

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Susan Goodlaxson
3400 Glenmore Ave.
Baltimore, Baltimore County, MD 21214,

Janice Jackson
6401 Loch Raven Blvd.
Apt. 301
Baltimore, Baltimore County, MD 21239,

Keyonna Mayo
1638 Mountmor Ct.
Baltimore, Baltimore County, MD 21217, and

Independent Marylanders Achieving Growth,
Inc. d/b/a The IMAGE Center of Maryland
300 E Joppa Rd.
Ste. 312
Towson, Baltimore County, MD 21286; *on
behalf of themselves and all others similarly
situated,*

Plaintiffs,

vs.

Mayor and City Council of Baltimore
100 N. Holliday St.
Baltimore, MD 21202,

Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs, Susan Goodlaxson, Janice Jackson, Keyonna Mayo, and The IMAGE Center of Maryland (“Plaintiffs” or “Named Plaintiffs”), on behalf of themselves and all other persons similarly situated, complain of Defendant Mayor and City Council of Baltimore

(“Defendant,” “the City,” or “Baltimore”) and allege as follows:

INTRODUCTION

2. The City of Baltimore’s curb ramps, sidewalks, and pedestrian right-of-way are dilapidated, disintegrating, and filled with objects such as telephone poles, trash, and trees, making everyday travel difficult and dangerous for the thousands of people with mobility disabilities who call Baltimore home or visit for work or pleasure. Individuals with mobility disabilities are unable to travel freely around Baltimore because of these conditions, injuring their right to engage fully in Baltimore’s civic life.

3. Plaintiffs bring this lawsuit against Defendant to redress Defendant’s systemic failure to provide full and equal access to its pedestrian right-of-way to Plaintiffs and similarly situated individuals with mobility disabilities. As alleged further below, the City has failed and continues to fail to install and maintain curb ramps and sidewalks that are necessary to make its pedestrian right-of-way readily accessible to people with mobility disabilities, and to comply with its obligation to install and/or remediate curb ramps and sidewalks when it engages in alterations or new construction of streets, roadways, sidewalks, and other pedestrian walkways.

4. A substantial number of the street crossings within the City’s pedestrian right-of-way do not comply with applicable federal regulations addressing accessibility for people with mobility disabilities. For example, some Baltimore streets lack curb ramps entirely, have curb ramps on only one side of a corner, have curb ramps or sidewalks that are obstructed by the presence of obstacles such as telephone poles within the ramp, or have curb ramps or sidewalks that are too narrow, steep, cracked, broken, or uplifted to be used by people with mobility disabilities.

5. The City’s pedestrian right-of-way is a fundamental public program, service, and/or activity that the City provides for the benefit of its residents and visitors. Accessible curb ramps and sidewalks are necessary to permit people with mobility disabilities to access and navigate the pedestrian right-of-way. Because the City’s pedestrian right-of-way constitutes a core mode of transportation, the absence of accessible curb ramps and sidewalks prevents people

with mobility disabilities from independently, fully, and meaningfully participating in all aspects of society, including but not limited to employment, housing, education, transportation, public accommodations, and recreation. Accordingly, an accessible pedestrian right-of-way is essential to realizing the integration mandate of disability non-discrimination laws, including Title II of the Americans with Disabilities Act (“Title II of the ADA,” “ADA,” or “Title II”), 42 U.S.C. § 12101, *et seq.* and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, *et seq.*

6. Named Plaintiffs Susan Goodlaxson, Janice Jackson, and Keyonna Mayo are three individuals with mobility disabilities who bring this action on behalf of themselves and all persons with mobility disabilities who live in, work in, or visit Baltimore and are being denied full and equal access to the City’s pedestrian right-of-way and subjected to unlawful or hazardous conditions due to the absence of accessible curb ramps and sidewalks within the City’s pedestrian right-of-way.

