When You Cannot “Look Both Ways”: Accessible Pedestrian Signals and the ADA

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WHEN YOU CANNOT “LOOK BOTH WAYS”:
ACCESSIBLE PEDESTRIAN SIGNALS AND THE
ADA

Becky Egan*

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INTRODUCTION

“Every day I cross New York City streets and I am scared I will be killed because there are not enough [Accessible Pedestrian Signals]. Without fail, at least once a day, I almost get hit by a vehicle because of the lack of APS telling me where and when it is safe to cross.”

These are the words of Christina Curry, one of the named plaintiffs in *American Council of the Blind of New York, Inc. v. City of New York.* Ms. Curry, who is legally blind and has severe hearing loss as well as a mobility disability, has some remaining usable vision. However, she cannot see traffic in street crossings unless it is very close to her and therefore cannot rely on visual street signals to help her cross a street. She lives in the Bronx, works in Harlem, and uses New York City sidewalks just like any sighted pedestrian: to commute to work, run errands, visit doctors, and meet friends all over the city.

In addition to fearing for her life when she crosses an intersection, Ms. Curry faces inconvenience, frustration, and humiliation as a blind person attempting to navigate the pedestrian grid in New York City. Before traveling, she maps out how to get to a specific location by taking the least dangerous path, even if it means taking a longer route. She tries to cross an intersection only in packs of people, often waiting as long as 20 minutes for others to show up so she can cross with them. She sometimes crosses streets

1. Accessible pedestrian signals are hereinafter abbreviated as “APS.” See infra Part I.
4. See *Curry Declaration ECF 96, supra* note 2, at 1.
5. See *Curry Declaration ECF 96, supra* note 2, at 1.
7. See *id.* at 5.
8. See *Curry Declaration ECF 96, supra* note 2, at 2.
9. See *Curry Declaration ECF 75, supra* note 6, at 4.
by using subway stations instead of the crosswalk, walking downstairs and underground to the other side of the street, which takes more time, energy, and money.\textsuperscript{10} She even uses taxis and car services to avoid walking where she feels unsafe.\textsuperscript{11}

Ms. Curry is not alone in her struggles. Seven million people living in the United States have some degree of vision loss and an additional one million are blind;\textsuperscript{12} an estimated 43 million people worldwide live with blindness.\textsuperscript{13} Vision is not binary — in that one is sighted or is not sighted — but rather exists on a spectrum, and blindness also exists on a spectrum.\textsuperscript{14} While there are differing types of challenges that visually impaired people face, depending on how much usable vision they possess, if any, visually impaired people are capable of independently navigating their environments.\textsuperscript{15} To do this, they use white canes,\textsuperscript{16} guide dogs,\textsuperscript{17} and sighted guides.\textsuperscript{18}

\begin{itemize}
\item \textsuperscript{10} See Curry Declaration ECF 75, supra note 6, at 4.
\item \textsuperscript{11} See Curry Declaration ECF 75, supra note 6, at 4.
\item \textsuperscript{13} See Blindness, CLEVELAND CLINIC (Nov. 14, 2022), https://my.clevelandclinic.org/health/diseases/24446-blindness [https://perma.cc/82WE-XMWD].
\item \textsuperscript{14} See What Blindness Really Looks Like, PERKINS SCH. FOR THE BLIND, https://www.perkins.org/what-blindness-really-looks-like/ [https://perma.cc/4WR3-X83E] (last visited Feb. 28, 2024); see also infra Section I.A.
\item \textsuperscript{16} See 10 Fascinating Facts about the White Cane, PERKINS SCH. FOR THE BLIND, https://www.perkins.org/10-fascinating-facts-about-the-white-cane [https://perma.cc/MR5L-RV7E]. An estimated 2–8% of the blind population uses a white cane. White canes also act as a visual signifier to sighted people that the cane user is blind or low vision. See id.
\end{itemize}
Street intersections pose a particularly difficult challenge for those with low or no vision. Signaled intersections provide visual information about crossing safety in the form of green lights and walk signals. Low vision pedestrians rely heavily on their audio cues to know when it is safe to cross. For example, they listen for oncoming traffic as well as traffic running parallel to where they are standing, and they listen for other pedestrians and cross with them (as Ms. Curry does).

However, there is a solution to the problems in crossing intersections that Ms. Curry and other visually impaired people face daily: APS. This solution helps blind and low vision pedestrians safely cross intersections, both quickly and with complete independence.

APS are devices that communicate information about pedestrian timing in nonvisual formats such as audible tones, verbal messages, and vibrating surfaces. According to Ms. Curry:

APS have a vibro-tactile surface that I can press that vibrates when it is safe to cross, and its arrow points to the crosswalk so I know exactly where to cross. Because I cannot see visual pedestrian signals, APS help me orient myself to the crosswalk and know when it is safe to cross the street.

Research shows that Ms. Curry’s experience is typical of the success blind users have with APS. These devices allow users to be significantly more accurate in their judgment of when the walk signal begins, reduce the number of crossings blind pedestrians begin during the “Don’t walk” phase of the cycle, reduce delay in blind pedestrians’ crossings, and result in significantly more crossings completed before the signal changes (i.e., increased safety in crossings).

While APS have been available for decades, and the City of New York installed its first in 1957, they are still not widely used at intersections. Plaintiffs have brought suits alleging that cities are violating the Americans with Disabilities Act (ADA) by failing to provide APS. Title II of the ADA

20. See id.
21. See id.
22. See Curry Declaration ECF 75, supra note 6, at 4.
23. See Harkey et al., supra note 18, at 1–2.
24. See Harkey et al., supra note 18, at 1–2.
25. Curry Declaration ECF 75, supra note 6, at 3–4.
requires public entities, including local governments, to allow people with disabilities to benefit from all of their programs, services, and activities. There has been debate about what constitutes a program or service of a public entity, including whether sidewalks qualify as a program or service of a city.

However, two recent cases brought by the American Council of the Blind against the cities of New York and Chicago have found that the cities have violated the ADA by not installing APS at signalized intersections. The New York case is currently in remediation and provides a useful model for other cities, including Chicago, which is still in the process of agreeing to a remedial plan. The Southern District of New York held that it needed to remain involved to make sure that New York City’s plan for installing APS at intersections was ambitious enough to be meaningful. As Ms. Curry noted, her “goal in this case is to improve the safety of New York City’s intersections for blind and deafblind people through the installation of APS.” APS can improve the safety of all intersections across the country for blind and low vision people.

This Note explores the way that courts can and should intervene to address Title II ADA violations by cities for lack of APS at intersections and to give meaningful access to the pedestrian grid to blind and low vision individuals. Part I will provide an overview of the landscape surrounding independent

33. See infra Part II.
39. Curry Declaration ECF 96, supra note 2, at 3.
navigation for blind individuals, including the use of APS, as well as an overview of disability rights laws including Title II of the ADA. Part II will examine how the ADA is applied in cases like the two American Council of Blind cases mentioned above, in a variety of settings, with specific reference to remediation. It will then examine the two cases in question and the approaches courts have taken to remediate the ADA violations. Part III will argue that the model that the District Court put into place, with monitoring by the court, is useful for future suits. While litigation is cumbersome, the courts exist to provide remedies like these and will play a vital role in providing meaningful access to the pedestrian grids for blind and low vision individuals. Similarly, city planners in other jurisdictions can look to the findings in these cases to understand their liability in terms of compliance with Title II of the ADA. Finally, there is an opportunity for the low vision community to collaborate with the Vision Zero movement. The goal of the Vision Zero movement, discussed further in Part III, is to eliminate traffic fatalities, and installing APS at intersections would certainly further this goal.

I. UNDERSTANDING INDEPENDENT NAVIGATION BY BLIND INDIVIDUALS

Part I of this Note gives an overview of the landscape of independent navigation by blind individuals. Section I.A provides a primer on blindness, accommodations for individuals with low vision, and APS as a solution for independent navigation for blind and low vision pedestrians. Section I.B discusses blindness as a legally protected disability under the ADA and other regulations, with a particular focus on Title II.

A. Blindness Defined

As discussed in the Introduction, blindness is not a binary in which either one can see, or one cannot see. There are many facets of human

40. See infra Part I.
41. See infra Part II.
42. See infra Sections II.D.1–2.
43. See infra Part III.
44. See infra Section I.A.
45. See infra Section I.B.
46. See supra Introduction.
47. See PERKINS SCH. FOR THE BLIND, supra note 14.
vision. The facet with which most people are familiar is visual acuity, which is measured by a standard eye chart. The most commonly used chart, the Snellen chart, has 11 rows of capital letters, with the top line being the large capital “E” and representing 20/200 vision. The lower lines on the chart represent progressively greater visual acuity, going beyond 20/20 to 20/15 or even 20/10. While visual acuity is one facet of vision, it is primarily concerned with clarity of central vision and the ability to take in information at a distance. Another important facet of vision is the visual field, which encompasses peripheral vision. This is measured not through an eye chart, but by having a patient look straight ahead while attempting to see items at the outer edges of their visual field. Finally, vision consists of

49. See id.
51. See id. 20/200 visual acuity means that a person can read clearly at 20 feet what a typically sighted person can read at 200 feet. See Low Vision and Legal Blindness Terms and Descriptions, supra note 48.
52. See Vimont, supra note 50.
53. See Vimont, supra note 50; Low Vision and Legal Blindness Terms and Descriptions, supra note 48.
55. See id. For context, it may be useful to note that this source explains that clinicians should test each eye individually in four steps:

