

HANDICAPPED PARKING

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I. INTRODUCTION***

In July 1999, the Los Angeles District Attorney's Office indicted fourteen members of the UCLA football team for fraud.¹ The prosecutors charged the football players with fabricating applications for handicapped parking tags,² claiming disabilities such as slipped disks, broken ankles, bad knees, and Bell's Palsy.³ The indictments sparked outrage from the public, especially people with disabilities.⁴ As one member of the Paralyzed Veterans of America griped, "Who do you think would *less* need something like this? . . . What were they thinking? This is a moral outrage."⁵

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*** Due to numerous citations to newspaper articles, and in accordance with the Seventeenth Edition of *The Bluebook: A Uniform System of Citation*, the Editors of the *Hofstra Law Review* have included the citation to either a commercial electronic database or the Internet along with the citation of traditional printed sources for all newspaper articles.

1. See Neda Raouf et al., *UCLA Football Players' New Opponent: The Disabled Scandal: As University Probes Charges that Some Team Members Falsely Obtained Handicapped Parking Placards, Legitimate Users Express Outrage*, L.A. TIMES, July 10, 1999, at B1, available at 1999 WL 2176065.

2. The term "handicapped parking" is politically controversial because of the potentially negative connotations about people with disabilities. The Authors use the term because it is the most widely recognized and accepted among the public at large; no political implications are intended.

3. See Raouf et al., *supra* note 1.

4. See *id.*

5. *Football Players Charged Over Handicapped Permits*, RECORD (New Jersey), July 10, 1999, at A8, available at 1999 WL 7115393 (quoting Maureen McCloskey of the Washington based Paralyzed Veterans of America) (emphasis added).

The misconduct of the UCLA athletes focused public attention and concern on a larger social issue. Like many well-intentioned government programs, the regulatory regime for handicapped parking—one of the cornerstones of public policy towards people with disabilities—is sparking public discontent. Indeed, in certain respects, the parking system threatens to harm the interests of the very people—individuals with severe mobility impairments—whom it originally was designed to serve.⁶ Although there are millions of handicapped spots in shopping malls, city streets, and employee parking lots across the country, people with severe mobility impairment sometimes find it just as difficult to get a convenient parking space today as they did in years past.

This Article is the first critical analysis of handicapped parking regulation in the legal literature.⁷ It provides an efficiency-based justification for handicapped parking regulation. The argument is straightforward: Handicapped parking spot set-asides can reduce transaction costs that otherwise would prevent parties from engaging in mutually beneficial trades. However, the fact that regulation may be efficient in theory does not imply that a regulated program actually will realize its promise. If overall public satisfaction is any measure of success, the program as currently implemented does not get particularly

6. For other examples of programs that fail to meet their own objectives, see generally BRUCE A. ACKERMAN & WILLIAM T. HASSLER, *CLEAN COAL/DIRTY AIR: OR HOW THE CLEAN AIR ACT BECAME A MULTIBILLION-DOLLAR BAIL-OUT FOR HIGH-SULFUR COAL PRODUCERS AND WHAT SHOULD BE DONE ABOUT IT* (1981) (describing how eastern soft coal interests joined with environmental groups from the West to secure air quality regulations that actually reduced air quality) and Jon D. Hanson & Kyle D. Logue, *The Costs of Cigarettes: The Economic Case for Ex Post Incentive-Based Regulation*, 107 *YALE L.J.* 1163 (1998) (discussing how the proposed tobacco liability settlement would actually harm public health). For a general discussion on regulatory programs failing to meet their objectives, see Cass R. Sunstein, *Paradoxes of the Regulatory State*, 57 *U. CHI. L. REV.* 407 (1990).

7. Studies of automobile driving, in general, are exceedingly rare, even though, arguably, the legal control of driving is one of the most important areas in which the power of the state interacts with the lives of ordinary citizens. A notable exception is the early work of Underhill Moore, who researched the interaction between law and driving in New Haven, Connecticut during the 1930s. See generally Underhill Moore & Charles C. Callahan, *Law and Learning Theory: A Study in Legal Control*, 53 *YALE L.J.* 1 (1943). For historical context, see LAURA KALMAN, *LEGAL REALISM AT YALE, 1927-1960*, at 18, 33-34 (1986) and John Henry Schlegel, *American Legal Realism and Empirical Social Science: The Singular Case of Underhill Moore*, 29 *BUFF. L. REV.* 195 (1980). In the economic literature, Thomas McQuade prepared a graduate student paper discussing handicapped parking as an example of a regulated institution that can be modeled such that the difficulties in the institutional design can be pinpointed. See Thomas J. McQuade, *Modeling Institutions as Procedures* (1996) (unpublished Ph.D. thesis) (on file with authors).

The Authors also wish to acknowledge a debt to Kenneth Davis, another legal scholar whose work is often overlooked in contemporary legal theory. The work of the Authors is, in a sense, in the spirit of Davis' focus on fleeting, day-to-day interactions between state officers and ordinary citizens. See, e.g., KENNETH CULP DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY* 107 (1969).

high marks.⁸ Given the importance of handicapped parking to millions of citizens, we believe it is desirable as a matter of public policy to revise the program if cost-justified changes can be identified that will increase public satisfaction with the program. In fact, the government already is undertaking a number of revisions to address obvious problems associated with the handicapped parking program, with the hope that these revisions will prove to be cost-justified and improve the program's efficiency.

Part II of this Article sets forth the economic justification for handicapped parking set-asides. Part III describes the surprisingly complex melange of federal, state, and local laws, regulations, and judicial decisions that constitute the governmental rules on handicapped parking.⁹ Part III.A describes how permits are allocated, and Part III.B

8. Although there appears to be a deep reservoir of public support for the concept of handicapped parking, there is also a strong current of dissatisfaction with the way the program is actually being administered. See examples cited *infra*. Public complaints focus on the perceptions that too many permits are given out, that spaces are inefficiently allocated, and that able-bodied persons are massively abusing the privilege. See Lynn Rykowski, *Nothing Seems to Stop the Space Stealers for the Handicapped, A Continuing War*, RECORD (New Jersey), July 8, 1986, at C5, available at 1986 WL 4644919; Marina Sarris, *Disabled Find Spaces Less Accessible; Parking: As the Number of Handicapped-Parking Permits Has Risen, So Has Abuse of the System by the Able-Bodied*, BALT. SUN, Mar. 31, 1997, at 1A, available at 1997 WL 5504629. The tenor of these concerns is evident in sentiments expressed by citizens in many letters to the editors of local newspapers. Yolanda Dobbins of Tampa, Florida voiced the dissatisfaction that accompanies such perceptions, when she wrote that “[a]ll a person needs today is a hangnail and their physician gives them a prescription for a permit to legally park in spaces designed for the permanently disabled—those people who must rely on a wheelchair for mobility.” Daniel Ruth, *It Could Be a Deflating Experience*, TAMPA TRIB., July 24, 1997, Nation/World, at 6, available at 1997 WL 10798868. Edith Roberts of Fountain Hills proclaimed:

Why are there so many [handicapped spots], and why are they all wide enough to park two cars in? Not every handicapped person drives a van with a side wheelchair ramp. I see mothers with babies and small children struggling through hot, busy lots, and then see empty handicapped spaces and get very irritated. Sometimes we all have good reason to park closer but cannot because of the acres of handicapped spaces.

Edith Roberts, *Why ‘Acres’ of Empty Handicapped Spots?*, ARIZ. REPUBLIC, Oct. 26, 1998, at D2, available at 1998 WL 7805779. Shirley Lupton of Baltimore observed:

When I drive up to a large, or small, place of business I feel anger when I see row upon row of empty handicapped spaces in the premium spots and every other space filled, resulting in a long walk.

There are many times when the able-bodied do not feel well or have extreme time constraints.

Shirley Landon Lupton, Editorial, *Give the Able-Bodied a Few Good Spaces*, BALT. SUN, Apr. 12, 1997, at 9A, available at 1997 WL 5506534. Commentator Andy Rooney crystallized some of the public's dissatisfaction by wondering in a 1992 syndicated newspaper column, “Who decided . . . on eight handicapped parking places? Why not [ten] or two? Someone must have made the decision. On what basis?” Andy Rooney, *Help for Handicapped is Touchy Subject*, HOUSTON CHRON., Mar. 8, 1992, Outlook, at 6, available at 1992 WL 8055524.

9. There is also a significant private component to the enforcement of handicapped parking

describes the siting of handicapped spots. Part IV assesses permit issues that have caused overuse of available spaces. Part V documents various measures that governments have undertaken to respond to this overuse. Part VI contains some economically motivated suggestions that governments might consider to further deal with such overuse.

II. THE ECONOMICS OF HANDICAPPED PARKING

In developing the economic argument for handicapped parking, it is useful to start with the assumption that transactions costs—the real-world costs of people making beneficial trades with one another—are absent. In other words, the assumption is that all mutually beneficial transactions that *could* be made *are* made, costlessly, instantly, and without the expenditure of any effort. One can then investigate the more realistic case in which transactions costs are positive and significant.

Imagine a no-transactions-cost environment in which only two parking spaces are available: a convenient, close-in space, and an inconvenient, remote space. There are only two potential users of these spaces. One is able-bodied and the other is mobility-impaired. The close-in space is worth \$1 to the able-bodied person, and \$10 to the mobility-impaired person. The remote space is worth 25¢ to both. If the mobility-impaired person arrives at the parking lot first, she will take the more convenient spot, which is the socially efficient result. But what if the able-bodied person arrives first and appropriates the convenient spot? In the absence of transactions costs or liquidity considerations, the two would trade spaces for some consideration. The disabled person would pay the able-bodied person some amount between 75¢ (the minimum that would make the trade worthwhile to the able-bodied person) and \$9.75 (the value of the trade to the mobility-impaired person). The result of the trade would be that the mobility-impaired person would park in the close-in space and the able-bodied person would park in the remote space. This is a straightforward application of the Coase Theorem.¹⁰ As this example demonstrates, in the absence of transactions costs, a pure capture rule for allocating parking spaces—a rule under which the initial property right in the space goes to the first occupant—would achieve the efficient result.¹¹ Thus, no governmental intervention would be needed to achieve the

spots. This Article, however, focuses only on the impact and design of government programs.

10. See generally R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960). The Coase Theorem holds that in the absence of transactions costs, the initial legal assignment of a property right has no effect on economic efficiency, because the parties will trade for their mutual advantage and thereby achieve the socially efficient outcome. See *id.* at 15.

11. See *id.*

socially optimal allocation of resources; parking spaces could be allocated to disabled people through purely private action.

Now, drop the assumption of no transactions costs, and instead, posit that transactions costs are real and significant. Would a pure capture rule still achieve the socially optimal result? Even in the presence of transactions costs, capture rules have a number of advantages: they are self-enforcing, the first possessor is often (although not always) the highest valuing user, and, after property rights have been assigned through capture, they can be renegotiated through market transactions.¹² However, in the parking space situation, a capture rule would not work well to allocate resources between able-bodied and disabled persons. There is no reason to assume that the first driver to arrive at a parking space will be the higher-valuing user. There are also severe impediments to market transactions that reassign the property right to the higher-valuing user when the lower-valuing user has captured the space. Putting aside the problems of strategic bargaining, or the social factors that may make the parties unwilling even to bargain in the first place, the setting is not one that naturally brings buyer and seller together. Parking places become open at different times and people with various needs to park arrive at different times. People who park do not ordinarily linger in their cars, but rather get out and go about their business. For the deal to work, the mobility-impaired person who wants a space would have to arrive at a spot during the short window of time after an able-bodied person captures a space and before the able-bodied person leaves on foot for his or her destination. If a mobility-impaired person arrives after the able-bodied person has left, no deal would be possible because there would be no one with whom to bargain. These problems make even a rough approximation of the Coasean bargaining solution unrealistic.

In such a setting, efficiency can be served by legal rules that place the parties in the position they would occupy had the Coasean bargain actually been struck. This is true even if no compensation is paid to the party being asked to give up the benefit.¹³ A government-sponsored set-aside program for handicapped parking can be justified on this basis. Because the people who are given the right to occupy the space value it more than the people who are required to park elsewhere, the program can generate social benefits that exceed their costs.

12. *See id.* at 15-16.

13. Technically, if the party being required to give up the benefit does not receive compensation, the outcome does not satisfy the Pareto efficiency condition, in that both parties are not made better off by the transaction. However, it does satisfy the less demanding Kaldor-Hicks condition, which requires only that both parties *could be* made better off.

However, the economic case for handicapped parking set-asides is limited by several conditions. One limitation is the transactions costs of administering the program.¹⁴ These include the costs of setting out and marking handicapped parking spaces, maintenance, policing, and enforcement.¹⁵ Another limiting factor is the cost of noncompliance: if, despite official enforcement efforts, many able-bodied people park illegally in handicapped spaces, the advantages of the program will be diluted through a shortage of vacant spaces.¹⁶ A final limiting factor is the cost of vacancies.¹⁷ The only way that a program can be administered is for the spots to remain empty when no mobility-impaired person is present to occupy the space, because the able-bodied person's car cannot be moved unless he or she is present with the key. Hence, handicapped parking benefits are unlike the policies on some subways and buses that permit able-bodied persons to occupy set-aside seats until a disabled person needs them. Those subway and bus rules work—or at least, are intended to work—because the able-bodied person can vacate the seat at low cost. For handicapped parking, it is necessary as a practical matter to incur a rate of vacancies for the specially designated spaces. Those vacancies impose a social cost, since they represent resources that are not at all times being put to a productive use. The cost of vacancies for handicapped spaces is larger than the cost of vacancies in parking spaces generally, because the handicapped spots are more valuable than other spaces.¹⁸ A full economic assessment of the value of handicapped parking set-asides must weigh the benefits of the program in allocating the property right to higher-valuing users against the costs of enforcement, noncompliance, and vacancies.

14. See Rykowski, *supra* note 8 (discussing the problem of able-bodied individuals parking in handicapped spaces and lack of police enforcement); Sarris, *supra* note 8 (administering permits is difficult without a computerized system).

15. See Sam Enriquez, *Parkers Taking Disabled Spaces Won't Be Cited*, L.A. TIMES, Aug. 9, 1998, Metro, at 8, available at 1988 WL 222546 (noting lack of proper markings designating handicapped spaces); Mark Potok, *Curbing Parking Cheats: Fraudulent Placards Becoming Big Business: Handicapped Parking Abuse Mushrooms*, USA TODAY, Feb. 8, 1996, at 1A, available at 1996 WL 2045645 (stating that officials “[do not] have the time or money to monitor fraud”); Rykowski, *supra* note 8 (describing inadequate parking space markings and lack of police enforcement with respect to handicapped parking).

16. See Rykowski, *supra* note 8 (observing that able-bodied individuals park in the four available handicapped parking spaces in a New Jersey shopping center).

17. See Paula Moore, *Handicapped Parkers Get 2nd Look*, DENV. BUS. J., Apr. 21, 2000, at 3A, available at 2000 WL 16620364 (noting the importance of keeping handicapped parking spaces empty, even when healthy drivers “pass handicapped parking spaces that always seem to be empty”).

18. See Potok, *supra* note 15 (observing that access to handicapped parking allows for “free parking at meters as well as prime parking spots outside public buildings” creating a market in Chicago for rental of “handicapped parking placards for as much as \$50 an hour”).

