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. UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. CITY OF CHICAGO, Defendant.	No. 19 C 6322 Judge Bucklo

UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON LIABILITY

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Introduction

This case is about Chicago's widespread lack of accessible pedestrian signals (APS) that allow pedestrians with vision disabilities to access the City's pedestrian walkways and street crossings. Chicago is home to approximately 65,000 people who have vision disabilities. And many more commuters and visitors with vision disabilities regularly travel to and around the City. Chicago promotes itself as not only a vibrant, but also walkable, metropolis. To that end, it has provided its sighted pedestrians with the safety benefit of approximately 2,800 visual pedestrian crossing signals at its intersections, enabling safer access to work, community activities, and entertainment. At the same time, Chicago has denied that benefit to its pedestrians with vision disabilities, some of whom are the plaintiffs in this case. As of the United States' intervention in this suit, the City had an appallingly small number of 19 pedestrian signals with audio features.

Accessible pedestrian signals (APSs) have specific features that enable people with vision disabilities to identify the crossing location, when to begin to cross, and the location of the far corner and thus the direction they should walk. Since the United States' intervention, Chicago has installed 7 more APS at its intersections with visual pedestrian crossing signals. All told, Chicago has made less than one percent of its signalized pedestrian crossings accessible to those with vision disabilities, despite its plans going back to 2007 to install APS on a wider basis.

Chicago's failure to deliver on those promises, and general lack of APS in any more than a negligible way, is reflected in materially undisputed evidence. That evidence establishes Chicago is in violation of Title II of the ADA and Section 504 of the Rehabilitation Act in at least the following two ways. First, Chicago has failed to make its pedestrian signaling program and interconnected pedestrian grid accessible as the law requires. Time and again, Chicago has affirmed that APS is the way to make its pedestrian crossings at intersections accessible, but then

it has failed to do so. This failure denies access to and harms people who have vision disabilities because it makes pedestrian crossings less safe for them than for sighted pedestrians, causing added fear and anxiety and sometimes injury. This also delays and sometimes even prevents people with vision disabilities from taking part in all the benefits of life that the City offers to pedestrians. Second, Chicago has failed to make newly constructed pedestrian crossing signals accessible since the obligation arose under the ADA in 1992. Under the ADA provisions that require making newly constructed facilities accessible, each signal should have been installed with APS, and they were not. The court should hold Chicago liable for its discriminatory denial of access to this critical safety program at its signalized pedestrian crossings.

Facts

American adults with vision disabilities make up about 13% of the nation's population.[1] United States' Rule 56.1 Statement of Material Facts ("SMF") ¶2. Like others, they seek to go into the community to work, shop, and socialize, among other activities. *Id*. ¶5. The rate of vision disabilities is higher among senior citizens. About one-third of people aged 65 or older have a vision-reducing eye disease. *Id*. ¶1. The number of Americans with a vision disability is expected to increase significantly with the aging of the population. *Id*. ¶2. Of those with vision disabilities, about 40,000 American adults are deafblind. *Id*. ¶3. Deafblindness is a double disability characterized by the loss of sight and the loss of hearing. *Id.* Individuals who are deafblind

[1] This brief uses the term "vision disabilities" and "blind" to include both low vision and legal blindness. To be "legally blind," one must have a (a) visual acuity of 20/200 or less with the best correction in the better eye, or (b) a visual field of 20 degrees or less (tunnel vision). About 85% of people who are legally blind have some usable vision and may consider themselves low vision rather than blind. "Low vision" means impaired vision that cannot be corrected by glasses, surgery or medication.

typically have some degree of vision or some residual hearing, but the combination of hearing and visual losses causes communication and travel challenges. *Id*. This is true in Chicago as well.

About 65,000 Chicagoans are blind or visually impaired. *Id*. ¶4. And more than 111,000 Cook County, Illinois residents have a vision disability. *Id.* In addition to residents, many millions of commuters and visitors—from Cook County and beyond—come to Chicago every year, including some with vision disabilities. *Id.* ¶5. Each of the plaintiffs and class declarants is blind, has low vision, or is deafblind. *Id*. ¶6. Each is either a Chicagoan or travels to Chicago regularly for work or other engagements. *Id*.

I. Street Crossing Techniques of Pedestrians with Vision Disabilities

Like those with sight, people with vision disabilities travel as pedestrians and cross streets to visit familiar and unfamiliar destinations. *Id.* ¶7. To do so, some use a long white cane to detect obstacles, elevation changes, and texture changes. *Id.* Also, fewer than five percent of those with vision disabilities travel with a dog guide, which can assist but cannot make decisions about the route or decide when to cross a street. *Id.* In addition to using a white cane, dog guide, and any functional vision, pedestrians with vision disabilities also use other information gained from sound and touch while walking on sidewalks and crossing streets. *Id*.

All pedestrians, sighted or not, must perform these four tasks to safely cross a street:

i. Locate the street and the crosswalk area at their approach corner (corner where they begin their crossing),

ii. Align to face the destination corner (corner they are crossing to),

iii. Identify the time at which it is legal and safe to begin crossing, and

iv. Maintain the appropriate direction during the crossing.

Id. ¶8. To perform these four tasks, sighted pedestrians rely heavily on their own visual cues and information conveyed by visual pedestrian signals. *Id.* ¶9.

Without visual cues or information provided by the pedestrian signal, individuals with vision disabilities rely primarily on audio and tactile cues and other techniques. *Id.* To accomplish the first task of locating the approach corner, a pedestrian with vision disabilities typically continues straight along their current line of travel, using their white cane to detect a curb, curb ramp, or a detectable warning surface with raised bumps, and assumes the crosswalk begins at that location. *Id*. ¶10. They may try to confirm this assumption by listening for traffic on the streets and then repositioning on the corner. *Id.* However, these are imperfect tools due to the difficulty of accurately hearing vehicular traffic and of recognizing complicated designs on the corner, such as where curb ramps and detectable warning surfaces do not align with the crosswalk. *Id.* Using these traditional methods, pedestrians who are blind are able to begin crossing within the crosswalk only about half of the time. *Id*.