(1) Ask the patient to look at your nose and count fingers held briefly in the area of central fixation. (2) Move and flash your fingers in each of the four quadrants of vision, simultaneously encouraging the patient to maintain fixation on your nose. It is best to flash only one, two, or all five fingers because three and four fingers are difficult to distinguish. (3) To depict double simultaneous sensory stimulation, hold your hands about 18 inches (45 cm) apart and flash fingers simultaneously in the nasal and temporal hemifields. Again, the patient must maintain fixation. A number of permutations should be tried. For instance, with the patient’s right eye fixing, raise one finger with your left hand and two fingers with your right hand; then hold up two fingers with your left hand and one on the right. If the patient first sees only one finger and then in the second part of the test sees only the hand with two fingers, you may suspect a nasal field defect of the right eye. (4) Hold both hands in the hemifield under suspicion (in this case, the nasal field of the right eye) and flash the fingers above and below the horizontal meridian, thereby testing the upper and lower portions of the affected field of vision.
the ability to see in full light as well as low light; some blind people have trouble with night blindness, or the inability to see in low light.\textsuperscript{56}

While legal blindness\textsuperscript{57} is somewhat narrowly defined as best corrected vision of 20/200,\textsuperscript{58} or a visual field of 20 degrees or less,\textsuperscript{59} each of these distinct facets of vision can give rise to distinct difficulties. Therefore, blindness exists on a spectrum, and it is more than just visual acuity that determines one’s functional ability.\textsuperscript{60} The National Federation of the Blind\textsuperscript{61} takes the view that anyone whose “sight is bad enough — even with corrective lenses — that they must use alternative methods to engage in any activity that people with normal vision would do using their eyes” should consider themselves as blind.\textsuperscript{62} Because there are no generally accepted definitions for “visually impaired,” “low vision,” or “vision loss,” anyone who uses those labels likely needs alternative methods to engage in any activity sighted people do with their eyes.\textsuperscript{63} For a pedestrian with difficulties in any of the abovementioned facets of vision, independent navigation can be difficult.\textsuperscript{64}

Blind or low vision individuals use a variety of tools, however, to navigate the physical (and nonphysical) world and can do so independently.\textsuperscript{65} These

\textsuperscript{56} See Night Blindness (Nyctalopia), CLEV. CLINIC (Dec. 19, 2023), https://my.clevelandclinic.org/health/symptoms/10118-night-blindness-nyctalopia [https://perma.cc/F38S-QGY2].


\textsuperscript{58} See id. 20/200 visual acuity means being able to see only the large “E” at the top of the standard eye chart; seeing at 20 feet what a typically sighted person can see at 200 feet; “best corrected vision” means best visual acuity that one can achieve with the help of glasses or contact lenses. See Low Vision and Legal Blindness Terms and Descriptions, supra note 48.

\textsuperscript{59} See Spector, supra note 54. The monocular visual field consists of central vision, which includes the inner 30 degrees of vision and central fixation, and the peripheral visual field, which extends 100 degrees laterally, 60 degrees medially, 60 degrees upward, and 75 degrees downward. Id.

\textsuperscript{60} See K.V. & Vijayalakshmi, supra note 15.

\textsuperscript{61} In the United States, there are several blindness advocacy groups: National Federation of the Blind, American Foundation for the Blind, and American Council of the Blind. All provide services and advocacy and take part in lawsuits. See generally FLOYD MATSON, WALKING ALONE AND MARCHING TOGETHER: A HISTORY OF THE ORGANIZED BLIND MOVEMENT IN THE UNITED STATES, 1940–1990; FRANCES A. KOESTLER, THE UNSEEN MINORITY (2004).


\textsuperscript{63} See id.

\textsuperscript{64} For a visual depiction of what low vision might look like, see Harkey et al., supra note 18, at 4–5.

\textsuperscript{65} See Harkey et al., supra note 18, at 2–8; see also supra note 23 and accompanying text.
include smartphone apps, such as speech to text and screen readers, audio description for audiovisual content, as well as canes and guide dogs. Unable to see well, perfectly, or even at all, individuals can use these mobility aids to navigate around obstacles in their way. This Note specifically addresses crossing intersections, which is only one part of independent navigation of a pedestrian grid.

APS are devices installed at intersections that communicate information about the crossing cycle in a non-visual format. This information includes: the existence and location of the pushbutton that activates the “Walk” signal feature, the beginning of the walk interval, the direction of the crosswalk and the location of the curb, intersection street names in braille or speech messages, intersection signalization with a speech message, and intersection geometry through speech messages and tactile maps. APS devices include numerous features: pushbutton locator tones (repeating sound that tells approaching pedestrians that they need to push a button to start the timing), audible walk indications (can be rapid ticks or speech walk indications), vibrotactile walk indications (which keeps from interfering with individuals’ use of audio signals to determine when it is safe to cross), and tactile arrows (so individuals can find the direction of the crosswalk). Additionally, research by the National Institute of Health and a myriad other groups has

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69. For a sampling of Braille education resources, see *HADLEY, supra note 66*.


71. See *supra* notes 16–18 and accompanying text.

72. See *supra* Introduction.

73. See Harkey et al., *supra note 18*, at 2–8.

74. See Harkey et al., *supra note 18*, at 2–8.

shown that APS improve crossing performance by blind pedestrians by allowing for safer, more efficient crossings.\textsuperscript{76}

The use of APS varies by city and locality in the United States. The situation is bleak in two of the nation’s largest cities. In New York City, the first APS were installed in 1957, but only about a dozen were in place throughout the city by 2003.\textsuperscript{77} As of September 10, 2019, only 443 out of roughly 13,200 signalized intersections had APS in all of New York City,\textsuperscript{78} meaning roughly 97% of the city’s signalized intersections lacked this feature. In Chicago, fewer than 30 of the city’s 2,800 signalized intersections have APS,\textsuperscript{79} meaning close to 99% of the city’s signalized intersections lack APS.

\section*{B. Blindness as a Legally Protected Disability}

Blindness is a legal disability.\textsuperscript{80} It is defined by the Social Security Administration for purposes of receiving supplemental income benefits,\textsuperscript{81} but more than that, blindness is a disability that is protected under myriad statutes, including the Americans with Disabilities Act and the accompanying Americans with Disabilities Act Accessibility Guidelines, the Rehabilitation Act of 1973, and state and local statutes. Section I.B.1 will discuss the ADA. Section I.B.2. discusses the regulatory guidelines that the Department of Justice has promulgated for the ADA. Section I.B.3 looks at the Rehabilitation Act of 1973. Finally, Section I.B.4 examines the various state and local statutes that protect blind individuals.

\subsection*{1. The Americans with Disabilities Act}

The most prominent of these statutes is the ADA.\textsuperscript{82} Passed in 1990, this statute serves to protect the rights of individuals with disabilities by ensuring their access to employment opportunities, public services, and public accommodations.\textsuperscript{83} Of this Act, the Supreme Court has written:

\begin{flushright}
\textit{\ldots}
\end{flushright}

\textsuperscript{76} See id.
\textsuperscript{78} See id. at 233.
\textsuperscript{80} See Soc. Sec. Admin., supra note 57.
\textsuperscript{81} While the Social Security Administration measures legal blindness in narrow terms relating to visual acuity and visual field, other agencies have begun to look at more than visual acuity as a marker of visual impairment (and visual improvement). See generally U.S. Dept. of Health & Hum. Servs. et al., Multiple Endpoints in Clinical Trials Guidance for Industry (2017).
\textsuperscript{82} See 42 U.S.C. § 12101.
\textsuperscript{83} See id.
“Discrimination against the [disabled] was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference — of benign neglect.”84 It is precisely this benign neglect that animates the ADA’s three component parts. Indeed, Congress’s Findings in the preamble of the Act itself are telling:

[Physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination[. . .] [This discrimination] persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services[. . .] [T]he continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.85

Separated into three titles, the ADA covers employment discrimination in Title I,86 public services (including state and local government services) in Title II,87 and public accommodations operated by private entities in Title III.88 APS installed at city intersections qualify under Title II as public services.89

Title II of the ADA is very broad in its scope, notably much broader than Titles I and III.90 Congress saw it largely as a duplication of Section 504 of the Rehabilitation Act, and thus it is more textually sparse than Titles I and III.91 The Rehabilitation Act prohibited any federal contractor from engaging in discrimination in any program or activity receiving federal funding.92 Professor Cheryl Anderson argues that Congress “saw Title II [of the ADA] as applying § 504 standards to all public entities, regardless of whether their services, programs, or activities are supported by federal

85. 42 U.S.C. §§ 12101(a)(1), (3), (8).
88. See 42 U.S.C. §§ 12181–89. Notably, the Supreme Court recently heard but vacated a case on the standing of so-called “ADA testers,” or individuals with disabilities that attempt to, for example, book accommodations at hotels that they may not themselves wish to visit, in order to bring challenges under the ADA for inaccessibility issues. See generally Acheson Hotels, LLC v. Laufer, 601 U.S. 1 (2023).
89. See infra Part II.
90. See Anderson, supra note 31, at 641.
92. See Anderson, supra note 31, at 641.
Federal regulations set out more specifics about how this applies to state and local government services, including “path[s] of travel” and sidewalks as it relates to government facilities.

The ADA contemplates citizen-enforcement. Petitioners can bring about enforcement actions in three ways: they can file a complaint per grievance policy of the public entity; they can file a complaint with the Department of Justice; or they can file a lawsuit directly against the noncompliant public entity. When petitioners do bring a lawsuit, they often sue under multiple statutes at once, as seen in Part II’s examination of the American Council of the Blind cases.

