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Getting there is none of the fun

A lamppost in the fast lane? A curb blocking an offramp? On the freeway it's a SigAlert. For wheelchair users, it's a typical day of violated access laws.

By Dan Weikel

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When John Lonberg travels the sidewalks outside his Riverside home, he is constantly reminded of the inequities of being in a wheelchair.

Within sight of his home on Kloiber Street are at least a dozen possible violations of civil rights laws that grant the disabled equal access to public rights of way.

Buckled sidewalks obstruct his path, street corners lack wheelchair ramps, and sloping driveways that cross sidewalks are difficult to navigate.

"The city says there are other ways I can go," said Lonberg, 69, who has sued Riverside in federal court, alleging widespread violations of federal access laws. "I'm not some gimp in a wheelchair complaining about little things. These are real problems the disabled encounter every time they go out of their homes."

Lonberg and other activists within the handicapped community are taking their fight to the public sidewalk — the latest battleground in the disability rights movement. Over the last several years, they have filed a series of federal lawsuits against local and state governments to secure equal access to public rights of way, such as sidewalks, crosswalks and park-and-rides. The latest case was lodged against the California Department of Transportation in late August.

The activists assert that sidewalks are in such poor condition in many cities that people in wheelchairs have to detour onto streets — an illegal and risky undertaking.

Out of court, disability rights groups have negotiated agreements with several cities to improve sidewalks, and the state attorney general's office — based on continuing complaints — has sent letters warning local governments to bolster their compliance with state and federal access laws.

"As a society we've come a long way," said Assistant Atty. Gen. Louis Verdugo Jr., who heads the state's civil rights enforcement unit. "But we still have a long way to go to create the

infrastructure that will continue to allow the disabled to be mainstreamed."

Government officials and powerful municipal organizations across the country contend that the growing legal assault will further burden financially strapped cities and counties already struggling to accommodate the disabled.

They say hundreds of miles of sidewalks and crosswalks, many of them built before access laws were passed, might now have to be upgraded. The estimated cost in California alone is \$2.5 billion.

"The cost of retrofitting is phenomenal," said Gregory Hurley, a Costa Mesa attorney who has represented local governments. "Where is the money going to come from?"

Whether funding is available or not, federal, state and local governments must comply with a variety of anti-discrimination laws that have been on the books for years, even decades.

Those laws essentially require public agencies to develop detailed access plans and install accommodations for the disabled whenever sidewalks, crosswalks and other pedestrian ways are built, repaired or altered.

The accommodations include wheelchair ramps at curbs, level pavement, gently sloping driveways, minimum clearances for wheelchairs and crosswalk warnings for the vision-impaired.

The laws further require governments to expedite official complaints from the disabled and maintain sidewalks and crosswalks in ways that ensure accessibility.

"Some communities have decided to move on these plans, but most don't have them for public rights of way," said Gene Lozano, a vice president of the nonprofit California Council for the Blind.

The council, along with Californians for Disability Rights Inc., is now suing Caltrans, alleging repeated violations of federal and state access laws, including the failure to draft an adequate plan to fix public rights of way. The case seeks statewide corrections to park-and-ride facilities as well as sidewalks and crosswalks along major routes.

"I'm surprised that on the recent 16th anniversary of the Americans With Disabilities Act, we are still fighting over sidewalk availability," said Mary-Lee Kimber, an attorney for Disability Rights Advocates, a Berkeley nonprofit.

Caltrans officials declined to comment on the lawsuit. In a prepared statement, they said: "The department remains committed to addressing the mobility needs of all Californians and takes seriously its responsibilities under the Americans With Disabilities Act."

The lawsuit specifically mentions Pacific Coast Highway in Long Beach and California 13, known in Berkeley as Ashby Avenue.

Attorneys for the disabled allege that wheelchair ramps at street corners are missing or poorly built. Sidewalks on both highways, they say, are strewn with obstacles, such as light poles, broken pavement, signs and benches.

The suit also alleges that crosswalk warnings, such as bumpy pavement and audible signals, are often missing or inadequate.

"Cars have narrowly missed me, and I've whacked a few of them with my cane," said Dimitri Belser, 48, of Berkeley, a plaintiff in the Caltrans case who is legally blind. "Caltrans should put money into making safe passages for people. I feel like a minnow in a pool of sharks out there."

As many as 300,000 people in California have serious vision impairments. An additional 350,000 Californians use wheelchairs, and about 700,000 rely on walkers, canes or crutches.

Statistics from the National Highway Traffic Safety Administration indicate that several hundred wheelchair users are struck and injured by motor vehicles every year. About a dozen or more are killed, including several in California.

The figures are from a 1997 study and fatality data from 2004. They do not reveal how many disabled people were hit while detouring onto streets to avoid blocked sidewalks.

Nevertheless, disability rights advocates contend that many of those accidents could have been avoided had sidewalks been accessible.

Such was the concern when Joan Barden and seven other people with disabilities sued the city of Sacramento seven years ago in federal court.

In the precedent-setting lawsuit, city officials agreed they needed to install more wheelchair ramps but disputed whether they had to remove sidewalk obstructions.

A U.S. District Court judge sided with the city, stating that sidewalks were not a government "service," "program" or "activity" under the law, and thus not subject to federal access requirements.

An appeals court overturned the decision in June 2002, ruling that the laws apply to anything that government does, including providing and maintaining sidewalks. The decision agreed with the position of the U.S. Justice Department.

As the case unfolded, it attracted the attention of such powerful government interest groups as the National League of Cities, the California League of Cities and the International Municipal Lawyers Assn.

In court papers, the groups argued that Sacramento and other local governments would lose the ability to prioritize improvements as required by federal law and be saddled with the staggering price of immediately refurbishing sidewalks across the country.

The groups hoped the U.S. Supreme Court would rule in their favor. But the high court declined to hear the case in June 2003.

Sacramento and Disability Rights Advocates settled the case. The city agreed to spend 20% of its transportation budget — now about \$7 million a year — for 30 years to provide ramps, adequate crosswalks and sidewalk access.

Jerry Way, Sacramento's transportation director, said the city is paying for improvements with gas and sales taxes without jeopardizing major projects.

Similarly, officials in Emeryville said the Bay Area city and civil rights activists worked out an affordable correction plan more than two years ago, avoiding a lawsuit.

City Manager John Flores said the town committed \$2 million from its \$100-million capital improvement budget for sidewalk projects.

"Rather than fight," Flores said, "we decided to work with them and make the most important changes in the shortest amount of time."

Lonberg, who was paralyzed below the waist by a drunk driver in 1983, would like the city of Riverside to take that approach. He is still battling in federal court, nine years after he sued the city. Hearings to determine monetary damages are set for February.

During the case, the city identified 12,400 barriers to the disabled, including 7,300 missing curb ramps.

In March, U.S. District Judge Robert J. Timlin rejected the city's federally required access plan as inadequate and ordered a new one. Under the law, governments were supposed to complete their access plans in 1992.

"The city, over a period of years, has engaged in a pervasive pattern of violating" the Americans With Disabilities Act and related regulations, Timlin said.

Riverside has appealed the decision, arguing that Lonberg has no legal right to challenge the city's plan, only illegal obstacles that he has encountered.

Hurley, who represents the city, cites court rulings that state it is possible for governments to draft inadequate plans and still provide reasonable access for the disabled.

Lonberg's attorney, Terry Fitzpatrick, counters that access plans are critical for making improvements, and that Congress intended that individuals have the power to sue to enforce federal law.

"Here we are in 2006," Lonberg said, "and Riverside has not written the required evaluation or come up with a plan to fix the problems."

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