After locating a starting point on the corner to cross, the second task is to align their body with the crosswalk in order to stay within the crosswalk to reach the destination corner. *Id*. ¶11. A pedestrian with vision disabilities will make assumptions about the shape of the intersection and then listen for the sound of parallel and perpendicular traffic to adjust their beginning alignment. *Id*. Given that audio cues are imprecise, that many intersections are skewed at angles different than 90 degrees, and that curb ramps are sometimes sloped towards the middle of the intersection, these tools are inaccurate. *Id*. Using these traditional crossing methods, blind pedestrians are misaligned prior to crossing by about 10 degrees and consequently risk veering into moving parallel traffic. *Id*. ¶12. At complex intersections using traditional methods, blind pedestrians may experience misalignment prior to crossing between one-fourth and one-half of the time. *Id*.

To accomplish the third and most important task—the decision of when to begin crossing—a pedestrian with vision disabilities must make two assessments that rely almost exclusively on

audio cues. *Id*. ¶13. They must first decide whether the intersection is controlled by signals or stop signs, since crossing techniques differ for each. *Id*. Crossing at a four-way stop-sign-controlled intersection occurs when hearing no vehicles, while crossing at a signalized intersection occurs based on hearing moving vehicles. This is time consuming and can be unreliable where there is inconsistent or no traffic flow on one or both streets. *Id*.

Once a pedestrian with vision disabilities determines the intersection is signalized, they typically will listen for a "parallel surge." *Id*. ¶14. This means listening for idling vehicles that begin to accelerate in the closest lane and go straight through the intersection parallel to the pedestrian's direction of travel. *Id*. Upon hearing a parallel surge, the blind pedestrian typically assumes that the light for the parallel surging traffic is green and that the pedestrian signal says "WALK." *Id*. This method of listening for parallel surges to determine "WALK" intervals is inherently inaccurate. *Id*. ¶¶14-5. Blind pedestrians relying on this method mistakenly begin their crossings outside of the "WALK" intervals between one-third and one-half of the time. *Id*. ¶14.

Blind pedestrians attempt to accomplish the fourth task of maintaining alignment, while crossing or staying in the crosswalk, by mentally projecting a straight line of travel in the direction of their original alignment from the curb, and by listening to the moving parallel and idling perpendicular traffic to maintain a safe distance from each. *Id.* ¶16. These traditional listening methods also suffer from the inherent inaccuracies of audio cues and thus create a safety hazard for pedestrians who have vision disabilities. *Id*.

II. APS Provide Access to Signalized Pedestrian Crossings to People who are Blind

An Accessible Pedestrian Signal (APS), pictured here, is a device attached to a pole at a signalized intersection that 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 have access to the same crossing information as sighted pedestrians. *Id*. ¶17. An APS has a round pushbutton with a raised arrow. It emits a variety of audible tones and speech messages, and it vibrates. An APS is installed at the ends of each crosswalk at an intersection, which means that there are eight APS devices (two on each corner) for a typical four-corner intersection. *Id*. ¶18.

Some type of pedestrian signal with audible features to assist people with vision disabilities has been used for over 60 years. *Id*. ¶19. Specific APS technical standards were established in 2000, and last updated in 2009, by the U.S. Department of Transportation Federal Highway Administration in its Manual on Uniform Traffic Control Devices (MUTCD), which Illinois adopted in 2011. *Id*. ¶20. The MUTCD requires APS to have the following features: vibrotactile (vibrating to the touch) pushbutton locator tone that has an arrow pointing in the direction of the crosswalk , audible and vibrotactile walk indication, and automatic volume adjustment to increase or decrease with the volume of traffic noise. *Id*. ¶21. There also are specific requirements for the location of the pushbuttons and speakers. *Id*. APS is the only device recognized by the MUTCD that makes a visual pedestrian signal accessible to pedestrians with vision disabilities. *Id*. ¶22.

APS not only tell blind pedestrians when it is safe to start crossing the street by communicating the visible “WALK” and “DON’T WALK” signals in non-visual formats, but they also make it easier for blind pedestrians to locate the crosswalk at the approach corner and to align

towards the destination corner before and during the crossing. *Id.* APSs assist blind pedestrians with each of the four street-crossing tasks. *Id.* ¶23 (video demonstrating how an APS is used).[2]

The APS pushbutton emits a soft locator tone every second during the "DON'T WALK" interval and the pedestrian crossing period. *Id.* ¶24. This tone makes clear to the pedestrian with vision disabilities that the intersection is controlled by a traffic signal rather than stop signs. *Id.* In addition, the locator tone helps the blind pedestrian find the crossing point (where the crosswalk meets the sidewalk corner), since the APS is located on the corner near the crosswalk. *Id.* Finally, the locator tone at the *destination* corner assists the blind pedestrian with the fourth street-crossing task—maintaining alignment within the crosswalk while crossing the street—because they can direct themselves toward the opposite locator tone and reach their destination. *Id*. ¶¶24-5.

Besides emitting the locator tone, the pushbutton on the APS device serves two purposes. *Id.* ¶26. First, pushing the button provides important audible information. *Id.* Pushing the button for up to one second while the locator tone is on provides an audible message that says "wait," confirming that the "DON'T WALK" visual sign is showing. *Id.* When a pedestrian holds down the pushbutton for more than one second, an audio message is played that describes the pedestrian's location (*e.g.*, "Wait, to cross Howard at Grand."), which confirms the crossing that the pushbutton controls as well as the person's location, which is particularly useful if the intersection is unfamiliar. *Id*. Second, the vibrotactile arrow located on the pushbutton helps a blind pedestrian with both alignment and deciding when to start crossing. *Id.* ¶27. As seen in this photo, the raised arrow on a properly installed APS aligns parallel to the crosswalk and points towards the destination corner. *Id.* Touching the raised arrow helps the blind pedestrian establish

[2] Polara & Lighthouse for the Blind and Visually Impaired present Accessible Pedestrian Signals, YouTube, uploaded by Polara Accessible Pedestrian Signals, Oct. 13, 2020, https://www.youtube.com/watch?app=desktop&v=v2FuNE3IErM (last visited Aug. 4, 2022).

proper alignment before crossing. *Id.* The arrow also vibrates during the "WALK" interval, assisting those who are deafblind with knowing when to cross. *Id*.

