

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PAUL PECUNAS; SHONA EAKIN;
MARK ZAHAR, and
VOICES FOR INDEPENDENCE, INC. (VFI),
on behalf of themselves and all others
similarly situated

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION;
ALLEN D. BIEHLER, P.E., in his official
capacity as Secretary of Transportation of
the Commonwealth of Pennsylvania;
MILLCREEK TOWNSHIP, PA;

Defendants.

Civil Action No.: _____

COMPLAINT:
CLASS ACTION

**CLASS ACTION COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I. PRELIMINARY STATEMENT

1. Millcreek Township, Pennsylvania (hereinafter “Millcreek”) is not accessible to and readily usable by Plaintiffs and other persons with disabilities. Millcreek’s street level pedestrian walkways and intersections are not safe, and people using wheelchairs for mobility are forced to travel in the streets.

2. The Department of Transportation of the Commonwealth of Pennsylvania, (hereinafter “PennDOT”) and Millcreek have spent federal and state taxpayer dollars creating or altering street level pedestrian walkways and street intersections and certain other facilities in

ways that are not readily usable to and accessible to Plaintiffs and others. Because Defendants have failed to make and to maintain these to be accessible, Plaintiffs and similarly situated class members with disabilities are denied access to Defendants' services, programs or activities, and must risk serious injury attempting to traverse Millcreek Township, or while attempting to use or participate in these services, programs and activities.

3. Beginning in 1973, under section 504 of the Rehabilitation Act, 29 U.S.C. §§701, et seq. ("Rehab Act") Congress prohibited Defendants—when receiving federal money—from discriminating in services, programs or activities against persons with disabilities. *See*, 29 U.S.C. §794. Later, in 1990 with the Americans With Disabilities Act of 1990, 42 U.S.C. §§12101, et. seq. ("ADA"), Congress strengthened the law, prohibiting Defendants from disability discrimination even if they did not receive federal funds. Both the ADA and Rehab Act also contain provisions requiring cities to make modifications in their services, programs, activities and facilities to make them readily usable and accessible.

4. Defendants—through defective construction and alterations, combined with insufficient maintenance and enforcement—have continuously failed to ensure that their street level pedestrian walkways, intersections and certain other facilities, services, programs and activities are readily usable by and accessible to Plaintiffs and others who are similarly situated.

5. Defendants have engaged in a continuing pattern and practice of overarching discrimination against Plaintiffs and class members beginning at least in January 1992 and continuing each year to the present.

6. Plaintiffs file this class action lawsuit to seek court intervention to force Defendants to live up to their federally mandated duties to ensure accessibility to their citizens with disabilities.

7. Plaintiffs ask the court to order Defendants to retrofit or remediate their intersections and street level pedestrian walkways, as required by the Rehab Act and/or the ADA, to make them readily usable and safe for people with disabilities. Plaintiffs also ask the court to order Defendants to put into place a detailed system to ensure that they comply with all federal accessibility law in the future so that the new construction and alterations, in addition to systemic maintenance, will ensure mandated access for people with disabilities.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction of Plaintiffs' claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

9. Venue is proper under 28 U.S.C. § 1391(b) because each Defendant is located in the Western District of Pennsylvania and the events and/or omissions giving rise to Plaintiffs' claims occurred in this District.

III. PARTIES

10. Plaintiff, Voices for Independence, Inc. (“VFI”), is a membership organization that advocates to increase opportunities for independent living for persons with disabilities. It serves people with disabilities throughout Pennsylvania, including throughout Millcreek Township, Pennsylvania. VFI’s mission is to promote access and inclusion of persons with disabilities into housing, employment and recreation. Defendants’ failure to properly construct, alters, or maintain their services, programs and activities frustrates VFI’s mission and purposes. VFI has diverted significant resources documenting violations by Defendants and in attempting to correct those illegal patterns of conduct.

11. Paul Pecunas, Shona Eakin and Mark Zahar—the named individual Plaintiffs—frequently travel throughout Millcreek Township, Pennsylvania. These Plaintiffs rely on wheelchairs to travel. Plaintiff Pecunas is a consumer of Plaintiff VFI, and Plaintiff Eakin is a consumer of and is the Executive Director of VFI. Each named individual Plaintiff is a person with a disability as defined by the ADA and the Rehab Act, and each is denied access to facilities, programs, services or activities of both Defendants as described herein.