7. Named Plaintiff The IMAGE Center of Maryland (“IMAGE Center”) is an independent living center located in Baltimore County. The IMAGE Center is a non-profit, consumer-controlled organization that advocates and promotes independent living for all persons with disabilities living in Central Maryland, including Baltimore. The IMAGE Center brings this action in conjunction with Plaintiffs Goodlaxson, Jackson, and Mayo as well as on behalf of persons with mobility disabilities who live in, work in, or visit Baltimore and are being denied full and equal access to the City’s pedestrian right-of-way and subjected to unlawful or hazardous conditions due to the absence of accessible curb ramps and sidewalks within the City’s pedestrian right-of-way. The IMAGE Center’s constituents include all members of the proposed class including Plaintiffs Goodlaxson, Jackson, and Mayo.

8. Federal disability access laws were enacted to provide persons with disabilities an equal opportunity to participate fully in civic life. *See* 42 U.S.C. § 12101(a)(7) (ADA); 29 U.S.C. § 794 (Section 504).

9. Since 1977 and 1992, respectively, Section 504 and Title II of the ADA have required that when streets, roads, and highways are constructed or altered, curb ramps or other sloped areas must be installed at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway, and existing curb ramps must be brought into compliance with current regulations. *See, e.g.*, 28 C.F.R. § 41.58; 28 C.F.R. § 35.151(i)(1); *see also Willits v. City of Los Angeles*, 925 F. Supp. 2d 1089, 1094 (C.D. Cal. 2013). Similarly, any sidewalks built or altered since these dates must be accessible. 45 C.F.R. § 84.23; 28 C.F.R. § 35.151(i)(2). Baltimore has failed and is continuing to fail to comply with these requirements.

10. In addition, under the ADA and Section 504, a public entity’s sidewalks, crosswalks, and paved paths—collectively referred to as a public entity’s “pedestrian right-of-way”—are a “program,” “service,” or “activity” that, when viewed in their entirety, must be readily accessible to persons with mobility disabilities. *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002).¹ To the extent that structural changes to facilities existing as of the effective date of the ADA or Section 504 are necessary to achieve this “program access” mandate, such changes were required to have been made by no later than January 26, 1995 under the ADA, and by no later than June 3, 1980 under Section 504. 28 C.F.R. § 35.150(c); 45 C.F.R. § 84.22(d). Baltimore has failed to comply with both of these deadlines.

11. As detailed below, Defendant has excluded Plaintiffs and all other similarly situated individuals with mobility disabilities from participation in or denied them the benefits of Defendant’s pedestrian right-of-way program, service, or activity, or subjected them to discrimination by:

- a. failing to install and remediate curb ramps (i) in newly-constructed or altered

¹ The Fourth Circuit does not provide guidance directly on point, but *Barden* was recognized by the Fourth Circuit in *Seremeth v. Bd. of Cty. Comm'rs Frederick Cty.*, 673 F.3d 333, 338 (4th Cir. 2012).

portions of the City's pedestrian right-of-way, and (ii) at crossings adjacent to newly constructed or altered roadways;

- b. failing to install and remediate sidewalks and other pedestrian walkways in newly constructed or altered portions of the City's pedestrian right-of-way;
- c. failing to install, remediate and maintain curb ramps and sidewalks where necessary to provide people with mobility disabilities meaningful access to (i) the City's pedestrian right-of-way, when viewed in its entirety, and (ii) facilities in which City programs, services, and activities are made available to the public;
- d. failing to develop and implement a process for identifying intersections, sidewalks and corners throughout the City at which curb ramps or sidewalks are necessary to provide people with disabilities meaningful, equal, and safe access to the pedestrian right-of-way;
- e. failing to adopt and utilize or require and enforce the utilization of curb ramp and sidewalk designs that comply with applicable federal and state design standards or guidelines;
- f. failing to adopt or implement reasonable administrative methods, policies, and procedures for inspecting, repairing, and maintaining the pedestrian right-of-way, including sidewalks and curb ramps, as required by Title II of the ADA and its implementing regulations such as 28 C.F.R. § 35.133 (maintenance of accessible features); and
- g. failing to adopt, implement, or enforce ordinances or other requirements necessary to ensure that the pedestrian right-of-way is free of temporary or permanent obstructions resulting in barriers to access and failure to maintain or

develop sidewalks according to Maryland Department of Transportation State Highway Administration standards 655.01-.22 as well as the requirements of ART. 26, Subtitle 9 of the Baltimore City Code.