The audible and tactile "WALK" indication is the most critical information provided by an APS. *Id.* ¶¶28-29. When the visual pedestrian signal changes to the "WALK" signal, an APS emits a rapidly repeating percussive tone (between 8 and 10 ticks per second), which is much faster than and easily distinguished from the locator tone emitted during the "DON'T WALK" interval. *Id.* ¶28. The percussive tone begins at the same time the vibrotactile arrow begins vibrating, providing an audible and tactile means by which blind pedestrians know that it is safe and legal to cross the street. *Id.* The percussive tone and the vibrating arrow improve the safety of street crossing by helping pedestrians with vision disabilities avoid crossing too early or too late, either of which can place them into the danger of moving cross-traffic. *Id*. ¶29.

III. Chicago's Pedestrian Grid and Signalized Intersections

Chicago is the nation's third-largest city with over 2.7 million residents and a density of over 10,000 people per square mile. *Id*. ¶30. Chicago describes itself as a "walkable" and "transit-friendly" city whose goal is to create "more and better pedestrian space" in order to encourage more people to walk and thereby "improve" their "collective health and quality of life." *Id.*

One of the key features of a pedestrian-friendly environment with high population density, such as Chicago, are intersections equipped with traffic signals. *Id*. ¶31. Traffic signals in Chicago fulfill the vital role of managing the flow of vehicles and pedestrians for the purpose of maximizing

safety and efficiency. *Id*. Given their important purposes, it is no surprise that Chicago has deemed it necessary to install traffic signals at about 2,800 intersections. *Id*. ¶32.

All of these intersections with traffic signals that are equipped with visual pedestrian signals that use words or pictures to convey "WALK/DON'T WALK" information, along with countdown signals at some intersections, to communicate safe-crossing information to sighted pedestrians. *Id*. ¶32. The purpose of telling people when to cross streets is "to reduce conflicts between pedestrians and other users of the intersection" and thereby secure an "efficient and safe operating environment for roadway users." *Id*.

Chicago's Department of Transportation ("CDOT") is the agency that oversees installation, alteration, and maintenance of signalized intersections within Chicago, including pedestrian signals at those intersections. *Id*. ¶33. CDOT is a recipient of federal funds. *Id*.

IV. Chicago's Lack of Accessible Pedestrian Signals

Despite having tens of thousands of residents with vision disabilities, Chicago has installed pedestrian signals with some kind of audible walk indication at only 26 of its more than 2,800 intersections with pedestrian signals. *Id*. ¶58. (Although Chicago claims it has APS at 26 signalized intersections, the audible devices at seven of those intersections are not MUTCD-compliant. *Id.*) At more than 99 percent of Chicago's signalized intersections, people with vision disabilities do not have access to the safe-street crossing information that Chicago provides to sighted pedestrians. *Id*. ¶34. Instead, those individuals must use less safe and less reliable methods of listening for traffic cues to cross streets. *Id*. ¶34. And if they are deafblind, without the vibrotactile arrow cue, they are left with no cue at all. *See id*. ¶¶17, 34.

A. Chicago's Intersection Landscape

Several factors in Chicago make traditional, traffic-based street crossing methods even less reliable for blind pedestrians. *Id.* ¶¶35-47. Environmental sounds that mask traffic sounds make

it more difficult to listen for surging parallel and idling perpendicular traffic. *Id.* ¶¶35-6. These sounds include honking cars, construction, street musicians, parades, snow, wind, rain, loud vehicles (such as buses, trucks, and emergency vehicles), and the Chicago Transit Authority's elevated, or 'L,' trains. *Id.* The growing use of hybrid and electric quiet cars also makes it more difficult for blind pedestrians in Chicago to hear surging and idling traffic. *Id.* ¶37. When traffic is light, audio cues disappear altogether and street crossing becomes more difficult. *Id*. ¶38.

Certain signal timing changes that remove or alter the parallel surges also make reliance on the parallel-surge sound to safely begin street crossing less reliable. *Id.* ¶¶39. For example, a leading pedestrian interval (LPI) is a signal timing variant that activates the WALK signal about three seconds before parallel vehicles are given a green light. *Id*. This provides pedestrians who can see the WALK signal a "head start" so they are already in the crosswalk and more visible before drivers move and turn right into the crosswalk the pedestrian is crossing. *Id.* Blind pedestrians cannot see the early WALK signal and rely instead on the delayed parallel surge to cross the street. *Id.* As a result, blind pedestrians at intersections with LPI lose the three-second "head start" to cross the street as well as the added safety protections of being able to start crossing before parallel vehicles begin moving. *Id.* ¶¶39-40. Recognizing the increased risk that LPIs cause to blind pedestrians, both Chicago's 2012 Pedestrian Plan and the MUTCD recommend installing APS wherever LPIs are used. *Id*. ¶¶40-42. Chicago has installed LPIs at 245 intersections but has installed APS at only 4 of these LPI intersections. *Id*. ¶43.

Another signal timing variant used in Chicago that alters parallel surges is the protected turn signal wherein a separate signal phase is provided for left- or right-turning vehicles. *Id.* ¶44. When parallel vehicles are given a green arrow to turn right or left across the parallel crosswalk, the pedestrian signal displays the "DON'T WALK" signal, alerting sighted pedestrians not to walk

because vehicles are turning across the crosswalk pedestrians intend to use. *Id*. However, the surge of traffic by turning vehicles (during the "DON'T WALK" signal) is often mistakenly interpreted by blind pedestrians as indicating the beginning of the parallel traffic surge, causing them to step into the crosswalk where the turning vehicles are headed. *Id.* ¶45. The MUTCD also recognizes these safety concerns regarding protected turn signals and states that transportation authorities should consider adding APS wherever protected turn signals are installed. *Id*. ¶46. Chicago has installed protected turn lanes at approximately 978 intersections, only 8 of which have APS. *Id*. ¶45.

Chicago also has numerous complex intersection designs, including angled crosswalks, bike lanes, plazas, wide streets, and six-corner intersections. *Id*. ¶47. These complex intersections make it more difficult for pedestrians with vision disabilities to align themselves with the crosswalk and to hear the correct vehicular surges. *Id*.

B. Chicago's Failure to Provide Accessible Pedestrian Signals

For the last 15 years, Chicago has promoted plans to install APS to enhance street-crossing safety and access for pedestrians who are blind. *Id*. ¶¶48, 50-54. All of Chicago's published plans concerning the pedestrian network have expressed a commitment to safety for all pedestrians, including the goal of installing APS. *Id*. ¶48. In its 2012 Pedestrian Plan, for example, Chicago stated an intention to install APS, which it described as a "medium cost pedestrian safety tool" that allows blind pedestrians to access the many benefits of Chicago's signalized intersections and pedestrian network. *Id*. Chicago has recognized APS as the only device that makes pedestrian signals accessible to pedestrians who are blind or low vision. *Id*. ¶49.