12. Defendants PennDOT and Millcreek are each public entities as that term is defined under 42 U.S.C. § 12131(l); 28 C.F.R. § 35.104. Defendant Allen D. Biehler, P.E., has been the Secretary of Transportation for the Commonwealth of Pennsylvania since 2003. He has ultimate decision and policy-making authority over the matters at issue in this lawsuit.

Defendants are discriminating against Plaintiffs and others by denying access to facilities, programs, services and activities located in Millcreek Township.

IV. CLASS ACTION ALLEGATIONS

13. Pursuant to Fed. R. Civ. P. 23 (b)(2), Plaintiffs bring this action on behalf of themselves and a class of all persons who live or will live in or who visit or will visit Millcreek Township, Pennsylvania, and who, because of a disability as defined by the Rehab Act or the ADA, have difficulties in unassisted ambulation or sight. Plaintiffs seek declaratory and injunctive relief only, but not damages, on behalf of themselves and the class.

(a). The class is so numerous that joinder of the individual members would be impracticable. According to the United States Census, Millcreek Township contains approximately 2,000 citizens defined in the category "Go Outside of Home-Disabled Residents, Noninstitutionalized", as well as more than 1,000 citizens defined in the category "Sensory-Disabled Residents, Noninstitutionalized". *See United States Census Information*, attached hereto as Exhibit 1. Additionally, many non-residents of Millcreek with disabilities travel throughout, patronize businesses in, or visit family and friends in Millcreek. Plaintiffs and others similarly situated will travel in Millcreek more often if Defendants comply with the ADA and Rehabilitation Act and make their facilities, services, programs and activities in Millcreek accessible to persons with disabilities.

(b). The named Plaintiffs are adequate class representatives because they are directly impacted by Defendants' failure to build, alter or maintain Defendants' facilities, programs, services and activities to be accessible to Plaintiffs. The interests of the named

Plaintiffs are not antagonistic to, or in conflict with, the interests of the class as a whole. The attorneys representing the class are experienced in representing clients in class actions involving civil rights claims, including enforcement of the ADA, and other federal claims.

(c). Common questions of law and fact predominate, including questions posed by Plaintiffs' allegations that Defendants have failed to operate their facilities, programs, services or activities to be accessible to Plaintiffs and others.

(d). Claims of the named Plaintiffs are typical of the claims of the class because all class members and the named Plaintiffs are affected by Defendants' discrimination against Plaintiffs and others.

(e). Defendants have acted on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

(f). Notice of the pendency of this class action pursuant to Rule 23(b)(2) is not required. It is contemplated that notice of any proposed dismissal or settlement shall be given to all members of the class in such manner as the Court directs pursuant to Rule 23(e).

V. FACTS

14. Plaintiff Paul Pecunas lives by himself in Erie, Pennsylvania, adjacent to Millcreek Township. He uses a motorized wheelchair to travel, and is unable to drive a vehicle. Although he sometimes rides public transit, he is totally reliant on his wheelchair to move about Millcreek. In addition, when weather permits, he travels from his home solely by his wheelchair.

15. Plaintiff Shona Eakin lives in Erie, and frequently travels throughout Millcreek Township. She drives a modified van equipped with a lift for her wheelchair. At times, she uses a manual wheelchair, and at times she uses a motorized wheelchair. Upon leaving her van, she is totally reliant on her wheelchair to move about Millcreek.

16. Plaintiff Mark Zahar lives in Millcreek Township, and frequently travels throughout Millcreek Township. He drives a modified van equipped with a lift for his wheelchair. Upon leaving his van, he is totally reliant on his wheelchair to move about Millcreek.

17. Plaintiff VFI provides multiple services to many persons with disabilities throughout Millcreek and its adjacent municipalities. Plaintiff Eakin is the Executive Director of VFI, and Plaintiffs Pecunas and Eakin are consumers of VFI's services.

18. Many hundreds of persons similarly situated to Plaintiffs live in and/or desire to use Defendants' public facilities, programs, services and activities throughout Millcreek Township.