III. THE HANDICAPPED PARKING PROGRAM

Handicapped parking regulation began in the United States in the 1960s and 1970s, principally through programs adopted and implemented at the state or local levels.¹⁹ As originally conceived, these programs were modest in scope.²⁰ A limited number of spaces were set aside for severely disabled persons, and access to the right to park in these spaces was strictly regulated.²¹ In Florida, for example, the legislature provided one handicapped space at each state building open to the public, and one space for every 150 meter on-street spaces.²² The only people entitled to use these spaces were persons who had to use a wheelchair for mobility and who were certified as totally and permanently disabled by either a public service agency or by two licensed Florida physicians.²³

Beginning in the late 1960s, the federal government adopted a series of increasingly comprehensive regulations affecting handicapped parking.²⁴ The Architectural Barriers Act of 1968 (“Architectural Barriers Act”) instructed federal agencies to require that physically handicapped persons, where possible, have ready access to, and use of, federal facilities.²⁵ However, even though the Architectural Barriers Act was important nationally for people with disabilities, the statute has limited application for the purposes of regulating handicapped parking because it applied only to federal facilities.²⁶ Later enacted statutes have been more important for the handicapped parking program. The Rehabilitation Act of 1973 (“Rehabilitation Act”) extends the reach of federal regulation beyond federal facilities to federally-funded facilities.²⁷ It provides, in pertinent part, that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from . . . participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁸ The Fair Housing Act (“FHA”), as amended in 1988,²⁹ prohibits actions that “discriminate in the sale or

19. See, e.g., Sarris, *supra* note 8 (discussing abuse of Maryland’s handicapped parking permits).

20. See *infra* text accompanying notes 22-23.

21. See *infra* text accompanying notes 22-23.

22. See FLA. STAT. ANN. § 316.1955(2)(a)-(b) (West 1990).

23. See *id.* §§ 316.1955(1), 320.0848(1)(a).

24. See *infra* text accompanying notes 25-31.

25. See 42 U.S.C. § 4154 (1995).

26. See *id.* §§ 4151-4157.

27. See 29 U.S.C. § 794(a) (1995).

28. *Id.*

29. Fair Housing Act, 42 U.S.C. §§ 3601-3614(a) (1995). The term “handicap” is defined as

rental, or [that] otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap."³⁰ Finally, and most importantly, the Americans with Disabilities Act of 1990 ("ADA"), prohibits employment discrimination against persons with disabilities and requires reasonable accommodations for those persons' needs.³¹

Beyond federal legislation, the legal framework governing handicapped parking spots is surprisingly complex, involving intricate allocations of responsibility between federal, state, and local governments. The mosaic of rules governing handicapped parking divides into two basic spheres: (1) permit regulation (rules governing the issuance and form of handicapped parking permits);³² and (2) site regulation (rules for siting and design of handicapped parking spaces at commercial facilities, workplaces, public streets, and residential buildings).³³

A. Permit Regulation

Permitting determines who is eligible to use handicapped parking spots.³⁴ Further, the number of permits outstanding determines the number of handicapped spaces that should be allocated, and in which locations, in order for the parking system to work efficiently.³⁵ The number of outstanding valid permits is dependent on the medical conditions qualifying a person to receive a permit and how long the permits remain in effect.³⁶

Permitting is generally regulated by the states, subject to certain federal mandates.³⁷ All permits must display the International Symbol of Access, the familiar wheelchair design designating special facilities for

"(1) a physical or mental impairment which substantially limits one or more of [a] person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." *Id.* § 3602(h).

30. *Id.* § 3604(f)(1). Discrimination is defined to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." *Id.* § 3604(f)(3)(B).

31. See Americans with Disabilities Act of 1990, 42 U.S.C. § 12112(a)-(b) (1995).

32. See discussion *infra* Part III.A.

33. See discussion *infra* Part III.B.

34. See, e.g., 23 C.F.R. §§ 1235.2-.5 (2000) (providing guidelines for determining who is entitled to handicapped parking permits).

35. See FLA. STAT. ANN. § 316.1955(2)(a)-(c) (West 1990) (providing that the local agency shall determine minimum number of handicapped spaces and shall increase or decrease available spaces based on need).

36. See, e.g., 23 C.F.R. §§ 1235.3-.5 (providing that permits will be issued upon application by individuals qualifying as disabled subject to periodic renewal).

37. See, e.g., FLA. STAT. ANN. § 316.1955(1) (providing that state division shall establish a minimum number of parking spaces for physically disabled individuals).

the disabled.³⁸ Permits can take either of two forms: specially-marked license plates or removable placards known as “hang-tags” designed to be hung from the rear view mirror.³⁹ Hang-tags have the distinct advantage that holders may affix them to other vehicles such as rental cars. Whether in the form of license plates or hang-tags, permits entitle holders to use handicapped parking spots, both in their home states and in the other forty-nine states.⁴⁰ The permit also provides rights to park in many other countries where the International Symbol of Access is recognized, including Canada, England, and Australia.⁴¹

1. Qualifying Conditions

Baseline rules defining eligibility for handicapped parking permits are contained in the United States Department of Transportation’s

38. See 23 C.F.R. § 1235.6.

39. See *id.* Placards were introduced in the 1980s. See *Handicapped Parking Cheats and Weasels*, ARIZ. REPUBLIC, Mar. 15, 1997, at B4, available at 1997 WL 8349651. The Department of Transportation mandates that the states make both forms of permits available. See 23 C.F.R. §§ 1235.3(a), 4(a), 5(a). Used for both permanent and temporary conditions, these placards are designed to be hung from the rear view mirror when the vehicle is not in use; if there is no rear view mirror, the placard is to be displayed on the dashboard. See *id.* §§ 1235.4(c), 5(c). A hang-tag is more convenient than a plate, since a tag can be removed and carried from car to car. Hang-tags may be of service if a handicapped person is borrowing or renting a car, or owns more than one vehicle. Hang-tags also do not alert others as readily to the fact that the driver suffers a disability, and accordingly, might provide somewhat greater safety against assault on the streets.

40. See 23 C.F.R. § 1235.8 (“The State system shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries . . .”).

41. Notably, some jurisdictions provide not only the right to park at specially designated handicapped spots, but also the right to park for free at metered spots. See, e.g., DEL. CODE ANN. tit. 21, § 2134(f)(1) (1995); FLA. STAT. ANN. § 316.1964. The Department of Transportation’s advisory committee on handicapped parking strongly recommended that holders of handicapped permits be given this right, on the ground that disabled people may take longer to conduct routine transactions and that they may have trouble reaching or feeding meters. See *Uniform System for Handicapped Parking*, 56 Fed. Reg. 10,328, 10,343-44 (Mar. 11, 1991) (to be codified at 23 C.F.R. pt. 1235). Many state and local governments responded by waiving metered parking fees for street parking or other charges for parking in state facilities. See, e.g., DEL. CODE ANN. tit. 21, § 2134(f)(1) (providing exemption from meter requirements for holders of handicapped permits); see generally Bruce Frazer, *Handicapped-Parking Abuse Must Be Stopped*, WASH. TIMES, Oct. 23, 1996, at C2, available at 1996 WL 2968980 (reporting on states that allow free meter parking for vehicles with handicapped permits). Some states have granted exemptions not only from metered parking payments, but also from other parking charges at state facilities, including airports, convention centers, and sports stadiums. See, e.g., Karen Rouse, *Parking Scofflaws Targeted: An End to Free Disabled Parking Takes Aim at Abusers*, FORT WORTH STAR-TELEGRAM, Aug. 8, 1997, at 1A, available at 1997 WL 11898083 (describing termination of free parking privileges in Texas for disabled individuals due to abuse of the exemption by individuals who do not qualify for the privilege); Alan Snel, *Lot for Disabled Misused, Stadium Manager Says*, DENV. POST, Nov. 28, 1996, at B1, available at 1996 WL 12637722 (discussing abuse of parking lot for disabled individuals at Mile High Stadium in Denver).

Uniform System for Parking for Persons with Disabilities.⁴² The system sets out six qualifying conditions: (1) inability to walk 200 feet without stopping to rest; (2) inability to walk without the use of or assistance from a device or person; (3) severe lung disease as measured by respiratory volume or arterial oxygen level; (4) use of portable oxygen; (5) cardiac condition of American Heart Association Class III or IV; or (6) severe limitation in the ability to walk due to an arthritic, neurological, or orthopedic condition.⁴³

The majority of states use the same standards for their permitting programs, but there are variations.⁴⁴ Some states require only a certificate stating that the patient suffers from a condition that severely impairs mobility.⁴⁵ Other states authorize handicapped parking for persons suffering loss of a limb (including arms).⁴⁶ A few jurisdictions provide handicapped permits for visually impaired persons (or their drivers),⁴⁷ or for audio-impaired persons whose deafness limits their mobility.⁴⁸

While most of the Department of Transportation's standards of disability in the handicapped parking area are uncontroversial, the criteria that permits should be given to persons unable to walk 200 feet without stopping to rest has proven problematic. Whether a person needs to stop for rest can be a matter of his or her own subjective judgment. Possibly because of the difficulties created by this standard, some states impose stricter standards than the Department of Transportation's uniform system.⁴⁹ Missouri requires that the person not be able to walk fifty feet

42. See 23 C.F.R. § 1235.

43. See *id.* § 1235.2(b).

44. See, e.g., *infra* notes 45-48 and accompanying text.

45. See, e.g., DEL. CODE ANN. tit. 21, § 2134(a)(4) (describing handicapped person as an individual certified as having a permanent physical disability which substantially impairs his or her mobility and which is so severe that he or she would endure hardship or be subject to a risk of injury if privilege were denied); IND. CODE ANN. § 9-18-22-1(4) (West 1992) (defining disabled person as an individual certified by a physician as having severe and permanent restriction in mobility due to pulmonary or cardiovascular disability, an arthritic condition, or orthopedic or neurological impairment).

46. See, e.g., KY. REV. STAT. ANN. § 189.456(1) (Michie 1997) (indicating that "any person who has . . . lower limb amputation" shall be issued an accessible parking placard); MINN. STAT. ANN. § 169.345(2) (West 1986) ("[P]hysically handicapped means any person who has sustained an amputation . . ."); TENN. CODE ANN. § 55-21-102(1)(A) (1998) (A "'[d]isabled driver' is one who is disabled by . . . amputation of leg, foot or both hands.").

47. See, e.g., DEL. CODE ANN. tit. 21, § 2134(a)(6); IND. CODE ANN. § 9-18-22-1(5)(A); N.C. GEN. STAT. § 20-37.5(2)(g) (1999); WYO. STAT. ANN. § 31-2-213(d)(ii)(G) (Michie 1999).

48. See, e.g., KY. REV. STAT. ANN. § 189.456(1) (providing individuals with severe audio impairment the privilege of obtaining handicapped parking permits); WYO. STAT. ANN. § 31-2-213(c)(i)(G).

49. See, e.g., *infra* text accompanying notes 50-51.

without resting;⁵⁰ Alabama and New Mexico require that the individual not be able to walk 100 feet without resting.⁵¹

In all states, permits are issued upon receipt of a certificate signed by a health professional.⁵² The United States Department of Transportation's Uniform System of Parking for Persons with Disabilities, followed by many states,⁵³ provides for authorization by licensed physicians only.⁵⁴ In other states, professionals other than medical doctors may sign the required form, apparently reflecting the political influence of non-physician medical professionals within the state. These professionals may include chiropractors,⁵⁵ podiatrists,⁵⁶ nurses,⁵⁷ physicians' assistants,⁵⁸ and Christian Science practitioners.⁵⁹

50. See MO. ANN. STAT. § 301.142.1(1) (West 1994).

51. See ALA. CODE § 66-3-16(G)(1) (1999); N.M. STAT. ANN. § 66-3-16(G)(1) (Michie Supp. 2000).

52. See *e.g.*, ALA. CODE § 32-6-231 (1999); ALASKA STAT. § 28.10.495(a), (c) (Michie 1998); ARIZ. REV. STAT. § 28-2409(D)(1) (1998); ARK. CODE ANN. § 27-15-307(4) (Michie Supp. 1999); CAL. VEH. CODE § 22511.55(b) (West Supp. 2000); COLO. REV. STAT. ANN. § 42-3-121(1) (West Supp. 1997); CONN. GEN. STAT. ANN. § 14-253a(b) (West 1999); DEL. CODE ANN. tit. 21, § 2134(a)(14) (Supp. 1999); FLA. STAT. ANN. § 320.0848(1)(a) (West 1990); GA. CODE ANN. § 40-6-222(c) (1997); HAW. REV. STAT. § 291-51(6) (1993); IDAHO CODE § 49-410(7) (Michie Supp. 2000); 625 ILL. COMP. STAT. ANN. 5/11-1301.2(a) (West Supp. 2000); IND. CODE ANN. § 9-14-5-1(1)(c) (West Supp. 2000); IOWA CODE ANN. § 321L.2(1)(a) (West Supp. 2000); KAN. STAT. ANN. § 8-1.125(a) (Supp. 1999); KY. REV. STAT. ANN. § 189.456(3)(c); LA. REV. STAT. ANN. § 463.4(A)(6) (West 1990); ME. REV. STAT. ANN. tit. 29-A, § 521.1 (West 1996); MD. CODE ANN., TRANSP. § 13-616.1(a) (Supp. 1999); MASS. GEN. LAWS ANN. § 21(23) (West 1999); MICH. COMP. LAWS ANN. § 257.675(5) (West Supp. 2000); MINN. STAT. ANN. § 168.021(1) (West Supp. 2000); MISS. CODE ANN. § 27-19-56(1) (Supp. 1999); MO. ANN. STAT. § 301.142.6; MONT. CODE ANN. § 49-4-301(1) (1999); NEB. REV. STAT. ANN. § 18-1738(3) (Michie 2000); NEV. REV. STAT. ANN. 482.384.1 (Michie Supp. 1999); N.H. REV. STAT. ANN. § 261:88III (Supp. 1999); N.J. STAT. ANN. § 39:4-206 (West Supp. 2000); N.M. STAT. ANN. § 66-3-16(F); N.Y. VEH. & TRAF. LAW § 1203-a(1)(i) (McKinney 1996); N.C. GEN. STAT. § 20-37.6(c)(1); N.D. CENT. CODE § 39-01-15(4) (1997); OHIO REV. CODE ANN. § 4503.44(B) (Anderson 1999); OKLA. STAT. ANN. tit. 47, § 15-112(B)(1) (West 2000); OR. REV. STAT. § 811.604(1)(a) (1999); 75 PA. CONS. STAT. ANN. § 1338(c) (West 1996); R.I. GEN. LAWS § 31-28-7(a)(3)(A) (Supp. 1999); S.C. CODE ANN. § 56-3-1910 (Law. Co-op. 1991); S.D. CODIFIED LAWS § 32-5-76 (Michie 1998); TENN. CODE ANN. § 55-21-103(a) (1998); TEX. TRANSP. CODE ANN. § 502.253(e) (Vernon Supp. 2000); UTAH CODE ANN. § 41-1a-408 (1998); VT. STAT. ANN. tit. 18, § 1325(b) (1982); VA. CODE ANN. § 46.2-1241(B) (Michie 1998); WASH. REV. CODE ANN. § 46.16.381(2)(5) (West Supp. 2000); W. VA. CODE ANN. § 17C-13-6(b)(2) (Michie Supp. 2000); WIS. STAT. ANN. § 341.14(1e)(a) (West 1999); WYO. STAT. ANN. § 31-2-213(c) (Michie 1999).

53. See, *e.g.*, DEL. CODE ANN. tit. 21, § 2134(a)(4); GA. CODE ANN. § 40.6.222(c); KY. REV. STAT. ANN. § 189.456(3)(c); W. VA. CODE ANN. § 17C-13-6(b)(2).