Chicago first conveyed a plan to install APS at *existing* signalized intersections in 2007. *Id*. ¶50. At that time, Chicago stated that it would launch an APS pilot program the following year, in 2008, to install approximately 40 APS devices near blind service organizations, corners

deemed dangerous to cross, and corners specifically requested by blind individuals. *Id.* However, by the time it published its 2012 Pedestrian Plan five years later, Chicago had installed pedestrian signals with audible walk indications at only 7 intersections. *Id*.

In that 2012 Pedestrian Plan, Chicago reiterated its goal of installing APS at existing signalized intersections but reduced the intended number of APS installations from 40 to 10 and delayed the planned installation date to 2014. *Id.* ¶51. The 2012 Pedestrian Plan also stated a plan to install APS with all new traffic signals beginning in 2016. *Id.* ¶52.

Chicago obtained funding for its APS pilot program in 2014 but then waited another five years before formally announcing the APS Pilot Program in July 2019. In the seven years between Chicago's 2012 Pedestrian Plan and its announcement of the 2019 APS Pilot Program, Chicago added APS to existing signals at only another five intersections. *Id*. ¶53. And in those same seven years, Chicago newly installed or fully modernized (*i.e.*, fully rebuilt akin to a new installation) traffic signals at 78 intersections and included APS at only one of them. *Id*. The City did not implement its 2012 Pedestrian Plan's statement that it would install APS at all new intersections beginning in 2016. *Id*. ¶¶52-3.

CDOT published a technical memorandum in May 2019 that, among other things, required APS installation when signalizing a new intersection or when fully modernizing an existing signal (meaning fully rebuilt akin to a new installation). *Id*. ¶52; *see also id.* ¶55 (Chicago estimates that it will install APS on new or fully modernized signals under this new APS plan at a rate of 10-15 intersections per year).

That same year, in July 2019, Chicago's mayor announced plans for installing APS at up to 50 existing pedestrian signals pursuant to its pilot program and up to 50 signal modernizations and new signal installations. *Id.* ¶54. In a press release, the mayor touted the City's plans to

increase installation of APS as "enabling both residents and visitors with visual disabilities to live more freely and safely throughout Chicago." *Id.* The mayor further stated that the APS programs for both existing and newly signalized intersections would result in installing up to 100 APS in the following two years. *Id.* By June 2021, however, Chicago had only installed APS at seven additional intersections, bringing the City's total to a mere 19 intersections with APS. *Id*.

Throughout this 15-year period when Chicago was promoting these APS plans but installing few APS through them, Chicago occasionally installed APS through another process—an unreliable and *ad hoc* aldermanic request system. *Id*. ¶56. When aldermen have asked for an APS to be installed at a particular location, generally in response to a constituent request or complaint, and agrees to pay for it from their own aldermanic budget, Chicago sometimes has installed an APS. *Id.* But an aldermanic request has not guaranteed that Chicago will add APS to the intersection within any particular timeframe, or at all, even when the request arose from a blind pedestrian being hit by a car at a location with a high population of blind seniors. *Id*. ¶¶56-57. Notwithstanding all of its various APS implementation processes over the years, Chicago has installed APS at fewer than one percent of its 2,800 intersections with visual pedestrian crossing signals. *Id.* ¶58.

C. Harms Suffered by Pedestrians with Vision Disabilities Because of Chicago's Lack of Accessible Pedestrian Signals

Pedestrians with vision disabilities have suffered numerous harms from Chicago's extreme lack of APS. Blind pedestrians in Chicago have been struck or nearly struck by vehicles as a result of crossing intersections without APS at the wrong time or place. *Id*. ¶ 60 (Ms. Heneghan crossed at the wrong time, was hit and hospitalized, requiring eight staples placed in her head), (Ms. Liddell was hit crossing intersection), (Ms. Wunderlich's guide dog was hit crossing intersection), (Mr. Campbell avoided collision with bus because strangers told him not to cross), (Mr. Polman was

stuck in the middle of the intersection with traffic whizzing by him). Crossing streets at the wrong time or place also increases the risk that blind pedestrians in Chicago will be shouted at and grabbed by strangers, which can be humiliating and frightening. *Id*. ¶ 61 (Ms. Heneghan shouted at and grabbed when crossing at the wrong time), (Mr. Campbell shouted at by strangers for mistaken crossing). Given the unreliability of using sound cues to cross streets and the risk of severe bodily injury from mistaken crossings, Chicago pedestrians with vision disabilities experience fear, frustration, and anxiety when crossing any street without an APS. *Id*. ¶63 (Mr. Campbell scared whenever crossing intersection and thinks "what if I guess wrong and get killed"), (Ms. Heneghan and Ms. Berman pray out of fear during every crossing).

Pedestrian travel takes much longer when relying on listening to traffic to make guesses about when it is safe to cross. *Id*. ¶64. Pedestrians with vision disabilities will often wait for several signal cycles to listen and understand the signal sequence and vehicle flow. *Id*. ¶65 (Mr. Campbell delayed by up to 10 minutes from listening for vehicle patterns); (Mr. Berg delayed when listening to competing environmental sounds and low traffic volume), (Ms. Berman, normally a fast walker, needs 30-45 minutes to walk a mile because there is no APS). They also have been forced to use alternate or more circuitous routes than sighted pedestrians to avoid crossing at particularly complicated or dangerous intersections. *Id*. ¶66 (Ms. Brash takes longer, indirect routes to avoid complicated intersections), (Mr. Berg takes indirect route from train to work due to challenging intersections). This requires increased effort and travel time. *Id.*

Pedestrians with vision disabilities also rely on sighted pedestrians to cross streets, rather than risk crossing without an APS. *Id.* ¶67. Such reliance on strangers causes delay, deprives the blind pedestrian of independence, and can be intimidating and unreliable. *Id.* (Ms. Wunderlich feels vulnerable relying on strangers who may present danger); (Mr. Campbell almost hit by a car

after following sighted pedestrians who crossed incorrectly); (Ms. Liddell often delayed waiting for a sighted pedestrian to help her cross).