19. Millcreek has many miles of street level pedestrian walkways and intersection crossings, which are routinely used by its citizens who do not have disabilities. But, Plaintiffs and all others similarly situated are denied use of these walkways and intersections because they are inaccessible, and Plaintiffs are segregated from full participation in these public facilities, as well as numerous public facilities, services, programs and activities throughout

Millcreek. If the walkways and intersections were made accessible as required by law, Plaintiffs would make much more use of these activities, and participate more fully in Millcreek's facilities, services and programs.

20. Some of these walkways and intersections were built and are maintained by Millcreek Township, while others were built and are maintained by PennDOT. After these walkways and intersections were constructed, Millcreek and PennDOT retained jurisdiction over the walkways within their rights-of-way, and no modifications or repairs can be done without one or both of the Defendants' permission.

21. The areas under Defendants' jurisdiction are extensive. For example, within the last two years, Defendants have resurfaced many miles of streets, roads and highways and their intersections throughout Millcreek. Most of these facilities are adjacent to street level pedestrian walkways. A portion of these resurfacing projects involved building new sidewalks within Defendants' rights-of-way. Defendants spent millions of dollars on these resurfacing and sidewalk facilities, services, programs or activities. This presented an excellent opportunity to eradicate some of the denial of access to Plaintiffs arising from the inaccessible sidewalks and pedestrian walkways.

22. Unfortunately, due to several practices, acts and/or omissions of Defendants, Plaintiffs are wrongfully segregated from and denied participation in Defendants' public facilities, programs, services and activities. A sample of some of these discriminatory practices is as follows:

(a). The resurfacing of intersections where walking pedestrians are intended to cross to walkways, but Plaintiffs and others are denied crossing. In some cases, Defendants have removed existing curb ramps and built solid curbs in their place at these crossings. In other cases, Defendants have failed to install curb ramps. At other intersections, Defendants have installed new curb ramps that not readily usable or accessible to Plaintiffs. The result is that walking pedestrians have many places to cross intersections, but Plaintiffs have very few, if any. There are several hundred examples of this pattern and practice.

(b). Constructing new walkways that contain a series of many abrupt changes in running slope creating an “undulating” or “roller-coaster” walkway. Plaintiffs have to force their way up each of these slopes, then restrain their chairs down these slopes, which is exhausting, and often are at severe risk of tumbling off the side of these slopes and plunging into the street or parking lot adjacent and parallel to the walkway.

(c). Constructing or altering curb ramps and adjacent crossings with cross-slopes that are many times steeper than permitted, and which threaten Plaintiffs and others with loss of control of their wheelchairs, even to the point of falling over into directly adjacent traffic. For example, some cross slopes at newly altered crossing and curb ramps exceed 2% up to and exceeding 14%, which Plaintiffs cannot overcome;

(d). Constructing or altering curb ramps so that they have massive running slopes that deny access to Plaintiffs. For example, in year 2009, Defendants constructed a new curb ramp in Millcreek Township at a pedestrian crossing of Peninsula Drive. This new curb ramp has a running slope of 19%, and causes wheelchairs to tip over backwards into the intersection, making attempted use of this brand new curb ramp potentially deadly.

Some Illustrations

23. Plaintiff Paul Pecunas wishes to travel from his home to the Millcreek Mall, which is located on State Route 19 (SR 19), also known as Peach Street, and which contains street level walkways. Approximately 20 months ago, Defendants resurfaced the entire stretch of State Route 19 in Millcreek. Walking pedestrians have been using these resurfaced intersections and walkways, but, unfortunately, Plaintiff Pecunas is denied the use of them. Instead, he is forced into a combination of traveling in the busy traffic on SR 19, and traveling on uneven, crowded parking lots parallel to SR 19, dodging vehicles entering and exiting from SR 19, and vehicles traversing the parking lots. This is because Defendants decided not to install curb ramps at many of these resurfaced intersections, and chose to leave in place very old, dangerous, defective and inaccessible curb ramps at all the other remaining intersections along SR 19 (Peach Street). In addition, many segments of the pedestrian walkways are in need of repairs, and/or suffer from inaccessible cross slopes and running slopes with unprotected drop-offs.

