

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Council for Disability Rights,]	
an Illinois not for profit corporation,]	
Bruce Moore, Larry Quillinan,]	
Venzelma Cotton, Kent Smith, Doris]	
Stewart, Margaret Holzer, on their own]	No: 05 C 5689
behalf and on behalf of a class of similarly]	
situated persons,]	
]	Judge: Wayne R. Andersen
Plaintiff,]	
]	
v.]	Magistrate Judge: Nan R. Nolan
]	
City of Chicago, a municipal]	
corporation,]	Jury Demanded
]	
Defendant]	

2nd AMENDED COMPLAINT

INTRODUCTION

1. Plaintiffs Council for Disability Rights, Larry Quillinan, Venzelma Cotton, Bruce Moore, Kent Smith, Doris Stewart, Margaret Holzer, bring this action on their own behalf and on behalf of other similarly situated persons with mobility impairments who live, work and for travel in the City of Chicago, Illinois to put an end to the City of Chicago's systemic failure to properly install and maintain sidewalks, curb cuts and ramps necessary for the mobility of persons with disabilities.

2. Each of the individual named plaintiffs has a disability: all of them use a

wheelchair or other assistive device, and one of the plaintiffs is legally blind.

3. The plaintiffs bring this action under Title II of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., and the regulations promulgated thereunder (the "ADA") and under Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability "under any program or activity receiving Federal financial assistance." 29 U.S.C. 794(a) ("Section 504"), to challenge the City of Chicago's pattern and practice of: (1) failing to properly install or maintain curb cuts and ramps when resurfacing streets and altering or installing city sidewalks; (2) failing to install all necessary curb cuts and ramps at a particular intersection when resurfacing streets and altering or installing city sidewalks; and (3) failing to properly install, repair or maintain city sidewalks. Plaintiffs are seeking declaratory and injunctive relief.

JURISDICTION AND VENUE

4. This Court has jurisdiction regarding Plaintiffs claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 (3)(4).

5. Plaintiffs' claims are authorized pursuant to 28 U.S.C. § 2201, § 2202, and 42 U.S.C. §§ 12101 et. seq.

6. Venue is proper in the Northern District of Illinois as all claims arise in District, the plaintiffs reside in the District, and the Defendant conducts business in the District.

PARTIES

Plaintiffs

7. Plaintiff the Council for Disability Rights (hereinafter "CDR") is a Not for Profit Corporation in Chicago, providing direct services and advocacy for persons with disabilities. CDR's advocacy for persons with disabilities has extended to participation in legal proceedings.

8. Plaintiff Larry Quillinan resides in Chicago Illinois. He is retired from the City of Chicago's Department of Aging and travels within Chicago each day in order to conduct business as an advocate for persons with disabilities, and for other routine daily activities. Mr. Quillinan has a mobility impairment and is legally blind. Mr. Quillinan is a person with a disability as that term is defined by the ADA.

9. Plaintiff Venzelma Cotton resides in Chicago Illinois, and often travels in the City of Chicago to conduct business as an advocate for persons with disabilities, to shop, and for other purposes. Ms. Cotton has a mobility impairment and uses two crutches to ambulate. Ms. Cotton is a person with a disability as that term is defined by the ADA.

10. Plaintiff Bruce Moore resides in Chicago Illinois. He has retired from the State of Illinois' Department of Rehabilitation Services and travels in the City of Chicago to conduct business as an advocate for persons with disabilities, to shop, and for other purposes. Mr. Moore has a mobility impairment and uses a manual wheelchair to ambulate. Mr. Moore is a person with a disability as that term is defined by the ADA.

11. Plaintiff Kent Smith resides in Elmhurst, Illinois, and has frequently

traveled to the City of Chicago to conduct business as the former (now retired) Development Officer of the Ada S McKinley agency, a Not For Profit Corporation that advocates an independent living philosophy for people with disabilities. Mr. Smith has a mobility impairment. Mr. Smith is a person with a disability as that term is defined by the ADA.

