

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AMERICAN COUNCIL OF THE BLIND OF  
NEW YORK, INC., MICHAEL GOLFO, and  
CHRISTINA CURRY, *on behalf of themselves  
and all others similarly situated*,

Plaintiffs,

v.

CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION,  
BILL DE BLASIO, *in his official capacity as  
Mayor of the City of New York*, and POLLY  
TROTTEBERG, *in her official capacity as  
Commissioner of the New York City Department  
of Transportation*,

Defendants.

18 Civ. 5792 (PAE)

OPINION &  
ORDER

PAUL A. ENGELMAYER, District Judge:

This case involves a challenge under the Americans with Disabilities Act of 1990 (“ADA”) and related statutes to the accessibility of New York City’s signalized crosswalks to blind and low-vision pedestrians.

On behalf of a certified class of blind and low-vision New York City pedestrians, plaintiffs—the American Council of the Blind of New York, Inc. (“ACBNY”), Michael Golfo, and Christina Curry—have sued the City of New York, the New York City Department of Transportation (“DOT”), Mayor Bill de Blasio, and DOT Commissioner Polly Trottenberg (collectively, the “City” or “defendants”). Plaintiffs allege that the City has long failed to provide non-visual crossing information at the vast majority of its signalized intersections, *i.e.*, those which provide visual crossing information to sighted pedestrians. Plaintiffs allege that the City’s failure to accommodate blind and low-vision pedestrians violates Title II of the ADA,

42 U.S.C. § 12132; section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) (“Rehabilitation Act”); and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107(4)(a) (“NYCHRL”).

With discovery complete, plaintiffs now move for summary judgment on all claims, but solely as to liability, without yet seeking a judicial remedy. Plaintiffs principally argue that (1) the absence of non-visual crossing information at the vast majority of the City’s signalized intersections denies blind and low-vision pedestrians meaningful access to those intersections and the pedestrian grid, in violation of the ADA, the Rehabilitation Act, and the NYCHRL; and (2) the City’s failure to add non-visual crossing information on occasions when it has done construction at, or upgraded aspects of, the same intersections is also unlawful.

For the following reasons, the Court grants plaintiffs’ summary judgment motion in principal part. Most significantly, the Court finds, on the undisputed facts, that the near-total absence at the City’s signalized intersections of crossing information accessible to blind and low-vision pedestrians denies such persons meaningful access to these intersections, in violation of all three statutes cited above. The Court also grants plaintiffs’ motion as to liability on their claim that the City’s failure to add non-visual street-crossing information at particular intersections at which it installed new traffic signals after June 27, 2015, violates the ADA and Rehabilitation Act. The Court otherwise denies plaintiffs’ motion for summary judgment. The case will now proceed promptly forward on two tracks: (1) to determine the remedy for the violations that have been established; and (2) to resolve plaintiffs’ open claims.

## I. Background

### A. Factual Background<sup>1</sup>

According to the U.S. Census Bureau's 2017 American Community Survey 1-Year Estimates, among New York City's non-institutionalized population, 205,212 persons are blind or have other vision difficulties. Atkinson Decl., Ex. 1 ("Census Community Survey") at 2. That amounts to approximately 2.4% of the City's population. *See id.*

#### 1. The Parties

Plaintiff ACBNY is a New York non-profit corporation. JSF ¶ 1. Its purpose is to "support and promote the educational, vocational and social advancement of people with vision disabilities." *Id.* Its members include individuals with vision disabilities within the meaning of the ADA, Rehabilitation Act, and NYCHRL, including approximately 45 members in its Greater New York Chapter, which includes New York City. *Id.* ¶¶ 2, 20.

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<sup>1</sup> The Court draws its account of the underlying facts from the parties' respective submissions on the motion for summary judgment, including: the parties' joint statement of undisputed facts, Dkt. 91 ("JSF"); plaintiffs' Local Rule 56.1 statement, Dkt. 93 ("Pl. 56.1"); defendants' Local Rule 56.1 counter-statement, Dkt. 105 ("Def. 56.1"); the declaration of Lori Scharff, Dkt. 95 ("Scharff Decl."); the declaration of Christina Curry, Dkt. 96 ("Curry Decl."); the declaration of Michael Golfo, Dkt. 97 ("Golfo Decl."); the declaration of Torie Atkinson, Esq., Dkt. 98 ("Atkinson Decl."), and supporting exhibits; the corrected declaration of Joshua Benson, Dkt. 107 ("Benson Decl."), and supporting exhibits; the corrected declaration of James Celentano, Dkt. 108 ("Celentano Decl."), and supporting exhibits; and the declaration of Pamela A. Koplik, Esq., Dkt. 102 ("Koplik Decl."), and supporting exhibits.