2. Americans with Disabilities Act Accessibility Guidelines (ADAAG)

The Department of Justice promulgates regulations called the Americans with Disabilities Act Accessibility Guidelines (ADAAG). These regulations, coupled with the standards for new construction and alteration, are called the 2010 ADA Standards for Accessible Design (“2010 Standards”). These standards set minimum requirements for newly designed and constructed or altered state and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities.

3. The Rehabilitation Act of 1973

Older than the ADA, the Rehabilitation Act of 1973 also seeks to protect those with disabilities. As in the preamble to the ADA, the

94. See supra notes 85–88.
95. C.F.R. § 35.151(b)(4).
98. See 36 C.F.R. §§ 1191 et seq.
101. Id. at Title II-3; see infra Section II.A.
102. 29 U.S.C. §§ 701 et seq.
103. This legislation, which has roots in post-World War I legislation, was updated in a time when disability rights was coming into its own. See generally Bianca G. Chamusco, Revitalizing the Law That Preceded the Movement: Associational Discrimination and the Rehabilitation Act of 1973, 84 U. CHI. L. REV. 1285 (2017). This was also a time when the
findings of Congress in the preamble to the Rehabilitation Act are also
telling: “[D]isability is a natural part of the human experience and in no way
diminishes the right of individuals to . . . live independently; enjoy self-
determination; make choices; contribute to society; pursue meaningful
careers; and enjoy full inclusion and integration in the economic, political,
social, cultural, and educational mainstream of American society[.]”104 The
Rehabilitation Act and the ADA have many similarities, and plaintiffs can
bring claims under both acts.105

4. State and Local Statutes

Transportation is a highly local endeavor, and cities and municipalities
play a large part in keeping the pedestrian grid accessible. In addition to
bringing claims under federal law, plaintiffs can bring claims under local
law.

New York City has adopted the New York City Human Rights Law
(NYCHRL).106 Section 8-107 of the NYCHRL details “unlawful
discriminatory practices” in employment107 and public accommodations,108
among other things. Disability is a protected status under this law.109
Similarly, Chicago enacted the Chicago Human Rights Ordinance,110 which
prohibits discrimination in employment, public accommodations, credit
transactions, and bonding. In Chicago, as in New York City, disability is a
protected status.111

Additionally, both Chicago and New York City enacted rules in their
administrative codes governing each city’s operations regarding its physical
space. In New York City, “Pedestrian Rights and Safety”112 lays out a
“master plan” for the city streets. In Chicago, the “Transportation Planning

105. See generally Nora Q. E. Passamaneck, Diverging Paths from A Shared Origin:
Defining ‘Disability’ Under 151b and the Americans with Disabilities Act in Dahill and
Sutton, 82 B.U. L. REV. 1263 (2002); Chris Glauser, Rehabilitation Act and ADA
Discrimination Claims–Two Birds You Can’t Always Kill With One Stone, 26 UTAH B.J. 1
(Jan./Feb. 2013).
107. N.Y.C. ADMIN. CODE § 8-107(1).
110. CHI. MUN. CODE §§ 6-10-010 et seq.
111. CHI. MUN. CODE § 2-120-480.
112. N.Y.C. ADMIN. CODE § 19-199.
Requirements” requires a plan for keeping the streets pedestrian friendly for pedestrians of all abilities, including, of course, blind and low vision individuals.

II. Title II of the ADA and the American Council of the Blind Cases

Part II of this Note reviews violations of Title II of the ADA in general, with specific reference to the two recent cases brought by the American Council of the Blind. Section II.A begins by reviewing cases that address violations of Title II and define liability with reference to the ADAAG standards. Section II.B drills down into cases involving sidewalks, which are a necessary part of the pedestrian grid and are needed for installation of APS. Section II.C looks at cases in which petitioners sought equitable relief or monitoring by the court. Finally, Section II.D reviews in detail the two cases brought by the American Council of the Blind regarding installation of APS.

A. ADAAG as One Key to Violations of Title II of the ADA

Courts often look to the ADAAG as a key to finding violations of Title II of the ADA. In Kirola v. City & County of San Francisco, decided in 2021, plaintiff Kirola, a disabled individual living in San Francisco, sued the City and County of San Francisco under Title II of the ADA. She alleged that the defendants had failed to eliminate barriers to access at the City’s libraries, swimming pools, parks, and public right-of-way, or its network of pedestrian walkways. The Northern District of California noted that the plaintiff in an ADA case “bears the burden of showing a violation of [the ADAAG].” In the case at hand, which came on remand from an appeal to the Ninth Circuit, the Northern District of California examined each of Ms. Kirola’s complaints regarding San Francisco’s compliance with the ADAAG, down to minute details. For example, the court held that the City

113. CHI. MUN. CODE § 10-14-010.
114. See infra Section II.A.
115. See infra Section II.B.
116. See infra Section II.C.
117. See infra Section II.D.
118. See infra Section I.B.1.
120. See id. at *3.
121. See id.
122. See id. at *7 (quoting Doran v. 7-Eleven, Inc., 524 F.3d 1034, 1048 (9th Cir. 2008)).
had failed to follow the ADAAG in its first lower level women’s restroom in the city’s Main Library, as the ADAAG specifies that in restrooms of six or more stalls, ambulatory accessible stalls are required.\textsuperscript{124} Similarly, the court found that the City violated the ADAAG in terms of knee space under the lavatory, as the ADAAG requires a minimum knee clearance of eight inches,\textsuperscript{125} but the restroom in the Main Library did not meet this standard.\textsuperscript{126}

Similarly, district courts in New York have also held that the ADAAG provisions are instrumental in finding an ADA violation. In \textit{Feltenstein v. City of New Rochelle},\textsuperscript{127} plaintiff Feltenstein, who used a wheelchair due to her physical disability, brought suit against the City of New Rochelle as the owner and operator of a parking garage because they placed all the handicap spaces in the garage on the lower level, and most attractions are on the first level.\textsuperscript{128} The Southern District of New York looked to Section 4.6.2 of the ADAAG for the standard of placement of accessible parking spaces in a parking facility.\textsuperscript{129} Because the “ADAAG establishes the technical standards required for ‘full and equal enjoyment,’”\textsuperscript{130} the court reasoned, a barrier violating those standards impairs the plaintiff’s full and equal access, which is discrimination under the ADA.\textsuperscript{131} In \textit{Shariff v. Beach 90th St. Realty Corporation},\textsuperscript{132} the court also looked to the ADAAG to determine whether a barrier to access existed.\textsuperscript{133} In that case, plaintiff Shariff, who used a wheelchair, alleged violations of the ADA at a restaurant.\textsuperscript{134} The Eastern District of New York found that the ADAAG requires at least one accessible route from the sidewalk to the entrance of a facility, and because that was not met, the facility was in violation of the ADAAG and thus liable under the ADA.\textsuperscript{135}

Courts have further held that plaintiffs not only bear the burden of proving violations of the ADAAG, but they must also point to specific ADAAG provisions when alleging violations.\textsuperscript{136} The Eastern District of Michigan

\textsuperscript{124} See 2021 WL 1334153 at *62. ADAAG sections 4.22.4 and 4.23.4 provide these rules.

\textsuperscript{125} See ADAAG § 4.19.2.

\textsuperscript{126} 2021 WL 1334153, at *61–62.

\textsuperscript{127} 254 F. Supp. 3d 647 (S.D.N.Y. 2017).

\textsuperscript{128} See id. at 650–51.

\textsuperscript{129} See id. at 654.

\textsuperscript{130} Id. at 655.

\textsuperscript{131} Id.


\textsuperscript{133} See id. at *4.

\textsuperscript{134} While this is an action under Title III of the ADA, because it is brought against a “public accommodation,” the reasoning of the court holds true for Title III as well as for Title II.

\textsuperscript{135} 2013 WL 6835157, at *4.

noted: “[Because t]he plaintiffs have utterly failed to point out for the Court which portions of those exhibits correlate to what specific ADAAG violations that they allege[,] [t]hey have not met their burden.” 137 Indeed, the ADAAG is a technically specific standard that provides very detailed guidance for potential defendants.138

Courts are also clear, however, that the provisions of the ADAAG are not always dispositive.139 In Brown v. County of Nassau, Plaintiff Brown brought an action against Nassau County, New York, for violations of Title II of the ADA.140 Mr. Brown used a wheelchair to navigate and encountered multiple problems while attending New York Islander games at the Nassau Coliseum,141 which is owned by Nassau County.142 His ADA expert found over 100 alleged violations of the ADAAG,143 but the County argued that violations of the ADAAG, while representing a barrier to accessibility, are not enough for a prima facie showing of a Title II violation.144 However, the Eastern District of New York held that “the standards may be properly considered as non-dispositive guidance in determining whether the plaintiff’s evidence, as a whole, demonstrates that an existing facility is readily accessible and usable by individuals with disabilities.”145 Thus, violations of the ADAAG are useful but not sufficient to find liability.

