

# Access Rights and Access Wrongs: Ethical Issues and Ethical Solutions for Service Dog Use

**Deni Elliott**

University of South Florida, St. Petersburg

**Pamela S. Hogle**

Bergin University of Canine Studies

**ABSTRACT:** Individuals with a variety of disabilities benefit greatly from the ADA provision of easy public access with their service dogs. However, the growing problem of non-disabled individuals passing off their pets as service dogs both threatens public safety and can result in denial of access for legitimate service dog teams. We argue that requiring certification of service dog teams and furnishing qualified teams with state-issued ID tags, following a process similar to that for obtaining accessible-parking placards, is the least intrusive way to protect access for legitimate teams and protect public safety. While some consider a certification requirement for service dog teams to be burdensome, balanced against the harms posed by easy public access for untrained or inappropriate dogs, the mild burden is justified.

The Americans with Disabilities Act (ADA), signed into law in 1990 and most recently updated in 2010, provides easy public access for people with disabilities who use service dogs to mitigate those disabilities. Examples of service dog work include guiding people who are legally blind; alerting people who have disabling auditory loss, seizure disorder or diabetes; providing balance and fetching objects for people who have mobility disabilities; and intervening in anxiety-driven or self-destructive behaviors for people with disabling mental illness. Under the ADA, persons with disabilities may be accompanied by their trained service dogs in any governmental office or any business that is open to the public.

Here we argue the unpopular position that referring to a dog as a “service dog” should not automatically result in the dog’s handler being given public access. Rather we argue that individual states should be allowed to certify resident service-dog teams as appropriate for public access based on the following three

factors: medical verification of disability, description of tasks that a service dog can mitigate for the specific person's disability, and the service-dog team's successful completion of a public access test. Allowing state certification as described eliminates ethical and safety problems generated by the presence of fake or ill-prepared service dogs in public and eliminates a continuing conflict between federal and many state laws.

We will start by providing some definitions:

**Service Dog:** After two years of public comment and departmental analysis, in 2010 the US Department of Justice (DOJ) refined the definition of "service animal" to include "any *dog* that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including physical, sensory, psychiatric, intellectual, or other mental disability" [emphasis added].<sup>1</sup> Along with excluding species other than dogs, the change recognized psychiatric service dogs, significantly expanding the population of service-dog users who have invisible disabilities.<sup>2</sup>

**Service Dog Team:** A two-member or three-member team that consists of a dog that meets the "service animal" definition and the human with a disability that the dog mitigates. If the person with disabilities is not able to manage the dog, due to the disabled person's age or other limitations, an additional human member of the team, such as a parent or adult caretaker, may be included as an essential member of a specific service-dog team.

**Public Access:** Under the ADA, people with disabilities may be accompanied by their service dogs everywhere that members of the public or customers are normally allowed to go. This access includes, but is not limited to, restaurants, hotels, taxis and shuttles, grocery and department stores, hospitals and medical offices, theaters, health clubs, parks, and zoos. Service dogs may be legally excluded from such areas only when their presence would constitute either a fundamental alteration of goods and services available for all or in instances where individual dogs have shown themselves to be a direct threat to safety.

**Gatekeepers:** Gatekeepers are people who are in the position to allow or disallow service-dog teams public access, such as managers in theatres and restaurants. ADA allows business owners/managers to ask the person with a disability if the dog is a service dog needed because of a disability and what tasks the dog performs to mitigate the disability. Under ADA, gatekeepers may not ask that the dog demonstrate its work or ask the nature of the disability. They may not ask for any kind of verification that the dog is a legitimate service dog.

**Public Access Test:** This is a test administered by a knowledgeable evaluator that documents the service-dog team's ability to work together effectively, safely, and unobtrusively in public environments. The public access test does not focus on the dog's mitigation of disability but rather on safe and appropriate public behavior. Public access tests ask that the service-dog team demonstrate the dog's ability to, with its handler, enter and exit private and public vehicles, walk on loose leash in indoor and outdoor settings while navigating around other people, and respond to basic commands such as sit, down, stay, and come, regardless of distractions. Dogs must also ignore food in restaurants, grocery stores and other public settings. Any dog that displays aggression or fear by growling, showing

teeth, biting, or hackles-up, that shows inappropriate elimination, or that is not under control of a human member of the team could not pass a public access test. This dog is not suitable for public access.

