

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

AMERICAN COUNCIL OF THE BLIND OF  
METROPOLITAN CHICAGO, ANN BRASH,  
MAUREEN HENEGHAN, and RAY  
CAMPBELL, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

CITY OF CHICAGO,

Defendant.

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UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

CITY OF CHICAGO,

Defendant.

No. 19 C 6322

Judge Hunt

**UNITED STATES'**  
**MEMORANDUM OF LAW IN SUPPORT OF ITS REMEDIAL PLAN**

**Table of Contents**

Table of Authorities ..... iii

Introduction..... 1

Procedural History ..... 2

Facts ..... 3

    I.    APS Installation Is Urgently Needed in Chicago ..... 3

    II.   APS Are Needed at All Signalized Intersections..... 5

    III.  Chicago Must Communicate With the Public About APS ..... 6

    IV.  Chicago Has Failed to Properly Install and Maintain APS..... 7

Argument ..... 8

    I.    Legal Framework ..... 8

        A.    The Americans with Disabilities Act and Rehabilitation Act ..... 8

        B.    Injunctive Relief ..... 9

    II.   Chicago Must Install and Maintain APS at All Signalized Intersections as  
          Expediently as Possible, While Prioritizing the Needs of People with Vision  
          Disabilities in the Interim ..... 10

        A.    APS Must be Installed at All Signalized Intersections to Achieve Equal  
              Access ..... 10

        B.    Chicago Must Achieve Full Program Access Within the Next Decade ..... 13

        C.    Chicago Must Prioritize Installing APS at Existing Intersections that  
              Present Heightened Danger, are Important for People with Vision  
              Disabilities, or Allow the City to Maximize Resources ..... 17

        D.    Chicago Must Install APS at All Newly Signalized and Altered  
              Intersections In Accordance with the Prioritized Categories for All  
              Intersections..... 19

E. Chicago Must Install and Maintain APS Properly .....	19
F. Chicago Must Provide Accurate APS Information to the Public .....	21
G. Chicago Must Have the Proper Personnel and Develop Expertise to Succeed.....	22
H. Monitoring and Compliance Reports are Necessary to Ensure Chicago Achieves Program Access within 10 Years.....	23
Conclusion .....	25

## Table of Authorities

### Cases

<i>Am. Council of Blind of Metro. Chicago v. City of Chicago</i> , No. 19 C 6322, 2023 WL 2744596 (N.D. Ill. Mar. 31, 2023) .....	<i>passim</i>
<i>Am. Council of the Blind of N.Y., Inc. v. City of N.Y.</i> , 579 F. Supp. 3d 539 (S.D.N.Y. 2021).....	10, 16, 17, 23
<i>Brown v. Bd. of Educ.</i> , 349 U.S. 294 (1955).....	17
<i>Chapman v. Pier 1 Imports (U.S.) Inc.</i> , 779 F.3d 1001 (9th Cir. 2015) .....	19
<i>City of New York v. Mickalis Pawn Shop, LLC</i> , 645 F.3d 114 (2d Cir. 2011) .....	23
<i>Civic Association of the Deaf of New York City, Inc. v. City of New York</i> , No. 95 CIV. 8591, 2011 WL 5995182 (S.D.N.Y. Nov. 29, 2011) .....	12
<i>Ellison v. United States Postal Serv.</i> , ___ F.4 <sup>th</sup> ___, 2003 WL 6990529 (7th Cir. 2023) .....	11
<i>Frederick L. v. Dep’t of Pub. Welfare of Pa.</i> , 422 F.3d 151 (3d Cir. 2005).....	14
<i>Green v. Cty. Sch. Bd.</i> , 391 U.S. 430 (1968) .....	10
<i>Lacy v. Cook Cnty., Illinois</i> , 897 F.3d 847 (7th Cir. 2018) .....	8
<i>Missouri v. Jenkins</i> , 495 U.S. 33 (1990).....	10
<i>Mote v. City of Chelsea</i> , 252 F. Supp. 3d 642 (E.D. Mich. 2017).....	18
<i>Putnam v. Oakland Unified Sch. Dist.</i> , No. C-93-3772CW, 1995 WL 873734 (N.D. Cal. June 9, 1995).....	12
<i>Ramirez v. District of Columbia</i> , No. 99 Civ. 803 (TFH), 1999 WL 986914 (D.D.C. Oct. 14, 1999) .....	13
<i>Reed v. Columbia St. Mary’s Hosp.</i> , 915 F.3d 473 (7th Cir. 2019).....	17
<i>Rufo v. Inmates of Suffolk Cnty. Jail</i> , 502 U.S. 367 (1992).....	17
<i>Segal v. Metro. Council</i> , 29 F.4th 399 (8th Cir. 2022) .....	10
<i>Steimel v. Wernert</i> , 823 F.3d 902 (7th Cir. 2016).....	9
<i>Stone v. City &amp; Cnty. Of San Francisco</i> , 968 F.2d 850 (9th Cir. 1992) .....	23
<i>Swann v. Charlotte-Mecklenburg-board of Educ.</i> , 402 U.S. 1 (1971) .....	10

*Washington v. Ind. High Sch. Athletic Ass'n*, 181 F.3d 840 (7th Cir. 1999)..... 8

**Statutes**

29 U.S.C. § 795a(a)(2)..... 9  
42 U.S.C. § 12101(a)(7)..... 8  
42 U.S.C. § 12101(b)(1) ..... 8  
42 U.S.C. § 12132..... 8  
42 U.S.C. § 12133..... 9  
42 U.S.C. § 2000d-7 ..... 9

**Regulations**

28 C.F.R. § 35.107(a)..... 22  
28 C.F.R. § 35.130(b)(1)(ii)..... 8  
28 C.F.R. § 35.133 ..... 19, 20  
28 C.F.R. § 35.149 ..... 9  
28 C.F.R. §§ 35.149-51..... 8  
28 C.F.R. § 35.150..... 9  
28 C.F.R. § 35.150(a)(1)..... 9  
28 C.F.R. § 35.150(a)(3)..... 17  
28 C.F.R. § 35.150(b)(1)..... 9  
28 C.F.R. § 35.150(c)..... 9, 13  
28 C.F.R. § 35.151(a)(1)..... 9, 19  
49 C.F.R. § 27.19(a)..... 8