B. Sidewalk Accessibility Cases

APS, placed at intersections for ease of crossing sidewalks, are a part of the larger pedestrian grid.146 Courts have, for the most part, held that sidewalks, crossings, and the pedestrian grid in general are “services, programs, or activities of a public entity” within the meaning of Title II of the ADA.147

137. Id.
140. See id. at 603.
141. Id.
142. Id. at 604.
143. Id. at 616.
144. See id. at 616–17.
145. Id. at 618.
147. 28 C.F.R. § 35.130.
The Fifth Circuit held in *Frame v. City of Arlington*\textsuperscript{148} that because the ADA does not define the “services, programs, or activities of a public entity,” courts should look to the text of the Rehabilitation Act\textsuperscript{149} for guidance, since these two statutes are interpreted \textit{in pari materia}\textsuperscript{150}. Because the Rehabilitation Act defines a “‘program or activity’ as ‘all of the operations of . . . a local government,’” it follows that the job of the court is to determine, in this case, if newly built and altered city sidewalks are benefits and services of a public entity.\textsuperscript{151} The *Frame* court held that “[b]uilding and altering city sidewalks unambiguously are ‘services’ of a public entity under any reasonable understanding of that term.”\textsuperscript{152} After using tools of statutory interpretation to determine what “services” might mean, including references to Supreme Court holdings,\textsuperscript{153} Webster’s Dictionary,\textsuperscript{154} and Black’s Law Dictionary,\textsuperscript{155} the court held that building and altering public sidewalks are services, programs, or activities of a public entity.\textsuperscript{156} “When a city decides to build or alter a sidewalk and makes that sidewalk inaccessible to individuals with disabilities without adequate justification,” the court held, then “disabled individuals are denied the benefits of that city’s services, programs, or activities.”\textsuperscript{157} Here, the court found that sidewalks are an integral part of the city’s services.

Further, the *Frame* court noted that the Supreme Court in *Pennsylvania Department of Corrections v. Yeskey*\textsuperscript{158} had previously interpreted Title II according to its text’s plain and ordinary meaning, holding that Title II “unambiguously” permitted a prisoner to sue a state prison,\textsuperscript{159} because:

> prisons provide inmates with recreational ‘activities,’ medical ‘services,’ and vocations ‘programs,’ all of which at least theoretically ‘benefit’ the prisoners. The Supreme Court noted that ‘in the context of an unambiguous statutory text,’ it is ‘irrelevant’ whether Congress specifically envisioned

\textsuperscript{148} 657 F.3d 215 (5th Cir. 2011).
\textsuperscript{149} 29 U.S.C. §§ 701 et seq.
\textsuperscript{150} 657 F.3d at 225. “\textit{In pari materia} means dealing with the same subject matter. \textit{In Pari Materia}, BLACK’S LAW DICTIONARY (11th ed. 2019).
\textsuperscript{151} *Frame*, 657 F.3d at 225.
\textsuperscript{152} Id. at 226.
\textsuperscript{153} Id. (quoting Holder v. Humanitarian L. Project, 130 S. Ct. 2705, 2721–22 (2010)).
\textsuperscript{154} Id. (quoting \textit{WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY} 2075 (1993) (‘\textit{defin[ing]} a ‘service’ as ‘the provision, organization, or apparatus for . . . meeting a general demand’’)).
\textsuperscript{155} Id. (quoting BLACK’S LAW DICTIONARY 1352 (9th ed. 2009) (‘\textit{defin[ing]} a ‘public service’ as work ‘provided or facilitat[ion] by the government for the general public’s convenience and benefit’’)).
\textsuperscript{156} See id. at 227.
\textsuperscript{157} Id.
\textsuperscript{159} *Frame*, 657 F.3d at 227.
that the ADA would benefit state prisoners. That a statute may be ‘applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. *It demonstrates breadth.*'160

Similarly, the Ninth Circuit held that city sidewalks are a service, program, or activity of a city under the auspices of Title II in *Barden v. City of Sacramento.*161 Here, plaintiffs with vision and mobility disabilities brought suit against Sacramento for “failing to install curb ramps in newly-constructed or altered sidewalks and by failing to maintain existing sidewalks” to ensure access for those with disabilities.162 The Eastern District of California had found that sidewalks are not a service, program, or activity of the city,163 but the Ninth Circuit disagreed, holding that, “[i]n keeping with our precedent, maintaining public sidewalks is a normal function of a city and ‘without a doubt something that the City ‘does.’”164 Maintaining their accessibility for individuals with disabilities therefore falls within the scope of Title II.”164 The Ninth Circuit drew on precedent that found that the language of the ADA is wide-reaching enough to encompass all activities of a public entity; trying to determine which public functions are and which are not programs, services, or activities is not the goal.165 Rather, the inquiry should focus on whether the public function in question is a “normal function of a governmental entity.”166 Sidewalk maintenance, the court determined, is one such normal function.167

The Northern District of Indiana in *Culvahouse v. City of LaPorte*168 relied on the legislative history of the ADA, among other evidence, to determine that sidewalks are part of what a public entity is responsible for.169

The court agrees [with most courts] that the ADA is to be construed broadly, and while the statute may not mandate that the phrase ‘services, programs, or activities’ encompass, without exception, all things that a public entity does, the ADA is broad enough to include public sidewalks within the scope of a city’s services, programs, or activities.170

The court noted that “Congress envisioned that the ADA would require that local and state governments maintain disability-accessible sidewalks”171

160. *Id.* (emphasis added).
161. 292 F.3d 1073 (9th Cir. 2002).
162. *Id.* at 1075.
163. *See id.*
164. *Id.* at 1076 (internal citations omitted).
165. *See id.*
166. *Id.* (internal citations omitted).
167. *See id.*
169. *See id.* at 939.
170. *Id.*
because “[t]he employment, transportation, and public accommodation sections of this Act would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets.”

Finally, these issues continue to be litigated. Disability Rights New York (DRNY), the Protection and Advocacy System for the State of New York, brought a claim in June 2022 against the City of New York for failing to maintain city sidewalks in the Mount Eden neighborhood of the Bronx. In relevant part, DRNY and the plaintiffs alleged:

Pedestrian pathways in the East Mount Eden neighborhood are frequently inaccessible due to parked vehicles that block curb cuts and intersections, and barriers along the sidewalks such as trash cans, debris, cracks in the pavement, level changes greater than a quarter of an inch, potholes, narrow pathways, and other issues. Plaintiffs regularly encounter ambulances and other emergency vehicles parked on the sidewalk, vehicles parked in intersections, vehicles blocking curb cuts, and objects such as garbage cans, blocking pedestrian pathways . . . . The sidewalks, crosswalks, and curb cuts in the East Mount Eden neighborhood are damaged and in disrepair. Significant level changes, cracked and jagged sidewalks, and inadequately sloped curb cuts all present an obstacle and a hazard to the Named Plaintiffs and others with mobility or vision disabilities. All of these barriers prevent Plaintiffs and other similarly-situated individuals from using the pedestrian pathways in the East Mount Eden neighborhood and keep them from fully participating in the community.

This case is currently in litigation after surviving defendants’ motion for judgment on the pleadings.

172. Id.
173. See Lugo v. City of Troy, N.Y., No. 1:19-cv-67, 2022 WL 15442205 (N.D.N.Y. Oct. 27, 2022). The court in this case, another sidewalk case, granted the City of Troy’s motion to dismiss for lack of subject matter jurisdiction because the Plaintiffs did not have standing to bring the suit. The City of Troy had remedied the conditions giving rise to specific injuries the Plaintiffs suffered. This case is currently being appealed. See id.
175. See generally Class Action Complaint and Demand for Jury Trial, Disability Rights N.Y. et al. v. City of New York et al. (S.D.N.Y. June 1, 2022) (No. 1:22-CV-04493), ECF No. 1.
176. Id. at 8–10.
Because courts have held that sidewalks are part of the programs, services, and activities of a city per Title II of the ADA, then it follows that APS, a vital part of the pedestrian grid, are also covered under Title II. 178

C. Injunctive Relief and Court Monitoring

This Section examines equitable relief in disability-rights cases, including specific injunctive relief and court monitoring, both of which were sought by plaintiffs in the American Council of the Blind cases.

1. Injunctive Relief

According to the Supreme Court, “injunctive relief is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” 179 However, once that clear showing is present, federal courts have the power to award any appropriate relief, absent any clear direction to the contrary by Congress, in a cause of action brought pursuant to a federal statute. 180 Further, “[i]f local authorities ‘fail in their affirmative obligations’ under federal law, ‘the scope of a district court’s equitable powers . . . is broad, for breadth and flexibility are inherent in equitable remedies.’” 181 However, the extent of the violation dictates the proper scope of the injunctive relief that the court will provide. 182

In some cases, a court may find liability for violating Title II of the ADA while at the same time finding that the injunctive relief granted at the trial court level is too broad. 183 In other cases, however, where the factual findings and evidence clearly support violations of the ADA, courts may determine that injunctive relief of a more sweeping nature is appropriate. 184

Class certification is a consideration with injunctive relief for violations of the ADA, because typically the alleged violations infringe upon the rights of more than just the named plaintiffs. In Westchester Independent Living Center, Inc. v. State University of New York, Purchase, 185 the Southern

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178. See infra Section II.D.
181. Id. (quoting Swann v. Charlotte–Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971)).
183. See, e.g., Armstrong v. Schwarzenegger, 622 F.3d 1058 (9th Cir. 2010) (reversing the trial court’s system-wide injunction and remanding for more focused injunctive relief).
184. Henrietta D. v. Bloomberg, 331 F.3d 261, 290 (2d Cir. 2003) (holding that the evidence presented at trial gave ample support for declaratory and injunctive relief, noting that the district court has “broad discretion to enjoin possible future violations of law where past violations have been shown” (internal citations and quotations omitted)).
District of New York certified a class of plaintiffs against SUNY Purchase. Plaintiffs alleged that the University had systematically failed to provide accessible rights-of-way for students and visitors with mobility disabilities because of problems with the pedestrian grid. 186 Three individually named plaintiffs, along with the Westchester Independent Living Center, Inc., a community-based organization, sought certification for a class consisting of all students and visitors with mobility disabilities who have been and will be denied meaningful access to the activities at SUNY Purchase. 187

The court, in its opinion granting certification, laid out the factors to determine if class certification is appropriate including numerosity, 188 commonality, 189 typicality, 190 adequacy, 191 and ascertainability. 192 Having determined that the class certification was appropriate, the court then accepted the parties’ proposed class settlement. 193 This settlement, which was granted final approval on January 11, 2022, 194 lists the following obligations of SUNY Purchase: SUNY Purchase will complete work on 64 discrete projects regarding rights-of-way at specific locations on campus; 195 it will continue to employ an ADA Compliance Officer for the duration of the Settlement Term (which lasted through September 2022); 196 and it will provide training to all staff on its ADA policies. 197 This case shows the power of a court to provide specific injunctive relief.