**International Symbol of Access:** This is also known as the Wheelchair Symbol and consists of a blue square overlaid in white with a stylized image of a person using a wheelchair. The symbol is used, among other things, to mark parking spaces and to mark vehicles used by persons with disabilities.

**Supremacy Clause:** This clause, which is part of Article VI of the US Constitution, establishes federal law as the supreme law of the land. When state laws are in conflict with federal law and are more restrictive than the federal law, federal law prevails.

## **ETHICAL PROBLEMS WITH THE CURRENT ADA SERVICE DOG PROVISIONS**

Approximately 20,000 US citizens with disabilities currently use service dogs in public,<sup>3</sup> but “more than 50 million Americans have disabilities.”<sup>4</sup> Many of these 50 million individuals have sensory, mobility, or psychiatric disabilities that could be mitigated by service dogs.<sup>5</sup> As the US population ages and veterans return home from wars in Iraq and Afghanistan, the number of potential and actual service dog users is likely to increase. According to DOJ, “Service members returning from war with new disabilities are increasingly using service animals to assist them with activities of daily living as they re-enter civilian life.”<sup>6</sup> Once trained to mitigate a particular person’s disability, a service dog becomes an essential part of that person’s life and as natural to use in navigating public spaces as any assistive device such as a cane or wheelchair. According to a special report on fake service dogs, “A service dog can be any size or breed. It does not need to carry special identification, register with any agency, or even wear a vest. The rules are very clear for public businesses—and they leave the field wide open for dishonest, unethical criminals to take advantage of the law.”<sup>7</sup> The current ADA public access requirements are problematic for gatekeepers and service-dog users. The requirements’ reliance on self-identification allows for people faking access needs for their pet dogs, endangering public health and safety.

## **THE ADA EXPECTS TOO MUCH OF CITIZEN GATEKEEPERS**

Few gatekeepers are experts on service dogs, the variety of disabilities that service-dogs mitigate, and how the dogs should perform their work. Gatekeepers are citizens who work as store clerks, security guards, receptionists, and building managers, and who, among their role-related responsibilities, allow or disallow public access for people and their dogs. Gatekeepers are expected to make on-the-spot judgments regarding public access for the dogs that are accompanying people who have or who claim to have disabilities. “A business person is very limited in what they can do when someone declares they have a service animal,” said Geoff Luebke, vice president of the Florida Restaurant and Lodging Association. “The average restaurant owner or hotelier just isn’t versed in this

and they are concerned they will be the subject of an ADA lawsuit."<sup>8</sup> DOJ says that "Businesses of all sizes should educate staff about the ADA's requirements."<sup>9</sup> But if staff members are not knowledgeable about service dogs, it may not be "apparent that the dog is a service animal"<sup>10</sup> to those gatekeepers, even if the dog is wearing a traditional guide-dog harness. Gatekeepers have been known to challenge visually impaired individuals who are accompanied by dogs working in the traditional "seeing eye" harness by observing, "You don't look blind."<sup>11</sup> Access and public reaction can be even tougher for people with invisible disabilities. One user comments, "I know for a fact that some people think that I'm a faker because I can walk and am not blind."<sup>12</sup>

Gatekeepers must balance the possibility of a lawsuit for denying someone with a disability access and protecting others from being harmed by a fake service dog. One Web-based resource for businesses counsels, "Since you can't ask for documentation as proof, you can observe the animal's behavior. If the animal appears to be wandering around, playing, jumping, barking, or relieving itself, it's possible that this is not a service dog. Keep in mind that you can't request removal of the animal unless it is disruptive to your business operations or poses a threat to the health and safety of others."<sup>13</sup>

Enforcement of the law depends on the gatekeeper's ability to guess appropriately. As one court noted, "These low-level employees are faced with the conflicting demands posed by a rule which, at times, [requires] that they admit any dog whose owner represents that it is a service dog and a policy which requires they exclude pets. They alone have to make an almost instant determination of whether a dog is a trained service animal or a pet which might pose a potential threat. Failing to make the correct determination could have serious, even fatal, consequences."<sup>14</sup> If a gatekeeper allows an inappropriate or fake service dog to have public access, the business becomes liable for any harm that befalls another client or customer because of the dog's presence.