24. Plaintiff Shona Eakin wishes to use the brand new sidewalks that a few months ago Defendants constructed for several miles along SR 5 (West 12th Street) and along SR 20 (West 26th Street). Walking pedestrians have been using these intersections and walkways, but, unfortunately, Plaintiff Eakin is denied the use of them. There are many intersections along this several mile stretch where walking pedestrian are legally intended and permitted to cross State Routes 5 and 20. Yet, Defendants intentionally chose to not install curb ramps to allow Mrs. Eakin and others similarly situated to cross these State Routes along with walking pedestrians. Instead, Mrs. Eakin is segregated into using only three intersections to cross. This

means that while a walking pedestrian can cross legally every few hundred feet, Mrs. Eakin must travel nearly one mile to safely cross the street. In addition, several portions of these newly constructed sidewalks suffer from multiple steep changes in running slope, creating a roller-coaster effect that exhausts Mrs. Eakin and makes these new sidewalks inaccessible for her.

25. Plaintiff Mark Zahar would like to use the sidewalks in Millcreek. At many newly resurfaced intersections near his house, the curb ramps are too steep and deficient for him to use, and many have drainage grates with large openings at the bottom of the ramp. As a result, he is forced to travel in the street in the flow of traffic, risking his and others' safety.

26. Plaintiffs Pecunas, Eakin, Zahar and all others similarly situated are similarly denied access to these and to many other intersections of Millcreek Township streets, roads, and highways and their adjacent street level pedestrian walkways resurfaced or constructed within the last two years. These include, but are not limited to, State Routes 5 (West 12th Street), 20 (West 26th Street), and 832 (Peninsula Drive).

27. Likewise, Plaintiffs and all others similarly situated are denied access to almost all of the Defendants' remaining streets, roads, and highways and their adjacent street level pedestrian walkways that have not been altered within the last two years. These intersections and their adjacent street level pedestrian walkways lack curb ramps, or contain old, dangerous, dilapidated, unusable and inaccessible transitions from intersections to adjacent street level pedestrian walkways.

28. Instead, Plaintiffs, and many other individuals with disabilities who use wheelchairs or scooters are forced into the heavy flow of traffic while also using adjacent parking lots and driveways. Any motorist driving on these busy roads, or entering or leaving these adjacent parking lots and driveways is at risk of colliding with Plaintiffs, or similarly situated members of the class on any given day. Mobility impaired citizens are left with a stark choice: either to risk sudden severe injury or even death, or to be totally denied from participating in Millcreek's programs, activities, services or facilities.

Intentional Discrimination Against Persons with Disabilities

29. Recently, PennDOT, in consultation and/or agreement with Millcreek, has removed long-existing curb ramps, and has planted grass and built solid curbs in place of the previously existing curb ramps. Thus, at intersections that have long been previously equipped with curb ramps, all access now has been wrongfully denied. Thus, although walking pedestrians can still legally cross at these intersections, Defendants have intentionally denied Plaintiffs access at these intersections.

30. Recently, PennDOT, in consultation and agreement with Millcreek, has built brand new street level pedestrian walkways containing many intersections for walking pedestrians to cross legally. However, as a part of these projects, Defendants have intentionally refused to build curb ramps at the vast majority of these intersection crossings, and instead have built new solid curbs, which wrongfully deny Plaintiffs and others any access to these crossings. In some cases Plaintiffs are forced to travel nearly one mile to find a curb ramp that would

permit them to cross an intersection, while walking pedestrians may legally cross the intersections every few hundred feet.

31. Recently, PennDOT changed a long-standing requirement that curb ramps and intersection crossings have cross slopes of less than 2%. Inexplicably, PennDOT's new written policy and instruction to contractors is to build curb ramps and street crossings with cross slopes up to and exceeding 11%. As a direct result, curb ramps that should have cross slopes of less than 2%, are designed and built with massive cross slopes. Such cross slopes violate applicable law and render the ramps unsafe and inaccessible to Plaintiffs. Indeed, these newly constructed massive cross slopes threaten to cause Plaintiffs' wheelchairs to tip over sideways into oncoming traffic.