12. The barriers to access in the pedestrian right-of-way not only make independent travel difficult or impossible for people with mobility disabilities, but also have placed and continue to place members of the proposed class at risk of bodily harm.

JURISDICTION

13. This is an action for declaratory and injunctive relief, brought pursuant to Title II of the ADA , 42 U.S.C. § 12131 *et seq.*; and Section 504, 29 U.S.C. § 794 *et seq.*

14. This Court has jurisdiction over claims arising under Title II of the ADA and Section 504 pursuant to 28 U.S.C. §§ 1331, 1343.

15. This Court has jurisdiction over Plaintiffs' claims for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 65 of the Federal Rules of Civil Procedure.

VENUE

16. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b), because Defendant resides within this District and the events or omissions giving rise to the claims alleged herein occurred in this District.

PARTIES

17. Plaintiff Susan Goodlaxson lives in Baltimore and uses a wheelchair for mobility because of a disability. Plaintiff Goodlaxson is a "qualified person with a disability" and a person with "a disability" within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20)(B).

18. Plaintiff Janice Jackson lives in Baltimore and uses a wheelchair

for mobility because of a disability. Plaintiff Jackson is a "qualified person with a disability" and a person with "a disability" within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20)(B). Plaintiff Jackson serves on the board of Plaintiff the IMAGE Center of Maryland.

19. Plaintiff Keyonna Mayo lives in Baltimore and uses a wheelchair for mobility because of a disability. Plaintiff Mayo is a "qualified person with a disability" and a person with "a disability" within the meaning of all applicable statutes and regulations, including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, and 29 U.S.C. § 705(20)(B).

20. Plaintiff IMAGE Center is an independent living center located in Baltimore County. The IMAGE Center is a non-profit, consumer-controlled organization that advocates and promotes independent living for all persons with disabilities living in Central Maryland, including Baltimore City. The majority of the IMAGE Center's board members and staff are persons with disabilities. The IMAGE Center's constituents, including Plaintiffs Goodlaxson, Jackson, and Mayo; its board members, including Plaintiff Jackson; and its staff are directly affected and harmed by Defendant's violations of law described in this Complaint.

21. Defendant the Mayor and City Council of Baltimore is a local government entity that provides a pedestrian right-of-way program in the form of an extensive network of sidewalks, curb ramps, crosswalks, and other pedestrian paths of travel throughout Baltimore. The City is responsible for constructing, maintaining, repairing, and regulating this pedestrian right-of-way program.

22. Presently, and at all times relevant to this Complaint, Defendant has been a "public entity" within the meaning of Title II of the ADA and has received federal financial assistance within the meaning of the Rehabilitation Act.

FACTUAL ALLEGATIONS

23. Baltimore's pedestrian right-of-way, including sidewalks and curb ramps, is systemically inaccessible to people with mobility disabilities.

24. The City of Baltimore's own data confirms this widespread inaccessibility.

25. For example, an August 2016 Americans with Disabilities Act self-evaluation of the Central Business District and Surrounding Areas ("2016 Self-Evaluation") determined that 64% of the 64 miles of sidewalk and 93% of the 2,938 curb ramps surveyed did not comply with the 2010 Americans with Disabilities Act Standards incorporated in Baltimore's Official Design Guidelines for Pedestrian Facilities within the City of Baltimore ("Baltimore Guidelines").

26. Although the 2016 Self-Evaluation focused on the Central Business District, the City subsequently conducted a more extensive survey.

27. Specifically, in 2019, the City conducted a multi-phase evaluation of the curb ramps in its public right-of-way in an "effort to provide accessibility and pedestrian safety" to all its residents ("2019 Survey"). This study also used the 2010 Americans with Disabilities Act Standards incorporated in the Baltimore Guidelines.

28. Phase 1 of the 2019 Survey involved the use of various imagery tools to remotely assess and identify intersections with missing curb ramps, obstructed ramps, missing landings, and missing detectable warnings, all of which constitute barriers to access for individuals with mobility disabilities.