Citations to a party's 56.1 statement incorporate the evidentiary materials cited therein. When facts stated in a party's 56.1 statement are supported by testimonial, video, or documentary evidence and not denied by the other party, or denied by a party without citation to conflicting admissible evidence, the Court finds such facts to be true. *See* S.D.N.Y. Local Civil Rule 56.1(c) ("Each numbered paragraph in the statement of material facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in statement required to be served by the opposing party."); *id.* Rule 56.1(d) ("Each statement by the movant or opponent . . . controverting any statement of material fact[] must be followed by citation to evidence which would be admissible, set forth as required by Fed. R. Civ. P. 56(c).").

Plaintiff Christina Curry is deaf, legally blind, and uses a forearm crutch as a mobility aid. *Id.* ¶ 3. As a result, she cannot see traffic in intersections unless it is “very close,” and cannot rely on visual street signals to cross the street. *Id.* ¶ 31. Because of her visual and auditory disabilities, she requires “tactile information” to use pedestrian signals. *Id.* She lives in the Bronx and regularly walks on New York City sidewalks to commute and as a part of her job as Executive Director of the Harlem Independent Living Center. *Id.* ¶¶ 32–34, 36. She avers that during her frequent pedestrian travel throughout New York City, she risks being hit by vehicles, fears for her life, is often grabbed by well-meaning pedestrians, and uses circuitous, sometimes costly, alternatives to walking to avoid such incidents—all because she cannot use the visual traffic signals that are available to sighted pedestrians. *See id.* ¶ 60; Curry Decl. ¶¶ 9–13.

Plaintiff Michael Golfo is a blind resident of Tarrytown, New York, who previously commuted to Manhattan daily for work and now walks on New York City sidewalks about once per week to visit his doctors and friends. JSF ¶¶ 63–64. As a result of his disability, he relies on his hearing and guide dog to navigate the New York City streets. *Id.* ¶ 65. Even with these aids, Golfo finds it difficult to traverse the City; he has almost been hit by cars on many occasions while crossing the street. *Id.* ¶ 74. Like Curry, Golfo often must rely on sighted persons to help him make such crossings. *Id.* ¶¶ 75–76. He also often relies on expensive taxis or car services to navigate the City, or takes elongated routes to avoid difficult intersections. *Id.* ¶¶ 79–80.

Defendants the City of New York and the DOT are responsible for and have broad authority over the City’s streets, and oversee the installation, repair, and maintenance of its traffic signals, sidewalks, crosswalks, and roadways. *Id.* ¶ 6. Each receives federal funds, including from the Federal Highway Administration (“FHWA”). *Id.* ¶ 5.

Defendant Bill de Blasio, sued in his official capacity, is Mayor of the City of New York. *Id.* ¶ 7. Defendant Polly Trottenberg, also sued in her official capacity, is Commissioner of the DOT. *Id.* ¶ 8.

## 2. New York City’s Pedestrian Landscape

New York City has the highest population density of any major American city. *Id.* ¶ 9. Walking “is a major form of transportation in the city, and access to sidewalks is an important component of city life.” *Id.*

To allow pedestrians safely to navigate its sidewalks and traffic intersections, the City has installed roughly 120,000 pedestrian control signals—*i.e.*, devices informing pedestrians when to cross the street and when to wait—at about 13,200 of its 45,000 intersections. *Id.* ¶¶ 11, 13. Of those 13,200 signalized intersections, all but 443 (roughly 96.6%) communicate crossing information exclusively in a visual format, *id.* ¶ 19, with an image of a mid-stride white stick figure indicating “walk,” and an upraised orange hand indicating “don’t walk,” *id.* ¶ 108. These visual signals are inaccessible to the blind. *Id.* ¶ 138.

## 3. Difficulties Facing Blind Pedestrians

As the parties agree, any pedestrian attempting to cross a street must perform four tasks: (1) locate the edge of the street and crossing point; (2) align to cross the street; (3) decide when to begin crossing; and (4) maintain alignment (*i.e.*, the correct direction) while crossing the street. Pl. 56.1 ¶ 6. Those with a visual disability, however, have difficulty accomplishing each of these tasks. *Id.* ¶¶ 8–15.

Typically, a blind person traversing New York City sidewalks will stop when he or she encounters a curb or other detectable warning surface, and will assume that a crossing point is located there. *Id.* ¶ 8. However, without assistance, blind pedestrians begin crossing from outside the crosswalk (*i.e.*, in a traffic lane) nearly 30% of the time. *Id.* ¶ 9. And once blind

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