"The question is not whether the road to the summit of East Rock should be open for general use. The question is whether access to that Public Park must be provided to people who have disabilities. The answer to that question is "unless it's impossible." The default is not "we will grant access if..." The default is "we must grant access unless..." and "unless..." must be proven. "Alternate means of Access" are allowed and investigation of them is required.

My ex was in town to visit a friend in the hospital and had a weekday afternoon free. She wanted to see New Haven from the summit of East Rock.I have a qualified disability, can't make the walk and was denied the right to access that Public Park. When the ADA was enacted, no enforcement agency was created. There are three enforcement options:

!. The Civil Rights Division of the Dept. of Justice can file a lawsuit (or summon city officials as it did here regarding sidewalks),

2. Personal or Class-Action lawsuits or

3. Voluntary compliance

are the only methods. I strongly prefer the voluntary compliance method. (And I believe in New Haven. We have a long history of leadership in the fight for equality. We don't always get it right, but we try harder than most cities do. We always have. It's who we are. We missed some folks. We don't even try to respect the rights of people who have disabilities. We didn't try to find a way to grant them equal access to this Public Park.)

1. The general governing Federal Statute is 28CFR35.130(A) " No qualified individual with a disability shall, on the basis of 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 public entity,"

2. Approximately 9.000 New Haven residents have an ambulatory disability. Nationally, 36% of people who are over 65 use a cane, walker, wheelchair or scooter. Nearly half of people over 75 use an assistive device of some kind..The decision not to investigate, let alone provide, an alternate means of access illegally discriminated against 9,000 New Haven residents and I don;t know how many visitors and residents of neighboring communities.

3. The Mayor's statement (Denying people who cannot walk a means of access) "**would allow people to**, instead of using the trails which are more narrow, **walk** through the park on the street itself,”  is very obviously discrimination against people who have disabilities - specifically for the purpose of providing a benefit to people who do not have disabilities.

4, Allowing limited access is not an appropriate solution. One-seventh of a right is not an equal right. It's like telling Black folks they can sit in the front of the bus or telling women that they can sit at a bar on Sunday, so it's OK to not let them do that six days a week..Allowing unlimited vehicular use one-day a week is a prior admission that there are no legitimate concerns that necessitate closing the roads. It is clearly optional.

5, The "bad behavior" reasons given for maintaining that denial of access beyond the public health emergency are all violations of Municipal Ordinances and/or State Law. Illegal discrimination is not a law-enforcement tool.

6. The most relevant Federal Court Case is Galusha v New York Dept. of Environmental Conservation.

 [https://law.justia.com/cases/federal/district-courts/FSupp2/27/117/2346406](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flaw.justia.com%2Fcases%2Ffederal%2Fdistrict-courts%2FFSupp2%2F27%2F117%2F2346406&data=05%7C02%7CTDasent%40newhavenct.gov%7Cea628552096f46d5cde208dc1c703540%7Cdd83ce47326d4fe9a0e57530887f77ab%7C0%7C0%7C638416515472511121%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=O9HKD1njHomA5v%2F37gRbUuLjdX%2FLnazQerwvLpvA1j0%3D&reserved=0)

The plaintiffs claimed that the State placed "restrictions on motorized vehicle use in various areas of the Park deny them the very 'even handed treatment' that the ADA promises." The US District Court granted a preliminary injunction "Until further determination is made by this Court, the following roads shall be open for motorized vehicle use by persons with certified mobility impairment disabilities (and listed the roads in question). The final Settlement Agreement provided permits to people who had "qualified disabilities."

It is likely that the US District Court would grant a preliminary Injunction in this case and order that the roads be opened. I believe that there are better potential solutions. As a practical matter, we all know that solution will present an additional enforcement problem. If the roads are open, people who don't have a permit or a handicapped parking tag or license plate will use the roads.

7. Outside of the law is the basic question of right and wrong. Statistically, the probability that the problems noted were caused by people who are able is 84%.and the probability that they were caused by people who have disabilities is 16%. (Plus Grandma probably ain't throwin' trash out of the car window while speeding down the hill.) We are punishing people who did nothing wrong for the actions of others.because we don't (or cannot) enforce those laws and ordinances and we're punishing them so that people who can walk have an easier walk..

9. A single vehicle driven by a professional driver on-demand would eliminate the bad behavior seven days a week and result in a reduction of traffic of 80 - 90% seven days a week, In July, 2023, the city applied for a grant to purchase seven-passenger vans (at least one of which would have to accommodate passengers who have a disability and have a right to access that program) that might provide that required accessibility and solve the problems noted. I do not know the status of the grant proposal, but similar solutions are possible. This one seemed like a "no-brainer." If it is not possible (I don't know if the vehicles will even fit on that road), I'm happy to assist the Commission investigating other alternate means of access.

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