29. Of the approximately 37,806 curb ramps assessed during Phase 1 of the 2019 Survey, approximately 34,309 failed this phase. Corners which failed this phase due to entirely lacking curb ramps include the Northeast and Southeast corners of Glenmore and Bertram on Plaintiff Goodlaxson's block. Curb ramps which failed this phase due to noncompliance with

accessibility requirements include multiple curb ramps at the corners of Lochraven and East Belvedere in Plaintiff Jackson's neighborhood and at the corners of North Mount and Presbury Street in Plaintiff Mayo's neighborhood.

30. The surveyors conducted a field inspection of the remaining approximately 3,497 curb ramps that preliminarily passed Phase 1 to take various measurements of ramps to determine whether they complied with the ADA's accessibility requirements. Only approximately 490 of these ramps passed the Phase 2 inspection.

31. In total, only approximately 1.3% of the 37,806 surveyed curb ramps were determined to comply with the 2010 Americans with Disabilities Act Standards.

32. Although the focus of the 2019 Survey was on curb ramps, notes from that Survey show widespread problems with sidewalks, including sidewalks that were damaged or too narrow, which make them inaccessible to individuals with mobility disabilities.

33. The systemic inaccessibility of Baltimore's curb ramps and sidewalks to individuals with mobility disabilities violates the ADA and Section 504 in multiple ways.

34. First, as demonstrated by the fact that the vast majority of curb ramps and sidewalks are not accessible, Baltimore has failed to ensure that its pedestrian right-of-way, as well as services and programs the City provides that can be reached through its pedestrian right-of-way, are readily accessible to and usable by individuals with disabilities.

35. In addition, Baltimore has altered or constructed sidewalks and/or curb ramps in a manner that does not comply with federal accessibility requirements.

36. Baltimore has also engaged in construction of, and alterations to, streets without installing ramps on corners adjacent to the newly constructed or altered streets, and without bringing existing ramps on those corners into compliance with the federal accessibility

requirements that applied when the construction or alterations occurred.

37. For example, from 2011 through 2013, Baltimore engaged in a repaving project, including milling and overlay of multiple streets. Plaintiffs reviewed a sampling of the streets that were repaved and identified more than 100 corners on which one or more curb ramps are missing, a clear violation of the alteration requirements of the ADA and Section 504. Baltimore also failed to bring existing curb ramps into compliance with federal disability access design requirements that were in effect when it performed the street alterations.

38. Baltimore has also failed to implement effective policies to ensure that curb ramps and sidewalks are maintained in an accessible condition, including through upkeep and repairs.

39. Baltimore both creates and ignores pervasive barriers obstructing its pedestrian paths of travel. The City's pedestrian right-of-way is frequently narrowed significantly or blocked entirely by objects such as telephone poles, trash, and trees growing in the sidewalks.

EXPERIENCES OF THE NAMED PLAINTIFFS

40. The experiences of Named Plaintiffs Susan Goodlaxson, Janice Jackson, and Keyonna Mayo are representative of the nature of barriers experienced by persons with mobility disabilities in the City.

41. Named Plaintiff Susan Goodlaxson uses a wheelchair due to her mobility disability. Plaintiff Goodlaxson lives near the Harford Road corridor in Northeast Baltimore. She frequently travels in the Harford Road area and throughout Baltimore City. She encounters numerous obstacles to using the pedestrian right-of-way when traveling in and around Baltimore City. Such obstacles include, but are not limited to, those described below.

42. Plaintiff Goodlaxson does not have a single curb ramp on her block of 3400 Glenmore Avenue. This forces her to enter her car from the sidewalk, causing her pain. She is

unable to cross Harford Road, a main throughway in Baltimore City, from her street due to a lack of curb ramps and obstacles when there are curb ramps. The intersection of Harford and Christopher Street is particularly dangerous, because the sidewalk is cracked, damaged, and has a fire hydrant that blocks any use of the curb ramps on this corner. This situation is typical of the sidewalks in this part of Northeast Baltimore. Ms. Goodlaxson has been and continues to be prevented from crossing the street and moving around her neighborhood because of the condition of the sidewalks.