54. See 23 C.F.R. §§ 1235.3(a), .4(b), .5(b) (2000).

55. See, *e.g.*, CAL. VEH. CODE § 22511.55(b).

56. See, *e.g.*, FLA. STAT. ANN. § 320.0848(1)(a).

57. See, *e.g.*, NEB. REV. STAT. ANN. § 18-1738(3).

58. See, *e.g.*, *id.*

59. See, *e.g.*, KAN. STAT. ANN. § 8-1.125(a) (Supp. 1999).

2. Expiration and Renewal

The Department of Transportation requires that the states provide periodic renewal of permits, but does not impose any particular time frame for removal.⁶⁰ Requirements for frequent renewal have encountered resistance from disabled drivers who object to the inconvenience of obtaining a new physician's certificate or returning to the state motor vehicle department.⁶¹ For example, Arizona originally required renewal every year, but eliminated the requirement in response to objections from disabled drivers.⁶² Therefore, the renewal period varies from state to state and often from town to town within a state.⁶³ In New York, some localities set a three-year limit, some five, some ten, and some impose no limit at all.⁶⁴ The period is five years in Connecticut⁶⁵ and four years in Maine.⁶⁶

In the case of temporary placards, federal regulation sets the expiration date at a period not to exceed six months, but the term may be shorter based on the medical professional's assessment of the probable period of disability.⁶⁷ Procedures for renewal also vary from state to state.⁶⁸ In some jurisdictions, permit holders must obtain a new physician's certificate.⁶⁹ In other states, permits are renewed automatically by mail, with no requirement for re-certification by a physician.⁷⁰

B. Site Regulation

Siting is subject to a baseline of federal regulation under the ADA, the Rehabilitation Act, and the FHA, as further elaborated by rules adopted at the state and local levels.⁷¹ The laws governing siting in general have developed around four key locales: (1) commercial areas; (2)

60. See 23 C.F.R. § 1235.4(a) (2000).

61. See Pila Martinez, *Disabled Signs on Cars Can Be from the Dead*, ARIZ. DAILY STAR, Mar. 3, 1997, at 1A, available at 1997 WL 7925906.

62. See *id.*

63. See, e.g., *infra* text accompanying notes 64-66.

64. See *Catch 'Em: Better Records and Enforcement Would Identify People Who Park Illegally in Handicapped Spaces*, POST-STANDARD (Syracuse, N.Y.), Oct. 1, 1996, at A6, available at 1996 WL 7186884.

65. See CONN. GEN. STAT. ANN. § 14-253a(2) (West 1999).

66. See ME. REV. STAT. ANN. tit. 29-A, § 521(3)(b) (West 1992).

67. See 23 C.F.R. § 1235.5(d) (2000).

68. See, e.g., *infra* text accompanying notes 69-70.

69. See Fred W. Lindecke, *Law to Target Drivers Who Abuse Plates for Disabled*, ST. LOUIS POST-DISPATCH, Aug. 28, 1996, at 1A, available at 1996 WL 2788386.

70. See *id.*

71. See *infra* Part III.B.1-4.

workplace parking areas; (3) multi-family residential buildings; and (4) public streets. Because site regulation has had to adapt to a multitude of legal requirements, developing an efficient network of handicapped parking spots has been challenging at best.

1. Commercial Areas

The ADA sets minimum requirements for accommodation of disabled persons in places of public accommodation and commercial facilities.⁷² The terms public accommodation and commercial facilities are broadly defined to include a variety of nonresidential commercial sites to which the public is invited.⁷³ The ADA distinguishes between new construction or renovations on the one hand, and existing facilities on the other.⁷⁴

As to new construction, the ADA provides that places of public accommodation and commercial facilities designed or constructed for first occupancy after January 26, 1993 must be “readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable.”⁷⁵ Likewise, the ADA requires that major renovations must be made “in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities.”⁷⁶

With respect to existing structures that have not been renovated, the ADA provides that it is an act of discrimination for a person in control of a facility to fail to modify policies and practices to accommodate persons with disabilities.⁷⁷ It is also an act of discrimination to fail to remove architectural barriers from an existing structure when “removal is readily achievable.”⁷⁸ A project is readily achievable when it is “easily accomplishable and able to be carried out without much difficulty or expense.”⁷⁹ The Department of Justice considers the provision of disabled parking spaces to be readily achievable because the cost of installing signs and painting parking spaces is minimal.⁸⁰ Thus, the handicapped

72. See generally 42 U.S.C. §§ 12181-213 (1995).

73. See *id.* § 12181(7)(A)-(L) (identifying twelve categories of private entities which qualify as places of public accommodation).

74. See *id.* §§ 12181(9), 12182(b)(2)(A)(ii), (iv), 12183(a)(1)-(2); see also 28 C.F.R. § 36.304 (1999).

75. 42 U.S.C. § 12183(a)(1).

76. *Id.* § 12183(a)(2).

77. See *id.* § 12182(b)(2)(A)(ii).

78. See *id.* § 12182(b)(2)(A)(iv).

79. *Id.* § 12181(9).

80. See 28 C.F.R. pt. 36, app. A, § 4.6.1-.6.4 (1999).

parking rules have roughly similar application to both new and existing facilities.

The architectural requirements of the ADA are fleshed out through federal, state, and local regulations. If federal funds are used, the siting and design of handicapped spaces must comply with the Uniform Federal Accessibility Standards promulgated by the Department of Justice in its ADA Accessibility Guidelines.⁸¹ The federal guidelines set forth the minimum number of required accessible spaces in places of public accommodation and commercial facilities as an increasing function of lot size.⁸² The requirements are as follows:

TABLE 1⁸³
FEDERAL REQUIREMENTS FOR NUMBER OF SPACES

Total Spaces in Lot	Required Minimum Number of Handicapped Parking Spaces
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1000	2% of total
1001 and over	20 plus one for each 100 over 1000

If federal funds are not used, the regulation of handicapped parking is left principally to the states,⁸⁴ subject to the guidance offered by the United States Department of Transportation in its Uniform System for Parking for Persons with Disabilities.⁸⁵ Most states follow the federal

81. *See id.* § 4.1.1(1).

82. *See id.* § 4.1.2(5).

83. *See id.*

84. *See* 23 C.F.R. § 1235.7(a) (2000) ("Each State shall establish design, construction, and designation standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State.").

85. *See generally id.* § 1235.

guidelines, although there are variations.⁸⁶ Wisconsin, for example, requires “[a]t least one space for a facility offering 26 to 49 spaces[;] [a]t least 2% of all spaces for a facility offering 50 to 1,000 spaces[; and] [a]t least [1%] . . . of each 1,000 spaces over the first 1,000 for a facility offering more than 1,000 spaces.”⁸⁷

86. See, e.g., *infra* text accompanying notes 89-90.

87. WIS. STAT. ANN. § 346.503(1m)(a) (West Supp. 1999). One development that bears mention at this point, although it is not part of the handicapped parking program per se, is the upsurge in “stork parking” at grocery stores and shopping malls. Some stores have begun to recognize pregnancy as a form of disabling condition, and have set aside stork parking spaces reserved for new parents or expectant mothers. See Lisa J. Huriash & Charles Strouse, *Mom Alert! Some Businesses Now Cater to the Carriage Trade*, SUN-SENTINEL (Ft. Lauderdale, Fla.), July 14, 1997, at 1A, available at 1997 WL 11390314 (discussing the rise of stork parking spaces in Georgia, Michigan, Mississippi, North Carolina, and Ohio). The first stork parking spaces began to appear in the mid-1990s, and the movement picked up speed through the decade. See *id.* The idea apparently originated in Latin America—either Chile or Cuba—and first appeared in the United States either at a chain of suburban supermarkets near Cleveland, Ohio or somewhere near Atlanta, Georgia. See *id.*; *Today: Reserved Parking Spaces for Pregnant Women Showing Up in Shopping Centers* (NBC television broadcast, July 14, 1997) (transcript on file with the *Hofstra Law Review*). Another claim is that the President of Venture Stores got the idea while talking to a pregnant friend. See Pam Adams, *More Space for Those Who Need It: Parking Lots Across the Country Are Setting Aside Special Spaces for Mothers and the Elderly*, PEORIA J. STAR, Feb. 13, 1997, at B2, available at 1997 WL 7652539.

Nearly all of these programs are adopted by merchants and operate without sanction of law. A few jurisdictions, however, have gone further. See, e.g., *infra*. Georgia permits pregnant women to obtain a temporary handicapped parking sticker if her doctor certifies that she has “a medical need for access to parking for persons with disabilities.” GA. CODE ANN. § 40-6-221(7) (1997). A proposal in the Louisiana legislature would have allowed pregnant women to obtain a handicapped parking permit for a one-year period. See Lee Leonard, *Good Intentions Fail to Win Passing Grade*, COLUMBUS DISPATCH, Mar. 24, 1997, at 9A, available at 1997 WL 7355808. Meanwhile, a proposed amendment to Ohio’s law would have required any business that provides handicapped parking to provide an equal number of spaces for expectant mothers. See Ed Anderson, *Parking Bill Helps Pregnant Women*, TIMES-PICAYUNE (New Orleans, La.), May 20, 1997, at A3, available at 1997 WL 4222098; Heather Salerno, *Reserved ‘Stork’ Parking Gives Birth to Mixed Reviews*, TIMES-PICAYUNE (New Orleans, La.), Sept. 21, 1997, at A10, available at 1997 WL 12667524. In Wyoming, legislators introduced a bill to declare that any parent with three or more children under the age of five years was entitled to make use of handicapped parking spaces. See H.R. 115, 1999 Gen. Sess. (Wyo. 1999), available at <http://legisweb.state.wy.us/99sessin/hbills/hb0115.htm>. In Illinois, a proposed bill would have provided handicapped parking privileges to women during the third trimester of pregnancy. See S. 518, 91st Gen. Assem., Reg. Sess. (Ill. 1999), available at <http://www.legis.state.il.us/scripts/imstran.exe?LIBSINCWSB518>. In Dade County, Florida, a law adopted in 1995 mandates that shopping centers set aside special spaces for parents of children under the age of two years and authorizes parents to purchase stroller placards for fifty cents a month entitling them to park there; violators are subject to a \$150 fine. See Huriash & Strouse, *supra*.

As might be expected, if stork parking was adopted, parking for the elderly was sure to follow. See Adams, *supra* (stating that some stores have also designated special spots for non-handicapped senior citizens); Nanette Woitas Holt, *Frayne Fashions Wants to Give Older Customers a Break in Parking Lot*, TAMPA BAY BUS. J., May 22, 1998, at 29, available at <http://www.bizjournals.com/tampabay/stories/1998/05/25/focus10.html>. As of yet, elder parking is far less common than stork parking, probably because many elderly people can obtain handicapped parking privileges through the existing program and therefore do not require any special privileges

2. Workplace Parking Areas

Sites of employment, such as factories and office buildings, are generally included within the definition of commercial facilities under the ADA,⁸⁸ and are, accordingly, subject to the ADA's general rules on siting of handicapped parking. However, in addition to these general rules, employee parking areas may be subject to review on a case-by-case basis under the employment provisions of that statute. Title I of the ADA prohibits employers subject to its terms—those with fifteen or more employees⁸⁹—from discriminating against a disabled employee or job applicant regarding any terms, conditions, or privileges of employment.⁹⁰ An employer is considered to discriminate against a person with a disability when he or she fails to make reasonable accommodations for the physical or mental limitations of a disabled employee or job applicant, unless the employer can demonstrate that the accommodations in question would impose undue hardship.⁹¹

Employees may argue that they require reasonable accommodation for their disabilities on the job,⁹² and that such accommodation includes provision of handicapped parking. The Equal Employment Opportunity Commission ("EEOC") may investigate and take up the employee's case.⁹³ The EEOC may be receptive to the claim of discrimination based on the failure to provide handicapped parking: its ADA guidelines specifically note that reasonable accommodation of a disability could "include . . . providing reserved parking spaces."⁹⁴

Handicapped parking for an employee was the basis of a discrimination claim under the ADA and the Rehabilitation Act in *Lyons v. Legal Aid Society*.⁹⁵ The employee, a Legal Aid attorney, suffered injuries in an automobile accident that impaired her ability to walk.⁹⁶ She asked her employer to provide a parking space in lower Manhattan near her office, at an expense to the employer of approximately one-quarter of

because of their age.

88. See EEOC, TECHNICAL ASSISTANCE MANUAL FOR THE AMERICANS WITH DISABILITIES ACT III-20 (1992).

89. See 42 U.S.C. § 12111(5)(A) (1995).

90. See *id.* § 12112(a). The Americans with Disabilities Act ("ADA") is modeled after the Rehabilitation Act of 1973, but goes beyond the earlier statute, which applies only to federal employers and private employers who receive federal funds. See 29 U.S.C. § 794(a), (b) (1995).

91. See 42 U.S.C. § 12112(b)(5)(A).

92. See *id.* § 12111(9).

93. See *id.* § 2000e-5.

94. 29 C.F.R. § 1630 (1995).

95. 68 F.3d 1512 (2d Cir. 1995).

96. See *id.* at 1513.

her salary.⁹⁷ The employer refused on grounds that it did not provide parking for any employees and that the complainant was seeking preferential treatment as a matter of personal convenience.⁹⁸ The trial court dismissed the complaint,⁹⁹ but the Second Circuit held that the plaintiff had stated a case that, if proved, would entitle her to the requested relief.¹⁰⁰

3. Residential Facilities

In the case of apartments, homeowners' associations, condominiums, and cooperatives, the applicable rules principally are found in the FHA.¹⁰¹ For properties constructed since 1988, the FHA requires that the building be designed "in such a manner that . . . the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons."¹⁰² For properties constructed before 1988, the law does not impose specific design requirements, but does require that "reasonable accommodations [be made] in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."¹⁰³

The Department of Housing and Urban Development takes the position that a landlord of a rental apartment subject to the FHA must provide reserved parking spaces for handicapped tenants, at least if the building provides parking for tenants on a first-come, first-served basis.¹⁰⁴ In *Hubbard v. Samson Management Corp.*,¹⁰⁵ a mobility-impaired tenant requested that the apartment provide her a designated parking space near her unit.¹⁰⁶ The owner of the apartment provided free spaces to tenants on first-come, first-served basis, in addition to reserving spaces for tenants for a monthly fee.¹⁰⁷ The apartment owner offered to provide a designated space for the tenant, but only if she paid the fee applicable to all other tenants who had designated spaces.¹⁰⁸ The tenant, backed by the United States, claimed that she should receive the space for free.¹⁰⁹ The trial

97. *See id.*

98. *See id.* at 1516.

99. *See id.* at 1514.

100. *See id.* at 1517.

101. *See* 42 U.S.C. §§ 3602(b), 3604 (1995).

102. *Id.* § 3604(f)(3)(C)(i).

103. *Id.* § 3604(f)(3)(B).

104. *See* 24 C.F.R. § 100.204(b) ex. (2) (2000).

105. 994 F. Supp. 187 (S.D.N.Y. 1998).

106. *See id.* at 188.

107. *See id.*

108. *See id.*

109. *See id.* at 188-89.

court agreed, ruling that the defendants had discriminated against the plaintiff on the basis of a handicap by refusing to allocate her a designated parking space at no charge.¹¹⁰

Like landlord-maintained rental units, residential associations clearly are subject to the FHA.¹¹¹ However, the wording of the statute does not easily cover the case of an existing resident seeking a specially designated spot, since the issue involves neither a sale nor a rental relationship. Providing specially designated handicapped parking for particular residents is often problematic for residential associations because the rules and regulations of the associations may prohibit such accommodations.¹¹² Residential associations tend to resist demands by disabled members for a handicapped spot.¹¹³ Privately negotiated solutions may be possible if another resident is willing to give up or trade a space, but people tend to zealously guard their parking spaces.¹¹⁴ When a dispute cannot be resolved privately, the Department of Housing and Urban Development's Fair Housing Enforcement Center and the United States Department of Justice have occasionally intervened, claiming that condominiums or other homeowners' associations violate the federal law by failing to provide adequate handicapped spaces for particular tenants.¹¹⁵

110. *See id.* at 193; *see also* *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 895-96 (7th Cir. 1996) (holding that an apartment building failed to make a reasonable accommodation for the needs of a tenant with multiple sclerosis when it failed to provide sufficient handicapped parking spaces).