12. Plaintiff Doris Stewart resides in Chicago, Illinois. Ms. Stewart works in Chicago, Illinois as an advocate for persons with disabilities. Ms. Stewart has a mobility impairment and uses a manual wheelchair for mobility. Ms. Stewart is a person with a disability as that term is defined by the ADA.

13. Plaintiff Margaret Holzer resides in Chicago, Illinois. Ms. Holzer works in Chicago, Illinois and is an advocate for persons with disabilities. Ms. Holzer has a mobility impairment and uses a motorized wheelchair for mobility. Ms. Holzer is a person with a disability as that term is defined by the ADA.

Defendant

14. Defendant City of Chicago is a municipal corporation authorized under the State of Illinois, and is a public entity as that term is defined by the ADA, 42 U.S.C. § 1213101; 28 C.F.R. § 35.104.

CLASS ACTION ALLEGATIONS

15. The plaintiffs bring this action, pursuant to Fed. R. Civ. P. 23 (b)(2), on behalf of themselves and a class of individuals consisting of persons with a wide range of

disabilities, including but not limited to individuals who use ambulatory devices such as wheelchairs or scooters for mobility, and who wish to access the public programs, activities, and/or services within the City of Chicago.

16. The plaintiffs are being denied the full and equal participation in the goods, services, programs, activities and benefits offered to the general public within the City of Chicago and the plaintiffs are being denied the full and equal participation in the goods, services, programs, activities and benefits offered by the Defendant, as a result of the failure of the City of Chicago to properly install, repair or adequately maintain:

- a. curb ramps when city streets are resurfaced or sidewalks are installed,
- b. city sidewalks at all times, and
- c. curb ramps at those existing pedestrian walkways which have not been installed or altered since the effective date of the ADA.

all in violation of Title II of the ADA, 42 U.S.C. §. 12131 et seq.

17. The size of the class is so numerous that joinder of the individual members would be impracticable. The 2000 US Census lists the number of persons in Chicago between the ages of 21 and 64 with disabilities as 400,961. Adding those under 21 and more than 65 brings the number of persons in Chicago with disabilities to nearly 600,000. To this number need to be added those disabled persons who come into the city every day to work, shop or play.

18. The named plaintiffs are adequate class representatives as they are directly impacted by the Defendant's failure to comply with the ADA as alleged in this Complaint.

The interests of the named plaintiffs are not in conflict with the interests of the class as a whole. The attorneys representing the class are experienced in representing clients in class action claims and with claims involving alleged ADA and Section 504 violations.

19. The named plaintiffs are a small number of those affected by the grievances presented in this case -- people with mobility limitations who use the public ways of Chicago, whether residents or not. Residents of Chicago who have mobility limitations (or may have in the future) number in the hundreds of thousands; nonresidents include visitors as well as daily commuters, many thousands of whom have or will have mobility limitations. The number of curbs at a given intersection may range from three or four to eight to ten or more, depending on the number of intersecting streets and pedestrian islands, etc. Alleys occurring at mid-block present two more sites that require curb cuts or ramps. Sidewalks that are not level are impassible barriers forcing people with mobility limitations into the street to find an accessible path. Sidewalks with steep cross-slopes are difficult or impossible for people with mobility limitations to navigate. Sidewalks without a level path across driveways can shoot people using wheelchairs or scooters straight into street traffic and are difficult or impossible for people with mobility limitations to navigate.

20. The need to correct the pattern of failure presented in this case is compounded by the number of individuals affected; the need is further complicated by the number of possible sites with improper installations. Finally, it is a compelling need -- to avoid injury to individuals and to improve the daily quality of life for these individuals

and everyone else traversing the public way in Chicago.

21. The impact of these conditions on the daily life of a person with a mobility limitation is difficult to imagine.

22. In order to travel to and from work, a mobility-limited person must know the condition of each and every curb that s/he must safely traverse. Those conditions change with the season. In the winter, piles of snow or ice often make the curb cut impassable. In the summer, construction work often requires the person to find another, safer path to work.