43. Due to the lack of compliant curb ramps on the 3400 Glenmore Avenue block and elsewhere, Plaintiff Goodlaxson is unable to participate in community activities and is isolated from her neighbors, including local barbeques as well as other social gatherings. She is unable to safely go shopping in her neighborhood because of the conditions of the sidewalks. Consequently, she is deprived of her independence and is segregated from her neighborhood and community. She is deterred from using the City's sidewalks to visit public facilities, places of public accommodations, and friends because she chooses to remain safe from the serious risks associated with the inaccessible pedestrian right-of-way throughout the City.

44. Named Plaintiff Janice Jackson uses a wheelchair due to her mobility disability. Plaintiff Jackson lives near the Loch Raven corridor near Morgan State University in Northeast Baltimore. She frequently travels in the Loch Raven area and throughout Baltimore City. She encounters numerous obstacles to using the pedestrian right-of-way when traveling in and around Baltimore City. Such obstacles include, but are not limited to, those described below.

45. Plaintiff Jackson does not have a clear pedestrian right-of-way on Loch Raven Boulevard that allows her to go shopping and return to her home or access other major facilities in that area. Ms. Jackson has also struggled to attend medical appointments at MedStar Good

Samaritan Hospital at 5601 Loch Raven Blvd, Baltimore, MD 21239 because of the condition of the sidewalks. The sidewalks in this area lack curb ramps, have curb ramps that do not meet accessibility standards for people with mobility disabilities, and have trees growing in the sidewalk without wells or sidewalk clearance. Further, sidewalks are damaged and uneven, making them dangerous for persons with mobility disabilities to navigate.

46. Due to the condition of the sidewalks and curb ramps in her neighborhood and elsewhere, Plaintiff Jackson is unable to safely participate in community activities and is isolated from her neighbors. Consequently, she is deprived of her independence and is segregated from her neighborhood and community. She is deterred from using the City's sidewalks to visit public facilities, places of public accommodation, and friends because she chooses to remain safe from the serious risks associated with using the inaccessible pedestrian right-of-way throughout the City.

47. Named Plaintiff Keyonna Mayo uses a wheelchair due to her mobility disability. Plaintiff Mayo lives in the Sandtown-Winchester corridor in South-West Baltimore. She frequently needs to travel throughout Baltimore City for her marketing business. She encounters numerous obstacles to using the pedestrian right-of-way when traveling in and around Baltimore City. Such obstacles include, but are not limited to, those described below.

48. Plaintiff Mayo does not have access to a clear pedestrian right-of-way in her neighborhood that allows her to go shopping and return to her home near the Pennsylvania and North Avenue area or access other major facilities in that area, such as the United States Post Office or the Light Rail. The sidewalks in this area lack curb ramps, have improperly installed curb ramps, have trees growing in the sidewalk without wells or clearance, or are damaged and uneven, making them dangerous for persons with mobility disabilities to navigate. There has also

been significant construction in that area without creation of a temporary, safe accessible path of travel for wheelchair users to navigate around construction sites.

49. Due to the condition of the sidewalks and curb ramps in her neighborhood and elsewhere, Plaintiff Mayo is unable to participate in community activities and is isolated from her neighbors. Consequently, she is deprived of her independence and is segregated from her neighborhood and community, including being blocked from using public transportation or accessing the local Post Office. She is deterred from using the City's sidewalks to visit public facilities, places of public accommodations, and friends because she chooses to remain safe from the serious risks associated with the inaccessible pedestrian right-of-way throughout the City.

50. Plaintiff IMAGE Center serves consumers with disabilities that affect their mobility who reside in, work in, and/or regularly travel to Baltimore. In addition, a majority of the IMAGE Center's staff and board members have disabilities that affect their mobility and live or work in Baltimore. For example, Plaintiff Janice Jackson is a member of the IMAGE Center's board. As a Center for Independent Living, the IMAGE Center is required by federal law to be under Consumer Control, which "means, with respect to a center for independent living, that the center vests power and authority in individuals with disabilities, in terms of the management, staffing, decision making, operation, and provisions of services, of the center." 29 U.S.C.S. § 796a.