111. *See* 42 U.S.C. § 3603(a), (b) (1995).

112. Prohibitions against special treatment are understandable in terms of the politics of residential associations. Any perception of favoritism for one resident over another with respect to usage of common areas is fertile ground for dissension within an association that can cause headaches and reduce the quality of life for all residents. Moreover, these rules of residential associations which require equal treatment of residents may be further backed by state statutes. In many cases, state law may declare that homeowners' association members are tenants in common in the common areas, and may limit the association's ability to sell or subdivide the common areas. *See, e.g.*, OHIO REV. CODE ANN. § 5311.04(A) (Anderson 1989) (limiting power of association to subdivide common areas); WASH. REV. CODE ANN. § 64.32.050(1)-(3) (West 1994). These statutes may be interpreted to preclude the setting aside of a specially designated parking spot out of the common areas for a handicapped resident.

113. *See* Caroline E. Mayer, *A Murky Area for Handicapped Parking: Homeowners Associations Often Caught Between Civil, Property Rights Over Spaces for Disabled*, WASH. POST, July 19, 1997, at E1, *available at* 1997 WL 11974641. Typically, the association defends itself on the ground that it fears a lawsuit if it provides the requested space. *See id.*

114. *See id.*

115. *See* Joseph Sjostrom, *Elk Grove Complex Faces HUD Complaint: Bias Alleged in Cuts of Disabled Parking*, CHI. TRIB., Dec. 20, 1996, at 1, *available at* 1996 WL 2738145. State law enforcement officers may also seek to enforce the federal regulations. *See State Files Suit Against Condo for Denying Handicapped Permit*, FLA. TODAY, Aug. 19, 1998, at B9, *available at* 1998 WL 18638957 (illustrating that the Department of Housing and Urban Development and the United States Department of Justice may file a lawsuit against homeowners' associations that discriminate against

Courts have reached differing conclusions in the litigated cases.¹¹⁶ In *Shapiro v. Cadman Towers, Inc.*,¹¹⁷ the plaintiff, who had multiple sclerosis, was a tenant in a cooperative housing apartment.¹¹⁸ Parking spaces in the building were allocated from a waiting list.¹¹⁹ Shapiro asked to be moved to the head of the list in order to accommodate her need for parking, but the cooperative refused.¹²⁰ The court held that the plaintiff was likely to succeed on her claim of discrimination under the FHA.¹²¹ Other courts have been less receptive to demands by disabled persons for special handicapped parking spots from their residential associations.¹²² In *United States v. Fairways Villas Condominium Ass'n*,¹²³ the plaintiff, who was living with herniated discs and chronic fatigue syndrome, requested that her condominium designate an outdoor space in the common area near her front door as a handicapped spot.¹²⁴ All the condominiums' outdoor spaces were offered on a first-come, first-served basis.¹²⁵ When the condominium refused, she filed a discrimination complaint with the Secretary of Housing and Urban Development under the FHA.¹²⁶ The Secretary charged the condominium association with discrimination on the basis of a handicap and filed suit in federal court.¹²⁷ The court held, however, that the association had not discriminated against the handicapped resident, because the association did not have the legal power to set aside the designated space.¹²⁸

4. Public Streets

A fourth, and in some respects most problematic, setting where siting is an issue is the public street adjacent to the home of a handicapped person. States, perhaps stimulated by the recommendation of the Transportation Department's advisory committee on handicapped parking,¹²⁹ are increasingly giving cities home rule authority to designate

disabled individuals).

116. See, e.g., *infra* text accompanying notes 120-31.

117. 844 F. Supp. 116 (E.D.N.Y. 1994).

118. See *id.* at 118-19.

119. See *id.* at 120.

120. See *id.* at 120-21.

121. See *id.* at 127.

122. See, e.g., *infra* text accompanying notes 126-31.

123. 879 F. Supp. 798 (N.D. Ohio 1995).

124. See *id.* at 799.

125. See *id.*

126. See *id.*

127. See *id.*

128. See *id.* at 802.

129. See Uniform System for Handicapped Parking, 56 Fed. Reg. 10,328, 10,344 (Mar. 11,

on-street spaces or stalls for handicapped parking.¹³⁰ Thus, the city would be permitted to create a handicapped spot in front of a disabled person's residence.

Cities, however, may not particularly appreciate being given this authority. Requests for special handicapped spaces have vexed city councils around the country because, while the council members may want to grant a particular citizen's request, they fear opening floodgates to further requests¹³¹ and aggravating neighbors.¹³² In congested urban areas, it is often difficult for residents to find street parking. Persons claiming disability can ask their cities to designate a handicap spot in front of their house, thus obtaining the functional equivalent of a property right in the space. Neighbors often object to this practice, since it gives privileged access to one resident and displaces them from spaces that they would otherwise have been able to use.¹³³ These concerns have caused many cities to deny requests for individual street spaces.¹³⁴ Such refusals have generated litigation under the ADA and state disability laws.¹³⁵ In the leading case, *Biggs v. City of Jackson*,¹³⁶ a state appellate court held

1991) (to be codified at 23 C.F.R. pt. 1235) (urging states to allow for designation of reserved parking spaces for persons with disabilities on the roadway in front of their homes).

130. See, e.g., CAL. VEH. CODE § 22511.7 (West 2000); IDAHO CODE § 49-213(1) (Michie 1994); MO. ANN. STAT. § 301.143(3) (West 1994); NEB. REV. STAT. ANN. § 18-1736(1) (Michie 1999).

131. See Danielle C. Hollister, *Council Denies Bid for Disabled Parking Reservation*, HARRISBURG PATRIOT (New Cumberland Borough, Pa.), Nov. 19, 1996, at 7, available at 1996 WL 5710819 (explaining that New Cumberland Borough Council in Pennsylvania opposed reserved spaces for handicapped residents because the city would be unable to administer and enforce policy).

132. See David Templeton, *Council Restores Handicap Spaces*, PITT. POST-GAZETTE, Dec. 25, 1994, at W4, available at 1994 WL 9670174.

133. See, e.g., *id.* (discussing revocation by North Charlerio, Pennsylvania City Council of a handicapped street permit it had assigned to Clarence and Lea Ann Bly, parents of an autistic child, after receiving complaints from neighbors, but reversed itself after the Blys filed state and federal complaints). An example occurred recently in Everett, Massachusetts. Pasquale Capodilupo, of Everett, Massachusetts, is deaf, legally blind, diabetic, and has had prostate cancer, colon cancer, and a heart attack. See Robin Washington, *Everett Handicap Space a Sore Spot*, BOSTON HERALD, July 11, 1999, at 2, available at 1999 WL 3402977. He obtained from the city a specially designated handicapped spot outside his house. See *id.* His neighbors resented the privilege, apparently because Mr. Capodilupo did not drive and did not have a car. See *id.* The spot remained empty during the day and was occupied at night by his wife when she returned home from work. See *id.* Three city council members and twenty-seven neighbors filed a petition to revoke the permit on the ground that Mr. Capodilupo was not, in fact, handicapped. See *id.*

134. See Hollister, *supra* note 131; Jan Murphy, *2nd Handicapped Parking Request Made*, HARRISBURG PATRIOT, Jan. 21, 1997, at 13, available at 1997 WL 7505192.

135. See Michael H. Hodges, *No Parking: HIV-Positive Man Is Looking for a Sign—One that Will Give Him a Space in Front of His Jackson House*, DETROIT NEWS, Jan. 21, 1997, at 1C, available at 1997 WL 5576148.

136. No. 181678, 1996 WL 649992, at *1 (Mich. Ct. App. Aug. 9, 1996).

that a Human Immunodeficiency Virus positive resident stated a claim under both the ADA and the Rehabilitation Act, as well as under the state's civil rights statute for disabled persons, against a municipality that had refused his request for a designated handicapped spot in front of his house.¹³⁷

If a city does set aside a handicapped space on a public street adjacent to the residence of a disabled person, there is the subsequent issue as to whether the space will be available for the sole use of that person, or whether any holder of a handicapped permit may use it. The person at whose request the space is created is likely to consider it his or her own personal property, but some cities have taken the position that the spot is available for any disabled driver.¹³⁸ Other cities, however, have been willing to enforce the property rights of the resident against those of other handicapped motorists.¹³⁹ Chicago establishes street spots for disabled residents, and reserves them by the number on the holder's handicapped permit.¹⁴⁰ These spots are huge: at twenty-five feet long,¹⁴¹ they could even accommodate a small truck. They also provide a substantial financial benefit: A resident of an apartment complex in Chicago may pay \$100 per month for parking in a basement garage; but, by obtaining a designated handicapped space on the street in front of the building, the resident can save \$1200 per year. Not surprisingly, these spaces have become popular, tripling in number from 2500 to 7500 between 1990 and 1998.¹⁴²

137. *See id.* at *2.

138. *See* Kelly Heyboer, *Space Invaders Curb Designated Parking: Man's House-Front Handicapped Spot Is There for the Taking*, STAR-LEDGER (Newark, N.J.), June 30, 1997, at 14, available at 1997 WL 8085013. In Belleville, New Jersey, Fred Rupp—a handicapped advocate—obtained a handicapped parking space outside his home because of an inflammatory condition that made it difficult for him to walk. *See id.* Coming home from a trip, he discovered another car with handicapped tags parked in the space. *See id.* He called the police, only to be told that they could do nothing because the space was public property. *See id.*

139. *See id.* In Bayonne, New Jersey, the city not only erects handicapped parking signs in front of homes, but writes the names of the residents on the sign and enforces the space against other handicapped parkers. *See id.*

140. *See* Gary Washburn, *City Targets Handicapped Parking*, CHI. TRIB., Oct. 20, 1998, at 3, available at 1998 WL 2907849.

141. *See* Andrew Martin, *Aldermen Stage Mini-Revolt on Daley Plan to Alter Permit Parking*, CHI. TRIB., Feb. 4, 1998, § 2 (Metro Chicago), at 4, available at 1998 WL 2821859.

142. *See id.* Chicago's receptivity to specially designated disabled street spaces is a function of its system of political favors meted out by the city aldermen, through whom all requests for street spaces must be channeled. *See id.* An alderman who obtains a street space for a constituent provides a benefit of substantial value, and undoubtedly can expect some form of gratitude in return. *See id.* So entrenched is the system that even Chicago's popular Mayor Daley confronted a revolt in his normally docile City Council when he attempted to revamp the parking permit program because the aldermen feared that such action would strip them of their power to control parking in their wards. *See id.*

IV. PROBLEMS OF OVER-USE

Problems of over-use, both legal and illegitimate, have plagued the regime of handicapped parking regulation since its inception. It is by far the most serious problem facing the parking program.¹⁴³ Over-use of handicapped parking spaces has occurred because of four principal reasons: (1) increases in permits legitimately issued; (2) parking without a permit; (3) parking with an improper permit; and (4) parking with a proper permit obtained under false pretenses.¹⁴⁴

A. *Increases in Permits*

In state after state across the country, the number of handicapped parking permits legitimately has increased dramatically since 1987, often growing by a factor of ten or more.¹⁴⁵ The increase appears to reflect a number of factors.¹⁴⁶ The stigma of being “handicapped” has undoubtedly receded over time, making more people willing to come forward and declare themselves disabled.¹⁴⁷ An aging population may have greater need for handicapped spots. Moreover, as permits increase, the public in general becomes more aware of the steps that are taken to obtain a permit, so that people who might have been deterred from obtaining a handicapped permit because they did not know how to go about doing it are stimulated to file applications. The public also is becoming more aware of the benefits of the program as those benefits have increased—for example, as governments have waived parking fees for persons with handicapped stickers.¹⁴⁸

143. See Dionne Searcey, *Handicapped-Parking Permits Frustrate Cops*, CHI. TRIB., Feb. 5, 1997, at 1, available at 1997 WL 3517675 (stating that Arlington Heights in Illinois has issued approximately 70,000 special license plates and 385,000 handicapped parking placards); see also *id.* (observing that Arlington Heights police “issued 865 tickets for handicapped [parking] violations” in 1996).

144. See discussion *infra* Part IV.A-D.

145. See *Across the USA: News from Every State*, USA TODAY, Apr. 1, 1997, at 10A, available at 1997 WL 6998457.

146. See *infra* text accompanying notes 151-52.

147. See Anne Lamoy, *Handicapped Parking Tags—and Frustration—Are on the Rise: More Able-Bodied Drivers Are Pulling into Reserved Spaces*, KAN. CITY STAR, June 12, 1997, at A1, available at 1997 WL 3016068. In the words of one advocate for the disabled, “[p]eople [do not] want to be called disabled, but when it comes to parking, everyone wants to be disabled.” *Id.* (quoting Joseph Mantovu, director of administration for the Whole Person Inc., an advocacy and service organization for persons with disabilities).

148. In 1995, the City of Buffalo, New York, doubled its parking meter rates, up to \$1 per hour, in the expectation of increased revenues. See Thomas J. Dolan, *Meter Money Drops Despite Doubled Rates*, BUFF. NEWS, July 28, 1997, at A1, available at 1997 WL 6450970 (discussing the increased use of handicapped parking permits in Buffalo, New York). However, revenues fell off, at least partly

The result of these factors has been a huge increase in permits. In Arkansas, roughly one driver out of eight enjoys handicapped privileges.¹⁴⁹ In Kentucky, the ratio is one in ten.¹⁵⁰ Ohio issued 62,000 handicapped placards in 1992; five years later, the number had more than doubled to 140,000.¹⁵¹ In Louisiana, the state issued 3933 placards in 1989, 51,516 in 1993, and 128,084 in 1997.¹⁵² In Arlington County, Virginia, placards outnumber the disabled population by a three to one ratio.¹⁵³ In Fort Lauderdale, handicapped status has become so ubiquitous that a columnist jokingly called for every driver to receive a handicapped permit, "which should cover the [fourteen] of us in South Florida who [do not] already have one."¹⁵⁴

B. Parking Without a Permit

Motorists frequently park in handicapped spots without the required permits.¹⁵⁵ Sometimes the motorist will blatantly disregard the rules and park in a disabled space without even a pretense of justification.¹⁵⁶ In other cases, the violation may be less egregious. For example, a driver may pull into a handicapped spot for an errand such as returning a tape to

because of elasticity in demand for handicapped parking privileges. *See id.* Essentially, the effect of more people parking for free with handicapped permits swamped the increased revenues obtained from those who paid. *See id.* This inference seems substantiated by a spot check conducted by the *Buffalo News*, which revealed that at forty-five of the sixty-five meters indicating "expired," the cars were displaying handicapped parking placards. *See id.* In Crystal City, Virginia, more than half of the on-street parking spaces are occupied on the weekdays by people using handicapped placards. *See* Frank O'Leary, *Taking the Right Path on Disabled Parking*, WASH. TIMES, Nov. 28, 1996, at C2, available at LEXIS, News Library, Wtimes File. In Texas, the waiver of fees at Dallas-Fort Worth airport has resulted in a massive number of people using handicapped placards, costing the airport as much as \$2,000,000 in lost revenues in 1996 alone. *See* Rouse, *supra* note 41.