The scrutiny of gatekeepers varies, making any public outing stressful for some service-dog users. People with disabilities never know when they are going to be confronted, told that dogs are not allowed, or otherwise forced to explain the presence of their service dogs. "Taking a service dog into a store may be fine one day when one store manager is on duty, but may cause a problem the next day when another store manager is on duty."<sup>15</sup> Business owners face a possible ADA violation if they deny access to a service dog on the one hand and a possible health code violation if they admit non-service dogs, on the other.<sup>16</sup>

While the allowable ADA questions are intended to be unobtrusive, the result of a gatekeeper's questioning is often a violation of the privacy of the person with a disability. The ADA is self-contradictory in allowing gatekeepers to ask, "What task does your dog perform for you," while acknowledging that it is an unwarranted invasion of privacy to require an individual to explain the nature of his or her disability. When asked about the dog's tasks, the disabled person may need to explain his or her disability in order to answer the question. For example, "My dog guides me around obstacles that I cannot see," reveals the person's visual impairment; "My dog alerts me to seizures," reveals the person's seizure disorder; "My dog lets me know when my blood sugar is dangerously low," reveals the

person's diabetes; and "My dog provides me with a friendly physical barrier from other people that I find threatening," or "my dog leads me to a quiet place when I have a flashback," reveals that person's psychiatric disorder. The person has, in effect, been forced to reveal the nature of his or her disability, despite the ADA's direction that gatekeepers are not legally allowed to ask a person the nature of his or her disability. "The individual will often have to explain what she suffers from in order to explain what the dog does for her."<sup>17</sup>

Some individuals have rebelled against these seeming violations of privacy. They respond to ADA-allowed questions minimally, refuse to provide any information or identification other than that required by federal law, and provoke confrontation with gatekeepers struggling to assess access rights within conflicting legal parameters.

Courts may not be sympathetic to people with disabilities who demand that gatekeepers conform to the letter of federal law. One court observed, "Plaintiff may not be required to have or show . . . identification. However, if she elects not to, Plaintiff can reasonably expect that not all NYCTA (New York City Transit Authority) personnel will automatically credit her representation and will inquire further. Even if some bus operators' and subway conductors' actions fall afoul of the rules . . . their actions cannot be reasonably construed as indecent, atrocious, or intolerable. Indeed this Court suspects that most lay jurors would find the policy and regulations which prohibit NYCTA employees from asking for identification, and Plaintiff's refusal to produce the identification she already has, to be more unreasonable than the actions of these bus operators and subway conductors."<sup>18</sup> A court's opinion that a reasonable jury would be more likely to support gatekeepers requesting proof for access rights not required by federal law adds to the conflicts of policy, practice, and law.

## **FAKING DISABILITY FOR PET DOG ACCESS**

It is hard to come up with reasons for why a rational adult would pretend to be disabled. Gaining illegal public access with a pet dog may be the top reason.

The ADA allows gatekeepers to ask two questions of people entering no-pet settings with their dogs: Is your dog a service dog? What task has the dog been trained to perform? This process fails to separate people with disabilities who are legitimately gaining access with their service dogs from pet owners who are acting deceptively. Business managers point out that if the pet-dog owner answers the ADA-allowed questions appropriately, the dog must be admitted to the business.<sup>19</sup>

Pet owners need only to be willing to lie, if questioned, and that willingness seems to be on the rise.<sup>20</sup>

Some "fakers" argue that their deception is harmless. According to one person, "Frankly, I just really like having my dog with me. Is that so bad? . . . People are selling drugs, evading taxes, and I'm simply trying to take my dog to get a cup of coffee. Is this something to get worked up about? I don't think so."<sup>21</sup>

Recent examples of pets being masqueraded as service dogs include a dog seen licking food containers in a supermarket,<sup>22</sup> a Chihuahua sitting in a grocery cart,<sup>23</sup> a Bichon in another cart, followed by a collie in the same supermarket,<sup>24</sup> pet

dogs in restaurants,<sup>25</sup> and a pit bull riding a public bus.<sup>26</sup> A particularly egregious example cited was a small dog at a dinner theater that was eating off of the person's dinner plate and that growled and vocalized throughout the performance.<sup>27</sup> In another incident, a service dog was accused of attacking a child at a mall.<sup>28</sup>