32. Through these *newly enacted* policies, directives and practices, Defendants have recently, and continue currently, to alter hundreds of intersection crossings and adjacent curb ramps or street level pedestrian walkways, making these inaccessible to Plaintiffs and all others similarly situated. This is no accident—Defendants have decided to remove these existing curb ramps, or to build solid curbs at these legal pedestrian crossings, denying Plaintiffs access, but still legally permitting all others to cross the intersection. Even if PennDOT claims that it was acting to save money, or to “protect” Plaintiffs and all others with disabilities, defenses which are without support in the law, it does not change the fact that PennDOT has taken intentional steps to deny Plaintiffs access to *hundreds* of these street crossings, while permitting all others to cross legally. In violation of the Rehab Act and the ADA, Defendants are altering many intersections in ways to intentionally deny access and use by Plaintiffs and others.

Future Effects of Inaction

33. Defendants PennDOT and Millcreek's discriminatory policies and practices during the last two years and earlier have exacerbated Plaintiffs' exclusion from use of Defendants' programs, services, activities and facilities. If the Court does not intervene, over the next several years these facilities and services will become even more inaccessible. Also, due to the fact that each street and sidewalk remains unaltered for many years after construction or alteration, Plaintiffs' segregation will remain in force far into the future—perhaps for decades. Now is the time to act to ensure accessibility for Plaintiffs so that they can participate in Defendants' services, programs, activities and facilities fully with all other citizens.

Millcreek as a Defendant

34. Of course, throughout Millcreek, the Township's streets intersect with PennDOT's streets, roads and highways. For the reasons stated above, Plaintiffs and others similarly situated are denied access to these intersection crossings and adjacent street level pedestrian walkways.

35. Plaintiffs must include both Millcreek and PennDOT as defendants in this lawsuit for the Court to determine the legal responsibilities of each Defendant at the many intersections of PennDOT with Millcreek streets, roads and highways. This is the identical action taken by Plaintiffs and others in their earlier federal lawsuits against the Cities of Erie and Meadville, and PennDOT, concerning PennDOT intersections in those cities. PennDOT required Erie and Meadville to be added to this prior lawsuit. Likewise, Erie and Meadville refused to

install many curb ramps at intersections with PennDOT roads. The matter was resolved only after all parties were included in the lawsuit. Plaintiffs believe that is the case here as well.

36. In addition, Millcreek is wrongfully discriminating against Plaintiffs at intersections, which are under Millcreek's exclusive jurisdiction. For example, during the year 2010, Millcreek resurfaced several intersections along Westbury Ridge, Walnut Ridge, Abington Way, and Annendale. Millcreek failed to remediate or repair old, steep, dangerous curb ramps, some with cross slopes and running slopes approaching 15%. Additionally, Millcreek placed or failed to relocate large storm water drains where the curb ramps meet the resurfaced intersections. The grates covering these surface drains have openings that are so wide that they will catch and trap wheelchairs, walkers and canes, causing Plaintiffs to tip over or fall into the street or otherwise rendering the ramp inaccessible. Thus, these altered intersections and their adjacent sidewalks are not readily usable and accessible to Plaintiffs. Similar examples abound throughout Millcreek Township.

VI. CAUSES OF ACTION

**FIRST CAUSE OF ACTION: CLASS-WIDE INJUNCTIVE RELIEF CLAIM UNDER
TITLE II OF THE AMERICANS WITH DISABILITIES ACT**

37. Plaintiffs hereby incorporate by reference paragraphs 1-36 above, as if the same were again set forth herein.

38. Plaintiffs bring this count under Title II of the Americans With Disabilities Act(ADA) for class-wide declaratory and injunctive relief.

39. Title II of the ADA provides that “no 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.” 42 U.S.C. § 12132. Title II of the ADA defines each Defendant as a “public entity.” 42 U.S.C. § 12131(1)(A) & (B).

40. Pursuant to the ADA, Plaintiffs are “qualified persons with disabilities” because “with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meet[] the essential eligibility requirements for the receipt of services or the participation in programs, services or activities provided a public entity [Defendants].” 42 U.S.C. § 12131(2).

41. Congress envisioned that, among other things, the ADA would require that local and State governments maintain disability-accessible sidewalks. “The 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.” H.R. Rep. No. 101-485, pt. 2, at 84 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 367. Thus, purely under the Act—Title II of the ADA—defendants have impermissibly discriminated against Plaintiffs.