23. In order to meet someone for lunch, not only must s/he know whether the restaurant is accessible, but also whether the path of travel from point A (the office) to point B (the restaurant) is also accessible.

24. In order for him/her to use public buildings or other public venues, the path of travel to (as well as into and throughout) the facility must be accessible. If a person with mobility limitations is going to a new location, a safe, accessible path of travel is unknowable; there is no one, no agency with the answer -- only another person with a mobility limitation who has been recently to that location.

25. Job-hunting becomes a real adventure into new territory, requiring a cell phone so that s/he can inform a potentially new employer when blocked by an inaccessible public way or when reaching an inaccessible site.

26. An accessible path of travel must become an integral part of the daily planning for a person with a mobility limitation in order for him/her to reach any given

destination in a safe and timely manner. A flexible approach to daily events also becomes part of his/her mind set, even though there may be occasional breakthroughs of anger that result in rude outbursts or, perhaps, lawsuits.

27. Common questions of law and fact are involved, including questions posed by the plaintiffs' allegations that Defendant has failed to properly install, repair or adequately maintain:

- a. curb ramps when city streets are resurfaced or sidewalks are installed,
- b. city sidewalks at all times, and
- c. curb ramps at those existing pedestrian walkways which have not been installed or altered since the effective date of the ADA.

These claims of the named plaintiffs are typical of the claims of the class.

Inconsistent or varying adjudication with respect to individual members of the class will result in establishing incompatible standards of conduct for the party opposing class certification generally applicable to the class, making declaratory or injunctive relief appropriate to the class as a whole.

28. Notice under Fed. R. Civ. P. 23(b)(2) is not required. Notice of any contemplated settlement or dismissal will be provided pursuant to R. 23(e) as the Court deems appropriate.

FACTS

29. The guidelines established by the ADA for sidewalks and ramps and curbs

recognize the difficulty encountered by persons with disabilities as they walk or use walkers, wheelchairs and/or scooters in navigating sidewalks, curbs and ramps. The ADA realistically requires different solutions for different problems so as to ensure accessibility by persons with disabilities.

30. An accessible route shall be smooth and have a slope no greater than 1:20. The least possible slope shall be used for any ramp. Ramp slopes between 1:16 and 1:20 are preferred.

31. The ability to manage an incline is related to both its slope and its length.

32. Wheelchair users with disabilities affecting their arms or with low stamina have serious difficulty using inclines.

33. The overall rise of a curb cut or ramp shall be no greater than 8.33%.

34. The cross slope of a curb cut or ramp shall be no greater than 2%.

35. The transition from each curb cut or ramp to the sidewalk shall be level, flush and free of abrupt changes.

36. The transition from each curb cut or ramp to the street shall be level, flush and free of abrupt changes.

37. Level landings are essential toward maintaining an aggregate slope that complies with these guidelines. A ramp landing that is not level causes individuals using wheelchairs to tip backward or bottom out when the ramp is approached.

38. Curb ramps require detectable warnings. A detectable warning is a standardized surface feature built in or applied to walking surfaces or other elements to

warn visually impaired people of hazards. Detectable warnings are raised domes with a diameter of about 0.9 in (23 mm), a height of about 0.2 in (5 mm) and a center-to-center spacing of about 2.35 in (60 mm) which contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light.

39. The plaintiffs are aware of locations where curb cuts and ramps are improperly installed or missing. These corners do not provide safe access to those who use wheelchairs, walkers, and scooters. Several of these intersections are in or near the downtown commercial district, government facilities, or other public commercial facilities. Many are in Chicago's diverse neighborhoods. Many are on streets which have been resurfaced within the past two (2) years. There are too many faulty curbs and inaccessible routes in Chicago to even attempt to list but some examples include:

a. All corners of Addison and Broadway. Addison was resurfaced within the last 2 years. There are four diagonal ramps at this intersection. Two of the ramps are new and two were not replaced at the time of the resurfacing.