2. Court Monitoring

In addition to injunctive relief, including detailed remediation agreements like the agreement in Westchester Independent Living Center, 198 a court can take a more active role in monitoring the implementation of injunctive relief. Professor Veronica Root examines “Modern-Day Monitorships” and defines a court-appointed monitor as “an independent, private outsider, employed

186. Id. at 285–86.
187. Id.
188. FED. R. CIV. P. 23(a)(1).
189. FED. R. CIV. P. 23(a)(2).
190. FED. R. CIV. P. 23(a)(3).
191. FED. R. CIV. P. 23(a)(4).
194. See id.
196. Id. at 4.
197. Id. at 4–5.
198. See supra Section II.C.1.
after an institution is found to have engaged in wrongdoing, who effectuates remediation of the institution’s misconduct, and provides information to outside actors about the status of the institution’s remediation efforts.”

In the context of ADA violations, she details an “Enforcement Monitorship” that oversaw the State of Georgia’s compliance with a settlement agreement arising out of violations of Title II of the ADA. In 2007, Root’s investigative journalism shed light on horrific conditions at state-run psychiatric hospitals, revealing that dozens of patients had died from abuse in such facilities. As a result, the Department of Justice Civil Rights Division opened an investigation and brought suit against Georgia’s mental health agency, which led to a settlement agreement in 2010. The settlement agreement required that an “Independent Reviewer” (whom Root calls a modern-day monitor) conduct the investigation and verification of data to ensure that the state was in compliance with the terms of the settlement agreement. As Root notes, the activities with which the Independent Reviewer was charged were activities that the state “could have undertaken itself, but needed an outsider to monitor because of the lack of trust stemming from its misconduct. The outsider was necessary to assure that the organization was actually committed to reforming its past conduct.”

Attorney David Ferleger, who was a special master for nine years in a lawsuit by the United States and is currently appointed independent consultant and monitor of a systemic class action for a federal court, argues that special masters have a unique role in public law litigation, specifically in disability rights. He contends that “the impetus is not individual wrongdoing but rather remedying the social condition and the governmental dynamics from which originate the violation of constitutional or statutory rights.” Because of the complex relationships between the myriad governmental agencies that provide or regulate service delivery to clients

200. Id. at 124 (“The monitor in [Enforcement Monitorships] serves as an agent of the government and ensures that the monitored organization is adhering to the government’s mandate, found in the agreement between the organization and the government.”).
201. See id. at 125.
202. See id. at 126.
203. See id.
204. See id.
205. Id.
208. Id. at 44.
with disabilities and their advocates and families, the use of special masters can help enforce judicial decrees that often require adjustment of or creation of regulations as well as decision-making regarding individuals who benefit from those decrees. This, he argues, is the realm of the independent monitor or master. He writes:

Complex systems transformation under public law judicial decrees necessitates careful planning and a judicial adjunct is often key to that effort . . . . When done well, the court can confidently end its jurisdiction, leaving a self-adjusting system in place, with sufficient feedback and flexibility to adapt to changing conditions . . . . [With a court order] in place, whether by consent or after litigation, the parties typically have a common interest in implementation . . . . Thus, unlike the prejudgment phase, at which the research shows parties prefer an adversarial procedure, a cooperative effort is possible in the implementation phase.

The Second Circuit upheld just this type of injunctive relief coupled with monitoring in Disabled in Action v. Board of Elections. Plaintiffs, individuals with mobility or vision disabilities and the nonprofit organizations that represent them, brought suit under Title II of the ADA against the Board of Elections in the City of New York (the “BOE”), The Center for Independence of the Disabled, New York (CIDNY), designated by the State of New York to train and certify poll site workers in accessibility issues, also conducts inspections of a random sample of polling places on election day, using a checklist for accessibility based on the Department of Justice’s ADA Checklist for Polling Places. From 2008 to 2011, CIDNY found that 80% or more of polling places in the state contained at least one physical barrier to access, including ramps, entryways, pathways, interior spaces, and missing or misplaced signage.

The Southern District of New York granted plaintiffs’ motion for summary judgment after discovery, holding that there was “no genuine dispute of material fact as to the existence of pervasive and recurring barriers to accessibility on election days at poll sites designated by the BOE.” The court then ordered the parties to confer to develop potential remedies and oversaw several rounds of meetings. Eventually, the Department of

209. Id. at 45.
210. Id.
211. 752 F.3d 189 (2d Cir. 2014).
212. See id. at 191.
213. Id. at 192.
214. Id.
215. See id. at 192–93.
216. Id. at 194 (quoting United Spinal Ass’n v. Bd. of Elections in N.Y., 882 F. Supp. 2d 615, 624 (S.D.N.Y. 2012)).
217. See id.
Justice submitted a proposed order for a remedial plan, modeled after a settlement agreement it had entered with the City of Philadelphia. After various hearings, the court issued a remedial plan that comported with the plan that the Department of Justice submitted, mandating that: the BOE will designate an existing poll site worker at every site as the on-site ADA Coordinator; the BOE will develop a poll-site accessibility checklist; the ADA monitors will visit each polling site twice on election day; and the BOE will work to improve poll site accessibility over the long term.

On appeal, the Second Circuit found that the BOE was liable under Title II and that the district court did not abuse its discretion by providing injunctive relief in the form of monitoring. The court noted: “As Congress did not express any intent to limit the remedies available under Title II or Section 504, equitable relief was proper for the district court to consider.” Additionally, the court found that the remedial order was properly tailored to fit the nature and extent of the violation. Plaintiffs’ evidence highlighted the BOE’s failure to properly plan to make facilities temporarily accessible, and any accommodations that the BOE suggested it would attempt have consistently fallen short. The remedial order, the court found, addresses those issues head on.

In a case very similar to the two American Council of the Blind Cases discussed below, plaintiffs, who are blind, deafblind, or severely visually impaired individuals, alleged Title II violations based on Nassau County’s failure to provide APS at intersections. While the County owned and operated 1600 signalized intersections, it had installed only ten APS units at intersections in the whole County. As a threshold matter, the court found that the installation and maintenance of APS is a service, program, or activity of the County within the meaning of

218. Per 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

219. See Disabled in Action, 752 F.3d at 194–95.

220. Id. at 195. The remedial plan is incredibly detailed, encompassing 129 pages and 19 distinct mandates. See Order, United Spinal Ass’n et al. v. Bd. of Elections in N.Y. et al. (S.D.N.Y. July 26, 2010) (No. 1:10-cv-05653), ECF No. 119.

221. See Disabled in Action, 752 F.3d at 202.

222. Id.

223. See id. at 202–03.

224. See id. at 203.

225. See id.

226. See infra Section II.D.


228. Id. at *5.
ADA Title II. The court denied both parties’ motions for summary judgment, because there is “an issue of fact as to the extent Defendants are required to comply with the applicable regulations which precludes a granting of summary judgment in favor of either party.” Following this denial, the parties agreed to resolve all issues before the court through a negotiated agreement, worked out at a settlement conference before a magistrate judge, and the court entered the parties’ submitted Consent Decree. The Consent Decree mandated that Nassau County install APS at all intersections along Hempstead Avenue as designated in the decree; it shall install APS in the “ordinary course of alteration of traffic signals . . . and shall continue to install APS when reconstructing or newly constructing traffic signals” as long as Title II of the ADA is in effect; it shall also develop an APS Accessibility Plan; and a qualified independent monitor will be hired to oversee implementation of the decree.

D. American Council of the Blind APS Cases

This Section explores the American Council of the Blind’s APS cases in New York City (“ACBNY”) and Chicago (“ACB Chicago”) in turn. These cases involve liability under Title II of the ADA as well as injunctive relief and court monitoring.