42. In addition, Defendants have violated Title II’s implementing regulations. Congress statutorily authorized the United States Department of Justice to create these implementing regulations. 42 U.S.C. §§ 12134(a), 12206; *Helen L. v. DiDario*, 46 F.3d 325, 331 (3d Cir. 1995) *cert. den.* 516 U.S. 813 (1995), (quoting *Chevron, U.S.A., Inc. v. Natural Res. Defense Council*, 467 U.S. 837, 844 (1984)). In view of Congress’ delegation, the DOJ’s regulations should be accorded “controlling weight unless [they are] ‘arbitrary, capricious, or manifestly contrary to the statute,’ ” *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 115 S. Ct. 2407, 2418, 132 L. Ed. 2d 597 (1995). The same is true of the preamble or commentary accompanying the regulations since both are part of the DOJ’s official interpretation of the legislation. *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 114 S. Ct. 2381, 2386, 129 L. Ed. 2d 405 (1994).” *Yeskey v. Pennsylvania Department of Corrections*, 118 F.3d 168, 171 (3rd Cir. 1997) *aff’d* 524 U.S. 206 (1998).

43. The Title II ADA access requirements are set forth in 28 C.F.R. § 149 (the general prohibition against discrimination); 28 C.F.R. § 150 (requiring accessibility of facilities

existing prior to January 26, 1992, the effective date of Title II); and, 28 C.F.R. § 151 (requiring that facilities newly constructed or altered after January 26, 1992 be fully accessible).

44. Section 28 C.F.R. §150(a) requires each Defendant to “operate each service, program, or activity, (so) when viewed in its entirety, (it) is readily accessible to and usable by individuals with disabilities. “[Title II’s] regulations state that the statute’s coverage extends to ‘all services, programs and activities provided or made available by public entities.’ This broad language is intended to ‘appl[y] to anything a public entity does.’” (citing 28 C.F.R. § 35.201(a) and pt. 35, App. A)”. *Yeskey*, 118 F.3d at 171; “The phrase ‘services, programs, or activities’ encompasses virtually everything that a public entity does.” *Johnson v. City of Saline*, 151 F.3d 564, 569 (6th Cir.1998).

45. Beginning in at least 1992, and continuing up to the present, each Defendant has engaged in a continuing pattern and practice of over-arching discrimination against Plaintiffs and class members by operating several of its public facilities, services, programs, or activities which, when viewed in their entirety, are not readily usable by and accessible to Plaintiffs and other class members with disabilities. These public facilities, services, programs, or activities include, among others, Millcreek’s street level pedestrian walkways, curb-ramps, and intersections. Indeed, because of Defendants’ inaccessible street level pedestrian walkways, Plaintiffs are prevented from accessing Defendants’ public facilities, programs, services and activities.

46. In addition, Title II of the Americans With Disabilities Act requires that when a public entity builds or alters any part of a facility after January 26, 1992, it shall to the maximum extent possible, be altered so that it is readily accessible to and usable by individuals with disabilities. 42 U.S.C. §12132; 28 C.F.R. § 35.151(a), (b) & (e). This includes, among other things, resurfacing of Defendants' intersections. *Kinney v. Yerusalim*, 9 F.3d 1067 (3rd Cir.1993) *cert. denied sub nom Hoskins v. Kinney*, 114 S.Ct. 1545 (1994). Many of the street level pedestrian crossings and walkways at issue in this lawsuit have been "altered" "by, on behalf of, or for the use" of each of the Defendants", but are not to the maximum extent possible readily usable by and accessible to Plaintiffs. *Id.* Indeed, as set forth in the facts above, Defendants' intersection crossings and street level pedestrian walkways deny access to Plaintiffs.

47. In sum, each Plaintiff has a qualifying disability, is being denied the benefits of Defendant's public facilities, services, programs, or activities for which Defendants are responsible, or is otherwise discriminated against by Defendants, and such discrimination is by reason of Plaintiffs' disabilities. By their actions complained of herein, Defendants have intentionally discriminated against Plaintiffs and class members due to their disabilities. Plaintiffs are entitled to declaratory relief, to injunctive relief ordering Defendants to bring these and future services, programs or activities into compliance, and to payment by Defendants of Plaintiffs' reasonable attorneys fees and costs.