**Rules**

Fed. R. Civ. P. 65(d)(1)(c) ..... 10  
Fed. R. Civ. P. 8(c)(1)..... 17

## Introduction

Chicago describes itself as one of the most walkable cities in the world. To ensure pedestrian safety, it has a network of pedestrian traffic signals that provide visual crossing information at 2,841 of its 26,000 intersections throughout the city. These traffic signals direct the flow of pedestrians and vehicles and indicate to people who are sighted when it is legal and safe to cross the street. They are, however, of little use to people with vision disabilities. People with vision disabilities need the audible and vibrotactile signals provided by accessible pedestrian signals (APS)<sup>1</sup> to identify when to cross the street. Chicago's failure to provide APS at each intersection that has visual crossing information denies people with vision disabilities equal access to Chicago's pedestrian grid. As this court recognized in its March 31, 2023 Order, the City provides APS at only a "miniscule fraction" (no more than 40) of intersections. The Court concluded that this does not provide "meaningful access" in violation of Title II of the ADA (Title II) and Section 504 of the Rehabilitation Act (Section 504). The court must now issue a remedial order to remedy these longstanding violations.

The United States and plaintiffs' joint remedial plan, as explained in the Declaration of Linda Myers, Certified Orientation and Mobility (O&M) Specialist ("Myers Decl."), requires Chicago to take a series of steps to remedy the violations and harms identified by the court. Each of these steps is necessary to provide blind pedestrians with equal safety information to ensure meaningful and equal access to Chicago's pedestrian grid and signalized intersections. First, and most critically, the plan requires Chicago to, within 10 years, install APS at all intersections where

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<sup>1</sup> APS are devices that communicate information about when and where it is safe to cross a street in an audible and vibrotactile manner so that individuals with vision disabilities receive the same crossing information as sighted pedestrians.

the City has determined pedestrian signals are required. Second, the plan prioritizes the installation of APS at the most dangerous intersections for blind pedestrians and intersections where APS are requested, while providing Chicago the flexibility to install APS at remaining signalized intersections in an efficient manner. Third, the plan requires Chicago to improve how it communicates with the public about APS, including requiring it to create a regularly updated website where individuals can learn where APS are located, request installation or maintenance of APS, and track the progress of those requests. Fourth, the plan requires Chicago to designate employees to oversee aspects of the plan's implementation, engage O&M expertise, and establish an advisory committee, to improve the quality and timeliness of its installation and maintenance of APS. Finally, the plan includes a court-appointed independent monitor, who can track Chicago's compliance with the plan and help resolve compliance issues that may arise, along with reporting and dispute resolution requirements.

### **Procedural History**

Plaintiffs American Council of the Blind of Metropolitan Chicago and three individuals, Ann Brash, Maureen Heneghan, and Ray Campbell, sued the City of Chicago,<sup>2</sup> on behalf of themselves and as a putative class, alleging violations of Title II and Section 504. Dkt. 1. The court certified plaintiffs as class representatives. Dkt. 149. After an investigation, the United States intervened as a plaintiff and alleged that the City violated Title II and Section 504 by failing to provide individuals with vision disabilities equal access to pedestrian safety information at intersection crossings. Dkt. 78.

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<sup>2</sup> Other nominal defendants were dismissed.

On March 31, 2023, after the parties cross-moved for partial summary judgment, this court issued a Memorandum Opinion and Order (Memo. Op.) holding the City in violation of Title II of the ADA and Section 504 of the Rehabilitation Act. *Am. Council of Blind of Metro. Chicago v. City of Chicago*, No. 19 C 6322, 2023 WL 2744596, at \*1-6, 11 (N.D. Ill. Mar. 31, 2023) (Dkt. 248, Memo. Op. at 15-21, 27-28). The Court’s ruling was based on the City’s “past and present failure to provide ‘meaningful access’ to its network of existing facilities and to ensure that newly constructed signals are designed and constructed in such a manner as to be ‘readily accessible’ by blind individuals.” Memo. Op. at 27-28. The court found that Chicago had installed APS at only a handful of signalized intersections—a “miniscule portion of the whole.” *Id.* at 16, 31.<sup>3</sup> The result is “individual plaintiffs’ and class declarants’ frustrating and harrowing experiences navigating City intersections,” which largely lack APS. The court must now determine the appropriate remedy for these longstanding violations. *See* Memo. Op. at 20 (“The question of what steps the City must take to remedy its non-compliance is one for another day.”).

### **Facts<sup>4</sup>**

#### **I. APS Installation Is Urgently Needed in Chicago**

Chicago has about 26,000 intersections, 2,841 of which have visual pedestrian crossing signals. Ex. 1(Emmanuel tr.) at 83. Visual pedestrian crossing signals improve pedestrian safety

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<sup>3</sup> The court also agreed with plaintiffs that the City is liable under Title II and Section 504 because Chicago violated “its duties: 1) to provide a necessary accommodation to ensure that blind pedestrians have meaningful access to its network of traffic signals; and 2) to ensure that it communicates with blind pedestrians as effectively as it communicates with sighted pedestrians by furnishing an appropriate auxiliary aid.” *Id.* at \* 6, 8-9.

<sup>4</sup> Many of the key facts have been determined by this court in its summary judgment decision, and they are incorporated herein. Dkt. 248 at 2-8 (cited herein as “Memo. Op.”). The United States also incorporates its Local Rule 56.1 Statement of Material Facts (“US SMF”). Dkt. 188.

at street crossings. Myers Decl. at 8-12; *see also* Memo. Op. at 7 (visual signals “direct the flow of pedestrians and vehicles as efficiently and as safely as possible”); Ex. 2 (Gleason tr.) at 41-45. An APS device communicates information about when and where it is safe to cross a street in an audible and vibrotactile manner so that individuals who are blind or deafblind receive the same crossing information as sighted pedestrians. *See* Ex. 2 (Gleason tr.) at 119; *see also* Memo. Op. at 3-7 (describing how APS devices enhance safety for people with vision disabilities). APS is the only device that makes signalized intersections accessible to pedestrians with vision disabilities. Myers Decl. at 4. There are more than 65,000 Chicagoans (and more than 111,000 Cook County residents) with vision disabilities.