The American Council of the Blind of New York brought the suit along with a class of blind and visually impaired individuals, including Ms. Curry. Because of the lack of APS at the majority of intersections in New York City and therefore, the lack of non-visual crossing information, plaintiffs alleged that the City violated Title II of the ADA, Section 504 of the Rehabilitation Act, and the New York City Human Rights Law by denying blind and low vision individuals access to the pedestrian grid. On October 20, 2020, the Southern District of New York granted the plaintiffs’
summary judgment motion on liability of the City, holding that the City had violated all three statutes by failing to install APS at intersections.237

The court began its analysis by noting that 2.4% of the City’s population is blind or has other vision difficulties;238 in New York City, the most population-dense American city, walking is a major form of transportation and “access to sidewalks is an important component of city life.”239 Roughly 13,200 of the City’s 45,000 intersections are signalized, meaning they have pedestrian control signals or devices (such as traffic lights) that inform pedestrians when to cross the street and when to wait (as opposed to merely having stop signs and yield signs).240 Further, without any accommodations, pedestrians with visual disabilities risk being hit by cars, may be forced to take longer, less convenient routes to avoid non-APS intersections, may need to take taxis, and may decline to participate in activities or to visit portions of the City at all.241

The court further noted that in New York City, APS function as follows:

At an intersection with APS, devices on each street corner emit a soft ‘locator tone’ every second, which allows blind and low-vision pedestrians to locate them when they approach the intersection. Each device also has a pushbutton with a raised arrow pointing at the crossing with which it is associated. Because each APS device points to a specific crosswalk from each side of the street, a standard four-cornered intersection equipped with APS typically requires two devices per curb, and eight per intersection. When an APS button is pressed, the device responds with an audible speech message. If the visual ‘walk’ signal is not on for the crosswalk associated with that APS device, the device audibly says ‘wait.’ If, on the other hand, pedestrians do have a ‘walk’ signal for the relevant crosswalk, then the APS device either says ‘walk sign is on’ or emits a rapid ticking sound. The pushbutton itself also vibrates, to alert pedestrians who are both deaf and blind that it is safe to walk. APS thus inform blind individuals, solely through audio and tactile cues, both where and when to cross the street safely.242

New York City installed its first APS device in 1957, but by 2003 only had about a dozen installed.243 In 2004, the City established an informal APS program to receive requests for APS, but each year between 2004 and 2011 it received more requests for APS than it installed, and it did not employ

237. Id.
238. See id. at 220.
239. Id. at 221.
240. Id.
241. See id. at 222.
242. Id. (internal citations omitted).
243. Id. at 223.
a ranking system to determine which requests to fulfill. In 2011, the City’s Department of Transportation developed a more formalized ranking tool to fulfill requests, evaluating the intersection in question in terms of its geometry, the presence of bike lanes or signal timing changes, and proximity to high-pedestrian areas. The City Council passed a law in 2012 to require the City to install APS at 25 locations per year, and in 2014 the Council updated its law to require the City to install APS at 75 intersections per year. By September 10, 2019, the total number of APS in the City was 443. After plaintiffs had moved for summary judgment, the City Council passed “Safe Streets Legislation” in November 2019, which required the City to install APS at no fewer than 2,500 intersections within five years. The court also noted that it is expensive to install APS, quoting an average cost of $60,930 per unit as the majority of locations where APS will be installed required one or two new poles per corner, with the requisite cables, or cutting into the roadway.

The court further noted the complexity of the regulatory guidance on installation of APS. While the Department of Justice is tasked with promulgating regulations under the ADA, Congress also tasked the Architectural and Transportation Barriers Compliance Board (“Access Board”), a separate federal agency, with issuing non-binding guidelines under the ADA. The Access Board published a notice of proposed rulemaking in the Federal Register in 2011, proposing its Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (“PROWAG”), and published its final rule in the Federal Register in August 2023. The PROWAG gives guidance on installation of APS: “Where pedestrian signal heads are provided at crosswalks, the walk indication shall comply with R308 [Accessible Pedestrian Signal Walk Indications].”

The suit commenced in June 2018, and in July 2019, the court certified a class comprising “all blind or low vision New York City pedestrians with disabilities as defined by the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the New York City Human Rights Law, and

244. Id.
245. Id.
246. Id.
247. Id.
248. See id.
249. See id. at 226.
250. Id.
251. Id. at 227.
252. 36 C.F.R. Part 1190 et seq.
253. Id. at R206.2.
who use signalized pedestrian street intersections in New York City.”254 The
plaintiffs then moved for summary judgment, arguing: (1) the lack of APS
denies those with vision impairments “meaningful access” to the City’s
pedestrian grid in violation of the ADA and the Rehabilitation Act; (2) each
time the City upgraded a crosswalk or signal and did not add APS, the City
violated the ADA and the Rehabilitation Act; and (3) summary judgment is
appropriate under the NYCHRL.255

The court found the City liable under the first argument above because to
establish an ADA Title II violation, the plaintiff must be a qualified
individual with a disability, the defendant must be a public entity, and the
plaintiff must have been denied the opportunity to participate in the
defendant’s services, programs, or activities because of her disability.256 Here, there is no issue about the first two prongs: blindness is a disability257
and a city is a public entity per Title II.258 The question before the court was
whether the lack of APS at more than 95% of the City’s signalized
intersections denied the plaintiffs meaningful access to the benefits of a
program, service, or activity of the City.259

The court held that this lack of APS denied the plaintiffs meaningful
access.260 First, the court followed other circuit courts, finding that the
building, alteration, and maintenance of city sidewalks are services per Title
II.261 The court also explicitly referenced Scharff262 because that decision
regarding lack of APS as a violation of ADA Title II came from a district
court in the Second Circuit. This court held: “The City’s maintenance of
signalized intersections and the pedestrian grid plainly constitutes a service,
program, or activity of a public entity.”263 Further, the court found that even
though the named plaintiffs may have found workarounds for the lack of
APS by taking taxis or using alternate routes, these “coping mechanisms”
are “anathema to the state purpose of the Rehabilitation Act” and the
ADA.264

254. See supra Section II.C; ACBNY, 495 F. Supp. 3d at 227.
255. ACBNY, 495 F. Supp. 3d at 229.
256. See id.; see supra Section I.B.
257. See ACBNY, 495 F. Supp. 3d at 229; supra Section I.B.
258. See ACBNY, 495 F. Supp. 3d at 229; supra Section I.B.
259. ACBNY, 495 F. Supp. 3d at 230.
260. See id.
261. See id.; see also Frame v. City of Arlington, 657 F.3d 215, 225 (5th Cir. 2011); Barden
v. City of Sacramento, 292 F.3d 1073, 1076 (9th Cir. 2002); supra Section II.B.
262. No. 10 CV 4208, 2014 WL 2454639, at *7 (E.D.N.Y. June 2, 2014); see supra Section
II.C.2.
263. ACBNY, 495 F. Supp. 3d at 231.
264. Id. at 235 (quoting Am. Council of the Blind v. Paulson, 525 F.3d 1256 (D.C. Cir.
2008)).
The City attempted to argue an affirmative defense in its memorandum opposing summary judgment, saying that the expense of giving meaningful access to blind and low-vision pedestrians would place an undue financial or administrative burden on the City. However, the City did not use this defense in its Answer, and the court still found that this would not be a complete defense as the cost estimates the City used were “questionable.”

The court also found the City liable under the plaintiffs’ second argument above, holding that the City violated the ADA every time it upgraded a signalized intersection and failed to install APS. Far from finding this issue mooted by the City’s new policy on installing APS, the court held that the issue was still live and that the City is liable for all new traffic signals installed without APS after June 27, 2015. Further, because the City’s new policy is prospective in nature and consists of promises to be fulfilled in the future, the issue is not moot as to relief for past violations.

Therefore, the court granted the plaintiffs’ summary judgment as to liability. The court asked for the parties to begin the remediation phase immediately. The parties submitted competing remedial plans. Plaintiffs’ proposed plan suggested the City should install APS in ten years at a rate of 1,268 units per year and requested an independent monitor, while the City’s proposed plan suggested installing APS in 30 years at a rate of 500 units per year and opposed an independent monitor. The United States also made several submissions to this litigation upon invitation from the Court: a statement of interest, a letter identifying federal funding sources available to support APS (including Federal Aid Highway Program and discretionary grants), and a brief commenting on the proposed remedial
The United States did not give a proposed timeline but provided legal basis for why the City had violated the ADA. The Court heard expert testimony and oral arguments over a three-day period. The Court noted that a federal court’s remedial authority “to cure breaches by units of local government of the ADA, the Rehabilitation Act, and related anti-discrimination statutes, is broad and flexible,” noting that the court had not only the power but the duty to do so. The court found common ground between the two plans and initiated a two-phase regime. In Phase 1, the City will install APS at 10,000 signalized intersections by the end of 2031. In Phase 2, all remaining intersections will have APS by the end of 2036.

The court rejected the City’s arguments about the administrative burden the plan places on it, emphasizing that the ease of installing APS would increase over time. The court also rejected arguments about financial limitations, saying the City had overestimated the costs by using the wrong number of intersections in their plans as well as ignoring the federal funding that they could use as noted in the United States’ brief outlining proposed remedial plans. Finally, the court rejected the City’s argument that this plan created an undue burden because the court found that installing APS would not, as the City contended, cause large-scale disruption to pedestrian and vehicular traffic on the City’s streets.

On February 28, 2023, the court-appointed independent monitor, Andrew W. Schilling of Schilling Law, LLC, submitted his first annual report, noting that the City had installed APS at 494 intersections, which was 94 more than required by the court’s remedial order and was the most installed in any single year. However, the monitor noted a few setbacks including the City reporting completion of projects too early, uneven distribution of

277. See id.
279. Id. at 566.
280. Id. at 573.
281. Id.
282. See id. at 578.
283. See id. at 578–82.
284. See id. at 582.
285. An alumnus of Fordham University School of Law.
287. See id. at 2.
288. See id. at 4.
APS by neighborhood, complaints received for failure to maintain current APS units, not prioritizing installation properly, and the fact that the City might not be able to continue on this pace as it started with 100 of the logistically “easiest” intersections.

While there are still years and thousands of APS units to go before this court-appointed plan reaches fruition, it provides assurance that there is an independent monitor or an “enforcement monitor,” per Veronica Root, to ensure the City’s compliance with the court’s order.

2. American Council of the Blind of Metropolitan Chicago v. City of Chicago

Another arm of the organization, the American Council of the Blind of Metropolitan Chicago, along with several of its members, brought suit against the City of Chicago. The suit sought injunctive relief under Title II of the ADA and Section 504 of the Rehabilitation Act, similar to ACBNY, to “remedy the City of Chicago’s failure to make its system of pedestrian traffic signals meaningfully accessible to blind and low-vision individuals through the installation of Accessible Pedestrian Signals.” Here, the United States intervened on behalf of the plaintiffs and argued for the City’s liability.