51. The IMAGE Center's constituents, including consumers, staff members, board members and volunteers, have used and will continue to use Baltimore's pedestrian right-of-way, but are impeded by the pervasive barriers to accessibility.

CLASS ALLEGATIONS

52. Plaintiffs bring this action individually and on behalf of all persons with mobility disabilities who use or will use the pedestrian right-of-way in Baltimore as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

53. Each member of the class is a “qualified person with a disability” and/or a person with a “disability” pursuant to Title II of the ADA, 42 U.S.C. § 12131(2); and Section 504, 29 U.S.C. § 794, *et seq.*

54. Defendant has failed to comply and continues to fail to comply with the ADA and Section 504 in its implementation of administrative methods, policies, procedures, and practices with regard to the construction, remediation, and maintenance of curb ramps and sidewalks that provide access to the City’s pedestrian right-of-way.

55. Defendant has not adopted and does not enforce appropriate administrative methods, policies, procedures, and/or practices to ensure that it is in compliance with the ADA and Section 504, and to ensure nondiscrimination against persons with mobility disabilities and equal access to facilities, programs, services, and activities for persons with mobility disabilities.

56. The persons in the class are so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action is a benefit to the parties and to the Court. According to data from the American Community Survey, as of 2017, more than 50,000 Baltimore residents have a mobility disability.² This does not include the many people with mobility disabilities who visit or work in Baltimore but live elsewhere.

57. The common questions of law and fact, shared by the Named Plaintiffs and all class members, include but are not limited to:

² *Table S1810 Disability Characteristics, 2017 Am. Cmty. Survey 1-Year Estimates*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?tid=ACSST1Y2010.S1810&q=S1810> (then select year and city).

- a. Whether Defendant is violating Title II of the ADA, 42 U.S.C. § 12131, *et seq.*, and/or Section 504, 29 U.S.C. § 794 *et seq.*, by failing to construct or remediate curb ramps that make the City's pedestrian right-of-way program, service, or activity accessible to and useable by persons with mobility disabilities;
- b. Whether Defendant is violating Title II of the ADA, 42 U.S.C. § 12131, *et seq.*, and/or Section 504, 29 U.S.C. § 794 *et seq.*, by failing to construct or remediate curb ramps that make facilities where City programs, services, or activities that are made available to the public accessible to and useable by persons with mobility disabilities;
- c. Whether Defendant has performed "new construction" and/or "alterations" to the City's pedestrian right-of-way within the meaning of 28 C.F.R. § 35.151 and 45 C.F.R. § 84.23, triggering an obligation to construct or retrofit curb ramps in compliance with Uniform Federal Accessibility Standards ("UFAS"), 1991 Americans with Disabilities Act Accessibility Guidelines ("1991 ADAAG"), and 2010 ADA Standards for Accessible Design ("2010 ADAS");
- d. Whether Defendant, by its actions and omissions alleged herein, has had a policy of discriminating against Plaintiffs and other persons with mobility disabilities in violation of applicable federal disability access laws.

58. Named Plaintiffs' claims are typical of the claims of the class as a whole because they arise from the same course of conduct engaged in by Defendant, and the Plaintiffs are similarly affected by Defendant's failure to provide access to Baltimore's pedestrian right-of-way.

59. Named Plaintiffs are adequate class representatives because they and/or their

constituents, are directly impacted by Defendant's failure to provide program access to Baltimore's pedestrian right-of-way program. The interests of the Plaintiffs are not antagonistic to, or in conflict with, the interests of the class as a whole, and they have retained counsel who are competent and experienced in litigating complex class actions, including large-scale disability rights class action cases involving the accessibility of municipal pedestrian rights-of-way for classes of individuals with mobility disabilities.

60. The attorneys representing the class are highly trained, duly qualified, and very experienced in representing plaintiffs in civil rights class actions for injunctive relief. Further, these attorneys have conducted an extensive investigation of the class claims; are experienced in handling class actions and complex litigation, including class actions challenging the accessibility of pedestrian rights-of-way, and thus are well-versed in applicable statutes, regulations and case precedent; and will commit the resources necessary to represent the class.