1. The southwest corner has a new diagonal ramp with two detectable warnings facing north and east.

- The running slope is greater than allowed.
- The cross slopes are greater than allowed.
- There is no level landing at the top of the ramp.
- The detectable warnings are not oriented to the cross

walks.

2. The southeast corner has a new diagonal ramp with two detectable warnings facing north and west.

- There is no level landing at the top of the ramp.
- The detectable warnings are not oriented to the cross walks.

3. The northeast corner has an old diagonal ramp.

- There is a steep rolled curb at the bottom of the ramp.
- The running slope is greater than allowed.
- There is no level landing at the top of the ramp.
- There are no detectable warnings.

4. The northwest corner has an old diagonal ramp.

- The cross slope is greater than allowed.
- There is no level landing at the top of the ramp.
- There are no detectable warnings.

b. A new sidewalk was installed on the south side of Addison between Broadway and Grove. Driveways crossing the sidewalk create cross slopes of over 8%. The driveways also have steep flared sides with slopes over 10% cutting through the path of travel along the sidewalk..

c. Addison and Magnolia: This is a T- intersection with six new ramps:

1. The southwest ramp facing north has a running slope that is greater than allowed.
 2. The northwest corner ramp facing south has a running slope that is greater than allowed.
 3. The northwest corner ramp facing east has a running slope that is greater than allowed and a reverse lip.
 4. The northeast corner ramp facing west has a huge rolled curb at the bottom of the ramp with a running slope that is greater than allowed for about 9 inches of run.
 5. The northeast corner ramp facing south has a running slope that is greater than allowed.
 6. The southeast ramp facing north has a large rolled curb at the bottom of the ramp and a running slope that is greater than allowed.
- d. A wheelchair going on Belden to or from Halsted to Lincoln Park must use the street for much or the journey.
- e. Belden and Cleveland: Belden was resurfaced in 2005. There are two new ramps and six old ramps that were not replaced during resurfacing. None of the old ramps have detectable warnings.
1. The southeast corner ramp facing west is a new ramp with a running slope that is greater than allowed.

2. The southeast corner ramp facing north is a new ramp with a running slope that is greater than allowed.
 3. The northeast corner ramp facing west is a old ramp with a huge lip at the bottom of the ramp.
 4. The northeast corner ramp facing south is an old ramp with a large rolled curb rising about 3 inches over an 8 inch run.
 5. The northwest corner ramp facing east is an old ramp with a significant reverse lip.
 6. The northwest corner ramp facing south is an old ramp with a large lip and a reverse lip.
 7. The southwest corner ramp facing east is an old ramp with a steep rolled curb.
 8. The southwest corner ramp facing north is an old ramp with a lip that is almost a curb.
- f. Clark was resurfaced in 2005 from Diversey to West Roslyn. This resurfacing project involves at least 9 intersections with four to eight ramps per intersection. Sidewalks were replaced at these as well. Most of the ramps have one or more of the following defects: cross slopes exceeding 2% and running slopes exceeding 8.3%. Driveways crossing the sidewalk create cross slopes that are greater than allowed.

- g. Clark was resurfaced in 2005 from Montrose to Addison. This resurfacing project involves at least 12 intersections with four to eight ramps per intersection. Not a single ramp was replaced at these intersections. None of the old ramps have detectable warnings and most have one or more of the following defects: rolled curbs or lips at the bottom of the ramps, cross slopes exceeding 2%, running slopes exceeding 8.3%, and no level landings at the top of the ramps.
- h. The Waveland underpass is under construction. The pedestrian walkway on the west side of Lakeshore Drive has two ramps, one on the north and one on the south leading down to the underpass. Both have running slopes of 10%. Both ramps lack the required level landings between the top and the bottom of the ramps.
- i. There are no curb cuts or ramps at the center island on the south side of the intersection of Jackson and Wacker.
- j. Northeast corner of Wabash and Madison.
- k. Southeast corner of Washington and Wabash.
- l. Northwest corner of LaSalle and W. Court Place.
- m. Water, ice and snow collect and pond at Northeast corner of Randolph and N. Garland Court forcing the disabled onto Randolph.
- n. Water, ice and snow collect and pond at many locations throughout Chicago in violation of the ADA. An example is the Northwest

corner of Dearborn and Madison.