149. *See Across the USA: News from Every State*, USA TODAY, Oct. 9, 1996, at 11A, available at 1996 WL 2071414.

150. *See* Laura Pulfer, *Parking: The Last Bastion for Whiners*, CIN. ENQUIRER, June 24, 1997, at B1, available at 1997 WL 5456547.

151. *See* Deborah Kendrick, *Alive and Well: Handicapped Parking Riles Up People*, CIN. ENQUIRER, Mar. 15, 1998, at F2, available at 1998 WL 3761259.

152. *See* James Varney, *Handicapped License Plates Abound: Scofflaws Are Tough to Prove*, TIMES-PICAYUNE (New Orleans, La.), Feb. 9, 1998, at B-1, available at 1998 WL 6255669.

153. *See* Chris Grier, *Parking Abuse: Despite New Rules, Scores Still Fraudulently Acquire Tags in Efforts to Snag Convenient Parking Spaces*, VIRGINIAN-PILOT, Mar. 9, 1998, at A1, available at 1998 WL 5538814.

154. John Grogan, *Changes in Rules Absolve Sinners*, SUN-SENTINEL (Ft. Lauderdale, Fla.), May 25, 1997, at 1B, available at 1997 WL 3105680.

155. *See* Searcey, *supra* note 143 (discussing the prevalence of illegally parked cars in handicapped parking spaces in Arlington Heights, Illinois).

156. *See* Kurt Erickson, *Handicapped Spaces Get Further Protection*, PANTAGRAPH (Bloomington, Ill.), July 12, 1997, at A8, available at 1997 WL 2476835 (discussing Illinois law aimed at motorists who abuse handicapped parking spaces).

a video store or mailing a letter at the post office, rationalizing that, although he or she is technically breaking the law, no one will be harmed.¹⁵⁷ Or the driver may sit in the spot with the motor running, on the theory that he or she is not actually parking but only stopping temporarily.¹⁵⁸ Some drivers may refrain from parking in disabled spaces as a general rule, but may do so if they are running late or facing some other exigency. For example, parishioners sometimes violate the handicapped parking rules when attending church on Sunday mornings.¹⁵⁹ Drivers may also feel justified in parking on the access aisles—the striped area next to a van-sized handicapped parking space—on the theory that these aisles are only needed for wheelchair-equipped vans, which are unlikely to show up.¹⁶⁰ In short, the usual range of excuses for violating a rule applies in the handicapped parking area as it does elsewhere.

C. Parking with an Improper Permit

Motorists who do not want to risk receiving a ticket for parking without a permit have a different option for using the handicapped spaces: obtain a permit improperly.¹⁶¹ One fairly frequent scenario is the death of a permit holder.¹⁶² Because permit holders are often elderly, or living with various diseases, they may die before the expiration of their permits. In such a case, the permit is often passed to an heir as an inheritance with the rest of the estate.¹⁶³ Even if the legitimate holder of a permit is alive,

157. See Carlos Moncada, *Drivers Parked Illegally to See Fines Double in St. Pete*, TAMPA TRIB., Jan. 23, 1999, at 5, available at 1999 WL 4641567 (observing that handicapped parking violators include individuals who justify their illegal conduct on grounds that they are only running into the store for a few minutes).

158. See Susan Barkett, Editorial, *Too Many Think It's All Right to Use Handicapped Parking*, PANTAGRAPH (Bloomington, Ill.), Apr. 26, 1997, at A18, available at 1997 WL 2470171.

159. See Alejandra Navarro, *Getting Tough on Parking Violators: Stafford Volunteers to Aid Enforcement*, HARTFORD COURANT, Aug. 18, 1997, at B1, available at 1997 WL 10984227.

160. See generally Marilyn J. Phillips, Editorial, *Handicapped Need Accessible Parking*, BALT. SUN, Apr. 4, 1997, at 14A, available at 1997 WL 5505387 (printing letters to the editor complaining of parking in access aisles).

161. See generally Steve Bates, *A Parking Space to Lie for: Rise Seen in Misuse of Handicapped Tags*, WASH. POST, July 9, 1994, at A1, available at 1994 WL 2429007 (specifying ways in which individuals who are not disabled improperly obtain permits to park in handicapped spaces).

162. See generally Stephanie Gibbs & Jon Craig, *Drivers Hog Parking Spots Reserved for People with Disabilities: The Blue Zone—How Motorists Abuse New York's Handicapped Parking Law*, SYRACUSE HERALD AM., Sept. 29, 1996, at A1, available at 1996 WL 7186599 (discussing ways in which individuals illegally acquire handicapped parking spaces, including a death of a relative with a permit).

163. See *id.* (describing a widow who presented deceased husband's permit for premium parking space); Sandy Strickland, *Looking Back: If You've Been Holding onto a Parking Ticket Be Ready*

the privilege can be lent to an improper person.¹⁶⁴ In the case of a car with handicapped plates, borrowing requires the able-bodied person to also borrow the car. This necessity limits, but does not prevent, the practice.¹⁶⁵ Hang-tags are much easier to lend to others. These placards do not need to be displayed unless, and until, the car is parked in a handicapped space.¹⁶⁶ When the placard is not needed, it can be removed and stored in the glove compartment.¹⁶⁷

Permits may be forged or fraudulently altered.¹⁶⁸ A popular trick is to cut off the expiration date, alter it with a marker, or cover it with tape to extend the useful life of the permit.¹⁶⁹ Counterfeit placards are also in common use.¹⁷⁰ Often these take the form of simple photocopies of genuine permits, although more sophisticated forgeries are also available.¹⁷¹ Because the tags hang from the rear view mirror inside the passenger compartment, and must be examined through the windshield, it may not be possible for parking enforcers to make a close inspection. Even crude forgeries or alterations may be successful at fooling the authorities.

Handicapped placards have become popular items for petty theft.¹⁷² Crime blotters record numerous instances of pilferage from parked cars.¹⁷³ While some of these permits may be used by the thief, the

Because . . . They're Coming to Get You, FLA. TIMES-UNION, Feb. 22, 1999, at B1, available at 1999 WL 9663393 (describing a man found with a handicapped parking permit issued to his grandmother who died eight years earlier).

164. See Gibbs & Craig, *supra* note 162 (abusing handicapped parking privileges by nondisabled drivers involves borrowing hang-tags belonging to disabled relatives and friends); Jeanne Morris, *New Breed Abusing Handicap Parking: NH Handicap Plate Criteria*, UNION LEADER (Manchester, N.H.), Aug. 1, 1993, at A1, available at LEXIS, News Library, Uleader File (explaining that nondisabled individuals borrow cars with handicapped plates and park in reserved spaces).

165. See Bates, *supra* note 161 (commenting that abuse of parking privileges with handicapped license plates is less common than with placards).

166. See Leslie Berkman, *Parking Lights Really Lack a Purpose—By Day or Night*, L.A. TIMES, May 15, 1995, at B1, available at 1995 WL 2046401.

167. See *id.*

168. See Bates, *supra* note 161.

169. See *id.* (reporting on widespread alteration of expiration dates in placards surveyed); see also Gibbs & Craig, *supra* note 166.

170. See Gibbs & Craig, *supra* note 162.

171. See *id.*

172. See *id.*

173. See Scott Scanlon, *Police Warn of Recent Thefts: Hundreds of Dollars Worth of Items Have Been Stolen from Parked Vehicles in Fulton Since Thanksgiving*, *Police Say*, POST-STANDARD (Syracuse, N.Y.), Jan. 18, 1997, at B1, available at 1997 WL 5717834.

majority are probably sold. Hang-tags are popular items at flea markets and sidewalk sales across the country.¹⁷⁴

Estimates of abuse of handicapped parking placards are difficult to substantiate, but there is universal consensus that violations have become extraordinarily widespread.¹⁷⁵ A constable in Travis County, Texas, surveyed 100 people seen using handicapped parking placards, compared them with the physical descriptions of the owners of the vehicles, and concluded that 35% did not match.¹⁷⁶ In Houston, the rate of violations is even higher: The deputy assistant city director of parking management estimated that 90% of cars displayed handicapped parking placards that were being used improperly.¹⁷⁷ In Crystal City, Virginia, entire blocks have been filled with cars showing nothing but handicapped placards and tags; it is not hard to infer that many of these permits were being used improperly.¹⁷⁸ At Mile High Stadium in Denver, Colorado, the city spent \$500,000 on a close-in 140-car lot for handicapped fans, but the stadium manager estimated that three-quarters of the cars displaying placards contained able-bodied people.¹⁷⁹ In Syracuse, New York, reporters for the *Syracuse Herald American* newspaper found a pattern of flagrant abuse of the handicapped parking laws at downtown shopping malls and Hancock Airport.¹⁸⁰ In California, a Department of Motor Vehicles study showed that 38% of the handicapped placards in the state's three largest cities were used illegally.¹⁸¹ In Arlington Heights, Illinois, one-quarter of the handicapped parking tickets written in 1996 were for forged placards.¹⁸²

D. *Improper Acquisition of Permits from the State*

A final cause of the massive increase in people using handicapped parking spots is the improper acquisition of permits from the state. Permits become especially easy to obtain when the state allows local

174. See Brad Goldstein, *Parking Tags Draw Thieves*, ST. PETERSBURG TIMES, Aug. 6, 1998, at 1B, available at 1998 WL 4278321.

175. See, e.g., *infra* text accompanying notes 180-86.

176. See Rouse, *supra* note 41.

177. See John Makeig, *Law Attacks Abuse of Handicap Parking: Official Thinks Most Permits Fake*, HOUS. CHRON., July 3, 1997, at A1, available at 1997 WL 6565463.

178. See *Parking Scofflaws Targeted*, WASH. POST, Feb. 27, 1997, at Va.8, available at 1997 WL 9336865.

179. See Snel, *supra* note 41.

180. See Gibbs & Craig, *supra* note 162.

181. See William T. Bolt, *ADA Makes Little Difference for the Severely Disabled*, SACRAMENTO BEE, July 13, 1995, at B7, available at <http://www.sacbee.com>.

182. See Searcey, *supra* note 143.

governments or other authorities to issue them. In Illinois, for example, any local authority is permitted to issue handicapped placards, including, not only local governments, but also a variety of private organizations that provide services to the disabled.¹⁸³ In New York, the state issues the permits but sends them to cities, towns, and villages for distribution; there is no central record keeping and no way to monitor whether permits are being distributed improperly or whether they are being revoked when no longer needed.¹⁸⁴ In some jurisdictions, a permit can be obtained from any local government without regard to residence, so that a driver could simply go to the next town if rejected in his or her home jurisdiction, and could amass numerous permits for distribution to others.¹⁸⁵ In the absence of a centralized bureaucracy for reviewing permits, a state is virtually disabled from exercising any form of realistic scrutiny to weed out fraudulent applications.

In most states, a person wanting to obtain a handicapped parking sticker by fraud need not even consult a doctor. Most states do not check to determine whether the signature on the form is in fact that of a physician or other health professional in good standing.¹⁸⁶ Handicapped parking applications are processed *en masse* by clerks who are both uninterested and unqualified in scrutinizing the validating signature or other required information, such as the applicant's name.¹⁸⁷ In Virginia, for example, the Department of Motor Vehicles checks about fifty applications a month out of the 56,000 it receives each year.¹⁸⁸ Thus, it is simple for applicants to forge a health professional's signature on the permit application, without any real fear of being caught.¹⁸⁹ No one knows how extensive this type of forgery is, but it appears to be widespread.¹⁹⁰

183. *See id.*

184. *See Catch 'Em: Better Records and Enforcement Would Identify People Who Park Illegally in Handicapped Spaces*, *supra* note 64.

185. *See Gibbs & Craig*, *supra* note 162 (reporting that New York has recently imposed a residency requirement).

186. *See, e.g., Sarah Ragland, Parking Decal for Disabled Being Misused*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Apr. 24, 1994, at 1B, *available at* 1994 WL 6805979 (discussing Florida's plan to implement a program to verify that applications for handicapped parking spaces are signed by licensed doctors).

187. *See generally Lindecke*, *supra* note 69 (noting that the oversight is so lax that even cartoon characters such as Fred Flintstone and Barney Rubble have been able to obtain permits without evoking suspicion from authorities).

188. *See Grier*, *supra* note 153.

189. *See Lorraine Woellert, Many Able to Abuse Handicapped Parking*, WASH. TIMES, July 8, 1994, at A1, *available at* 1994 WL 5499121 (reporting Arlington, Virginia police's view that many doctors' signatures on handicapped parking applications were forged).

190. *See Sarris*, *supra* note 8.

If an able-bodied person wants to avoid any risk of being accused of forging a physician's signature, a simple recourse is to obtain a valid signature from a friendly doctor. Physicians around the country are reporting massive increases in requests for handicapped parking privileges.¹⁹¹ Reputable doctors will refuse a request for a handicapped permit from someone living with a non-covered illness (such as high blood pressure or obesity) or someone who is obviously faking symptoms in order to get a permit. But, given the large number of available doctors (not to mention other authorized medical professionals), a person who is sufficiently anxious to obtain a handicapped tag can usually find someone flexible enough to fill out the required form. Doctors have reportedly certified patients suffering from conditions such as carpal tunnel syndrome or an amputated fingertip as disabled.¹⁹²

Doctors who falsely certify a patient as disabled are subject to fines or even imprisonment in some states,¹⁹³ but these threats are unlikely to act as much of a deterrent. In the event of an investigation, the physician-patient privilege would likely protect communications between the motorist and the doctor, thus shielding evidence of wrongdoing. Moreover, because one of the qualifying conditions is the inability to walk 200 feet without stopping to rest,¹⁹⁴ a doctor who wants to stay technically within the law need only ask his patient this question and provide a suitable cue as to the expected answer. In the unlikely event of an investigation, the doctor can say, truthfully, that he or she relied on the patient's self-report of symptoms that were inherently not observable by the doctor. Beyond this, the probability that a government would attempt to prosecute a doctor for improperly certifying a patient as handicapped is exceedingly low simply because of the uproar such a prosecution would cause, including vociferous objections from the medical community against intrusion into the physician-patient relationship.

V. GOVERNMENT RESPONSE

Across the country, governments are struggling to make the difficult

191. See, e.g., *Ky. Cracks Down on Handicapped Parking Abuse*, CIN. ENQUIRER, Apr. 7, 1997, at B1, available at 1997 WL 5444877 (reporting remarks of Primary Care Medical Director of Lexington-Fayette County Health Department, Dr. James Collier, that a "'day [does not] go by that we [do not] have people asking for [handicapped parking privileges]'").

192. See Lindecke, *supra* note 69.

193. See, e.g., FLA. STAT. ANN. § 320.0848(5) (West 1999); see generally *Disabled Parking Scofflaws Face Hefty Increase in Fines*, COLUMBIAN (Vancouver, Wash.), June 4, 1998, at B12, available at 1998 WL 11742227 (discussing Washington law which imposes penalty of up to \$5000 and imprisonment for doctors who falsely certify individuals as disabled for free parking privileges).

194. See, e.g., FLA. STAT. ANN. § 320.0848(1)(b)(1).

tradeoffs between the various benefits and costs of administering handicapped parking permit programs.¹⁹⁵ In reforming these programs, governments consider the complex and recursive interactions permit usage and site development have with one another. As usage increases, a larger number of spaces must be set aside to meet the rising demand. However, over-use may create a false appearance of increased demand. Moreover, there is a problem of recursion. As site regulation designates more desirable spaces for disabled people, the benefit of the privilege increases, both because it gives access to more desirable spaces, and because the remaining spaces for non-handicapped persons are scarcer and less convenient. Hence, as people become more willing to undergo the costs of filing an application because of the increased value of the benefit.¹⁹⁶ But, as the number of people entitled legitimately to use the benefits increases, the marginal social value of the program drops, because the people newly obtaining handicapped parking privileges are expected to be less severely mobility-impaired (otherwise they would have obtained a permit earlier) and, therefore, value the privilege less. Hence, the efficiency of the program decreases, even with the addition of more handicapped spaces. The problem of over-use only compounds this decrease in efficiency.