While Chicago has been “aware of the need for APS since at least 2007” and has announced plans to increase APS installation, Chicago has done little to carry out its promises, and the City’s signalized intersections and pedestrian grid remain inaccessible to people with vision disabilities. *See* Memo. Op. at 3 (“[D]espite fifteen years of planning, projections, assurances, and the receipt of federal funds, no more than thirty of the City’s intersections had been equipped with APS [as of October 2022].” As of September 2023, Chicago has installed APS at no more than 40 intersections, Ex. 3(Supp. Att. ABCMC Int. No. 15), which is less than two percent of Chicago’s intersections with visual pedestrian signals.

In the meantime, navigating the city without APS is becoming more dangerous for blind pedestrians because of the increase in distracted drivers and quieter cars, the aging population, and the City’s installation of signal timing changes, such as leading pedestrian intervals (LPI). Myers Decl. at 20-21; *see also* Mem. Op. 5 (LPI “increase blind pedestrians’ vulnerability to turning vehicles, which may not expect them to be crossing after other pedestrians have made their way into the crosswalk.”). In fact, while failing to install APS, the City has been installing certain

signal timing changes like LPI and protected turn signals that make an intersection significantly more dangerous for blind pedestrians. Myers Decl. at 27-28. Chicago has installed LPIs at 291 intersections (46 of those since the close of fact discovery), but it has installed APS at only 17 of those intersections. Ex. 4 (Supp. Att. Resp. Second ABCMC Int. No. 9); US SMF ¶43. And Chicago has installed protected turn signals at 991 intersections, yet only 23 of those have APS. Ex. 5(Supp. Att. Resp. Second ACBMC Int. 10). *Id.*

## **II. APS Are Needed at All Signalized Intersections**

There is consensus among O&M experts in the United States that APS should be installed at all signalized intersections to ensure safe, equal, and independent access to city streets and sidewalks. Myers Decl. at 18-20. Pedestrians with vision disabilities, like sighted pedestrians, use the pedestrian grid for travel to work, shop, stroll, visit friends, attend medical appointments and social activities. *Id.* at 8. Pedestrians with vision disabilities, like sighted pedestrians, engage in spontaneous travel. *Id.*

O&M specialists generally instruct pedestrians with visual impairments to take the most direct route with the fewest turns in order to safely and successfully reach their destination. *Id.* at 10. But when only some signalized intersections have APS, blind pedestrians must take indirect, often zigzag routes. This results not only in extended travel time, but also requires blind pedestrians to walk additional distances, which increases fatigue, confusion, and the risk of injury. *Id.* at 9. Taking indirect routes also increase the likelihood of becoming disoriented. *Id.* at 10-11. And being forced to memorize longer, indirect routes to avoid inaccessible intersections causes increased cognitive load, which can cause additional confusion, poor decision-making, and a higher likelihood of choosing unsafe paths of travel. *Id.* at 11-12.

Myers illustrates how partial accessibility creates indirect and unsafe paths of travel based on a route often traveled by blind pedestrian Colleen Wunderlich. Ms. Wunderlich will often start

near Harrison and Dearborn in the south loop and end her walk at St. Peters Church at 110 W. Madison, between Clark and LaSalle Streets. *Id.* at 13. A direct route would require Wunderlich to walk 7.5 blocks and make 1 turn, for a total of 0.624 miles and a 14-minute travel time. *Id.* at 13-14. When APS is only provided at alternating intersections, the walk turns into a 11.5 block walk, for a total distance of nearly a mile (0.908 miles) or almost double the accessible path, and 26 minutes of travel time (85.7%). *Id.* at 15-16. And even if APS were installed at 75 percent of the signalized intersection, Wunderlich would still have to walk another two blocks and make another six turns compared to the preferred direct route. *Id.* at 16-17. The total route becomes 0.759 miles, or an increase of more than 20% over the fully accessible route and 18 minutes of travel time (28.6% more time). *Id.* at 17.

### **III. Chicago Must Communicate With the Public About APS**

Chicago has not implemented effective methods to give information to the public about APS and allow the public to provide feedback and request APS installation. *Id.* at 30-31, 35. Accurate and timely information about the City's APS program and the remedial plan is vital for blind pedestrians. *Id.* at 35-36. Presently, Chicago's APS webpage lists only 26 intersections where APS, or an audio-only communication device, is installed. Ex. 6 (APS webpage). The webpage has not been updated since March 15, 2022 (more than 19 months ago). *Id.* The webpage does not inform the public as to (1) how residents can request an APS or find out the status of any APS requests; (2) whether any installed APS are damaged or not functioning properly; or (3) whom within the City people should contact with questions or recommendations about the City's APS program. Myers Decl. at 35; *see also* Ex. 6.

Chicago also does not have an effective or fair system for the public to request APS installation or maintenance for or to efficiently respond to specific requests. Myers Decl. at 30-31. Instead, the only way to request APS at a particular intersection is to make the request through

the resident's alderman in hopes that the alderman agrees to pay for the installation from their own budget and submits the request to Chicago. US SMF ¶¶ 56-57. And even those granted have taken years to be installed. *Id.*

#### **IV. Chicago Has Failed to Properly Install and Maintain APS**

Chicago is not properly installing or maintaining APS devices. Myers inspected eight intersections Chicago claims are equipped with APS and identified several installation and maintenance problems. Myers Decl. at 31-33. These issues ranged from the location of APS elements, like the placement of the pushbuttons and direction of the vibrotactile arrows, to the sound calibration and message accuracy of the audio elements. *Id.* For example, at one location, the arrow was incorrectly aimed towards the middle of the intersection rather than the destination corner, which could lead a blind pedestrian to walk into traffic. *Id.* at 32-33. Myers also found issues with the maintenance of APS devices, including one APS device located near the Chicago Lighthouse for the Blind that was not working even though it has been reported to the City several times. *Id.* at 31.