The Northern District of Illinois began its analysis by noting that 65,000 people in Chicago proper and 111,000 in Cook County are blind or low-vision. Further, of the City’s 2,841 signalized intersections, fewer than 30 are equipped with APS, despite repeated plans and promises beginning as early as 2012 when the city published a Pedestrian Plan.

In this case, unlike in ACBNY, the City of Chicago argued that pedestrian signals are not a “service, program, or activity” under Title II. It argued that while each signal is a “facility,” the network of signals is not a program...
or service.302 The court dismissed this, relying on the reasoning in ACBNY
and Scharff.303 “Given the sweeping breadth of the phrase ‘services,
programs, or activities,’” the court “agree[d] with the ACBNY court.”304

The court also dismissed the City’s contention that it was not liable
because it had plans to install APS, as plans do not equate with “meaningful
access.”305 Similarly to ACBNY, the court rejected the City’s contention that
because plaintiffs have developed “‘workarounds and alternate means of
traversing the City’s pedestrian crossings,’ or that they have ‘summoned the
fortitude to cross busy intersections in spite of the risks presented,’” that this
represents “meaningful access.”306 Finally, the court also rejected the City’s
insistence that because the ADA does not require perfection, it is not
liable.307 As the ACBNY court put it: “[T]he City’s observation that the ADA
and Rehabilitation Act may not require the installation of APS at each of its
13,200 signalized intersections does nothing to defend the status quo.
Whatever the point would be at which the number (and dispersal) of APS at
such crossing would afford blind and visually impaired persons meaningful
access to the pedestrian grid within the meaning of these statutes, that
standard is clearly not met today.”308 The ACB Chicago court wrote: “I
agree in full measure with the court’s reasoning and conclusion on these
points.”309 The court, therefore, granted Plaintiffs’ motion for summary
judgment on the issue of the City’s liability under Title II of the ADA and
the Rehabilitation Act.310

The City claimed that its liability should be limited due to Illinois’s two-
year statute of limitations on all claims arising out of activity before
September 23, 2017.311 The United States as intervenor, however, argued
that claims for equitable relief are not barred by any statute of limitations,312
and the court agreed.313 Here, the court parted ways with ACBNY,314 holding
that the Tenth Circuit’s explanation in Hamer v. City of Trinidad315 was

302. Id.
303. See id. at 775; see supra Section II.D.1.
304. ACB Chicago, 667 F. Supp. 3d at 775.
305. Id. at 776.
306. Id. at 777.
307. See id.
308. Id. at 777 (quoting ACBNY, 495 F. Supp. 3d at 237 (S.D.N.Y. 2020) (emphasis
added)).
309. Id.
310. See id. at 779–80.
311. See id. at 782.
312. See id.
313. See id.
315. 924 F.3d 1093 (10th Cir. 2019).
correct: public entities have an affirmative obligation to accommodate persons with disabilities, and “[f]ailing to act in the face of an affirmative duty . . . axiomatically gives rise to liability . . . . [A] public entity does commit a ‘new violation’ each day that it fails to remedy a non-compliant service, program, or activity.”

This case is not as far along as the ACBNY case. Under the remedial schedule in force here, the parties submitted proposed remedial plans by October 27, 2023, took depositions by December 15, 2023, and filed responses and replies by February 2, 2024. There is no discussion yet of an independent monitor.

III. MANDATE OF THE ADA: COURT MONITORING IS A SOLUTION

Part III of this Note argues that APS are critical parts of the pedestrian grid for blind and low-vision individuals. It also argues that the ACBNY and ACB Chicago cases provide a model for future ADA Title II suits. Section III.A examines the analysis the courts in New York and Chicago used to find liability and applies it to other jurisdictions. Section III.B discusses the use of independent standards to help cities and municipalities understand their obligations in installing APS. Section III.C discusses the use of an independent monitor in bringing APS to fruition. Finally, Section III.D discusses the potential for collaboration between the Vision Zero and low vision communities.

A. Analysis of Liability

Title II of the ADA gives a clear mandate: public entities must provide meaningful access to programs and services to all individuals with disabilities. Federal courts across jurisdictions have found that the pedestrian grid falls squarely within the bounds of Title II’s “programs, services, and activities.”

316. ACB Chicago, 667 F. Supp. 3d at 783–84 (quoting Hamer, 924 F.3d at 1105).
318. See supra Section I.A.
319. See supra Sections II.D.1–2.
320. See infra Section III.A.
321. See infra Section III.B.
322. See infra Section III.C.
323. See infra Section III.D.
324. See 42 U.S.C. § 12131; see also supra Sections I.B, II.B–D.
325. See supra Section II.B.
The two American Council of the Blind cases discussed in Part II\(^{326}\) build on each other. The Southern District of New York, in the 2020 *ACBNY* case, looked to decisions in other circuits to determine that the building, alteration, and maintenance of sidewalks is a program of a public entity per Title II.\(^{327}\) Additionally, the court in *ACBNY* referenced *Scharff*\(^{328}\) to find that installation of APS is a necessary function of a public entity’s programs.\(^{329}\)

Two years later, the Northern District of Illinois in *ACB Chicago* explicitly agreed with the *ACBNY* court’s view of pedestrian signals pursuant to Title II “*`given the sweeping breadth of the phrase `services, programs, or activities. `*\(^{330}\) Two distinct courts, in two different circuits, have used the same reasoning to determine that public entities need to give blind and low-vision individuals access to the pedestrian grid by installing APS. It remains to be seen where other litigation may follow, but these cases’ reasoning provides an established precedent that allows other courts to find liability for public entities that have failed to install APS. When asked about pending APS legislation in other jurisdictions, the Director of Advocacy and Governmental Affairs at the American Council of the Blind noted that “any jurisdiction where people who are blind or Deafblind do not have equal access to the pedestrian infrastructure is a jurisdiction where litigation is viable.”\(^{331}\)

Some of these jurisdictions could be other large American cities. While obtaining exact numbers of APS by city is difficult, a survey of Department of Transportation websites by locality is telling. In Washington, D.C., for instance, the Department of Transportation discusses its High-Intensity Activated crossWalK (HAWK) Signals, also known as Pedestrian Hybrid Beacons.\(^{332}\) These push-button signals stop vehicular traffic with a red light and allow pedestrians to cross with the WALK signal, the flashing walking person signal which means it is safe to begin crossing the intersection, and at certain locations, the signal can automatically detect the presence of pedestrians.\(^{333}\) However, in a section entitled, “Accessibility for the Disabled,” the Department notes that “HAWK signals in the District usually

\(^{326}\) See generally *ACB Chicago*, 667 F. Supp. 3d 767 (N.D. Ill. 2023); *ACBNY*, 495 F. Supp. 3d 211 (S.D.N.Y. 2020); see also supra Sections II.D.1–2.

\(^{327}\) See *ACBNY*, 495 F. Supp. 3d at 230–32; see also supra note 261 and accompanying text.

\(^{328}\) No. 10 CV 4208, 2014 WL 2454639, at *7 (E.D.N.Y. June 2, 2014).

\(^{329}\) See generally *ACBNY*, 495 F. Supp. 3d; see also supra Section II.D.1.

\(^{330}\) 667 F. Supp. 3d at 775.

\(^{331}\) E-mail from Clark Rachfal, Then-Dir. of Advoc. & Gov’t Affs., Am. Council of the Blind, to Becky Egan, Author (Oct. 5, 2023, 10:06 AM) (on file with author).


\(^{333}\) See id.
feature APS equipment.” Accessibility consultant Sofia Gallo, a legally blind resident of D.C., notes that APS are still not widely available around D.C., and their availability varies widely by neighborhood.

The Boston Transportation Department’s policies indicate that the city knows it needs to install APS at all new intersections and at those where equipment is being modified or upgraded. Indeed, the State of Massachusetts has a Policy and Prioritization tool for installing new APS units. The website also gives an easy way for consumers to request new APS units. However, it is not clear exactly how many APS units Boston currently has, nor how many other Massachusetts cities have.

On the West Coast, the City of Los Angeles notes in its Complete Streets Committee’s Policy & Design Guidance that APS should be installed at signalized intersections. Similar to Massachusetts, California notes in its Traffic Signal Operations Business Plan that cities working with their ADA coordinator to install APS is a “HIGH” priority. However, it is again not clear how widespread access to APS units currently is.

San Francisco lists online the number of APS units it has: a mere 505. However, it lists the location of every APS unit and provides an online request form for blind San Franciscans to request a new APS unit. Additionally, the San Francisco Municipal Transportation Authority affirms that its policy is to install APS at new and upgraded signalized intersections. The question for San Francisco and other cities is: is the

334. Id. (emphasis added).
336. AMY CORDING & NICHOLAS GOVE, BOS. TRANSP. DEP’T, SIGNAL OPERATIONS DESIGN POLICY (2023).
338. See id.
342. See id.
343. See id.
installation happening quickly enough to afford true access to the pedestrian grid to blind and low vision pedestrians?

One additional issue that should be determined is the question of the statute of limitations. The ACBNY court held that there is a three-year statute of limitations on claims arising under Title II of the ADA, but the ACB Chicago court, relying on the Department of Justice’s reasoning in its briefs, determined that where plaintiffs seek equitable relief, there is no statute of limitations applicable because the public entity creates a new violation each day it bars access. In practice, however, this differing interpretation of the applicable statute of limitations may not be relevant in the implementation of the remedial plans. This is because courts will either rely on ACB Chicago’s reasoning, holding that a new violation begins every day a plaintiff is denied access, or the courts will hold, as did the court in ACBNY, that the entire grid needs to be reformed, regardless of the statute of limitations.