Pedestrians with vision disabilities sometimes must rely on paid transportation for travel rather than walk through intersections without APS. *Id*. ¶ 68 (Ms. Heneghan takes paratransit or an Uber to her doctor even though she prefers walking), (Ms. Brash takes buses and taxis to locations even though she prefers walking). Such reliance is expensive, causes delay, and deprives the blind pedestrian of independence, spontaneity, and the enjoyment of pedestrian travel. *Id*.

Some people with vision disabilities are dissuaded entirely from using pedestrian travel due to lack of APS and will forgo the planned travel altogether. *Id*. ¶69. For example, blind pedestrians in Chicago have chosen not to walk to lunch during work, not to visit Grant Park, and not to walk beyond the block on which they live. *Id*. This deprives individuals with vision disabilities the convenience and enjoyment of pedestrian travel and the opportunities to visit friends, attend events, and take care of errands. *Id*. It also results in people who are blind or low vision spending more time at home and feeling isolated. *Id*. Chicago's extreme lack of APS has even led individuals with vision disabilities who work in Chicago and would otherwise prefer to live in Chicago to decide not to move to Chicago due to their difficulty navigating Chicago's intersections without APS. *Id*. ¶70 (Ms. Brash wanted to live at Presidential Towers in Chicago but decided against it due to the lack of APS).

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 (along with other since-dismissed nominal defendants), on behalf of themselves and as a putative class, alleging violations of Title II of the ADA and Section 504 of the Rehabilitation Act. Dkt. 1. After briefing

and the submission of supporting declarations from plaintiffs and five additional class members, each of whom have vision disabilities, the court certified plaintiffs as class representatives, over the opposition of the City. Dkt. 149. After an investigation, the United States intervened as a plaintiff and asserted that the City violated Title II of the ADA and Section 504 by failing to provide accessible pedestrian signals, thereby denying individuals with vision disabilities the benefits of its pedestrian signaling program. Dkt. 78.

Argument

I. Summary Judgment Standard

Summary judgment must be granted if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the party against whom summary judgment is sought "does not come forward with evidence that would reasonably permit the finder of fact to find in her favor on a material question, then the court *must* enter summary judgment against her." *Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir. 1994) (emphasis in original; citations omitted). Only disputes over facts that "might affect the outcome of the suit under the governing law" will preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Bunn v. Khoury Enterprises, Inc.*, 753 F.3d 676, 681 (7th Cir. 2014) ("[a] 'material fact' is one identified by the substantive law as affecting the outcome of the suit."). To show such a dispute, the non-moving party must present sufficient admissible evidence sufficient to support a jury verdict in its favor. *Anderson*, 477 U.S. at 249.

II. Statutory and Regulatory Background

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).

Congress found that many people with disabilities have been precluded from fully participating in all aspects of life in society because of discrimination. *Id.* § 12101(a)(1). Thus, the ADA exists to foster "equality of opportunity, full participation, independent living, and economic self-sufficiency" for those individuals. *Id.* § 12101(a)(7).

Title II of the ADA applies to public entities, which includes local governments. 42 U.S.C. § 12131(1)(a), § 12132. It provides: "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity." 42 U.S.C. § 12132; *see also Tennessee v. Lane*, 541 U.S. 509, 524 (2004) ("Congress enacted Title II against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights."). A qualified individual with a disability is an individual with a disability "who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2).

Under Title II's implementing regulations, among other directives, a public entity may not 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); *see also* 42 U.S.C. § 12134. The "Program Accessibility" subpart of the regulations applies these non-discrimination principles in the context of physical access to government programs. *See* 28 C.F.R. §§ 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 individuals

with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity." 28 C.F.R. § 35.149.[3]

The ADA ensures access by individuals with disabilities to the public right of way. *See, e.g.,* 42 U.S.C. § 12101(a)(3) ("[D]iscrimination against individuals with disabilities persists in such critical areas as . . . transportation . . . and access to public services."); *id.* § 12101(a)(5) ("[I]ndividuals with disabilities continually encounter various forms of discrimination, including . . . the discriminatory effects of architectural, transportation, and communication barriers."); *see also* 28 C.F.R. § 35.151(i)(2) ("Newly constructed or altered street level pedestrian walkways must contain curb ramps . . . ."). The House Report accompanying the ADA explains that "[t]he employment, transportation, and public accommodations section of this Act would be meaningless if people [with disabilities] were not afforded the opportunity to travel on and between the streets." House Report No. 101-485, 1990 U.S.C.C.A.N. at 367.

The program accessibility regulations set out the requirements applicable to "existing facilities," 28 C.F.R. § 35.150, and "new construction and alterations," 28 C.F.R. § 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." 28 C.F.R. § 35.150(a).

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." 28 C.F.R. § 35.151(a)(1).

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[3] Facility "includes both indoor and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment." 28 C.F.R. app. B. § 35.104 (Definitions).

III. Chicago's Pedestrian Signaling Program Discriminates Against Individuals with Vision Disabilities in Violation of Title II of the ADA and Section 504

Chicago's widespread failure to provide accessible pedestrian signals at more than 99 percent of its intersections with pedestrian signals discriminates against individuals with vision disabilities in violation of Title II and Section 504. The ADA prohibits Chicago from denying the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. 28 C.F.R. § 35.149. But Chicago does exactly what the regulation prohibits. Instead of operating a pedestrian signal program that is "readily accessible to and usable by individuals with disabilities," 28 C.F.R. § 35.150(a), Chicago has paid lip service to installing APS but, in truth, has installed APS at fewer than one percent of its approximately 2,800 signalized intersections with pedestrian crossing signals. SMF ¶58.

For purposes of this motion, Chicago has violated the law in two ways.[4] First, it has ignored its obligation to provide access to its *existing signalized pedestrian crossings* through installation of APS. Second, Chicago has failed to install APS at *newly signalized intersections* (including those total modernizations that involve complete renovation akin to a new installation), including at 77 of the 78 intersections newly signalized since 2012. By 2012, Chicago had publicly embraced APS as the way to make pedestrian signal crossings accessible, but it did not actually do so. These failures have harmed individuals with vision disabilities.

