

Outline for ABAG Presentation on ADA Sidewalk Compliance in the Post-*Barden* Era
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I. History

- Congress enacted the Americans with Disabilities Act in 1990
- Title II applies to public entities: “services, programs or activities”

II. *Barden v. City of Sacramento*, 9th Circuit, 2002

- “Services, programs or activities” include “anything a public entity does”
- Title II thus applies to the **maintenance** of public sidewalks, which is the normal function of a municipal entity
 - Includes the removal of barriers such as benches and poles

III. The Reality

- Avoid *Barden* by establishing process for responding to complaints quickly and effectively
- Administrative claim with U.S. Department of Justice
- Activist litigation under *Barden*

IV. Avoiding *Barden*: Guidelines for Sidewalk Compliance

- Minimum clear width, curb ramps, barrier removal, etc.

V. Avoiding *Barden*: Recommendations

- Transition plan, self-evaluation, ADA Advisory Committee, “sidewalk ordinance”

VI. Activist Litigation

- The City of Sacramento’s onerous post-*Barden* settlement
- Less-onerous settlement in *Nystrom v. City of Vacaville*
- Disability rights advocates and plaintiff’s attorneys have begun filing lawsuits against cities throughout California
 - Alleging violations of the ADA and California Civil Code §§ 54 and 54.1
 - Potential for high damages and attorney’s fees under California law
 - California courts likely to apply *Barden*