Pet owners who are willing to falsely claim that their pet dogs are service dogs to obtain public access are only a mouse-click away from online organizations that, for a price, will help with the ruse. More than a dozen Web-based organizations sell fake service-dog certification, including identification cards and other official-looking documents.<sup>29</sup> Federalwaymirror.com editor Andy Hobbs says, "For \$249, customers visiting the site for Service Dogs America, for example, can buy a special doggie vest and ID cards that label the dog as a service animal." Although identification is not required by ADA, a dog wearing a vest or displaying an official-looking ID is less likely to be challenged, making public access easier, regardless of the team's legitimacy.

The proliferation of non-legitimate service-dog teams leads to legitimate teams facing stringent questioning or denial of access.<sup>30</sup> "The phenomenon can infuriate people with real disabilities who rely on their highly trained dogs to lead as normal and active a life as possible."<sup>31</sup>

## **MANY STATE LAWS CONFLICT WITH FEDERAL LAW**

States "may provide appropriately for increased access"<sup>32</sup> as compared to federal law, but they may not create or enforce state laws that are more restrictive. "[A]ny state which attempts to enforce stricter definitions of assistance animal than the federal statute is effectively taking away rights, and those state statutes may be void under a supremacy challenge."<sup>33</sup>

Nevertheless, more than half of the states have laws on the books that narrow the federal definition of legitimate service-dog users. For example, some states (Missouri, Nebraska, South Dakota, and Vermont) fail to include people with psychiatric disabilities as having rights to public access with their service dogs. Another, Washington, recognizes the right of people with mental disabilities to have public access with service dogs but fails to include this group of individuals in the license fee waiver for dog guide and service animals.<sup>34</sup>

Pennsylvania has a complicated and narrow definition of a service dog that excludes some individuals that the ADA includes. The state defines a service dog as one that perform tasks for a "person who receives disability insurance or supplemental security income for the aged, blind, or disabled under the Social Security Act;<sup>35</sup> who receives a rent or property tax rebate under the act of March 11, 1971,<sup>36</sup> known as the "Senior Citizens Rebate and Assistance Act," on account of disability; who has a disability certificate issued by the United States Veterans Administration; or who has a special registration plate under 75 Pa.C.S. §1338 (relating to person with disability plate and placard)."<sup>37</sup> This definition is far more restrictive than the federal definition of persons with disabilities, excluding residents who do not receive SSI, individuals who do not qualify for a special registration plate or placard, and individuals who have not sought certain federal and state services.

Other states' requirements are even more substantially in conflict with the ADA, as they include requirements specifically prohibited by the DOJ, including identifying tags, harnesses, collars, or leashes, or certification from recognized training programs or schools.

For example, Georgia says that an "assistance dog [is one that] . . . has been trained by a licensed or certified person, organization, or agency to perform physical tasks for a physically challenged person,"<sup>38</sup> effectively excluding people with disabilities who are not "physically challenged," as well as demanding training of the service dog by "a licensed or certified person." Maryland, Michigan, Minnesota, and New Jersey are among the states that require that the dog be trained by an approved, accredited, or recognized training agency or school.

It is a legal and conceptual error for states to specify some training organizations as necessary and sufficient for a state to make the determination that a particular animal qualifies as a service dog for public access. There is nothing in the ADA definition of service dogs that precludes individuals from training their own service dogs; nor is there any prohibition on private dog trainers working privately with an individual with a disability and his or her dog to train the team for service dog work and public access. For many of those wanting a service dog, acquiring such a dog through private means is the only practical or timely option. The DOJ acknowledges that "individuals with disabilities may be capable of training, and some have trained their service animals to perform tasks or do work to accommodate their disability."<sup>39</sup>

There are simply not enough school- or organization-trained dogs to go around. Many service dog training schools have long waiting lists for people with disabilities who want to be placed with their trained dogs. In addition, large areas of the country are hundreds of miles from any service dog training school. While there is no comprehensive list of service dog schools or their wait lists, Semmel points out that "an assistance animal training facility may have as many as four hundred people on its waiting list,"<sup>40</sup> and the wait for a guide dog can be up to a year and a half at some organizations.<sup>41</sup>

Even the best-trained dog from the best training organization may be less suitable for public access as he ages; handler skills may also deteriorate over time. Basing a service-dog team's access on the credentials of its trainer is a problem because it is the dog and handler, not the trainer or the trainer's organization, who need to safely and predictably work in public. A dog's appropriateness for public access is an entirely separate question from where, when, or how the dog was trained to mitigate disability. A dog that is appropriate at age two, when released to its disabled partner, may be inappropriate by age five or age eight, due to handler problems or simply due to the dog's aging process. States that require school-certified service dogs create a daily access problem for people with disabilities that can only be remedied through a Supremacy law challenge.