The City has failed to develop sufficient expertise on APS. According to the City's own retained expert Peter Koonce, the Chicago Department of Transportation (CDOT) employees who have the responsibility for whether, when, and where to install APS "don't know enough" about APS, and no one at the City has "taken up the mantle to own this as a program." Koonce tr. at 164:8-166:2. In his own city of Portland, Oregon, Koonce traditionally relies on an O&M consultant to provide accessibility expertise related to APS. *Id.* at 45:14-21, 48:12-22, 50:16-20, 59:18-60:10. O&M specialists who work with Portland conduct site visits and guide electricians about pushbutton placement among other issues. *Id.* A specialist is essential to ensure that APS

devices are properly installed and maintained in compliance with standards in the Manual on Uniform Traffic Control Devices.<sup>5</sup> Myers Decl. at 34-35.

## **Argument**

### **I. Legal Framework**

#### **A. The Americans with Disabilities Act and Rehabilitation Act**

Congress enacted the ADA in 1990 to provide a clear and comprehensive national mandate for the elimination of discrimination against people with disabilities. 42 U.S.C. § 12101(b)(1). The ADA seeks to ensure that individuals with disabilities are provided with “equality of opportunity, full participation, independent living, and economic self-sufficiency. *Id.* § 12101(a)(7).<sup>6</sup>

Under Title II of the ADA, a public entity may not exclude or deny an individual with a disability the benefits of its services, programs, or activities, or discriminate against such individual. *Id.* § 12132. Nor may a public entity afford “a qualified individual with a disability an opportunity to participate in or benefit from [an] aid, benefit, or service that is not equal to that afforded others.” 28 C.F.R. § 35.130(b)(1)(ii) (emphasis added). The “Program Accessibility” subpart of the regulation applies these non-discrimination principles to the context of physical access to government programs. *See id.* §§ 35.149-51. It requires that “no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by

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<sup>5</sup> “The United States Department of Transportation’s 2009 Manual on Uniform Traffic Control Devices (‘MUTCD’), which Illinois adopted in 2011, sets forth technical standards for APS.” Mem. Op. at 6.

<sup>6</sup> “Because Title II was modeled after section 504 [of the Rehabilitation Act of 1973], ‘the elements of claims under the two provisions are nearly identical.’” *Lacy v. Cook Cnty., Illinois*, 897 F.3d 847, 852 n.1 (7th Cir. 2018) (quoting *Washington v. Ind. High Sch. Athletic Ass’n*, 181 F.3d 840 (7th Cir. 1999)); *see also* 49 C.F.R. § 27.19(a) (funding recipients “shall comply with all applicable requirements of the [ADA],” including at 28 C.F.R. Part 35).

individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity.” *Id.* § 35.149. The subpart sets forth the requirements applicable to “existing facilities,” *id.* § 35.150, and “new construction and alterations,” *id.* § 35.151. For existing facilities, a public entity must “operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” *Id.* § 35.150(a)(1).

A public entity can comply with its program access requirements through the alteration of existing facilities and construction of new facilities, among other ways. *Id.* § 35.150(b)(1). “In choosing among available methods for meeting” program accessibility requirements, “a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.” *Id.* (emphasis added). After the ADA was enacted, a public entity was expected to move “as expeditiously as possible” when it needed to make structural changes in facilities to achieve program access. *Id.* § 35.150(c). For new construction—construction after January 26, 1992—“[e]ach facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities.” *Id.* § 35.151(a)(1).

## **B. Injunctive Relief**

The ADA and Rehabilitation Act provide for injunctive relief. *See* 42 U.S.C. § 12133 (Title II of the ADA adopting the remedies under § 504 of the Rehabilitation Act), 29 U.S.C. § 795a(a)(2) (Rehabilitation Act incorporating the remedies available under Title VI of the Civil Rights Act, 42 U.S.C. § 2000d-7, providing legal and equitable remedies). Thus, where a public entity has violated the ADA or Rehabilitation Act, the district court may exercise its equitable powers to craft an appropriate injunction. *Steimel v. Wernert*, 823 F.3d 902, 918 (7th Cir. 2016).

“[T]he scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg-board of Educ.*, 402 U.S. 1, 15 (1971); *Am. Council of the Blind of N.Y., Inc. v. City of N.Y.*, 579 F. Supp. 3d 539 (S.D.N.Y. 2021) (compiling cases when injunctions were issued to provide meaningful access to individuals with vision disabilities). At the same time, a court must show “proper respect for the integrity and function of local government institutions.” *Missouri v. Jenkins*, 495 U.S. 33, 51 (1990). The court should assess the effectiveness of any proposed plans and should consider any alternatives “which may be shown as feasible and more promising in their effectiveness.” *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 439 (1968). An injunction must “describe in reasonable detail...the act or acts restrained or required.” Fed. R. Civ. P. 65(d)(1)(c).

## **II. Chicago Must Install and Maintain APS at All Signalized Intersections as Expeditiously as Possible, While Prioritizing the Needs of People with Vision Disabilities in the Interim**

### **A. APS Must be Installed at All Signalized Intersections to Achieve Equal Access**

As this court found in its March 31<sup>st</sup> Order, Chicago’s “current APS distribution does not provide plaintiffs and the class ‘meaningful access’ to its network of pedestrian signals in violation of the ADA and the Rehabilitation Act.” Memo. Op. at 20. While the court left open the question of what specific steps the City must take to remedy this violation, the court’s opinion provides guidance as to the scope of an appropriate remedy. In the opinion, the court recognized that the terms “meaningful access” and “equal access” are the same concept whose core requires that individuals with disabilities be provided with “equality of opportunity.” See Dkt. 187 (USA Brief) at 23-24; see also Memo. Op. at 15 (citing *Segal v. Metro. Council*, 29 F.4th 399, 406 (8th Cir. 2022) (“the term ‘meaningful access’ has its common and ordinary understanding, signifying access to services by disabled individuals that is substantially equal to the services provided to non-disabled persons.”)). And as the Seventh Circuit recently held, where an individual “cannot

enjoy a program’s fundamental benefits, her access is unlikely to be meaningful.” *Ellison v. United States Postal Serv.*, \_\_\_ F.4<sup>th</sup> \_\_\_, 2003 WL 6990529, at \*5 (7th Cir. 2023). To provide equality of opportunity in this context, Chicago must install APS at all intersections that have visual pedestrian signals.