Title II of the ADA requires that Chicago, as a public entity, not discriminate against qualified individuals with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). The United States can prove that Chicago violated Title II by establishing the following elements: (1) a qualified individual with a disability; (2) was denied the benefits of the services, programs, or

[4] These are the specific violations the United States is addressing in this motion, and for which the United States will seek relief at a future remedial stage.

activities of a public entity; and (3) the denial was because, or on the basis, of their disability. *See Lacy v. Cook Cnty., Illinois*, 897 F.3d 847, 853 (7th Cir. 2018). Section 504 similarly provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).

"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*, 897 F.3d at 852 n.1 (quoting *Washington v. Ind. High Sch. Athletic Ass'n*, 181 F.3d 840, 845 n.6 (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). However, to establish a violation of Section 504, the United States (or any plaintiff) must also show that Chicago is a recipient of federal financial assistance and that it discriminated solely on the basis of disability. *Washington*, 181 F.3d at 845 n.6; *see also Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 748 (7th Cir. 2006) (*en banc*) ("the Rehabilitation Act helps disabled individuals obtain access to benefits only when they would have difficulty obtaining those benefits 'by reason of' their disabilities, and not because of some quality that they share generally with the public."). Here, it is not contested that Chicago is a public entity that receives federal funds, nor can it be materially disputed that the plaintiffs are individuals with disabilities under the ADA. SMF ¶¶33, 6.

As the material, undisputed facts show, the City's failure to provide access to pedestrian crossing signals via installation of APS has discriminated against those with vision disabilities in violation of Title II of the ADA and Section 504.

A. Chicago's Signalized Pedestrian Crossings Are a Program or Service, and Each Pedestrian Crossing Signal Is a Facility, under Title II of the ADA and Section 504

Chicago's provision of signalized pedestrian crossings is a program, service, and/or activity that is covered by Title II and Section 504, and the pedestrian crossing signals themselves are "facilities" under the law.

The City of Chicago is a public entity. SMF ¶33. And Chicago's pedestrian signal program—a robust program and service including more than 2,800 signalized intersections with pedestrian crossing signals—meets the definition of a service, program, or activity under Title II of the ADA and Section 504. *Id.* ¶¶32-3. Title II of the ADA applies to a public entity's "services, programs, or activities." 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130; 35.149-151. The term "services, programs, or activities" is broadly construed to include "anything a public entity does.'" 28 C.F.R. pt. 35, App. B, § 35.102 (Application); *see also Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 782 (7th Cir. 2002); *Fortyune v. City of Lomita*, 766 F.3d 1098, 1101-02 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2888 (2015) (on-street public parking is a service that must be accessible); *Yeskey v. Penn. Dep't of Corr.*, 118 F.3d 168, 171 (3d Cir. 1997), *aff'd* 524 U.S. 206 (1998) (programming for inmates in state prison). "Any sensible reading of ADA Title II compels the conclusion that maintaining public pedestrian thoroughfares for citizens to get around a city—and access the many public services and businesses located within—is the archetypal example of the most fundamental of public services." *Mote v. City of Chelsea*, 252 F. Supp. 3d 642, 654 (E.D. Mich. 2017).

Chicago's pedestrian crossing signals are part and parcel of the pedestrian thoroughfare that cities like Chicago create and maintain. *Cf. Frame v. City of Arlington*, 657 F.3d 215, 231 (5th Cir. 2011) (*en banc*) ("Title II unambiguously extends to newly built and altered sidewalks"); *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) ("maintaining public sidewalks

is a normal function of a city and without a doubt something that the [City] 'does.' . . . Maintaining their accessibility for individuals with disabilities therefore falls within the scope of Title II.") (internal quotations and citation omitted). Therefore, Chicago's provision of pedestrian crossing signals as part of the pedestrian grid plainly constitutes a service, program, or activity under Title II and Section 504. *Am. Council of the Blind of N.Y., Inc. v. City of New York*, 495 F. Supp.3d 211, 231 (S.D.N.Y. 2020) (hereinafter "*ACBNY*"); *Scharff v. County of Nassau*, No. 10 CV 4208-DRH, 2014 WL 2454639, *7 (E.D.N.Y. June 2, 2014) ("The act of installing and maintaining pedestrian crossing signals at crosswalks is a normal function of the County, and therefore falls within the scope of Title II and the Rehabilitation Act.").

In *ACBNY*, a certified class of blind pedestrians sued New York City, alleging that it violated Title II and Section 504 by failing to provide non-visual crossing information at the vast majority of its signalized intersections. *ACBNY*, 495 F. Supp. 3d at 219. There, the court recognized the relevant service, program, or activity as New York City's "signalized intersections and the pedestrian grid." *Id.* at 231. In doing so, the court agreed with plaintiffs that the inquiry should focus on New York City's "signalized street crossings, taken as a whole," and whether plaintiffs were "denied meaningful access to these crossings, because, at the vast majority of signalized crossings, they are unable to access the visual information that the City conveys, for safety purposes, to sighted pedestrians." *Id*. As in New York, the relevant program, service, or activity in this case is Chicago's pedestrian signal program, which includes Chicago's provision of information to pedestrians to allow them to safely use street crossings in the pedestrian grid. *See also Scharff*, 2014 WL 2454639, at *11 (Title II protects "opportunities to travel safely *on and between streets*") (emphasis added).

The pedestrian crossing signals themselves also are facilities under both Title II and Section 504. *ACBNY*, 495 F. Supp. 3d at 250 ("ADA regulations make clear that traffic and pedestrian crossing signals are facilities under both statutes."); 28 C.F.R. § 35.104 (defining "Facility"). Pedestrian signal devices are a form of "equipment" installed along public walkways and thus they are facilities under anti-discrimination law. *See* 28 C.F.R. § 35.104 ("Facility means all or any portion of buildings, structures, . . . equipment, . . . or other real or personal property . . . ."). In holding that pedestrian signals meet the definition of facilities, the federal district court in *Scharff* reasoned that "the pedestrian crossing signals are part of the *equipment* provided by the County to notify pedestrians of when it is safe to cross the street at the crosswalks." *Scharff*, 2014 WL 2454639 at *10 (emphasis added); *see also Civic Ass'n of Deaf of N.Y.C., Inc. v. Giuliani*, 970 F. Supp. 352, 359 (S.D.N.Y. 1997) (emergency call boxes along city streets are facilities under Title II regulations). That reasoning applies in Chicago just as it does elsewhere. *See* SMF ¶33.