- o. On the near South side a wheelchair cannot use either sidewalk to complete a journey from Clark to Wells on Polk Street.
- p. On the West side and in neighborhoods throughout Chicago, curb ramps are overly steep like the Northwest corner of Peoria and Grand, Southwest corner Schiller & Hoyne and the Southwest corner Leavitt and Huron.
- q. Alley on the east side of Milwaukee between Hubbard and Grand.
- r. Southeast corner LaSalle and Madison.
- s. Northwest corner LaSalle and Adams.
- t. Southwest corner LaSalle and Adams.
- u. Southwest corner Adams and Dearborn.
- v. Northwest corner Clark and Madison.
- w. Northwest corner Jefferson and Fulton.
- x. Southwest corner Damen and North.
- y. Southeast corner Grand and Dearborn.
- z. Many T intersections such as the west side of Chestnut and State or the west side of Schiller and Leavitt have no curb cut..
- aa. Northwest corner Orleans and Menomonee.
- ab. Southeast and Southwest corners Wisconsin and Orleans.
- ac. Southeast corner Armitage and Orchard where curb joins sidewalk.

ad. Few of the curb ramps have detectable warnings.

40. The plaintiffs are not aware of every location where sidewalks, curb cuts and ramps are improperly installed or missing.

41. Title II of the ADA prohibits a public entity from excluding individuals with disabilities from participating in, or being denied, the benefits of the goods, services, programs and activities of the entity, or otherwise being discriminated against on the basis of their disabilities. 42 U.S.C. § 12132.

42. The regulations implementing title II of the ADA require a public entity when designing or constructing any street, road, sidewalk or other facility to make the designed or constructed street, road, sidewalk or other facility accessible to, and usable by, individuals with disabilities. 28 C.F.R. § 35.151(a).

43. The regulations implementing title II of the ADA require a public entity when altering any existing street, road, sidewalk or other facility in any manner that affects usability, to make the altered portions accessible to, and usable by, individuals with disabilities. 28 C.F.R. § 35.151(b).

44. The regulations specifically address the subject of curb ramps and provide that a public entity must install curb ramps at intersections whenever it alters streets, roads or highways after January 26, 1992. 28 C.F.R. § 35.151(e) (1). Similarly, it must install curb ramps at intersections whenever it alters sidewalks after January 26, 1992. 28 C.F.R. § 35.151(e)(2).

45. The resurfacing of streets within the City of Chicago by the Department of

Transportation and the City of Chicago, is an alteration that affects accessibility and usability of those streets, and therefore is an alteration within the meaning of the ADA. 28 C.F.R. § 35.151(b).

46. The installing, modifying or repairing of sidewalks within the City of Chicago by the Department of Transportation and the City of Chicago, is an alteration that affects accessibility and usability of those streets, and therefore is an alteration within the meaning of the ADA. 28 C.F.R. § 35.151(b).

47. The City of Chicago operates a "program or activity receiving Federal financial assistance" under the meaning of Section 504.

COUNT I

48. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 47, inclusive.