In addition, both permit and site regulation reforms affect vacancy rates. As previously mentioned, there is a trade-off between the costs of vacancies and the benefits vacancies confer on disabled people. In assessing costs of a handicapped parking program, costs of signage, maintenance, and enforcement also need to be considered; these costs presumably increase with the number of spaces set aside. Noncompliance costs are also significant. Noncompliance imposes costs by diluting the benefits of the program for mobility-impaired people, and by eroding public confidence in, and support for, the program. Moreover, as the value of the privilege increases, the incentives for cheating go up. The level of noncompliance can be reduced through enhanced expenditures on enforcement, but increasing expenditures increases enforcement costs. These costs contribute to decreasing the efficiency of the program.

Governments have instituted a variety of reforms intended to improve the operation of the system.¹⁹⁷ Depending on the jurisdiction, governments have acted to curb abuse of benefits and/or reconfigure the

195. See discussion *infra* Part V.A-F.

196. Such costs may include transactions costs—for example, going to the doctor to be certified as eligible for a permit—and social costs—for example, upbraiding a non-obviously, but still qualified, disabled person for using a handicapped parking space.

197. See discussion *infra* Part V.A-F.

parking program.¹⁹⁸ They have: (a) tightened standards for issuing permits; (b) adopted technical countermeasures to provide increased protection against the use of forged, altered, or illegally transferred tags; (c) increased penalties for violations; and (d) enhanced enforcement.¹⁹⁹ In addition to trying to curb abusive behavior, governments have: (a) reduced the benefits of handicapped parking to reduce legitimate and illegal over-use of the handicapped parking privilege; and (b) engaged in campaigns of public education.²⁰⁰

A. *Tightened Standards for Issuing Permits*

Some cities are experimenting with measures intended to tighten up procedures for permit issuance. In Houston, Texas, it was, until recently, sufficient for a health professional to simply sign the permit.²⁰¹ A new ordinance requires the doctor to provide a notarized statement certifying that an applicant is actually mobility-impaired.²⁰² In Fort Lauderdale, Florida, officials have proposed going further and setting up a task force to investigate doctors accused of illegally certifying permit applications.²⁰³ California recently tightened its requirements for medical approval, requiring submission of detailed patient information and making that information available to law enforcement officials.²⁰⁴

B. *Technical Countermeasures*

States have also begun to experiment with technical countermeasures to combat permit fraud.²⁰⁵ Some states, for example, have enhanced authentication requirements for handicapped placards, requiring that the state seal appear as a holographic image on the placards, making them difficult to counterfeit.²⁰⁶ As to the problem of people retaining handicapped permits after they no longer need them, or after the original holder dies, some jurisdictions have adopted what are in effect permit recall programs, under which all permits are required to be renewed and

198. See discussion *infra* Part V.A-F.

199. See discussion *infra* Part V.A-F.

200. See discussion *infra* Part V.A-F.

201. See Makeig, *supra* note 177.

202. See *id.*

203. See Jodie Needle, *Police Nab 'Space Invaders'*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Mar. 28, 1997, at 5, available at 1997 WL 3094428.

204. See David Haldane, *Street Smart: New State Driving Laws Get Green Light on Wednesday*, L.A. TIMES, Dec. 30, 1996, at B1, available at 1996 WL 12770308.

205. See *infra* text accompanying notes 210-16.

206. See Grier, *supra* note 153; Makeig, *supra* note 177.

replaced in order to weed out outdated or forged placards.²⁰⁷ These have not always been politically popular.²⁰⁸ For example, when Maryland attempted to require re-certification of handicapped tags during the 1980s, the result was widespread outrage by persons who did not want to incur the expense of a doctor's visit.²⁰⁹

A number of reforms combat improper use of authentic placards issued to an able-bodied person. In several jurisdictions, the law now requires that an applicant's driver's license number be printed on the placards.²¹⁰ Some states have proposed or adopted requirements that the handicapped placards carry photographic identification of the user, and that the user carry similar identification in his or her wallet.²¹¹ A more controversial—but potentially more effective—reform is to allow police officers to question motorists who do not appear to be disabled. For example, under the “Operation Space Invader” program in Davie, Florida, officers are permitted to stop and question people whom they believe to be improperly parked in handicapped spaces, and to review the permit, the registration for the permit, and the driver's identification.²¹²

C. Increased Penalties

Many localities have increased the penalties for violations of handicapped parking regulations, in an attempt to deter such violations. For example, in St. Petersburg, Florida, the County Commission increased the fine for illegally parking in a handicapped spot from the state-mandated minimum of \$100 to \$250, and required second offenders to perform forty hours of community service.²¹³ Washington State hiked its fine more than three-fold, from \$75 to \$250, in 1998.²¹⁴ Arlington, Virginia, has quadrupled its previous maximum fine for handicapped parking violations, from \$125 to \$500.²¹⁵ In some cases, handicapped

207. See *Disabled Parking Permit Deadline April 1*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Feb. 24, 1998, at 6B, available at 1998 WL 3248028.

208. See, e.g., Sarris, *supra* note 8 (discussing outrage in Maryland in response to re-certification policy).

209. See *id.*

210. See *Disabled Parking Tags: Loan Them at Your Peril*, NEWS-PRESS (Ft. Myers, Fla.), Feb. 24, 1998, at 6B, available at 1998 WL 3248028; Makeig, *supra* note 177.

211. See *Disabled Parking Scofflaws Face Hefty Increase in Fines*, *supra* note 193; *Handicapped Parking Cheats and Weasels*, *supra* note 39.

212. See Needle, *supra* note 203.

213. See Jo Becker, *Handicapped Parking Law Remains Strict*, ST. PETERSBURG TIMES, July 30, 1997, at 1, available at 1997 WL 6210622; Mathew Horridge, *Parking Law Gets 2nd Look*, TAMPA TRIB., July 28, 1997, at 1, available at 1997 WL 10799462.

214. See *Disabled Parking Scofflaws Face Hefty Increase in Fines*, *supra* note 193.

215. See *Arlington Raises Fine for Handicapped Spaces*, WASH. POST, June 9, 1998, at B3,

parking violations are now penalized more severely than nearly any other traffic offense—even those, such as blocking a fire hydrant, which might appear to represent a serious threat to the public welfare.²¹⁶

In addition to hiking fines for persons parking without the required permit, some jurisdictions have attempted to deter the issuance of permits to persons who are not actually disabled. San Francisco, California, for example, imposes a fine of \$500 for misusing a permit.²¹⁷ Another tactic is to deter improper certification by doctors. Louisiana, for example, imposes a fine of up to \$1000 and imprisonment up to ninety days for doctors who sign a false certification.²¹⁸ In Washington State, doctors face a penalty of up to \$5000 and a year in jail for such an action.²¹⁹

D. Enhanced Enforcement

To date, in many jurisdictions, police enforcement of the handicapped parking laws has been lax.²²⁰ As a spokesperson for the Vancouver, Washington police department politely observed, “it would be accurate to say that their (the police officers’) priorities are elsewhere.”²²¹ For example, someone who borrows, forges, or steals a hang-tag can, of course, be observed exiting and entering the vehicle. If the person displays no obvious disability, his or her behavior is likely to raise suspicions.²²² However, police officers rarely confront motorists in this situation.²²³ A principal reason is concern that, while the person may appear able-bodied, they may in fact live with a handicap.²²⁴

Beyond this practical concern, however, the problems of lax enforcement are sometimes exacerbated by legal impediments. In some jurisdictions the police lack power to enforce handicapped parking regulations in private parking lots, and, when they can patrol private lots,

available at 1998 WL 11585210.

216. See Bill Thompson, *Police to Issue Parking Tickets*, TAMPA TRIB., July 15, 1999, at 1, available at 1999 WL 21332902. In Dade City, Florida, for example, the local authorities recently proposed a schedule of parking penalties capped at ten dollars—except for handicapped parking violations, which would be subject to a fine of fifty dollars. See *id.*

217. See William Carlsen, *\$500 Fine for Disability Card Misuse*, S.F. CHRON., Jan. 7, 1994, at A26, available at 1994 WL 4083559.

218. See Varney, *supra* note 152.

219. See *Disabled Parking Scofflaws Face Hefty Increase in Fines*, *supra* note 193.

220. See Susan Nielsen, *Spinning Their Wheels*, COLUMBIAN (Vancouver, Wash.), Aug. 17, 1997, at B7, available at 1997 WL 13546796.

221. *Id.* (quoting Lieutenant Rex Woodward of the Vancouver Police Department).

222. See Sarris, *supra* note 8.

223. See *id.*

224. See *id.*

they may elect to give warnings rather than tickets.²²⁵ In Arkansas, a court order is required before the police may enter a private lot if the owner objects.²²⁶ In other jurisdictions, the police may not enforce the parking rules on private property unless the owner specifically authorizes them to enter. In most Maine towns, the police may not enter even if the merchant wants the rules enforced.²²⁷ Although these impediments are gradually being eliminated, the fact remains that in some jurisdictions, motorists face little danger of being ticketed for parking in handicapped spots at malls, shopping centers, and other private facilities.

In many jurisdictions, moreover, tickets may only be properly issued if the violator is parked in a space with the requisite markings.²²⁸ If the signs are wrong, the accused has a complete defense even if he or she knowingly parked in a handicapped space.²²⁹ In Nevada, for example, a motorist may be cited only if the space has a handicapped-only sign at least four feet high which states that violators face a fine of at least \$100.²³⁰ Even minor deviations from these requirements may provide a defense.²³¹ Claims of improper marking are so frequent in Florida that the legislature attempted to resolve the issue by specifying a standard: A “violation may not be dismissed for failure of the marking[s] on the parking space to comply” fully with the statute, “if the space is in general compliance and is clearly distinguishable as a designated . . . space.”²³² Friendly police or parking court judges, however, retain discretion not to punish an offending motorist on the ground that the sign was inadequate.²³³ Given the fact that many handicapped spaces are improperly marked, the defense is likely to be successful in many cases.²³⁴

225. See Chris Borm Bothell, Editorial, *Handicapped Parking—We Should Beef Up Efforts to Crack Down on Cheats*, SEATTLE TIMES, May 23, 1997, at B5, available at 1997 WL 3234795. Moreover, store or mall owners are even less likely to risk offending a customer by engaging in an unpleasant confrontation.

226. See ARK. CODE ANN. § 27-15-306(b) (Michie 1999).

227. See Sharon Mack, *Skowhegan Selectmen to Mull Handicapped Parking Measure: Meeting to Take Comment from Public on Housing Program*, BANGOR DAILY NEWS (Bangor, Me.), Aug. 12, 1997, at B4, available at 1997 WL 11880317 (describing inability of police officers to ticket illegally parked vehicles at shopping malls and high schools in Skowhegan, Maine).

228. See, e.g., *infra* text accompanying notes 234-38.

229. See, e.g., *infra* text accompanying notes 234-38.

230. See Ed Vogel, *Handicapped-Parking Bill Likely to Pass in Assembly Again*, LAS VEGAS REV.-J., Jan. 30, 1997, at 4B, available at 1997 WL 4536049.

231. See *id.*

232. FLA. STAT. ANN. § 316.1955(7) (West Supp. 2000).

233. See *id.* (providing that “[o]nly a warning may be issued for unlawfully parking in a space designated for persons with disabilities if there is no above-grade sign” that clearly distinguishes the parking space as reserved for persons with disabilities).

234. One survey found that only twenty-three percent of handicapped spaces in Nevada are

Moreover, the problem of improperly maintained spots will only get worse over time. A large number of existing handicapped spaces are the result of new construction. As this construction ages, the currently well-maintained spots will tend to fall into disrepair, unless the law is actively enforced against property owners, who often have little incentive to keep the handicapped spaces in good order other than the fear of being fined for not doing so.

Recently, state and local governments have begun to direct much more official time and energy to the enforcement process. One tactic, reminiscent of drug enforcement, is the “sweep” in which officers are directed to make ticketing of illegal use of handicapped parking a priority.²³⁵ Sweeps allow for greater monitoring and supervision by beat officers, who are given an explicit, if temporary, priority to target handicapped parking violators; they also increase publicity that parking for the handicapped is being enforced in the jurisdiction. As an alternative to a sweep, the police can designate part of their time for handicapped parking enforcement. In Grand Prairie, Texas, the police department, responding to a request from the city’s Commission on Disabled Services, set aside shifts of one hour a day for monitoring handicapped spaces.²³⁶ Cities may also provide privileged access for complaints about handicapped parking violations—for example, by routing them directly to the switchboard rather than to the general dispatcher.²³⁷ All of these techniques are designed to establish administratively-manageable priorities for enforcement personnel to upgrade their attention to handicapped parking violations.

Among the most interesting, and controversial, devices for enhancing the vigor of enforcement is the use of unpaid volunteers to ticket cars illegally parked in handicapped spaces. These volunteer enforcement efforts have ranged from unaffiliated individuals²³⁸ to informal groups, sometimes known as “Polaroid Patrols,” who photograph violators and turn the incriminating evidence in to the authorities,²³⁹ or to officially deputized squads of enforcers with the power to write tickets for

properly marked. See Vogel, *supra* note 230.

235. See 39 *Ticketed for Illegal Handicapped Parking*, TIMES UNION (Albany, N.Y.), Apr. 25, 1997, at B7, available at 1997 WL 3491579 (reporting results of Albany’s “sweep” program, which collected \$35,000 in fines over three years from vehicles illegally parked in handicapped spaces).

236. See Robert Cadwallader, *Grand Prairie Puts Able-Bodied Drivers on Parking Notice*, FT. WORTH STAR-TELEGRAM (Ft. Worth, Tex.), Dec. 24, 1993, at A1, available at 1993 WL 9455379.

237. See *id.*

238. See Heyboer, *supra* note 138.

239. See George Eyerman, Editorial, *Exposing Illegal Handicapped Zone Parkers on Film*, CIN. POST, Dec. 22, 1993, at 14A, available at 1993 WL 4107178.

violations.²⁴⁰ Members—often themselves persons with disabilities²⁴¹—may be permitted to wear some sort of official-looking uniform,²⁴² although how much these outfits can resemble police uniforms is a delicate issue. They typically receive some sort of training from the police.²⁴³ Most volunteer their time, although some receive an hourly wage.²⁴⁴ Revenues from handicapped parking tickets can be used, in part,

240. See Navarro, *supra* note 159. In Hartford, Connecticut, for example, volunteers take note of cars in handicapped spaces, check for valid permits, and write down information on cars that have no permit or an expired permit; they then fill out a form and submit it to the city's community police officer. See *id.* Similar programs are in place in more than a dozen Massachusetts communities. See Editorial, *Putting Scofflaws in Their Place*, BOSTON GLOBE, Nov. 24, 1996, at D6, available at 1996 WL 6887540.

241. See *Parking Law to Be Enforced*, BATON ROUGE ADVOCATE, Feb. 13, 1999, at 3B, available at 1999 WL 6095821 (explaining that Saint Mary Parish, Louisiana, looks for "mobility-impaired" volunteers to staff its handicapped patrol); *Metro Report*, PALM BEACH POST, July 28, 1999, at 2B, available at 1999 WL 21273615 (reporting that the City of Palm Beach sought "disabled people" to patrol handicapped spaces). Even if the requirement that patrol members be disabled is not formalized, it appears that the great majority of members of these patrols are people with disabilities.