61. Defendant has acted and/or failed to act on grounds generally applicable to the class as a whole, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole. Class claims are brought for the purposes of obtaining injunctive relief only.

62. References to Plaintiffs include each Named Plaintiff and each member of the class, unless otherwise indicated.

FIRST CAUSE OF ACTION
VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT
(42 U.S.C. § 12131, et seq.)

63. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

64. Title II of the ADA, 42 U.S.C. § 12132, prohibits a public entity from excluding a

person with a disability from participating in, or otherwise benefitting from, a program of the public entity, or otherwise discriminating against a person on the basis of disability: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

65. Named Plaintiffs Susan Goodlaxson, Janice Jackson, and Keyonna Mayo, and many of the consumers, staff, and board members of Named Plaintiff the IMAGE Center of Maryland, are qualified to participate in the City's pedestrian right-of-way program and have disabilities within the meaning of the ADA.

66. A "public entity" includes state and local governments, their agencies, and their instrumentalities. 42 U.S.C. § 12131(1).

67. At all times relevant to this action, Defendant was and is a public entity within the meaning of 42 U.S.C. § 12131 and 28 C.F.R. § 35.104.

68. Title II of the ADA requires public entities, including the City, to operate each of its programs, services, or activities "so that, when viewed in its entirety, it is readily accessible to and useable by individuals with disabilities." 28 C.F.R. § 35.150; *see also* 28 C.F.R. §§ 35.149, 35.151.

69. The City's pedestrian right-of-way constitutes a vital program, service or activity under Title II of the ADA. 28 C.F.R. § 35.102.

70. Due to the lack of accessible curb ramps and sidewalks as alleged above, the City's pedestrian right-of-way is not fully, equally, or meaningfully accessible to Plaintiffs when viewed in its entirety. Defendant has therefore violated the "program access" obligation applicable to pedestrian right-of-way facilities that have not been newly constructed or altered

since January 26, 1992.

71. Title II of the ADA requires that when a public entity newly constructs facilities or alters any existing facilities in any manner that affects the usability of such facilities, the newly constructed or altered portions must be made accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151(a), (b). Sidewalks, crosswalks, curb ramps and other walkways at issue constitute facilities within the meaning of the ADA and its implementing regulations.

72. Since January 26, 1992, Defendant has constructed, altered, or repaired curb ramps and sidewalks, and through its administrative methods, policies, and practices, has failed to make such curb ramps and sidewalks readily accessible to and usable by persons with disabilities in accordance with federal disability access design requirements.

73. Title II of the ADA's implementing regulations specifically require a public entity to install compliant curb ramps at intersections whenever it newly constructs or alters sidewalks, streets, roads, and/or highways at any time after January 26, 1992, and these ramps must comply with UFAS, 1991 ADAAG, or 2010 ADAS depending on the date of construction or alteration. 28 C.F.R. § 35.151. A street resurfacing project by a public entity is an alteration triggering sidewalk and pedestrian route accessibility requirements under the meaning of the regulation. *Kinney v. Yerusolim*, 9 F.3d 1067, 1073-74 (3d Cir. 1993).

74. Through Defendant's administrative methods, policies, and practices, Defendant has failed to install curb ramps in compliance with applicable federal disability access design standards when newly constructing or altering sidewalks, streets, roads, and/or highways throughout Baltimore, in violation of Title II of the ADA.

75. The regulations implementing Title II of the ADA also require a public entity to maintain the features of all facilities required to be accessible under the ADA. 28 C.F.R. §

35.133. Facilities required to be accessible include curb ramps, roads, sidewalks, and passageways. *See* 28 C.F.R. § 35.104.

76. Defendant has failed and continues to fail to maintain accessible features on its pedestrian right-of-way throughout Baltimore, including without limitation by failing to fix deteriorating and heaving pavement and concrete, failing to remove obstructions in pedestrian paths of travel, and failing to ensure sufficiently wide paths of travel, among other failures to maintain accessible features of such facilities, in violation of Title II of the ADA.