B. Chicago Has Failed to Make Its Pedestrian Signal Program Accessible to People with Vision Disabilities in Violation of the ADA and Section 504

Chicago operates a pedestrian signal program that, when viewed as a whole, must be accessible to those with vision disabilities in order to be non-discriminatory. Chicago determined that about 2,800 intersections across the City need pedestrian signals to ensure safe access to the pedestrian grid. SMF ¶32. But nearly all of these pedestrian signals are visual-only and thus deny individuals with vision disabilities the safe crossing information provided to sighted pedestrians throughout the city. *Id.* ¶58. In so doing, Chicago inequitably endangers and delays pedestrians with vision disabilities, among other harms, and discriminates against them in violation of Title II of the ADA and Section 504.

At its core, the ADA requires that individuals with disabilities be provided with "equality of opportunity." 42 U.S.C. § 12101(a)(7); *see also* 28 C.F.R. §35.130(b)(1)(ii). Under that equality

mandate, the provision of services 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 (N.D. Cal. June 9, 1995). Under the Rehabilitation Act, the Supreme Court has held that individuals with disabilities "must be provided with meaningful access to the benefit" offered. *Alexander v. Choate*, 469 U.S. 287, 301 (1985); *see also id.* at 306 (concluding that state did not violate the Rehabilitation Act where it provided "meaningful and equal access to [a] benefit"). Courts interpreting *Choate* have understood that the requirement of "meaningful access" is coextensive with equal treatment and focused on the equality being served in a meaningful and material way, *i.e.* to provide "evenhanded treatment." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273-74, 276 (2d Cir. 2003) (meaningful access means "evenhanded treatment") (internal quotations and citations omitted); *Payan v. Los Angeles Cmty. Coll. Dist.*, No. 17 Civ. 1697 (SVW), 2018 WL 6164269, at *12 (C.D. Cal. Oct. 16, 2018) ("*Choate*'s 'meaningful access' requirement is coextensive with the concept[] of . . . 'equal opportunity' under Title II. This conclusion is bolstered by the fact that *Choate* itself at times seems to use the terms 'meaningful' and 'equal' interchangeably."). Although this standard is "necessarily fact-specific," where there exists "an obstacle that impedes [an individual's] access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit." *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008).

The facts show that Chicago has correctly recognized—for more than a decade—that APS is the way to provide pedestrians with vision disabilities access to signalized pedestrian crossings. Indeed, the City never had a plan to use any other method besides APS to remedy this lack of access. SMF ¶49. Beginning at least in 2007, then as reflected again in the 2012 Pedestrian Plan, its 2016 Chicago Forward Action Agenda, and its 2019 announcement of its APS pilot program,

Chicago has recognized again and again that APS is the method to provide access to its signalized pedestrian crossing program. *Id.* ¶¶48, 50-2, 54. In 2019, Chicago's press release about its APS plan stated that "Accessible Pedestrian Signals are important to the safe navigation of the City by Chicago's blind and low vision community." *Id.* ¶54. At that time, Chicago's mayor stated that a significant increase in APS would enable "both residents and visitors with vision disabilities to live more freely and safely throughout Chicago." *Id.* Chicago's identification of APS as the method for accessibility also aligns with the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), which identifies APS as the device that can provide access to pedestrian crossings for those with vision disabilities and gives specifications for APS features and installation. *Id.* ¶22. There can be no genuine dispute of material fact that, when it comes to pedestrian crossing signals, APS is the way to provide access to those with vision disabilities. *Id.* ¶¶17-29, 41-42, 46, 48-54, 60-73. But Chicago has not installed APS as needed to render the program accessible. *Id.* ¶¶34-73.

The staggering numerical dearth of APS devices in Chicago shows that its pedestrian signaling program, "when viewed in its entirety," is not readily accessible to and usable by individuals with vision disabilities. 28 C.F.R. § 35.150(a). In *ACBNY v. City of New York*, a substantially similar ADA action regarding New York City's scarcity of APS—although NYC had many more APS than Chicago, with about 3.4% of NYC's pedestrian signals equipped with APS—the court entered summary judgment for plaintiffs and held that NYC denied program access to vision-impaired people where "more than 95% of [the City's] crossings contain[ed] signals accessible only to sighted persons." *ACBNY*, 495 F. Supp. 3d at 237; *Scharff*, 2014 WL 2454639 at **2, 15 (denying defendant county's motion for summary judgment where county had installed APS at approximately 10 of the county's approximately 1,600 signalized intersections); *see also*

Rodriguez v. County of San Diego, No. 14cv9490, 2016 WL 4515860 at *14 (S.D. Cal. Feb. 9, 2016) (concluding that a reasonable jury could find that the listed barriers, including a lack of audible signals along paths, deny plaintiff equal access to the County's Recreational Paths). At the later remedial stage, the court directed New York City to install APS at all of its approximately 13,000 signalized intersections. *Am. Council of the Blind of New York, Inc. v. City of New York*, No. 18 CIV. 5792 (PAE), 2021 WL 6112028, at *26 (S.D.N.Y. Dec. 27, 2021). Chicago's failure to provide APS is even worse than New York City's, with more than 99% of Chicago's signalized pedestrian crossings denying their service to those who have vision disabilities. SMF ¶¶34, 58.

Plaintiffs and class members' lack of access to Chicago's pedestrian signal program, as a whole, is further evidenced by the harm they experience attempting to navigate the city by foot, which includes serious physical injury, fear, distress, humiliation, loss of independence, delayed pedestrian travel, and the need to take alternative and costly modes of transportation to stay safe, as well as missed opportunities caused by having to abandon plans altogether. SMF ¶¶60-73. For example, plaintiff Ann Brash, who commuted to Chicago for work and travels throughout the city to socialize, attend meetings, and run errands, finds relying on audio cues and strangers to cross intersections without APS to be unsafe and inefficient. *Id.* ¶71. Crossing streets based on audio cues has been risky for Ms. Brash. *Id.* She has been yelled at numerous times by strangers alerting her that she had walked into intersections at the wrong time, and a bus nearly hit her several years ago, striking her cane as she stepped into an intersection. *Id.* She is routinely delayed crossing streets by waiting for strangers to help her or by taking indirect routes to avoid the more dangerous intersections. *Id.* She experiences constant fear and frustration crossing intersections without APS. *Id.* Because of that, Ms. Brash does not travel spontaneously, would not leave her work building for lunch, occasionally misses meetings requiring travel, is forced to take expensive cab

rides short distances to locations she would rather walk, and even decided against residing in Chicago, where she would prefer to live. *Id.*

