, informally incorporating case law into a presentation of the current ADA regulations:

Frequently Asked Questions about Service Animals and the ADA (p. 2)

Q8: Do service animals have to wear a vest or patch or special harness identifying them as service animals?

A: No. The ADA does not require service animals to wear a vest, ID tag, or specific harness.

Imposing a gear requirement (as in the current form of SB 1166) would abridge the rights of service animal users, reducing a freedom in a way contrary to the clear intention of the DOJ in its ADA implementation.

Further cooperation

Thank you for the effort that has gone into SB 1166. We have focused on opportunities for improvement, but there is much that is laudable in the bill. We sincerely hope to see it go forward with the problematic parts removed. We respectfully contend that this would be the best way not only to adhere to superceding (federal) law, but also to honor the intense

debate, deep reasoning, and practical experience that has been fed into that law.

We would be happy to work with you in constructing or modifying any other portions of service animal legislation. A major part of our mission is to work with legislators and regulators to make the world more just. Please contact us if there is any way we can continue toward this goal together.

Earnestly and optimistically,



Veronica Morris, PhD
President & Executive Director
on behalf of the PSDP Board of Directors

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Psychiatric Service Dogs Partners' purpose is to promote the mental health of people using service dogs for psychiatric disabilities by educating, advocating, providing expertise, facilitating peer support, and promoting responsible service dog training and handling.