## **DOJ'S FAILED ATTEMPT AT MODIFICATION**

Ironically, one of the ways that DOJ justified the 2010 modifications was in saying, "Many covered entities indicated that they are confused regarding their

obligations under the ADA with regard to individuals with disabilities who use service animals. Individuals with disabilities who use trained guide or service dogs are concerned that, if untrained or unusual animals are termed ‘service animals,’ their own right to use guide or service dogs may become unnecessarily restricted or questioned. Some individuals who are not individuals with disabilities have claimed, whether fraudulently or sincerely (albeit mistakenly), that their animals are service animals covered by the ADA, in order to gain access to hotels, restaurants, and other places of public accommodation.”<sup>42</sup>

Despite the ADA’s recent modification, deceptive pet access, gatekeeper confusion, and conflicts between legitimate service dog users and others remain. It doesn’t have to be this way.

### **A PROPOSAL FOR STATE-BASED, JUSTIFIED SERVICE DOG CERTIFICATION**

It is reasonable for states to attempt to verify the legitimacy and provide identification of service dogs, as this protects service-dog teams and members of the public. It is unreasonable for federal law, through ADA, to prohibit such verification in the attempt to create easy access for service-dog teams. It is unreasonable because the current allowed method inadvertently subjects people with disabilities to intrusive questions that implicitly require them to describe their disabilities, creates unreasonable expectations for gatekeepers, and does not protect the general public or legitimate service-dog teams from fake or inappropriate dogs having public access. There is also an established analogy, accepted by the public and ADA, for the service-dog team certification we propose.

The process that states follow to issue handicapped parking placards and license plates provides a useful analogy for how the relationship between ADA protections and state regulation for verifying legitimate service-dog teams can be more effectively negotiated. Under the ADA Accessibility Guidelines (ADAAG), DOJ requires accessible parking spaces at public accommodations and requires that parking space identification signs include the International Symbol of Accessibility.<sup>43</sup> However, the DOJ is silent on how states may determine which residents have disabilities that require use of accessible parking spaces. The DOJ provides the requirement, but it is up to the states to determine how the DOJ requirements can best be met.

In a similar fashion, the ADA specifies that a service dog is “individually trained to do work or perform tasks for a person with a disability,” and that “[t]he work or tasks performed by a service dog must be directly related to the handler’s disability,”<sup>44</sup> but is silent on how states may determine which residents have the listed disabilities, whether the disability can be “directly” addressed by work or tasks performed by service dogs, or whether a team may safely be permitted public access.

We propose that DOJ further modify the ADA to allow states to revamp their access regulations so that all states require a state-issued, nationally-uniform identification tag to be displayed by service-dog teams working in public. These tags should be issued based on:

- (1) Verification from an appropriate medical provider that the individual has a federally-included disability that is directly addressed by work or tasks performed by the service dog—this would mirror states’ requirements for a handicapped parking placard; and
- (2) The service-dog team’s successful completion of a public access test administered by a state-approved evaluator, with required re-examination every three years.

Many states already attempt to provide visual cues for service-team access, despite the conflict with ADA. For example, California, New York, and New Hampshire require that service dogs wear licenses marked with their service status, and a number of states require that at least some service dogs wear harnesses or orange-colored leashes or collars. All states require that all resident dogs—pet and service dogs alike—be licensed; most waive license fees for service dogs. State-issued identification tags that are uniform in size, shape, and color would allow gatekeepers to tell at a glance that a service-dog team is legitimate, regardless of the team’s home state, just as parking enforcement officers can recognize the universal “handicapped parking” symbol on state-issued placards and license tags. As resident service-dog users are required by state law to license and tag their dogs, providing medical verification of disability to get a universal “service dog” identification tag is no more of a burden for people with disabilities than providing the dog’s rabies vaccination record, which all states require for licensure. Filing the requesting person’s medical verification form is no more of an onerous burden for the state employee processing dog licenses than it is for the state employee processing handicapped parking placards.