B. Independent Standards / ADAAG

As examined previously, the ADAAG and other technical standards can be a useful way for courts to find liability in Title II violations and to provide a guide to cities and other public entities in installing APS and maintaining the accessibility of the pedestrian grid in general. The ACBNY court also referenced Public Right-of-Way Accessibility Guidelines (PROWAG), which are the guidelines issued by the Access Board, an independent federal agency tasked with promoting equality for people with disabilities via accessible design and accessibility guidelines and standards. Since the decision in both ACBNY and ACB Chicago, the Access Board has issued a new final rule. The Executive Summary of the rule states: “All new and altered pedestrian signal heads installed at crosswalks must include ‘accessible pedestrian signals’ (APS).” This

344. See ACBNY, 495 F. Supp. 3d at 211.
345. See ACB Chicago, 667 F. Supp. 3d at 767.
346. See supra Section II.A.
347. See supra Section II.A.
348. See ACBNY, 495 F. Supp. 3d at 228.
351. Id.
seems to be the policy of many major cities already.³⁵² The Access Board appreciates the cost of installing APS, noting that “the requirement for universal installation of APS is the single most costly provision of PROWAG.”³⁵³

However, the Board notes that APS are needed for true access to the pedestrian grid for blind individuals. Immediately after referencing the cost, the Board notes:

[Universal installation of APS] is the provision expected to provide the greatest advance in equity for persons who are blind or have low vision, as the use of accessible pedestrian signals is one of the accessibility features of public rights-of-way that has not been uniformly adopted across the United States. The Board has assessed the costs and benefits of this requirement and is confident that the combination of the monetizable and unmonetizable benefits greatly outweigh the costs.³⁵⁴

The Board’s acknowledgment of the benefits that closer-to-universal APS at intersections will provide for individuals with visual disabilities is heartening. Further, because the Board notes that APS have not been uniformly adopted across the United States, it may be a combination of the courts and federal agencies that push APS to be installed in greater numbers.

Until that point, however, city planners do not have a bright-line test from the courts as to the percentage of signalized intersections that should have APS. However, the paltry single digit percentages seen in Chicago and New York City clearly are not acceptable. Planners need to strive for true access for blind individuals by accelerating their installation of APS at more than just upgraded or new intersections.

C. Model for Independent Monitor

Bringing a lawsuit is a cumbersome process, but without the monitoring by the courts, it seems unlikely that cities will meet their burden of installing APS at signalized intersections. The ACBNY case gives a framework for how courts can handle future suits: when a court finds liability under Title II of the ADA,³⁵⁵ it can then move to the remediation phase. A court can work as a mediator to help the parties craft a plan that makes sense for installing APS in a meaningful way, and the appointment of an independent monitor can help keep the court, and thus the public, abreast of the progress.³⁵⁶ As a

³⁵² See supra Section III.A.
³⁵³ Accessibility Guidelines for Pedestrian Facilities, supra note 350, at 53,609.
³⁵⁴ Accessibility Guidelines for Pedestrian Facilities, supra note 350, at 53,609 (emphasis added).
³⁵⁵ See generally ACBNY, 495 F. Supp. 3d 211 (S.D.N.Y. 2020); see also supra Section II.D.1.
³⁵⁶ See generally ACBNY, 495 F. Supp. 3d; see also supra Sections II.C.1–2, II.D.1.
result of the *ACBNY* case, the New York City Department of Transportation publishes an Accessible Pedestrian Signals Program Status Report, which details all the locations of APS in New York City sorted by borough.  

Additionally, the Department has an APS page on its website where individuals can locate, request, or report a problem with APS.  

APS are also featured prominently in the New York City Department of Transportation’s Proposed Five-Year Accessibility Plan.  

In contrast, the comparable APS page of the City of Chicago’s website lists fewer than 30 APS in the entire city, and there is no place for individuals to request or report a problem with APS.  

With time and court monitoring, the City of Chicago’s APS reporting may become more robust, as will its installation of APS.  It is clear that the public nature of the court process will help incentivize cities to meet their APS installation goals.  

The brief survey of other major cities in Section III.A shows that a best practice is to not only list the locations of APS in the city, so that pedestrians can plan their routes safely, but also to have an easy way for pedestrians to request the installation of new APS directly on the city’s website.  As one journalist put it, cities are now “on notice” that they must install APS to help blind pedestrians.  

While the *ACB Chicago* case is still pending, the plaintiffs and the United States as an intervenor submitted their Proposed Remedial Plan to the court on November 6, 2023.  This plan suggests using an independent monitor appointed by the court to oversee compliance with the remedial plan by accessing city records and information about APS installation as well as identifying deficiencies.  

The monitor would also meet with an Advisory

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363. *Id.* at 5–6.
Group at least biannually and submit biannual reports to the court on the progress of APS implementation. The City of Chicago also submitted a Proposed Remedial Plan on November 6, 2023, which calls for the use of the services of an independent monitor who would have the right to consult with city personnel, inspect the installation of APS citywide, and provide status reports to the court. While the court will not decide on the proposed remedial plans until the spring of 2024, it seems clear that whichever plan the court selects will include an independent monitor, bringing transparency and accountability to the process.

D. Future Developments

These two cases brought by the American Council of the Blind highlight the need for accessibility of the pedestrian grid for blind and low-vision individuals at a national level. While the cases seek to compel cities and municipalities to install APS at intersections, cities and advocates should continue to explore other avenues for bringing true accessibility to cities.

1. Vision Zero Collaboration

The American Council of the Blind and other blindness advocacy groups may consider collaborating with the Vision Zero Network. Vision Zero, which started in Sweden in the 1990s, stands for the proposition that communities should have zero traffic fatalities and severe injuries, and that traffic deaths are preventable rather than inevitable. Vision Zero provides advocacy, tools and resources, and information exchange for communities that have vowed to eliminate traffic fatalities. The good news is that many large cities have already committed to Vision Zero, including New York.
City, Chicago, D.C., Los Angeles, San Francisco, and Boston. Any community that is a Vision Zero Community needs to have a Vision Zero plan in place. Therefore, it would not be very difficult to integrate the addition of Accessible Pedestrian Signals into these existing plans, and this would be a natural next step for any of these communities. Because there are Vision Zero Communities all across the United States, this would be a synergistic collaboration that can galvanize efforts to make the pedestrian grid safe and accessible for all pedestrians.

In New York City, for example, the advocacy group Transportation Alternatives, which has a 50-year history of championing pedestrian and cyclist safety, hosted a conference in October 2023 entitled “Vision Zero 2023: Safe Streets Save Lives.” This conference brought together city leaders, transportation planners, and disability activists to discuss how safe streets can enhance the lives of all pedestrians but especially the lives of pedestrians with disabilities. These types of collaborations can be replicated in other cities as well.

376. Vision Zero Communities, VISION ZERO NETWORK, https://visionzeronetwork.org/resources/vision-zero-communities/ [https://perma.cc/HXS6-ES4P] (last visited Mar. 5, 2024). As of this writing, there are more than 45 U.S. communities that have committed to Vision Zero. See id.
379. See id.
2. Emerging Technologies

The City of Chicago suggests new solutions for blind and low-vision individuals in its Proposed Remedial Plan. While it does not propose these solutions in this current plan, it does indicate a desire to keep abreast of technological advances that may supplement or supplant the use of APS, as it “anticipates that there will come a time when such a technology renders current APS obsolete or outcompetes current forms of APS on the basis of safety, reliability, cost, flexibility, ease of installation, and ease of maintenance.”

First, the city is exploring the use of integrating modernized signals that can interact with smartphone apps to assist blind pedestrians with crossing signalized intersections. For example, an app developed by the University of Minnesota Center for Transportation Studies, allows blind pedestrians to receive audible crossing information directly from those traffic signals that give real-time data about traffic. Second, additional equipment at signalized intersections, including cameras and LiDAR devices, can use Connected Vehicle technology to alert drivers when a pedestrian is in the crosswalk. Finally, those same Connected Vehicle technology devices can potentially connect to a blind pedestrian’s smartphone app to provide similar information about what types of travelers are on the road directly to the blind pedestrian.

While it is undoubtedly important for cities and planners to stay informed about new technologies that arise, it is also important to remember that at this time, APS are the gold standard for allowing blind and low-vision pedestrians to maintain their independence while crossing city streets. There may be a place in the future for Connected Vehicle technologies and smartphone apps, but the reality is that not all blind pedestrians are comfortable with smartphones. Additionally, providing information directly to motorists may be helpful, but the goal of this work should be to empower...
blind pedestrians directly, instead of giving more information to the motorists. It will be interesting to see how these technologies develop. In the meantime, cities and municipalities should still aim for a robust APS installation plan for at heavily trafficked intersections.

CONCLUSION

Blind and low vision individuals struggle to independently navigate a city’s pedestrian grid without APS. The cities themselves must install and maintain APS, which is a costly endeavor for cities juggling multiple priorities on limited budgets. However, Title II of the ADA is clear: public entities are required to create meaningful access to their programs and services for individuals with disabilities, and the pedestrian grid itself is a program or service. Without court intervention, it remains unlikely that cities will allocate resources to install APS at intersections. The court in *ACBNY* provides a useful guide that courts in other jurisdictions can use to help enforce ADA compliance. While litigation is cumbersome, and court monitoring is also cumbersome and a burden on judicial resources, litigation and subsequent court monitoring remains an effective method for providing access to the streets for blind and low vision individuals. This combination, coupled with the recent updated guidelines for accessibility published by the Access Board suggesting installation of APS at all new and altered pedestrian signal heads, may mean that blind and low vision individuals may soon have closer-to-universal APS at intersections, giving them truly meaningful access to the pedestrian grid.