49. The Defendant's practices as set forth above, constitute unlawful and intentional discrimination on the basis of disability, in violation of Title II of the Americans With Disabilities Act 42 U.S.C. § 12131 et seq., and 28 C.F.R. § 35.151(b)(e), as follows:

- a. The Defendant illegally failed to properly install or maintain curb cuts and ramps when resurfacing streets and altering or installing city sidewalks;
- b. The Defendant illegally failed to install all necessary curb

cuts and ramps when resurfacing streets and altering or installing city sidewalks;

c. The Defendant illegally failed to install curb ramps at those existing pedestrian walkways which have not been installed or altered since the effective date of the ADA and

d. The Defendant illegally failed to properly install, repair or maintain city sidewalks.

50. The Defendant's conduct constitutes an ongoing and continuous violation of the ADA and, unless restrained and enjoined from doing so, the Defendant will continue to violate the ADA. The Defendant's acts and omissions, unless enjoined, will continue to inflict irreparable injuries for which plaintiffs have no adequate remedy and law.

COUNT II

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED, 29 U.S.C. § 794 ET SEQ., BY THE CITY OF CHICAGO

51. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 50, inclusive.

52. Each individual plaintiff is an "otherwise qualified individual with a disability" under the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504").

53. The City of Chicago operates a "program or activity receiving Federal

financial assistance" under the meaning of Section 504.

54. Through the acts and omissions alleged herein, the City of Chicago has, by reason of plaintiffs' disabilities: excluded plaintiffs from participation in the City of Chicago's programs, services and activities; denied plaintiffs the benefits of the City of Chicago's programs, services, and activities; and subjected plaintiffs to discrimination.

55. The City of Chicago's acts and omissions set forth herein are in violation of the equal access and non-discrimination requirements set forth in Section 504, and the regulations promulgated thereunder, and have resulted in injury to plaintiffs.

56. The City of Chicago's conduct constitutes an ongoing and continuous violation of Section 504 and, unless restrained and enjoined from doing so, the City of Chicago will continue to violate Section 504. The City of Chicago's acts and omissions, unless enjoined, will continue to inflict irreparable injuries for which plaintiffs have no adequate remedy and law.

PRAYER FOR RELIEF,

WHEREFORE, the Plaintiffs request that the Court:

1. Exercise jurisdiction over this action;
2. Certify the class herein, and order class-wide relief in the instant action;
3. Declare that Defendant's conduct violates the ADA and Section 504 of the Rehabilitation Act of 1973;
4. Issue a preliminary and permanent injunction requiring Defendant to install

curb ramps whenever it resurfaces, alters or repairs streets, or alters, repairs or installs sidewalks, as required by the ADA and Section 504 of the Rehabilitation Act of 1973, together with oversight to assure correct installation;

5. Issue a preliminary and permanent injunction requiring Defendant to install or repair curb ramps at each corner where it has resurfaced streets, or repaired or installed sidewalks since the date of the effective enactment of the ADA, together with oversight to assure correct installation;

6. Issue a preliminary and permanent injunction requiring Defendant to install, or repair curb ramps as required by the ADA and Section 504 of the Rehabilitation Act of 1973, together with oversight to assure correct installation, maintenance and/or repair;

7. Issue a preliminary and permanent injunction requiring Defendant to install, maintain or repair sidewalks, as required by the ADA and Section 504 of the Rehabilitation Act of 1973, together with oversight to assure correct installation, maintenance and/or repair;

8. Issue a preliminary and permanent injunction requiring Defendant to install, maintain or repair sidewalks, as required by the ADA and Section 504 of the Rehabilitation Act of 1973, at each location where it has installed sidewalks since the date of the effective enactment of the ADA, together with oversight to assure correct installation, maintenance and/or repair;

9. Award attorneys fees and such other relief as the Court deems appropriate;

and

10. For such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand jury trial in this action pursuant to Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

s/ Theodore A. Woerthwein

One of the Attorney for Plaintiffs

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CERTIFICATION OF SERVICE

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This is to certify that on the 23rd day of November, 2005, the undersigned attorney caused a copy of the preceding **2nd AMENDED COMPLAINT**, to be delivered to the

individuals listed above by electronic notification.

S/ Theodore A. Woerthwein
Theodore A. Woerthwein

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