Verification of disability for a service-team ID is consistent with federally-allowed states’ verification of disability for parking placards or license plates that carry the international accessibility symbol. Verification is also consistent with employers securing proof of medical need before providing special equipment or other accommodation for people with disabilities, including allowing people with disabilities to bring their service dogs to work.<sup>45</sup> This is also allowed by the DOJ.

Establishing medical need for a service dog is a necessary but not sufficient step for states to ensure the safety of service dogs, users, the public, and gatekeepers. A service-dog team should also be required to demonstrate its ability to perform appropriately in public.

It is undeniable that the requirement of a public access test would add a new burden for service-dog users and for states.

At least one public access test is already in existence, created by Assistance Dogs International (ADI), an organization of professional assistance dog trainers. The test is given “to ensure that dogs who have public access are stable, well-behaved, and unobtrusive to the public.” ADI recommends that the test be given in a public space, such as a shopping mall, where there will be plenty of people and distractions.<sup>46</sup> This test’s goal and demonstrations relate directly and exclusively to commonly accepted understandings of how service-dog teams can be expected to perform in public.<sup>47</sup>

A state's public access test can be easily administered by any evaluator familiar with dog training and socialization. A public access test, as proposed, would not require that the dog demonstrate an ability to perform work directly related to the handler's disability. These specific tasks or work are not the business of a public access evaluator or a gatekeeper. The best service-dog teams include a dog that willingly and unobtrusively performs tasks that mitigate the human partner's disability and a human who has reasonable expectations for the dog and respect for members of the public who wish to function without being inconvenienced by the service dog.

States may choose to employ their own evaluators who would function in a similar manner to Department of Motor Vehicles examiners. Alternatively, states may opt to require that individual evaluators complete training and pass tests for certification as evaluators, similar to the method used to train and certify state Notary Publics. Online-based models for achieving evaluator status can be found within the dog world. For example, The American Kennel Club provides requirements and an online test for individuals to become evaluators for their Canine Good Citizen Test.<sup>48</sup> Pet Partners, an organization that champions the use of pet-assisted therapy, provides requirements and a test for individuals so that they can be approved to evaluate the safety and reliability of prospective therapy dog teams that visit nursing homes, hospitals, and other settings.<sup>49</sup> State-sanctioned evaluators should be allowed to charge a reasonable fee, to be paid by the service-dog user, for performing evaluations. A reasonable fee is analogous to the fees that many states charge for accessible-parking placards or plates.

Dogs that are trained through service-dog schools, agencies, or training programs should be expected to pass a public access test with their human partners prior to graduating from training; it is reasonable to expect that a state-sanctioned evaluator would be on staff. For these organizations, documentation of the service dog team's testing prior to graduation could serve as the initial public access test for these teams. Initial testing would thus be necessary only for those who seek licensure for public access with privately trained or self-trained dogs. Re-testing of all service dog teams is appropriate every three years, as dogs' dispositions and capabilities to perform tasks change as they age, as do the utilizing individuals' needs and handling abilities. Thus teams that perform appropriately upon completion of training may fail to do so years later. This requirement protects public safety in a similar way that requiring a vision test for a driver's license renewal provides some level of continuing scrutiny for drivers.

As there is no restriction on who may train or place a service dog,<sup>50</sup> the requirement of a public access test would enhance public safety and protect individuals with disabilities from unscrupulous individuals and organizations that place untrained or inappropriate dogs as service dogs or that place service dogs with unsafe handlers, such as unaccompanied children. The ADA sets no minimum age for service dog handlers, and some organizations and private trainers place service dogs with children who are as young as three years old.<sup>51</sup> Others place dogs that are clearly untrained, some too young to be housebroken. At least one organization places 13-week-old puppies as "service dogs" with young children;<sup>52</sup> another placed a 7-week-old puppy with an 8-year-old boy, claiming the puppy

was a trained diabetic alert service dog that could alert from as much as a half-mile away.<sup>53</sup> An untrained dog would be unable to pass a public access test, even with a qualified handler. An individual who cannot maintain control of his or her dog or a small child who is not capable of responsibly handling a dog would be unable to pass the test without a responsible adult caretaker being part of the team, providing protection for both the public and the dogs.<sup>54</sup>