SECOND CAUSE OF ACTION:
CLASS-WIDE CLAIM UNDER THE REHABILITATION ACT OF 1973

48. Plaintiffs hereby incorporate by reference paragraphs 1-47 above, as if the same were again set forth herein.

49. Plaintiffs bring this count for class-wide declaratory and injunctive relief. This Act provides that "[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a) (Section 504 of the Rehab Act). Upon information and belief, each Defendant receives Federal financial assistance. The Rehab Act defines "program or activity" as "all of the operations of" a qualifying local government. 29 U.S.C. § 794(B)(1)(A). The Rehab Act was "the first federal statute to provide broad prohibitions against discrimination on the basis of disability." *Yeskey v. Pennsylvania Dep't of Corrections*, 118 F.3d 168, 170 (3d Cir. 1998). *aff'd* 524 U.S. 206 (1998).

50. Given their similar language and related purposes, Congress has directed that Title II of the ADA and Section 504 of the Rehab Act be construed and applied consistently. *Yeskey*, at 170. As a result, leading cases, including those in the Third Circuit, have interpreted these statutes in *pari materia*. *Id.*

51. Each individual Plaintiff (1) has a disability; (2) is and has been otherwise qualified to participate in Defendants' federally funded programs or activities; and (3) was denied the benefits of the programs or activities or was otherwise subject to discrimination because of his or her disability.¹ *See Chambers v. School District of Philadelphia*, 587 F.3d 176, 189 (3rd Cir. 2009), quoting *Nathanson v. Medical College of Pennsylvania*, 926 F.2d 1368, 1380 (3^d Cir. 1991) (quoting *Strathie v. Department of Transp.*, 716 F.2d 227, 230 (3^d Cir. 1983)).

52. As detailed above, beginning with the effective date of the Rehab Act, and continuing each year to the present, each Defendant has received federal money but has engaged in a continuing pattern and practice of over-arching discrimination against Plaintiffs and class members by denying the benefits of, or subjecting them to discrimination under several programs or activities receiving Federal financial assistance.

53. Plaintiffs are entitled to declaratory relief, to injunctive relief ordering each Defendant to bring these services, programs or activities into compliance, and Plaintiffs reasonable attorneys fees and costs.

¹ Although the Rehab Act—passed in 1973—uses the term “handicapped”, Congress in the late 1980s stopped using this term because “individuals with disabilities find the term ‘handicapped’ objectionable.” *Helen L. v. Didario*, 46 F.3d 325, 333 n8 (3rd Cir. 1995).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff class seeks judgment against Defendants as follows:

1. That the Court declare the rights and duties of the parties consistent with the relief sought by Plaintiffs;
2. To enjoin Defendants from the discrimination against Plaintiffs and the class through the complained of conduct resulting in denial of Defendants' public facilities, programs, services and activities;
3. That Plaintiffs recover an award of their reasonable attorneys fees, costs, and expenses.
4. Plaintiffs further pray for such additional relief as the interests of justice may require.

Respectfully submitted,

HEBERLE & FINNEGAN PLLC

By /s/ J. Mark Finnegan, Esquire
J. Mark Finnegan
Denise M. Heberle
2580 Craig Road
Ann Arbor, MI 48103
(734) 302-3233
(734) 302-3233
hffirm@comcast.net

ELDERKIN, MARTIN, KELLY & MESSINA

By /s/ Craig A. Markham, Esquire

Craig A. Markham, Esquire

150 East Eighth Street

Erie, Pennsylvania 16501

(814) 456-4000

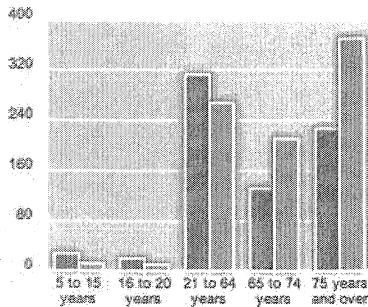
Attorneys for Plaintiffs

<http://www.city-data.com/township/Millcreek-Erie-PA.html>



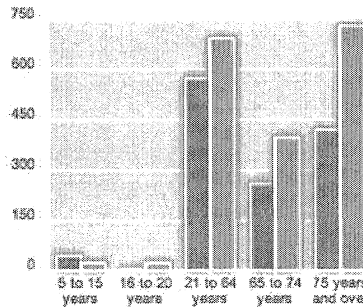
Millcreek township, Erie County, Pennsylvania (PA)