Chicago installed pedestrian signals at 2,841 (or 10.7 percent) of the City’s approximately 26,000 intersections to improve the safety of its pedestrian grid. Chicago determined that those 2,841 intersections require, because of safety concerns, signals that direct pedestrians when to cross the street. But in doing so, Chicago largely ignored the needs of people with vision disabilities by failing to install accessible pedestrian signals at all but a “tiny portion” of intersections. Memo. Op. at 7. This failure denies the fundamental safety benefits of the City’s signalized intersection program to people with vision disabilities, who are entitled to and need equal, not less, safety information at these intersections. As this court has already recognized, pedestrians who are blind suffer many injuries and harms when crossing a signalized intersection without APS. Those harms range from “from the inconvenience of having to wait through several signal cycles to be able to determine where and when it is safe to cross,” “to loss of independence,” “to the terror of a near-collision with a vehicle,” “to serious injuries from an actual collision.” *Id.* at 3.

The court’s recognition of these harms relied on the findings of Linda Myers, who is a Certified Orientation and Mobility (O&M) Specialist. In the attached Declaration, Myers further explains that forcing a blind pedestrian to take indirect, often zigzag routes, requires blind pedestrians to walk additional distances, which increases fatigue and the risk of injury. Myers Decl. at 9. Taking indirect routes also increases the likelihood of becoming disoriented when frequently detouring around inaccessible intersections. *Id.* at 10-11. And being forced to

memorize longer, indirect routes to avoid inaccessible signalized intersections increases cognitive load, which causes additional confusion, poor decision-making, and a higher likelihood of choosing unsafe paths of travel. *Id.* at 11-13 (explaining what cognitive load is and how it is vastly increased each time a pedestrian who is blind is forced to reroute). Here, the only way to provide blind pedestrians equal safety information to sighted pedestrians is through APS. Myers Decl. at 12.

Indeed, under this equality mandate, the provision of facilities that are “less safe” to individuals with disabilities constitutes “prohibited discrimination.” *Putnam v. Oakland Unified Sch. Dist.*, No. C-93-3772CW, 1995 WL 873734, at \*11, 13 (N.D. Cal. June 9, 1995) (accessibility barriers made schools less safe for students with disabilities). For example, in *Civic Association of the Deaf of New York City, Inc. v. City of New York*, No. 95 CIV. 8591, 2011 WL 5995182, at \*15 (S.D.N.Y. Nov. 29, 2011), the city sought to replace accessible emergency callboxes with inaccessible devices. The court found that this would not provide deaf and hard of hearing persons meaningful access to emergency services from the street, and thus violated the ADA and Rehabilitation Act. To meet the ADA’s equality mandate and to provide meaningful access, APS must be installed at all intersections where the City has installed visual pedestrian signals.

Finally, as this court recognized, Title II and Section 504’s goals are “to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society” and “full participation, inclusion, and integration of” people with disabilities. Memo. Op. at 13, 34. Because of the burdens of navigating a pedestrian grid without full APS, a blind pedestrian may decide not to make the trip at all, forgoing community involvement. *See* Myers Decl. at 6. For instance, providing APS could have allowed plaintiff Ann Brash to go out to lunch when she worked downtown, which she gave up because

she feared for her life trying to cross Chicago's inaccessible street intersections. US SMF ¶ 69. Ms. Brash and other people with vision disabilities are legally entitled to the "full participation, inclusion, and integration," *see* Memo. Op. at 34, Chicago allows sighted people. Therefore, the court should order the City to install APS at all intersections where the City has decided pedestrian signals are necessary.

### **B. Chicago Must Achieve Full Program Access Within the Next Decade**

Chicago must remedy its past discrimination as expeditiously as possible. 28 C.F.R. § 35.150(c) (to achieve program access, all structural changes must be made within three years of the Department of Justice's issuance of the ADA regulation or else "as expeditiously as possible"); *Green*, 391 U.S. at 439 (requiring school district to remedy its past discrimination "at the earliest practicable date."); *Ramirez v. District of Columbia*, No. 99 Civ. 803 (TFH), 1999 WL 986914, at \*4, 6 (D.D.C. Oct. 14, 1999) (requiring a public entity to bring its bathroom into compliance with the ADA within 20 days, reasoning in part that the entity was "long overdue in bringing [the bathroom] within compliance of the ADA" because the modification had not been made under the time afforded by 28 C.F.R. § 35.150(c)). Chicago can and should be able to do so within the next decade.

To begin, a mandated timetable is necessary because Chicago has not achieved compliance on its own despite being aware of the need for APS since at least 2007 and setting but failing to meet multiple goals for installing APS. *See* Memo. Op. at 8 ("[D]espite fifteen years of planning, projections, assurance, and the receipt of federal funds, no more than thirty of the City's intersections had been equipped with APS by the time briefing on the pending motions had concluded."); *see also Ramirez*, 1999 WL 986914, at \*5 (ordering public entity to remedy inaccessible bathroom within 20 days since Defendants were "unwilling to remedy this situation without the Court's involvement."). And Chicago has failed to show any meaningful progress

since this court's order finding Chicago liable for discrimination under the ADA and Rehabilitation Act because of the lack of APS. As of October 2022, Chicago had installed either APS or other audible signals at 30 intersections. Memo. Op. at 3. As of September 2023, that number has increased to only 40 intersections. Ex 3 (Supp. Att. ABCMC Int. No. 15). At this rate, it would take Chicago over 300 years to install APS at its 2,841 signalized intersections.

