



# DISABILITY RIGHTS CENTER

## The Protection & Advocacy (P&A) System

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Mr. Ernie Passailaigue, Executive Director  
Arkansas Lottery Commission  
P.O. Box 3238  
Little Rock, AR 72203-3239

**RE: The Arkansas Scholarship Lottery and the Americans with Disabilities Act (ADA).**

Dear Mr. Passailaigue:

Disability Rights Center is the independent rights Protection and Advocacy system for people with disabilities in Arkansas. There are over 500,000 people with disabilities in Arkansas.<sup>1</sup> Many of these folks will want to buy lottery tickets. The *Arkansas Democrat Gazette* reported on August 14, 2009, that you were more confident than ever that lottery ticket sales will begin September 28, 2009. We are concerned that the Arkansas Lottery Commission in its rush to start ticket sales in September has given its obligations under the ADA short shrift.

The Commission has included a provision in The Arkansas Scholarship Lottery Retailer Application Package requiring the business applying with the Commission to sell tickets self certify that "The business location where lottery tickets will be sold is in compliance with the accessibility requirements set forth in and in compliance with the Americans with Disabilities Act (ADA) (1990), 42 U.S.C. 1201 *sic*."

We hope that the businesses that are self certifying they are in compliance with the ADA really are, but the truth of the matter is that even though it has been 19 years since the ADA was passed, people with disabilities in Arkansas still are not able to get into most businesses because there are no accessible parking

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<sup>1</sup> 576,471 – number of people with disabilities age 5+ in Arkansas\* 2000 U.S. Census doesn't include people in institutions, e.g. nursing homes, human development centers, Arkansas State Hospital.

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*"To passionately assist the lives of people with disabilities through education, empowerment and protection of their legal rights."*

spaces, ramps, or paths of travel from the parking lot to the front entrance. (To view a list of businesses that Disability Rights Center has worked with or is currently working with to comply with the ADA after receiving a complaint from a person with a disability, go to <http://www.arkdisabilityrights.org/adaaccess.html>).

Under Title III of the ADA, privately operated retailers are liable under the ADA pursuant to 42 U.S.C. § 12182. However, this liability, which is the individual liability of the retailers, is separate and apart from the responsibilities that the Arkansas Lottery Commission, as a public entity, owes to people with disabilities pursuant to the ADA. 42 U.S.C. § 12132. A lottery commission's obligations imposed by the ADA were recently litigated in Virginia.

In Winborne et al v. Virginia Lottery et al, petitioners, people who used wheelchairs, were seeking a determination of their rights and the Virginia Lottery's obligations under 42 U.S.C. § 12132 of the ADA. The Virginia Supreme Court found that although the Virginia Lottery is not responsible for the violations of the lottery retailers concerning their individual retail sites, the Virginia Lottery is responsible for its own violations in failing to provide people with disabilities access to the Virginia Lottery's programs and activities. The Court found that the ADA imposes an obligation upon the Virginia Lottery separate from the obligation that the individual retailers owe to people with disabilities and held that, "Because the selling of lottery tickets is a program or activity within the meaning of the . . . ADA, . . . the Virginia Lottery has an obligation under the ADA to ensure that disabled persons are not excluded from participation in or denied access to such program or activity of the Virginia Lottery." Winborne, et al v. Virginia Lottery, et al, 677 S.E. 2d 302, 308 (June 4, 2009).

We hope the Virginia Case is instructive. We encourage the Arkansas Lottery Commission to take action it deems necessary and appropriate to ensure that it operates the lottery so that it is accessible, when viewed in its entirety, to people with disabilities in Arkansas.

Respectfully,

Jan Baker  
Managing Attorney