77. Defendant has failed and continues to fail to comply with regulations implementing Title II of the ADA, which require public entities to provide and maintain accessibility for temporary facilities, including but not limited to, "temporary safe pedestrian passageways around a construction site." 28 C.F.R. Pt. 36 app. D. 4.1.1(4).

78. As a direct and proximate result of the aforementioned acts, Plaintiffs have been and continue to be injured.

79. The City's conduct constitutes an ongoing and continuous violation of Title II of the ADA and, as a result, Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees, expenses, and costs.

SECOND CAUSE OF ACTION
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973
(29 U.S.C. § 794, et seq.)

80. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

81. Section 504 provides in pertinent part: "No 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.

82. Named Plaintiffs Goodlaxson, Jackson, and Mayo along with many of the constituents of Named Plaintiff IMAGE Center are qualified to participate in Defendant's pedestrian right-of-way program in Baltimore and have disabilities within the meaning of Section 504. *See* 29 U.S.C. § 705(20)(B) (referencing 42 U.S.C. § 12102); *see also* 28 C.F.R. § 39.103.

83. The City is a recipient of federal financial assistance sufficient to invoke the coverage of Section 504 and has received such federal financial assistance at all times relevant to the claims asserted in this Complaint.

84. The City and its agents and employees have violated and continue to violate Section 504 and the regulations promulgated thereunder by excluding Plaintiffs from participation in, denying Plaintiffs the benefits of, and subjecting Plaintiffs, based solely by reason of their disabilities, to discrimination in the benefits and services of Defendant's pedestrian right-of-way program in Baltimore.

85. Defendant has additionally violated Section 504 by failing to construct curb ramps compliant with federal accessibility requirements at intersections throughout Baltimore, where they have newly constructed or altered sidewalks, streets, roads or highways since June 3, 1977.

86. As a direct and proximate cause of the aforementioned acts, Plaintiffs have been and continue to be injured.

87. Defendant's conduct constitutes an ongoing and continuous violation of Section 504 and, as a result, Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows, including but not limited to:

88. Certification of Plaintiffs' claims as a class action and certification of Plaintiffs as class representatives and their counsel as class counsel.

89. Issuance of a judgment declaring that Defendant's conduct as alleged herein has violated and continues to violate Title II of the ADA and Section 504.

90. Issuance of an order and judgment enjoining Defendant from violating Title II of the ADA and Section 504 and requiring Defendant to develop and implement a remedial plan to remedy Defendant's past and ongoing violations of the statutes. At a minimum, Plaintiffs request that Defendant be enjoined to take the following actions:

- a. Ensure that the City constructs, remediates, repairs, and maintains curb ramps and sidewalks such that, when viewed in its entirety, the City's pedestrian right-of-way is readily accessible to and usable by individuals with mobility disabilities;
- b. Ensure that the City constructs, remediates, repairs, and maintains curb ramps and sidewalks such that facilities in which City programs, services, and activities are made available to the public are readily accessible to and usable by individuals with mobility disabilities;
- c. Ensure that the City performs prompt remedial measures to cure past violations of its duty to construct or alter curb ramps and sidewalks as required by the new construction and alteration obligations of Title II of the ADA and Section 504, and the accessibility design standards in effect at the time of such new construction or alterations;
- d. Ensure that all future new construction and alterations to the City's curb ramps

- and sidewalks fully comply with then-existing accessibility design standards;
- e. Ensure that Defendant adopts and implements administrative methods, policies, and practices to maintain accessible curb ramps and sidewalks, including, without limitation, ensuring that trees and other objects do not block the pedestrian right-of-way,
 - f. Remain under this Court's jurisdiction until Defendant fully complies with the Orders of this court; and
 - g. Prepare a complete Self-Evaluation and a complete and publicly available Transition Plan regarding the accessibility of the existing pedestrian right-of-way in compliance with Title II of the ADA and Section 504;
91. Pay of Plaintiffs' reasonable attorneys' fees, expenses and costs; and
92. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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* Motion to Appear *Pro Hac Vice* To Be Filed

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