Full pedestrian signal program access for Chicago's blind community can and should be achieved in 10 years or less. This will provide the City with sufficient time to secure the necessary resources and execute a citywide installation plan. Requiring compliance in 10 years or less is essential here because of the ongoing injuries and harms to blind pedestrians, including the risk of serious injury. *See* Memo. Op. at 7. And as Myers fully explains, navigating the city without APS is becoming more dangerous for blind pedestrians because of the increase in distracted drivers and quiet cars. Myers Decl. at 21. Also, Chicago's elderly population is growing, and vision loss increases with age. *Id.* at 22. Finally, a defined time for full compliance will allow for accountability and much needed certainty to people with vision disabilities who have already waited far too long to be treated equally. *See, e.g., Frederick L. v. Dep't of Pub. Welfare of Pa.*, 422 F.3d 151, 157 (3d Cir. 2005) (ADA remedial plan must "adequately demonstrate[] a reasonably specific and measurable commitment to deinstitutionalization for which [public entity] may be held accountable").

Chicago has access to resources to achieve full program access within 10 years. The City must aggressively seek out all sources of funding. *See e.g., Ex. 7* (S.D.N.Y. Remedial Order) (requiring New York City to "energetically pursue all sources of funding that could support the installation of APS"). Chicago can fund large-scale transportation projects through multiple local,

state, and federal funding sources.<sup>7</sup> The City can also successfully carry out large infrastructure projects like its Five-Year Capital Plan, announced in 2020, which included over \$28 million for modernizing the City’s traffic signals and dedicated funding for making sidewalks accessible to people with disabilities. *See generally* City of Chicago 2024 Budget Forecast, available at <https://perma.cc/TPK8-EE2N> (last visited Nov. 6, 2023). Indeed, Chicago first received federal grant money in 2015 to install APS, *see* City 56.1 ¶ 17, and should and can continue to seek funding. CDOT should designate an employee to be responsible for pursuing funding to support installation of APS, as discussed below. As Chicago expands its APS installation, the City will be able to benefit from savings through economies of scale. The City has estimated that it costs less to install APS while performing other signal improvements at the same time, *see* City’s L.R. 56.1 at ¶¶ 51-52, so it should install APS during other intersection construction projects.

Over time, Chicago can also improve its ability to install APS by expanding its knowledge and expertise in designing and installing APS. Cities embarking on long-term construction projects can start with an initial ramp-up period, during which they acquire expertise, develop procedures, and gather resources for APS installation which later allows them to proceed with the project at a faster pace. Myers Decl. at 23-24. While Chicago claims to have started this process

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<sup>7</sup> *See generally* City of Chicago 2024 Budget Forecast, available at <https://perma.cc/TPK8-EE2N> (last visited Nov. 6, 2023). For example, in 2020, it announced its Five-Year Capital Plan, a multi-billion-dollar plan with dedicated funding for the repair and replacement of bridges, shoreline revetment, Americans with Disabilities Act (ADA) accessible sidewalks, street resurfacing, streetlights and traffic signals among others. The plan was funded through bonds and specifically identified more than \$28 million for modernizing the City’s traffic signals. *See* Press Release, City of Chicago, *Mayor Lightfoot Announces Five-Year Capital Plan For Chicago* (Nov. 18, 2020), available at <https://perma.cc/AS7U-YFLN> (last visited Nov. 6, 2023). Chicago can also access federal funds for APS installation. *E.g.*, U.S. Dept. of Transp., Fed. Highway Admin., *Pedestrian and Bicycle Funding Opportunities*, available at <https://perma.cc/552X-7AGX> (last visited Nov. 6, 2023) (listing nineteen sources of federal funding that may be used for “signs/signals/signal improvements (including accessible pedestrian signals)”).

as part of an APS Pilot Project that began in 2016, City L.R. 56.1 at ¶¶ 17-27, Chicago must continue to develop expertise so it can install APS at existing signalized intersections at a rapid pace.

Chicago can learn from New York City—a city with around 13,430 signalized intersections—which is more rapidly installing APS as the result of a remedial order. In 2018, the year the APS suit against New York was filed, New York City installed APS at 83 intersections, bringing the city’s APS total to 371 intersections. *Am. Council of the Blind of New York, Inc. v. City of New York*, 579 F. Supp. 3d 539, 547-8 (S.D.N.Y. 2021). By the end of 2020, New York City had installed APS at 749 intersections. *Id.* at 548. The court’s 2021 remedial order set annual benchmarks, ultimately requiring New York City to install APS at 10,000 signalized intersections within ten years. *Id.* In the first year, the order required 400 intersections, with subsequent annual requirements of 500, 700, 900, and so on. Ex. 7 (Remedial Order in *American Council of the Blind New York City v. City of New York*, 18 C 5792 (S.D.N.Y.) (Dkt. 208 at 3)). New York City in fact exceeded its first annual benchmark. As the independent monitor reported, in the first year, New York City installed APS at 494 intersections (or 3.7 percent of its signalized intersections), almost 25 percent more than the required 400. Ex. 8 (First Ann. Rep. Indep. Monitor in *American Council of the Blind New York City v. City of New York*, 18 C 5792 (S.D.N.Y.) (Dkt. 246 at 2-3)).

If Chicago installs APS at the same rate as New York City, Chicago could install APS at about 100 intersections in the first year (3.7 percent of 2,800). From there, the City could gain experience and utilize efficiencies to ramp up its future annual APS installations, just as the remedial order in the New York City APS case lays out. And as discussed below, Chicago should hire an expert and develop in-house expertise to ensure it can achieve full program access in 10 years.

If Chicago claims that 10 years is not feasible, it bears the burden to show that a longer remedial period is “consistent with good faith compliance at the earliest practicable date.” *Brown v. Bd. of Educ.*, 349 U.S. 294, 300 (1955).<sup>8</sup> And a court cannot “prolong[] the denial of plaintiffs’ meaningful access based on asserted financial burdens that are unsubstantiated.” *Am. Council of the Blind of N.Y., Inc. v. City of N.Y.*, 579 F. Supp. 3d 539, 569 (S.D.N.Y. 2021). Therefore, the court should order full APS implementation within a decade.

**C. Chicago Must Prioritize Installing APS at Existing Intersections that Present Heightened Danger, are Important for People with Vision Disabilities, or Allow the City to Maximize Resources**

All signalized intersections present heightened danger for all pedestrians, or the City would not have signalized them. *See* Memo. Op. at 7 (2,841 intersections have traffic signals to promote efficiency and safety). Ideally, Chicago would immediately retrofit all these intersections with APS. But since the City may realistically need up to 10 years to do so, Chicago should follow a prioritization plan. Chicago should prioritize intersections that are particularly dangerous or important for those who are blind, as well as intersections where the City is already doing construction or modernization work.

