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Before

The U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Oversight and Investigations

hearing entitled

“Accessibility for People with Disabilities on National Parks and Public Lands

Testimony of
Graham Hill

Thank you to the Committee for the opportunity to testify on a topic of long-standing importance to a great many disabled Americans, and of some controversy as well. I come to you today by way of 40 years of hunting, fishing, recreational and competitive shooting and other outdoor pursuits – all from a wheelchair.

Growing up in Texas, my love of the outdoors was shared by all that I knew. Like many others that I came to know after my injury, I longed to return to those devotions any way possible. For me, with the unfaltering support of my Father, Brother and others, reclaiming my place in the great outdoors served to reinstate my former view of myself as a capable person with a world of possibilities to explore and pursue. I was fortunate, for many others I came to know over the early years of my disability had not found themselves, or their way in world.

The power of the outdoors to heal a person's soul is real. It has been observed by great observers of the natural world from Albert Einstein to Hemingway and Thoreau, and by simple, small-town outdoorsmen like me, and everyone in between. The thousands of veterans returning from wars have experienced it too. From Vietnam to Afghanistan, veterans have often found themselves again while in the presence of the grace of the great outdoors, where peace brings perspective and hope.

These rehabilitative experiences I share with a great many other disabled Americans are why practical access to America's vast land holdings brings forth such passion by both the disabled and their abled bodied supporters. These lands are theirs too, and they seek nothing short of the healing solace of it.

When in 1964 Congress passed the Wilderness Act and established the National Wilderness Preservation System (NWPS) it did not foresee passage in 1990 of the Americans with Disability Act. In the intervening 26 years of the two laws, the slow emergence of the rights of people with disabilities entered the national dialogue and eventually found a leader in Justin Dart Jr. Dart was a Chicago native who made his way to Texas and ultimately led the Governor's Committee for Persons with Disabilities, and then in Washington as a Member of the National Council on Disability (NCD) where he became the unstoppable force behind the Americans with Disability Act (ADA).

The determination of the supporters of the NWPS to preserve the System's lack of roads collided with the determination of the disabled rights supporters in Section 507 (c) of the ADA:

(1) In General--Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.

(2) Definition--For the purposes of paragraph (1), the term wheelchair means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

While Section 507(c) provided for wheelchair access to the NWPS, it was a hollow provision. Wheelchair access to the wilderness is akin to wheelchair access to the ocean – no one in a wheelchair can roll on water and no one in a wheelchair can push themselves through the wilderness. Importantly, this provision doesn't prohibit any "special treatment or accommodation", it just doesn't require it. In true Congressional fashion, it "kicked the can down the road" for a future, practical access solution to be fashioned that was not required by law, but formed by good will, trust and common sense.

To be sure, the ADA did spur improved practical access in other federally owned and managed lands. The National Park Service perhaps most off all has made progress, and continues to do so, in providing practical wheelchair

access. Though it is true that the NPS disallows some activities, like hunting and shooting, to all visitors which consequently spares it an obligation to the wheelchair bound for practical access for those activities.

I must also note the work of groups like the U.S. Access Board, National Council on Disability (NCD), ADAAG and others that have produced standards, metrics, rulemakings and other guidance to implement the ADA's requirements across federal land holdings.

In 1992, just two years after passage of the ADA, the NCD prepared a report in accordance with Section 507(a) of the ADA entitled "Wilderness Accessibility for People with Disabilities"¹. The Report's recommendations remain pertinent and applicable today:

1. All federal agencies that manage the NWPS should adopt policies consistent with those stated in Section 507(c) of the Americans With Disabilities Act as soon as possible.
2. Federal agencies should bring existing facilities outside of the NWPS up to code for use by persons with disabilities as soon as possible. This upgrade includes trailheads, parking facilities, restrooms, and telecommunications devices for the deaf (TDDs) in ranger stations.
3. NWPS managing agencies should develop guidelines for special permits and modifications regarding use by persons with disabilities that are consistent with the Wilderness Act. Agencies should be encouraged to facilitate NWPS use by persons with disabilities when such use is consistent with the Wilderness Act. Agencies are encouraged to work with persons with disabilities, outfitters, and other programs that use the NWPS to develop these guidelines.
4. NWPS unit managers should receive training to increase general awareness of disability issues and specific awareness of the policies and practices regarding use of the NWPS by persons with disabilities.
5. Each agency should develop better information about what is available to persons with disabilities who want to use the NWPS. This information should be made readily available to the public.

During preparation of the above report David C. Park, the Chief of the Special Programs and Populations Branch of the National Park Service made the following remarks to the NCD:

"On the surface, the concurrent goals of equal accessibility and preservation of wilderness areas seem to be antithetical. However, at a closer look, we do not believe that is actually the case. It is not, in our estimation, a question of one goal or legal mandate taking precedence over another or superseding another. It is a

¹ <https://ncd.gov/publications/1992/December1992#1>

question of finding effective ways to balance the intent of both and finding ways to provide the highest-level access with the lowest level impact on the environment.”.

Despite the sage and wise perspective of Mr. Park, and the commonsense approach he expressed in how to reconcile the ADA with environmental concerns, including the Wilderness Act, little practical access progress occurred.