Age and Sex of Sensory-Disabled Residents (Noninstitutionalized)



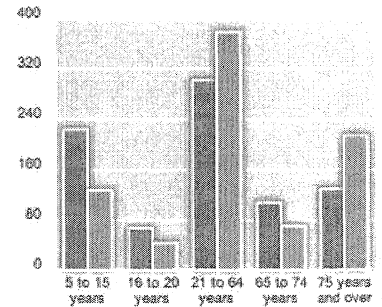
■ Sensory-disabled males ■ Sensory-disabled females

Age and Sex of Physically-Disabled Residents (Noninstitutionalized)



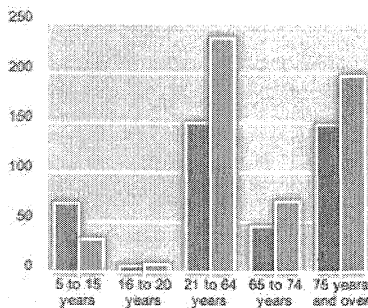
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Age and Sex of Mentally-Disabled Residents (Noninstitutionalized)



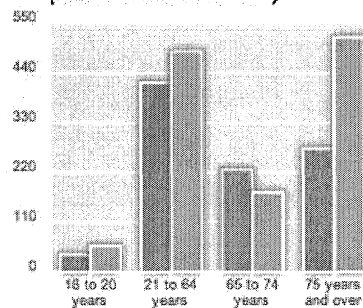
■ Mentally-disabled males ■ Mentally-disabled females

Age and Sex of Self-Care Disabled Residents (Noninstitutionalized)



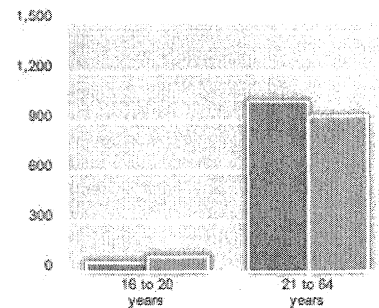
■ Self-Care disabled males ■ Self-Care disabled females

Age and Sex of Go-Outside-Home Disabled Residents (Noninstitutionalized)



■ Go-outside-home disabled males ■ Go-outside-home disabled females

Age and Sex of Residents with Employment Disability (Noninst.)



■ Males with emp. disability ■ Females with emp. disability

EXHIBIT

1

tabbles

11-16

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PAUL PECUNAS; SHONA EAKIN; MARK ZAHAR, and VOICES FOR INDEPENDENCE, INC. (VFI), on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Erie

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Craig A. Markham, Esquire
Elderkin, Martin, Kelly & Messina
150 East Eighth Street, Erie, PA, 16501 (814) 456-4000

DEFENDANTS

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, et al.

County of Residence of First Listed Defendant Dauphin

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 193 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 K.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROFESSIONAL FEES ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☒ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee ☐ 465 Other Immigration Actions	☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 4312101; 29 USC 44701

Brief description of cause:

ADA / REHAB ACT CLAIMS

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE McLaughlin

DOCKET NUMBER 06 - 78

DATE

1-18-2011

SIGNATURE OF ATTORNEY OF RECORD

Craig A. Markham

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44AREVISED June, 2009
 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
 THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (☒ Erie ☐ Johnstown ☐ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venango or Warren, OR plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in Erie County and that the Plaintiff resides in Erie County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. ☒ This case is related to Number 06-78 . Short Caption VFI vs. PennDOT
2. ☐ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit **EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

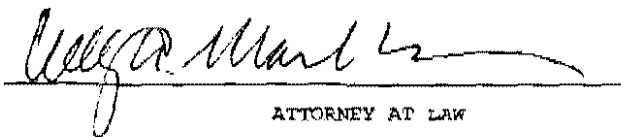
PART C

I. CIVIL CATEGORY (Place * in only applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☐ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: 1-20-2011


 ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.