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<sup>8</sup> Chicago did not raise any affirmative defenses—including the undue burden and fundamental alteration defenses—in its Answers (Dkt. Nos. 52, 87) or in response to the parties’ motions for summary judgment (Dkt. No. 184). As a result, any such argument about *whether* program access can be achieved has been waived. 28 C.F.R. § 35.150(a)(3); Fed. R. Civ. P. 8(c)(1); *Reed v. Columbia St. Mary’s Hosp.*, 915 F.3d 473, 482-84 (7th Cir. 2019) (statutory defense to ADA claims, raised for the first time in motion for summary judgment, is waived or forfeited). Instead, any financial constraints should be considered only with respect to how *long* the transition would take, not whether it can happen. *Cf. Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 392-93 (1992) (“financial constraints may not be used to justify the creation or perpetuation of constitutional violations, but they are a legitimate concern of government defendants in institutional reform litigation and therefore are appropriately considered in tailoring a [remedy].”)

Dangerous intersections for pedestrians with vision disabilities that should be prioritized include intersections with LPI, exclusive pedestrian phases (EPP), protected turn phases, complex geometry, long crosswalks, or crosswalks with islands. *See* Myers Decl. at 27-28; *see also* MUTCD Ch. 4E.09 (noting that these qualities can make an intersection even more dangerous to someone with a vision disability); Memo. Op. at 5 (citing Myers's opinion that LPIs present heightened danger). Intersections with LPI, EPP, protected turn phases, pedestrian crossings at mid-block, and T-shaped intersections are particularly dangerous because they make it difficult to accurately determine when it is safe to start crossing. Myers Decl. at 27-28. Intersections that are particularly important for people with vision disabilities also include intersections for which APS requests have been made and intersections close to public services, transit centers, and organizations serving people with vision disabilities and seniors. These intersections are along paths that individuals with vision disabilities are more likely to travel in order to live independent lives and obtain public services. *Cf. Mote v. City of Chelsea*, 252 F. Supp. 3d 642, 654 (E.D. Mich. 2017) (requiring accessible public pedestrian thoroughfares to provide full enjoyment of public services). Of these intersections, citizen requests for APS should be given the highest priority because these requests likely reflect a blind individual's need to access that intersection on a regular basis, which is inaccessible and dangerous. Myers Decl. at 29.

Additionally, Chicago should have the flexibility to prioritize APS installation whenever it performs other work at an intersection to maximize its resources (*i.e.*, underground work at the intersection, replacing wiring, controllers, signal heads). As Myers describes, a public entity may be able to save money and resources by installing APS when it digs up ground at an intersection or replaces certain kind of equipment. Myers Decl. at 7, 26. Prioritizing APS installation in these

scenarios, for the sake of efficiency and savings, benefits both the City and the people with vision disabilities the remedy here is meant to protect.

**D. Chicago Must Install APS at All Newly Signalized and Altered Intersections In Accordance with the Prioritized Categories for All Intersections**

The ADA requires Chicago to install APS at newly signalized intersections and altered pedestrian signals. 28 C.F.R. § 35.151. This court held that Chicago violated its obligation to install APS at around 57-60 intersections that were newly signalized since 2011. Memo. Op. at 20-21. Going forward, of course, Chicago must provide APS at any pedestrian signal it newly installs or alters. For intersections newly signalized since 2011, Chicago should retrofit them within the categories of prioritized intersections described above, since Chicago must ultimately install APS at all intersections with pedestrian signals to achieve program access. This will allow the City to prioritize signalized intersections that are most dangerous to or frequently used by people with vision disabilities, and as well as intersections that present the City with resource efficiencies. Chicago should likewise install APS at altered pedestrian signals in accordance with the prioritization categories set out above.<sup>9</sup>

**E. Chicago Must Install and Maintain APS Properly**

To provide and sustain equal access, APS must be installed and maintained properly. 28 C.F.R. § 35.133 (“A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act”); *cf. Chapman v. Pier 1 Imports (U.S.) Inc.*, 779 F.3d 1001 (9th Cir. 2015)

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<sup>9</sup> There remains a triable issue of fact as to what constitutes an “alteration” for the purposes of Chicago’s signalized intersection program, triggering the obligation to install APS under 28 C.F.R. § 35.151(a)(1). But resolving that issue is unnecessary under the United States’ and plaintiffs’ proposed remedial plan, which requires APS at all signalized intersections over time, and prioritizes more dangerous intersections.

(affirming summary judgment for plaintiff because failure to maintain accessible aisles violated the ADA, which requires maintaining accessibility, not just creating it initially).

The parties agree that APS must be installed in accordance with the technical specifications set forth in the MUTCD, but Chicago has not always done this. Myers Decl. at 31-33. For example, in August 2023, Myers evaluated four locations with newly installed APS and found all four locations were noncompliant with MUTCD. Myers Decl. at 31-32. At all four locations, Myers found that the volume was too loud when responding to ambient sound and the APS percussive tone did not begin without a pedestrian pushing the APS button. At one location, Myers found the APS placed on the APS pole in a location that exceeded the MUTCD height requirements. And at one location, the tactile arrow on the APS device was improperly installed such that it directed a pedestrian towards the middle of the intersection rather than the destination corner.

Chicago also must *timely* repair or replace APS that are not functioning properly. 28 C.F.R. § 35.133. As the guidance to the Title II regulations explains: “it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them.” 28 C.F.R. Part 35, Appendix B at section 35.133. Chicago has violated the ADA through its failure to repair and maintain its APS. In November 2021, Myers inspected an APS location near the Chicago Lighthouse for the Blind that was not working even though it had been reported to the City *several* times. Myers Decl. at 31. Chicago has no particular time frame for repair of APS after it learns one needs repair. To meet the equality mandate of the ADA, Chicago must repair APS within five business days.