While dogs often provide invaluable assistance for disabled children at home, a problem arises when parents argue that their young children are allowed, by ADA, to take their service dogs to school. The ADA clearly stipulates that staff are not required to care for or handle the dogs.<sup>55</sup> Assuming that a grade-school child can keep a dog safe and under control in a classroom full of children is often unrealistic. However, a blanket policy denying access to all child-handled service dogs unjustifiably harms those teams in which a mature, responsible child safely can handle and care for his or her dog, or when the child and service dog are accompanied by an adult assistant. A public access test would be an objective assessment, eliminating the emotionally fraught debates that frequently arise when a parent petitions for access for his or her child's service dog.<sup>56</sup>

## CONCLUSION

State-based, justified certification of service-dog teams would protect the public and service-dog users by ensuring that service teams in public are safe and reliable. It would obstruct people who falsely claim that their pets are service dogs in order to achieve public access, and it would eliminate organizations that provide false service dog documentation, as only state-issued identification would allow teams to attain public access.

Some service-dog users object, stating that displaying service-team identification constitutes public announcement that one is disabled.<sup>57</sup> But one's use of a service dog in locations where pets are not allowed materially implies that one is disabled, with or without a state-issued tag. A gatekeeper's glance at a tag is less of an obstruction to the civil rights of a person with a disability and less intrusive than the gatekeeper demanding that the individual affirm that the dog is a service animal and describe what work the dog performs.

Individuals who use service dogs in home settings with no need or interest in gaining public access would have no requirement to qualify for a state-issued service-team ID. Using a service dog in public is an option for any person who chooses to mitigate his or her disability in this way.

This proposed ADA modification best serves people with disabilities and their rights to public access, while also serving the interests of states and members of the public in ensuring that only safe and reliable service-dog teams have public access.

## Endnotes

1. US Department of Justice, *Service Dog Law Changes Effective March 15, 2011* (Washington, D.C.: Federal Register, 2010).
2. Limited exceptions for miniature horses were included in the 2010 definition; however, this paper addresses access for teams made up of a human and a dog only, since

these are far more common and the likelihood of abuse of the access rights is far more likely with pet dogs than with miniature horses.

3. W. K. Roustan, "Fake Service Dogs," *The (Orlando) Sun Sentinel*, April 8, 2011, p. 8.
4. US Department of Justice, *ADA Update: A Primer for Small Business* (Washington, D.C.: US Department of Justice, Civils Rights Division, Disability Rights Section, 2011), 1.
5. "Service Dog Certification—Spotting Fake Certification/Registration/ID," Service Dog Central, 2011, <http://www.servicedogcentral.org/content/node/509>.
6. US Department of Justice, *ADA Update: A Primer for Small Business*, 4.
7. C. D. Watson, "Fake Service Dogs, Real Problem," *PetsAdvisor.com*, <http://petadviser.com/service-animal/fake-service-dogs/>.
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10. *Ibid.*, 5.
11. "You Don't Look Blind," Blindgator's Weblog, July 11, 2011, <http://blindgator.wordpress.com/2011/07/15/ypji/>; and "Blind Woman Forced to Leave Local Restaurant," *Topix*, May 29, 2009, <http://www.topix.com/forum/city/copperas-cove-tx/T52KB3SEVEHKE3KQ3>.
12. Watson, "Fake Service Dogs, Real Problem."
13. *Ibid.*
14. *Stamm v. New York City Transit Authority*, 2011 WL 1315935 (E.D.N.Y.), United States District Court, E.D. New York, March 30, 2011.
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16. B. Hall, "Service Dog Barred from Bowling Alley," *Corvallis Gazette-Times*, June 6, 2012, [http://www.gazettetimes.com/news/local/service-dog-barred-from-bowling-alley/article\\_53e83440-af7b-11e1-a28e-001a4bcf887a.html](http://www.gazettetimes.com/news/local/service-dog-barred-from-bowling-alley/article_53e83440-af7b-11e1-a28e-001a4bcf887a.html).
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