242. See *Volunteers to Hunt Parking Scofflaws*, WASH. TIMES (Washington, D.C.), Nov. 24, 1997, at C6, available at 1997 WL 3690352. In many jurisdictions the volunteers wear civilian clothes: a strategy that allows the police and other officials to distance themselves to a degree from the volunteer squad's activities. See discussion *infra*. However, uniforms could have a deterrent effect on illegal handicapped parking, since persons observing the volunteers in action would increase their estimation of the probability of getting ticketed. Uniforms could also help protect volunteer enforcers in the event of a confrontation with a motorist. Some jurisdictions such as Tampa, Florida and Newport News, Virginia provide uniforms for their civilian patrols—although the garments are easily distinguished from official police or fire uniforms. See George Coryell, *Volunteers Guard Handicapped Parking*, TAMPA TRIB., Nov. 22, 1997, at 11, available at 1997 WL 13844306; *Volunteers to Hunt Parking Scofflaws*, *supra*. In Vancouver, Washington, members of the Handicapped Parking Citizen Volunteer Program wear bright orange vests. See Nielsen, *supra* note 220. In Georgia, the appointing agency is required to supply volunteer patrols with wind-resistant jackets and helmets. See GA. CODE ANN. § 40-6-228(b)(1) (1997). In Oregon, the civilian patrol wears baseball caps and windbreakers with the Oregon State Police insignia. See Nichola Zaklan, *Volunteers to Patrol for Parking Scofflaws*, PORTLAND OREGONIAN, May 30, 1992, at B2, available at 1992 WL 6835143.

243. See S.A. Reid, *New Eyes Peeled for Usurpers of Disabled Parking*, ATLANTA J., Aug. 7, 1997, at 3D, available at 1997 WL 3985187. Members of the volunteer squads typically receive training from the local police departments in matters such as traffic laws, writing tickets, testifying in traffic court, and avoiding confrontations with angry motorists. See *id.* Atlanta provides only four hours of training. See *id.* New York State requires that volunteers receive a minimum training of only two hours. See N.Y. VEH. & TRAF. LAW § 1203-f(2)(a) (McKinney Supp. 2000)

244. The reason for not providing compensation is not simply the community spirit of the volunteers. Unions for city employees would likely protest any payment to these enforcers unless the terms of their appointment, compensation, and retention followed union rules. See Patrick McGreevy, *Disabled Posse Could Enforce Parking Rules*, L.A. DAILY NEWS (Los Angeles, Cal.), July 14, 1995, at N1, available at 1995 WL 5411228 (reporting that the city union for parking enforcement officers delayed the adoption of volunteer enforcement program). Because it would be difficult to follow these rules with respect to handicapped parking enforcers, the cities are effectively forced to use unpaid volunteers. See *id.* In such cases, the city may be limited to underwriting expenses such as Polaroid™ cameras, cellular phones, motorized wheelchairs, or uniforms. Some cities, however, apparently have

to fund the expenses of the volunteer squads, or for other activities designed to improve access for the disabled.²⁴⁵

States and localities began to adopt legislation and regulation formally authorizing the use of volunteer enforcers during the 1980s.²⁴⁶ At the state level, such legislation usually takes the form of home rule authority for counties, cities, or villages to enact ordinances or resolutions authorizing persons other than peace officers to issue handicapped parking citations.²⁴⁷ It is then up to the local jurisdiction to establish its own program if it wishes to do so. States adopting legislation authorizing volunteer enforcement squads laws include Maine (1989),²⁴⁸ New Jersey

not received pressure from municipal unions and are able to pay members of the disabled patrols—sometimes fairly generously, as in Chicago, where disabled parking enforcers were paid \$8.25 an hour in 1994. See Mary A. Johnson, *Parking Posse Defends Spaces for the Disabled*, CHI. SUN-TIMES, June 7, 1994, at 4, available at 1994 WL 5553680.

Cities that pay their disabled patrols, such as Chicago, can impose work rules as to hours on the job and areas covered. See *id.* (stating that paid parking enforcers work four days a week, five hours a day). In the more usual case where the volunteers are unpaid, however, the city cannot exercise nearly the same amount of direction over their activities as it could over an employee. Volunteer handicapped parking enforcers typically set their own schedules and coverage areas, working as many hours as they want and writing tickets to violators while running errands or shopping. See *Cities Let Handicapped Patrol Their Parking Zones: At Least 12 Such Groups Have Been Set Up Across the Country to Write Tickets*, DALLAS MORNING NEWS, Nov. 24, 1996, at 39A, available at 1996 WL 10997442 [hereinafter *Cities Let Handicapped Patrol Their Parking Zones*].

245. For example, after a “Quad Squad” of wheelchair-bound and other handicapped persons began to write tickets in Jefferson Parish, Louisiana, the state legislature adopted a special bill allowing local jurisdictions to hike handicapped parking fines by \$25 to finance such volunteer enforcement programs. See Ed Anderson, *Record Set for Bills Filed, Passed: 1,564 Measures Await Foster’s Pen; Voters Get Chance at 17*, TIMES-PICAYUNE (New Orleans, La.), June 26, 1997, at A-2, available at 1997 WL 4228944. In Durham, North Carolina, volunteers began to issue handicapped parking tickets. See Ned Glascock, *Ticket Foul-Up Fixed; Search Resumes for Violators in Handicapped Spaces: Parking Patrol Back in Action After Diversion*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 4, 1997, at B4, available at 1997 WL 7825281. But, due to a bureaucratic oversight, the monies collected from fines went to the police department; the volunteer squad suspended operations until the problem was fixed and the revenues directed to programs to educate people about disabilities. See *id.* In California, state law permits local authorities to set aside fifty dollars of each fine collected to be used for altering existing public facilities to make them accessible to persons with disabilities. See CAL. PENAL CODE § 1463.20 (West 2000). In Florida, the law permits municipalities to increase fines for disabled parking violations over the state-mandated minimum, and to set aside two-thirds of all such fines collected into a special fund used to improve accessibility. See FLA. STAT. ANN. § 316.008(4)(b) (West 1990). The statute also allows municipalities to provide equal opportunity to qualified persons who have disabilities in the county or municipality and to provide funds to conduct public awareness programs on disability issues. See *id.*

246. See, e.g., WIS. STAT. ANN. § 349.145, historical and statutory notes (West 1999); see also *Cities Let Handicapped Patrol Their Parking Zones*, *supra* note 244; Reid, *supra* note 243 (reporting on a volunteer squad initiated in Atlanta, Georgia in 1990).

247. See, e.g., NEB. REV. STAT. ANN. § 18-1741.01(2) (Michie 1999).

248. See ME. REV. STAT. ANN. tit. 30-A, §§ 471-72 (West 1992).

(1991),²⁴⁹ Minnesota (1992),²⁵⁰ Nebraska (1993),²⁵¹ Arizona (1997),²⁵² Illinois (1997),²⁵³ New York (1997),²⁵⁴ and Nevada (1997).²⁵⁵ A substantial number of cities and towns have responded by establishing civilian patrols.²⁵⁶

249. See Richard Epstein, *Living with a Disability: Recent Laws Should Help Protect Parking Spaces*, RECORD (New Jersey), May 17, 1992, at L6, available at 1992 WL 9431101.

250. See MINN. STAT. ANN. § 169.346(4) (West Supp. 1999).

251. See NEB. REV. STAT. ANN. § 18-1741.01.

252. See ARIZ. REV. STAT. ANN. § 28-886 (West Supp. 1997).

253. See ILL. COMP. STAT. ANN. 5/11-1301.7 (West Supp. 2000).

254. See N.Y. VEH. & TRAF. LAW § 1203-f(1) (McKinney Supp. 2000).

255. See 1997 Nev. Stat. 484(1).

256. See Colin Bessonette, *Q&A on the News*, ATLANTA J., Mar. 5, 1997, at 2A, available at 1997 WL 3957997 (Atlanta, Ga.); Paul Bonner, *Woman Has the Ticket on Handicapped Parking*, NEWS & RECORD (Greensboro, N.C.), Mar. 24, 1997, at B2, available at 1997 WL 4577286; Andrew Buchanan, *Extra Eyes Mean Extra Tickets Too: Vernon Hills Citizen Patrol Nabs Scofflaws*, CHI. TRIB., Jan. 21, 1997, at 1, available at 1997 WL 3512840 (Vernon Hills, Ill.); Glascock, *supra* note 245 (Durham, N.C.); *Handicapped Parking Cheats and Weasels*, *supra* note 39 (Phoenix, Ariz.); *Handicapped-Parking Patrol*, DES MOINES REGISTER, May 25, 1992, at 14, available at 1992 WL 5078232 (Des Moines, Iowa); Toni Heinzl, *Douglas County OKs Citizen Patrol for Parking*, OMAHA WORLD-HERALD, Oct. 2, 1996, at 21, available at 1996 WL 6033328 (Douglas County, Neb.); Anita Kumar, *Parking Patrol Adjusts to Role*, ST. PETERSBURG TIMES, Nov. 19, 1997, at 1, available at 1997 WL 14077531 (Clearwater, Fla.); Bill Leukhardt, *Strategy Proposed for Handicapped Parking Law*, HARTFORD COURANT, Nov. 13, 1996, at B7, available at 1996 WL 12668532 (New Britain, Conn.); Lydia Lum, *Area Volunteers to Fight Handicapped Parking Abuse*, HOUS. CHRON., July 15, 1995, at 34, available at 1995 WL 9393734 (Houston, Tex.); Carol MacPherson, *Volunteer on the Lookout for Parking Scofflaws: He Patrols Handicapped Spaces in the Valley*, SPOKESMAN-REV., July 7, 1999, at B1, available at 1999 WL 20168687 (Spokane, Wash.); McGreevy, *supra* note 244 (L.A., Cal.); *Mesa Police Volunteers to Enforce Parking Rules*, ARIZ. REPUBLIC, Oct. 3, 1996, at B1, available at 1996 WL 7743338 (Mesa, Ariz.); Marcus Montoya, *Group's \$50 Message: Pay Heed to Handicapped Spots*, COLORADO SPRINGS GAZETTE TELGRAPH, May 3, 1994, at B1, available at 1994 WL 8573781 (Colorado Springs, Colo.); Sherri Nee, *That's the Ticket*, COLUMBIAN (Vancouver, Wash.), June 4, 1997, at B1, available at 1997 WL 10808914; Krista Olson, *Park in a Handicapped Spot? A Watchdog Group May Form: A Proposal to Create a Parking Enforcement Unit Is Before the Banning Public Safety Panel*, PRESS ENTER. (Riverside, Cal.), Nov. 21, 1996, at B1, available at 1996 WL 12706095 (Riverside, Cal.); *Parking Patrol Gains 25 More Volunteers*, OMAHA WORLD-HERALD, Apr. 28, 1997, at 14, available at 1997 WL 6300642 (Omaha, Neb.); Bill Reed, *Pest Is a Handicap to Those Who Park Illegally in Handicapped Spot*, VIRGINIAN-PILOT, Oct. 27, 1996, at 7, available at 1996 WL 10867768 (Norfolk, Va.); Gary Rummmler, *Group Will Monitor Disabled Parking: County Enforcement Council Will Notify Police of Violations*, MILWAUKEE J. SENTINEL, Nov. 14, 1996, at 3, available at 1996 WL 11311063 (Milwaukee, Wis.); *Sheriff's Posse to Ticket for Illegal Handicapped Parking*, ARIZ. REPUBLIC, July 7, 1997, at 4, available at 1997 WL 8376348 (Sun City, Ariz.); Diane Smith, *Irving Training Civilians to Patrol for Handicapped Parking Violators*, FT. WORTH STAR-TELEGRAM, Nov. 18, 1997, at 5, available at 1997 WL 11920178 (Irving, Tex.); *Those Special Spaces*, GRAND RAPIDS PRESS, Apr. 22, 1992, at A14, available at 1992 WL 3725570 (Kent County, Iowa); *Three Get Top BGR Honors: Seven Receive Merit Awards*, NEW ORLEANS TIMES-PICAYUNE, June 27, 1997, at A21, available at 1997 WL 4229159 (New Orleans, La.); Judith VandeWater, *Campaign Planned to Cite Drivers Who Illegally Use Disabled Parking*, ST. LOUIS POST-DISPATCH, Sept. 11, 1996, at 1, available at 1996 WL 2791024 (St. Charles, Mo.); Zaklan, *supra* note 246 (Clackamas County, Or.).

Despite hostile responses from some people receiving tickets,²⁵⁷ volunteer squads appear to have greatly increased the number of handicapped parking tickets written, at least in some jurisdictions. In Omaha, Nebraska, for example, the authorities issued only about fifty citations a month for handicapped parking violations in 1992, but this number increased to an average of 300 tickets a month in 1997—a hike in enforcement attributed, at least in part, to the activities of the Omaha Handicapped Parking Patrol.²⁵⁸

E. *Reduced Benefits*

One response by governments to the problem of legal and illegal overuse of handicapped parking permits has been to cut back on the benefits available to a person who holds a permit. Reducing benefits is analogous to an increase in price. The person who might use the benefits has to “pay” for it in terms of the inconvenience of obtaining and renewing a permit. Reducing the benefit obtained from this effort is equivalent to a price increase in the same way that shrinking a candy bar effects a price increase even when the nominal price remains the same.²⁵⁹ As price increases, quantity demanded by the public decreases.²⁶⁰ Thus, in theory, reducing handicapped parking benefits can address the problem of over-demand, both legitimate and illegal, for permits, with the higher-valuing users continuing to use the spaces.

Generally, jurisdictions that reduce benefits appear to follow this economic logic. Free meter parking for vehicles displaying a handicapped parking permit has been cut back in a number of locations. Florida repealed free meter parking for handicapped permits at state facilities in 1996.²⁶¹ Tampa, Florida, repealed its meter exemption in 1997.²⁶²

257. See Joey Ledford, *The Lane Ranger: Handicapped Parking Spot Monitors Need Some Respect*, ATLANTA J., Dec. 22, 1997, at C2, available at 1997 WL 4009117. A volunteer enforcer in DeKalb County, Georgia reported that an angry motorist pulled a gun on him when he was writing a ticket. See *id.* Another enforcer explained that he was resigning because irate motorists had threatened to shoot him, attempted to run him over, and called him at home to complain: “‘Believe it or not, some of the worst abuse I had was from little old ladies who used words that I never heard in my four years in the Navy.’” Jack Money, *Enforcer Giving Up on Battle: Parking Scofflaws Too Nervy*, DAILY OKLAHOMAN, Aug. 10, 1994, Community, at 1, available at <http://archives.oklahoman.com> (quoting Ed Colley).

258. See Robert Nelson, *Parking Patrol: Think No One Will Care if You Park in that Handicapped Parking Stall for Only a Few Minutes? Think Again*, OMAHA WORLD-HERALD, Jan. 2, 1998, at 41SF, available at 1998 WL 5490098.

259. See JACK HIRSHLEIFER, PRICE THEORY AND APPLICATIONS 378-79 (2d. ed. 1980) (discussing profit maximization and influence of price on product quality).