Plaintiff Maureen Heneghan, a lifelong Chicagoan, also suffers these same injuries as a result of being denied the benefit of Chicago's visual-only pedestrian signals, because of the extreme lack of APS. *Id.* ¶72. In 2004, she was seriously injured after she was hit by a car while crossing the street at an intersection without an APS. *Id.* She fortunately survived but she was hospitalized and received eight staples in the back of her head. *Id.* She finds traditional methods of street crossing where there is no APS—using listening as well as following or asking others—to be unreliable, and she worries about getting hit by a car again. *Id.*

Similarly, plaintiff Ray Campbell, who works in and commutes to Chicago's downtown Loop, has narrowly avoided being hit by a car while crossing intersections without APS on multiple occasions. *Id.* ¶73. His efforts to use listening or relying on strangers have been problematic and unreliable. *Id.* He has been yelled at by strangers when inadvertently attempting to cross the street at the wrong time, which he finds upsetting. *Id.* He waits up to ten minutes to cross intersections, in order to be more assured about when it is his time to cross, and is frustrated because he cannot independently and efficiently navigate intersections like sighted pedestrians. *Id.*

These types of injuries from the lack of APS in Chicago are not limited to plaintiffs. They also are experienced by most other Chicago pedestrians with vision disabilities, including the class declarants in this case. *Id.* ¶¶60-69 (Myers expert report explaining that most blind pedestrians experience these same injuries), (injuries to Ms. Wunderlich, Ms. Berman, Ms. Liddell, Mr. Berg, and Mr. Polman).

This undisputed evidence about what these plaintiffs and class members suffer due only to their disabilities—including suffering serious injury from being hit by moving vehicles, experiencing frustrations, fear, anxiety, and humiliation, as well as experiencing delays and even entirely being prevented from doing things they would otherwise do—establishes that they cannot readily access and use Chicago's pedestrian signaling program, in violation of Title II and Section 504. *See Putnam*, 1995 WL 873734, at *11 (equal opportunity includes safety, as the provision of services that are "less safe" to individuals with disabilities by itself constitutes . . . prohibited discrimination."); *ACBNY*, 495 F. Supp. 3d at 236 ("The City's widespread failure to provide crossing information in any non-visual format effectively denies blind persons the *ready and safe* use of signalized intersections, which are a vital means of traversing the City.") (emphasis added); *id.* at 254 (LPI's "deleterious effects on blind pedestrians' safety" constitute "hazards . . . germane to" plaintiffs' claim of "failure to provide the blind with meaningful access to the City's signalized intersections"); *id.* at 235 ("conditioning access upon arduous or costly coping mechanisms and on the assistance of strangers is anathema to the stated purpose of the Rehabilitation Act and the ADA.") (internal quotations and citations omitted); *Scharff*, 2014 WL 2454639, at *11 (" . . . Title II will be meaningless, and social costs will be aggravated, if people who are blind or visually impaired are not afforded the opportunities to travel *safely* on and between streets.") (emphasis added); *see also Celeste v. East Meadow School Dist.*, 373 F. App'x 85, 88 (2d Cir. 2010) (architectural barriers causing a student with a disability to take a ten-minute detour each way to and from athletic fields constituted "an unnecessary usurpation of [his] time" that justified finding a denial of meaningful access).

The court must act or the City will not make its pedestrian signal program accessible. Chicago has shown time and again that it enjoys the publicity of promoting access over actually

providing accessibility and safety. The court should render a judgment of liability against the City for its violations of Title II of the ADA and Section 504, for its failure to make its pedestrian signaling program accessible through an effective policy and practice of installing APS anywhere the City has deemed it necessary to install pedestrian signals.

C. Chicago Has Failed to Make Its Newly Installed and Totally Modernized Pedestrian Signals Accessible, in Violation of the ADA and Section 504

In addition to Chicago's obligation to make its pedestrian signaling program accessible by installing APS, it also has an obligation to make each new pedestrian signal accessible. 28 C.F.R. § 35.151(a)(1). The ADA's new construction requirements apply to construction after January 26, 1992. *Id.* Therefore, Chicago violated the law each time it newly constructed or fully modernized an intersection's pedestrian signals since January 27, 1992, but failed to make the signals accessible. SMF ¶¶32, 34, 53, 58.

Chicago's noncompliance is evident even when focusing on the period between 2012 (when the City published its Pedestrian Plan recognizing APS as the safety tool the City would use to provide safe access for pedestrians with vision disabilities) and 2019 (the year CDOT published its technical memorandum and announced its APS pilot program). SMF ¶¶51-54. During this period, Chicago failed to make accessible pedestrian signals at 77 of the 78 intersections where it installed new or fully modernized signals. *Id.* ¶53. The City's failure to install APS at these 77 intersections, as well as other intersections where it newly installed or totally modernized pedestrian signals since January 27, 1992, violates Title II and Section 504. *See* 28 C.F.R. § 35.151(a) (requiring each facility or part thereof installed since January 26, 1992 to be accessible unless structural impracticability exists).

Accordingly, the City is and has been in violation of the specific requirement under the ADA and, by extension, Section 504, that new construction be made accessible, and this court should hold the City liable for its violation.

Conclusion

For the foregoing reasons, the court should enter summary judgment on liability in favor of the United States and against the City of Chicago, finding that Chicago is in violation of Title II of the ADA and Section 504 for its failure to provide an accessible pedestrian signal program.

Respectfully submitted,

JOHN R. LAUSCH, Jr.
United States Attorney

By: /s/ Sarah J. North
PATRICK JOHNSON
SARAH J. NORTH
Assistant United States Attorneys
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604
(312) 353-5327
(312) 353-1413
patrick.johnson2@usdoj.gov
sarah.north@usdoj.gov

AMANDA MAISELS
Deputy Chief
U.S. Department of Justice
Civil Rights Division – Disability Rights Section
950 Pennsylvania Avenue, N.W. – 4CON 9.114
Washington, D.C. 20530

MATTHEW FAIELLA
Trial Attorney, Civil Rights Division –
Disability Rights Section
(202) 305-6829
matthew.faiella@usdoj.gov