Just seven years later, in the 105th Congress, on October 14, 1998 this Committee brought to the House floor under suspension of the rules HR 4501 “Study Regarding Improved Outdoor Recreational Access for Persons with Disabilities”. Introduced by Congressman Bob Schaffer of Colorado, the floor debate led by Congressman Hansen in support of the bill, and Congressman Miller in opposition, quickly came to center upon the division of opinion flowing from Section 507(c) of the ADA and the Wilderness Act.

(a) Study Required.--The Secretary of Agriculture and the Secretary of the Interior shall jointly conduct a study regarding ways to improve the access for persons with disabilities to outdoor recreational opportunities (such as fishing, hunting, trapping, wildlife viewing, hiking, boating, and camping) made available to the public on the Federal lands described in subsection (b).

(b) Covered Federal Lands.--The Federal lands referred to in subsection (a) are the following:

- (1) National Forest System lands.
- (2) Units of the National Park System.
- (3) Areas in the National Wildlife Refuge System.
- (4) Lands administered by the Bureau of Land Management.

(c) <<NOTE: Deadline.>> Report on Study.--Not later than 18 months after the date of the enactment of this Act, the Secretaries shall submit to Congress a report containing the results of the study.

“It did not take long to get past the disability issue here to see the anger over the fact that we have a national Wilderness Act in this country²”, said Congressman Miller during floor debate. Mr. Schafer responded “Over the last several years the disabled have proven that personal determination and technological advancements overcome seemingly insurmountable odds. This bill will bring a heightened awareness of those issues and help facilitate the hopes and goals of over 40 million disabled Americans through outdoor recreation.”³ Debate during floor consideration of HR 4501 pitted supporters of the Wilderness Act that perceived wheelchair access as a trojan horse for destruction of the wilderness, against supporters of the disabled who were also unhappy that the permanent authorization of Wilderness Act had prevented any updates to the Wilderness Act. Though HR 4501 did pass under suspension in the House and by UC in the Senate to become Public Law 105-359 (112 Stat. 3275) but the subsequent study did not ameliorate the challenges of practical wheelchair access to Wilderness Lands.

Of all of the federal land access issues that challenge the disabled and wheelchair bound, the Wilderness Act and ADA Section 507(c) remain the most resistant to a solution based in common sense, mutual understanding and trust. We today remain largely, though not entirely, at the same place we were at 30 years ago on this issue.

² Congressional Record H10847, October 14, 1998 105th Congress.

³ Ibid.

Though the progress at other agencies has been slow at times, it has been progress. The acceptance and recognition of an established civil right takes time. Passage of a law recognizing it doesn't wipe clean the circumstances that gave rise to the need to recognize it in law. Reluctance of how to accommodate the civil right, resistance to the changes it requires, uncertainty in how to balance interests, all remain in place and only over time dissipate.

The U.S. Forest Service, the National Park Service, the U.S. Fish and Wildlife Service and, more recently, the Bureau of Land Management have all made strides towards practical access, though progress has been uneven. Different metrics for disability between these agencies, their different legal purposes and obligations, their different allowed activities and other factors often produce confusion for the disabled customer seeking to navigate the rules and regulations intended to aid them with access to federal lands. Intra-agency efforts to bring improved practical access to federally owned lands have been a saliency for progress, particularly at the NPS and Fish and Wildlife Service. The BLM and Forest Service lag behind in my experience.

Among them all, Inter-agency collaboration has been very slim, if it has occurred at all. This in my view represents an opportunity today to establish improved, consistent alignment between the agencies in their rules and guidance for disabled customers where possible. While each agency thinks of itself as its own entity, from the customer's point of view it is all federally owned and managed land to which they are seeking information for practical access.

In conclusion, I challenge this Committee to take up the stalemate of Section 507(c), and the spirit of Mr. Park's words *"It is a question of finding effective ways to balance the intent of both and finding ways to provide the highest-level access with the lowest level impact on the environment."* The middle ground to which Mr. Park refers does exist. There is no question that the commonsense NCD recommendation that "NWPS managing agencies should develop guidelines for special permits and modifications regarding use by persons with disabilities that are consistent with the Wilderness Act. Agencies should be encouraged to facilitate NWPS use by persons with disabilities when such use is consistent with the Wilderness Act. Agencies are encouraged to work with persons with disabilities, outfitters, and other programs that use the NWPS to develop these guidelines" is the pathway towards a workable solution for practical access. It is clear to me however, that in the absence of Congressional direction this issue will not be resolved.

Separate from the ADA and Wilderness Act issue, all of the land agencies should be directed to undertake the following to improve progress toward practical wheelchair and disabled access on federal lands:

1. www.Recreation.gov is an online resource operated by DOI intended to provide everything a customer would need to visit federal sites, a Federal "Travelocity" if you will. The website, while a great portal, does not provide a simple and comprehensive navigation to wheelchair and disabled access information across all of the facilities. A single "one stop shop" capability for disabled access would improve the accessibility of disabled accessibility information. This is also true of the websites of the land agencies.
2. There are hundreds, if not more, private charities and volunteer organizations that exist to aid the disabled enjoy the outdoors generally, and federal lands specifically in many cases. They are well funded and well organized. These groups are underutilized partners for the land agencies, particularly when it comes to practical access challenges for wheelchair bound and disabled customers.