260. See EDWIN MANSFIELD, MICROECONOMICS: THEORY/APPLICATIONS 21 (9th ed. 1997).

261. See Editorial, ‘Disabled’ Parkers Must Pass Muster, SUN-SENTINEL (Ft. Lauderdale, Fla.),

Arlington County, Virginia, did the same in 1998, providing disabled motorists instead with “Parkulators,” computerized devices which allow disabled drivers to pay for street parking while avoiding the need to return to their cars to feed meters.²⁶³

A few jurisdictions have reduced the convenience of handicapped parking, making the privilege less valuable and hence less demanded. For example, Oregon State University recently removed a benefit previously available to holders of handicapped parking stickers: close-in parking for football games and other events at the stadium is no longer available.²⁶⁴ While, previously, any holder of handicapped stickers could use these spaces,²⁶⁵ under the new policy, only handicapped drivers who are major donors to the university can do so.²⁶⁶ If the spots are not filled by handicapped drivers who are major donors, they are given away to other major donors without handicapped privileges.²⁶⁷ As for holders of handicapped permits, they are sent to a more expensive lot that requires bus service to get to the stadium.²⁶⁸

F. Public Education

Governments have recognized that public cooperation may be necessary to combat violations of the handicapped parking laws. Some jurisdictions have engaged in education campaigns, designed to induce empathy for the hardships experienced by disabled persons. In 1995, the legislature in Maine required that defensive driving courses offered by the Department of Public Safety include instruction on the existence and practical purpose of parking laws and ordinances for persons with disabilities.²⁶⁹ In Massachusetts, the authorities filmed a public service advertisement designed to run on local television stations, in which Charles MacGillivray, a war hero who lost an arm in the Battle of the

Nov. 4, 1996, at 12A, available at 1996 WL 10696126.

262. See Richard Danielson, *Special Permits No Longer Apply at Metered Spaces*, ST. PETERSBURG TIMES, Jan. 24, 1997, at 3B, available at 1997 WL 6177630.

263. See Sylvia Moreno, *New Parking Fee Irks Disabled Drivers: Arlington Charges for Handicapped Spaces, Hoping to Curb Abuses by Abled-Bodied*, WASH. POST, June 2, 1998, at B1, available at 1998 WL 11583774; Arlo Wagner & Kristan Trugman, *Arlington OKs End to Free Parking for the Handicapped*, WASH. TIMES, Feb. 22, 1998, at A10, available at 1998 WL 3440688.

264. See *Disabled Spots Scarce Around OSU Stadium*, COLUMBIAN (Clark County, Or.), Sept. 17, 1999, at B4, available at 1999 WL 24805284.

265. See *id.*

266. See *id.*

267. See *id.*

268. See *id.*

269. See ME. REV. STAT. ANN. tit. 23, § 4208 (West 1992 & Supp. 1999).

Bulge, says that “he ‘would trade [his Medal of Honor] for a parking space’” (the descriptions of the video do not explain why someone who has lost an arm is mobility-impaired for purposes of the handicapped parking rules).²⁷⁰ In Onandaga County, New York, the County Executive and the Mayor of Syracuse joined to declare June 1994 as “Disabled Parking Awareness Month” in an effort to dissuade able-bodied citizens from parking in disabled spots.²⁷¹ A proposal in Washington State would have required repeat violators to serve forty “hours of community service to ‘sensitize the violator (to) the special needs of person[s] with disabilities.’”²⁷² Omaha, Nebraska, allows persons who receive citations for illegally parking in handicapped spaces to avoid the heavy fine by attending three-hour sensitivity classes on the needs of handicapped motorists, at which violators are instructed on the problems faced by disabled people and required to perform tasks while riding in a wheelchair.²⁷³ Sensitivity training programs of this sort are being instituted in jurisdictions throughout the country.²⁷⁴

Governmental commissions on the disabled often participate in these public outreach and norm-management campaigns. In Fort Worth, Texas, the Mayor’s Committee on Persons with Disabilities prepared a pamphlet explaining the technicalities of the disabled parking code in simple

270. *New Placards to Aid in Identifying Cars of the Handicapped*, BOSTON GLOBE, Dec. 17, 1997, at B5, available at 1997 WL 6285892 (quoting Charles A. MacGillivray).

271. *See June Named Disabled Parking Awareness Month by City*, POST-STANDARD (Syracuse, N.Y.), June 17, 1994, at C1, available at 1994 WL 5613997.

272. Joseph Turner, *Bill Targets Abuse of Disabled-Parking Rules: Plan Would Make Enforcement Easier and Penalize Repeat Violators*, NEWS TRIB. (Tacoma, Wash.), Dec. 11, 1997, at A1, available at 1997 WL 3466516 (alteration in original) (quoting proposed bill).

273. *See Nelson, supra* note 258.

274. Attempts at sensitivity training may have reached new heights in the *Disability Etiquette Handbook*, prepared and distributed by the City of San Antonio’s Disability Access Office. CITY OF SAN ANTONIO DISABILITY ACCESS OFFICE, DISABILITY ETIQUETTE HANDBOOK, available at <http://www.ci.sat.tx.us/planning/handbook/deh12.htm>. This booklet instructs its readers in proper usage with respect to disabled persons. *See id.* For example, it is deemed acceptable to refer to someone as a “person with a disability,” but unacceptable to refer to someone as “handicapped” or a “handicapped person.” *Id.* “Spinal cord injured” is unacceptable, but a person “with spinal cord injuries” is acceptable. *Id.* “Deaf and dumb” are not acceptable, but “deafness/hearing impairment” is fine. *Id.* “Retarded” is not acceptable; instead, a “[p]erson who has a mental or developmental disability” should be used. *Id.* It is not appropriate to describe a person as “confined/restricted to a wheelchair,” but, instead, one should say, he or she “use[s] a wheelchair.” *Id.* Able-bodied people should not be called normal or healthy, but rather “people who are not disabled.” *Id.* Someone does not “suffer[] from” multiple sclerosis, but rather is “[a] person who has multiple sclerosis.” *Id.* It is extremely inappropriate, when interviewing a disabled person for a job, to say, “I notice that you are in a wheelchair, and I wonder how you get around.” *Id.*, available at <http://www.ci.sat.tx.us/planning/handbook/deh7.htm>. Instead, the interviewer should say, “This position requires digging and using a wheelbarrow, as you can see from the job description. Do you foresee any difficulty in performing the required tasks?” *Id.*

language and provided a phone number to call to report violations.²⁷⁵ Fifteen thousand copies were to be distributed to local businesses, apartment buildings, community centers, libraries, and other facilities, as well as to participants at community forums, neighborhood association meetings, and other gatherings.²⁷⁶ The Arkansas Governor's Commission on People with Disabilities is required to stimulate community interest in the problems faced by people with disabilities and to promote public awareness of resources available for such people.²⁷⁷ The Wisconsin Council on Physical Disabilities is required to "[e]ncourage public understanding of the needs of and issues concerning physically disabled persons[, and to a]pprove educational material relating to the parking privileges of physically disabled persons for placement on vehicles."²⁷⁸ The Kansas Commission on Disability Concerns is required to "conduct . . . educational programs [and to] assist in developing societal acceptance of people with disabilities."²⁷⁹ The North Carolina Governor's Advocacy Council for Persons with Disabilities is charged with the responsibility of assisting in "creating statewide interest in the rehabilitation and employment of the handicapped, . . . obtaining and maintaining cooperation with all public and private groups and individuals in th[e] field, . . . [and] initiat[ing] public awareness projects."²⁸⁰ Over the coming years, one expects to see further efforts at public outreach and education.²⁸¹

275. See Lou Chapman, *City Kicks off Education Program to Improve Parking Access for Disabled*, FORT WORTH STAR-TELEGRAM (Fort Worth, Tex.), May 10, 1997, at B4, available at 1997 WL 4840991.

276. See *id.*

277. See ARK. CODE ANN. § 20-14-206(5) (Michie 2000).

278. WIS. STAT. ANN. § 46.29(1)(d), (em) (West 1997).

279. KAN. STAT. ANN. § 74-6706(e), (g) (1992).

280. N.C. GEN. STAT. § 143B-403.1(8), (10) (1999).

281. In addition to government agencies, private organizations for the disabled often include as part of their primary mission the task of informing the public about the nature of the problem with which they are dealing, and influencing attitudes and behaviors within the broader society in order to improve the lot of their members. For example, the Easter Seals Society ("Society") promotes greater awareness and understanding of the needs and condition of disabled people through its First Step campaign. See *Easter Seals' Awareness Campaign*, <http://www.easter-seals.org/resources/awarenes.asp> (last modified Sept. 14, 2000). This outreach program seeks to correct common stereotypes about disabilities and to suggest appropriate ways of behaving towards a disabled person. See *id.* The Society advises that children should not be scolded if they evince curiosity about a person's disability on the ground that punishing the child may make them feel there is something bad about being disabled. See *Easter Seals' Awareness Campaign: Removing Barriers*, <http://www.easter-seals.org/resources/removing.asp> (last modified Sept. 14, 2000). The Society encourages readers to promote the interests of disabled persons, for example, by advocating for a barrier-free environment, speaking up when negative words or phrases are used in connection with disability, hiring qualified disabled persons whenever possible, and writing producers and editors a note

VI. CONSIDERATIONS FOR REFORM

This Part of the Article offers some additional considerations that governments might wish to evaluate as means for increasing the efficient operation of the handicapped parking system.

First, governments could experiment with more frequent renewal for handicapped privileges—for example, every two years at a minimum. A frequent renewal policy would filter out cases in which the holder of the permit either died or regained her mobility. It would reduce the value of forged or stolen permits in the black market—and thus lower the incentive to forge or steal these items in the first place. Frequent renewals would also, to some extent, deter people from fraudulently applying for a permit, since the more often they commit fraud, the more likely it is that they will be detected. Balanced against these benefits is the fact that legitimate permit holders must incur the expense and inconvenience of renewing their permits. However, if the benefits to legitimate permit holders are significant, it may not be unreasonable to ask them to obtain recertification on a relatively frequent basis in order to help weed out massive abuse and thus protect handicapped spots against occupancy by people without serious mobility impairment.

Governments might also consider restricting the authorization for certifying disability, perhaps by limiting the certification decision to specially designated physicians or other qualified health professionals in each locality.²⁸² Such reform would deter other medical professionals from certifying people without serious mobility impairments. It would

of support when they portray people with disabilities as they do others in the media. *See id.* The Society also sets forth a detailed etiquette code for relating to people with disabilities. *See id.* For example, when communicating with a hearing-impaired person, the society recommends that an able-bodied person refrain from shouting, avoid speaking with food in the mouth, and keep mustaches well-trimmed. *See Easter Seals' Awareness Campaign: Disability Etiquette*, <http://www.easter-seals.org/resources/disabili.asp> (last modified Sept. 14, 2000).

On the specific topic of handicapped parking, the society classes as “myth” the attitude that it is all right for non-disabled people to park in accessible parking spaces for a short time, advising instead that “[b]ecause accessible parking spaces are designed and situated to meet the needs of people who have disabilities, these spaces should only be used by people who need them.” *See Easter Seals' Awareness Campaign: Removing Barriers*, <http://www.easter-seals.org/resources/removing.asp> (last modified Sept. 14, 2000).

Other organizations for disabled people also play a role in public awareness campaigns. The Independent Living Center of Western New York produced a video, *The Space Adventures of Porky Parker*, along with an accompanying coloring book and poster, for children from kindergarten to third grade. *See Susan LoTempio, Little Pictures*, BUFF. NEWS, Oct. 16, 1994, at M22, available at 1994 WL 5034713. The organization seeks to send the message that disabled people need to use the handicapped parking spaces and should be entitled to use them. *See id.*

282. Alternatives would be to require the signature of two qualified professionals, or to create special boards with exclusive certification powers.

also greatly reduce the risk of fraudulent applications with forged signatures of physicians. The staff at parking bureaus cannot realistically monitor against such fraud today, when literally thousands of professionals are authorized to certify someone for handicapped parking, but they would be able to check signatures if a smaller number of medical professionals were authorized to certify disability for parking purposes. By the same token, people who would be inclined to forge a signature may find it more difficult to do so if only a limited number of people were authorized to sign a certificate. This reform would impose some inconvenience on people with disabilities, since they would have to seek out a physician or other medical professional authorized to grant the certification. However, if limiting the class of people authorized to grant certification would significantly reduce fraud in the system, it may be reasonable to institute the reform even if doing so requires an applicant to seek out a medical professional other than his or her regular physician.

Governments might also take some additional, but limited, steps to reduce the benefits of possessing a handicapped sticker. For example, aside from the mobility-related concern about returning to feed meters, there is little justification for relieving disabled motorists from the obligation to pay for their parking on the same terms as other drivers. By eliminating free meter privileges, the government could greatly reduce the incentive for fraudulent use of handicapped privileges. In order to address the mobility concerns for disabled people, devices could be installed that allow the purchase of parking time for more extended periods than is possible with coin-fed meters. This reform could reduce parking congestion in high-use areas, such as streets adjacent to popular stores, or streets near office facilities. It could also reduce backlash by able-bodied citizens who resent having to pay to park in a lot and then observe people, many of them apparently able-bodied, parking for free all day in highly desirable spots.

Governments might also impose a small but reasonable fee—say, between \$10 and \$25—for the privilege of obtaining a handicapped permit. This fee could be used to defray the costs of administering the handicapped parking system. Although such a fee would likely be unpopular with advocates for disabled people,²⁸³ there is reason to believe that it would actually serve the long-range interests of these citizens

283. Attempts to impose even a small fee for the handicapped parking privilege have encountered political opposition. In North Carolina, for example, holders of handicapped permits brought a class action against the state charging that the \$5 fee charged for placards violated their rights under the ADA. *See Brown v. N.C. Div. of Motor Vehicles*, 987 F. Supp. 451, 452, 460 (E.D.N.C. 1997) (rejecting the claim on Eleventh Amendment grounds).

because enforcement and other aspects of the program could be enhanced through the resources made available by these fees.

Perhaps the most effective—but also the most controversial—reform would involve eliminating the hang-tag form of permitting and requiring cars parking in handicapped spaces to display specially-marked license plates. Hang-tags are easily abused by able-bodied persons who use permits assigned to handicapped persons.²⁸⁴ Handicapped plates are already recognized in every state, so that this reform would not introduce a new form of permitting. Eliminating hang-tags would not prevent able-bodied persons from using vehicles with handicapped plates, but this misconduct is likely to be a minor problem when compared with hang-tag abuse. There is, to be sure, a cost associated with eliminating hang-tags. Disabled people who rent cars or who ride in cars belonging to able-bodied people would not be able to make use of the privilege. With respect to rental cars, the problem might be ameliorated if rental car agencies are authorized to attach handicapped license plates to vehicles rented by people who can show proof of having a proper handicapped parking permit. However, it remains true that some people with serious mobility impairments would occasionally lose access to handicapped parking privileges if hang-tags were eliminated. But if the benefits of eliminating hang-tags—in the form of suppressing abuse, freeing up handicapped spaces for mobility-impaired people, and reducing irritation and backlash by able-bodied people—exceed the costs, then the reform may be worthwhile.

VII. CONCLUSION

This Article has critically evaluated, for the first time in the legal literature, the regulation of parking set-asides for persons with disabilities—one of the centerpieces of the programs available for disabled people in the United States today. The Article developed the economic justification for handicapped parking regulation. It described the surprisingly complex structure of permit and site regulation that governs the provision of handicapped parking at the national, state, and local levels. It analyzed the serious problems of over-use that have plagued the actual implementation of the program. The Article then discussed various measures that governments have undertaken to address these problems, and concluded with further ideas for reform to the program that, the Authors hope, could allow it to function more effectively and to provide enhanced benefits for disabled citizens and for

284. See discussion *supra* Part IV.

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the society at large. The Authors hope that the analysis in this Article will contribute, in some fashion, to clarifying the issues and identifying possible options for reform to a valuable, but troubled, governmental program.