## **F. Chicago Must Provide Accurate APS Information to the Public**

Chicago must share APS program information and APS locations with the public, especially given the many years it will take to make Chicago's pedestrian signal program accessible. The City provides little information about APS and what it does provide is inaccurate. Ex. 6 (APS webpage). The City must also develop and communicate a clear method for individuals to request APS installation or identify malfunctioning APS, which it does not have. The City must stop relying on the outmoded and ineffective aldermanic APS request and funding system.

To remedy these failings, the City's website should contain all pertinent information about the court's remedial order, including a copy of the order and a summary of its provisions. Second, it should contain current information about all APS, including (1) the location of current APS as well as intersections where APS is expected to be installed over the next year, and (2) locations with damaged or malfunctioning APS. The webpage should also include pertinent information about the APS citizen request policy, including (1) how to submit such requests, (2) how and when such requests will be satisfied; and (3) tracking information about such requests. The website should include the identity and contact information for the CDOT official responsible for implementing the remedial plan as well as a designated staff person who can answer information about APS. Finally, all of this information should be accurate and updated each month, and in an accessible format,<sup>10</sup> so pedestrians with vision disabilities can access this valuable information.

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<sup>10</sup> To ensure the website is accessible to blind individuals, it should conform with the Web Content Accessibility Guidelines 2.1, Level AA (June 5, 2018), published by the World Wide Web Consortium, available at [www.w3.org/TR/WCAG/](http://www.w3.org/TR/WCAG/) ("WCAG 2.1 AA," which incorporates the Level A and Level AA Success Criteria).

Myers Decl. at 31, 36. This information will help mitigate the difficulty of navigating the pedestrian grid until all signalized intersections are equipped with APS.

**G. Chicago Must Have the Proper Personnel and Develop Expertise to Succeed**

Chicago needs personnel who can successfully implement the remedy to achieve program access. 28 C.F.R. § 35.107(a); *cf.* 49 C.F.R. Part 37, App. D, at section 37.173 (“A well-trained workforce is essential in ensuring that the accessibility-related equipment and accommodations required by the ADA actually result in the delivery of good transportation service to individuals with disabilities.”). The City’s own expert opined that the City failed to install APS because the CDOT employees who have the responsibility for whether, when, and where to install APS “don’t know enough” about APS, and no one at the City has “taken up the mantle to own this as a program.” Koonce tr. at 164:8-166:2. Cities like Portland, San Francisco, and New York City have dedicated an official within their transportation departments who has expertise with APS and who assumes responsibility for the success of the APS program. Myers Decl. at 33. Chicago does not have a person responsible for this, and thus has no one knowledgeable and accountable for the program. *Id.* at 34; *see also* Def. Supp. Obj. and Resp. to Pl. First Set of Int. Nos. 2-6.

Accordingly, to ensure success, CDOT should similarly identify a qualified person to oversee the design, installation, and maintenance of APS, including overseeing the work performed by contractors who are experts in APS. CDOT also should engage a Certified O&M Specialist by the Academy for Certification of Vision Rehabilitation & Education Professionals (ACVREP), who has demonstrated experience with and knowledge of the technical standards for APS. This follows practices of other cities and is necessary to ensure that APS devices are properly installed and maintained in compliance with the MUTCD technical standards and to educate city officials on why these standards benefit pedestrians with vision disabilities. Myers Decl. at 33.

Finally, Chicago should create and regularly communicate with an APS Citizen Advisory Committee. *Id.* at 36. The Committee should include representatives from CDOT responsible for implementing the remedial plan, the Mayor’s Office of People with Disabilities, and Chicago’s blind community, including organizations that serve the blind community. The Committee should meet quarterly and provide feedback to the City on all issues relating to the remedial plan. This will help develop the City’s own expertise on APS and accessibility for people who are blind and further the goal of better communicating with the public, as addressed above.

#### **H. Monitoring and Compliance Reports are Necessary to Ensure Chicago Achieves Program Access within 10 Years**

To assure compliance, the court should exercise its broad discretion to appoint an independent monitor to oversee the implementation of its remedial order. *See City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 145 (2d Cir. 2011) (“The power of the federal courts to appoint special masters to monitor compliance with their remedial orders is well established.”); *Stone v. City & Cnty. Of San Francisco*, 968 F.2d 850, 859 n.18 (9th Cir. 1992) (collecting cases). “[M]onitor appointments . . . are familiar means of assisting judges in cases where remedial orders directed to units of local government have entailed ‘discretionary and technical decisions’ that inherently require ‘dedicated time and resources’ to evaluate,” as will be the case here. *Am. Council of the Blind of New York*, 579 F. Supp. 3d at 592. The district court in the recent APS enforcement action in New York City appointed a monitor at its remedial phase, and a monitor is appropriate here for the same reasons. *Id.*

Here, a monitor would determine compliance and submit bi-annual reports to the court on the public docket outlining, at a minimum: 1) the number of APS installations conducted in the prior six months; 2) whether those installations complied with the MUTCD; 3) whether installations complied with the prioritization required under the remedial order; 4) whether the

City complied with the public communication and maintenance terms of the remedial order; and 5) recommendations for improving implementation of the remedial order. The monitor would identify any deficiencies and attempt to resolve them in consultation with the parties, including by recommending corrective action. And if the plaintiffs or United States believe that the City has not complied in any material respect with the remedial plan, the monitor will assist the parties seeking to resolve the dispute before the matter is brought to the attention of the court. The City would pay the monitor's reasonable fees and expenses, within the monitor's budget and fees approved by the court. Appointing a monitor would reduce the burden on the court, especially for a remedy of this scope and duration and affecting the rights of such a large group of aggrieved individuals.

To most efficiently select a monitor, the court should order the parties to confer and jointly propose a monitor for the court's consideration. Should the parties not agree, the parties then should each submit up to three names, with qualifications, for the court to consider. The monitorship should be structured to minimize the costs to Chicago, to be accountable to the court, the parties, and the public, and should be subject to judicial reevaluation and reappointment.

## Conclusion

For these reasons, the court should adopt the United States' and the plaintiffs' proposed remedial plan to ensure Chicago complies with Title II of the ADA and Section 504 as expeditiously as possible.

Respectfully submitted,

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