

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF THE DISTRICT OF COLUMBIA**

UNITED SPINAL ASSOCIATION,
a nonprofit organization,
75-20 Astoria Boulevard
East Elmhurst, NY 11370

THE DC CENTER FOR INDEPENDENT
LIVING, a nonprofit organization,
1400 Florida Avenue NE
Washington, D.C. 20002

GERALDINE HASSELL, an individual,
182 Joliet Street SW, Apt C
Washington, D.C. 20032

PAMELA CARREKER, an individual,
1657 Trinidad Avenue, NE
Washington, D.C. 20002

AMBER KEOHANE, an individual,
1400 Florida Avenue, NE
Apartment 415
Washington, D.C. 20002

on behalf of themselves and all others similarly
situated,

Plaintiffs,

-against-

THE DISTRICT OF COLUMBIA,
1350 Pennsylvania Avenue, NW, Suite 316
Washington, D.C. 20004

MAYOR VINCENT GRAY, in his official
capacity,
1350 Pennsylvania Avenue, NW, Suite 316
Washington, D.C. 20004

Defendants.

Case No.

COMPLAINT FOR DISCRIMINATION;
INJUNCTIVE AND DECLARATORY
RELIEF

INTRODUCTION

1. This class action lawsuit challenges the multiple, serious failures by Washington, D.C. (“the District”) and Mayor Vincent Gray (“Mayor Gray”) to address the needs of persons with disabilities in planning for emergencies.

2. Emergency preparedness is one of the most important obligations of a local government to its residents.

3. As the nation’s capital, and a major metropolitan area, Washington, D.C. is endangered by numerous natural and man-made emergencies, including hurricanes, winter storms, floods, and terrorist attacks.

4. Although the District has created a comprehensive emergency plan for the majority of its residents, it has failed to adequately plan to meet the needs of its approximately 72,000 residents with disabilities.

5. Washington, D.C.’s failure to adequately plan for people with disabilities during emergencies is a matter of life and death.

6. Lack of adequate planning unnecessarily endangers citizens’ lives.

7. When a public entity fails to adequately plan for the foreseeable needs of persons with disabilities, it cannot ensure that it will be able to provide emergency services to persons with disabilities when a disaster strikes.

8. Thus, the lives of this population are at an extreme and unacceptable risk due to the District’s exclusion of persons with disabilities from its emergency preparedness program.

9. By failing to make affirmative plans for the needs of persons with disabilities, Washington, D.C. has discriminated against persons with disabilities in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the DC Human Rights Act.

10. This class action seeks to ensure that District residents with disabilities are no longer denied the benefits, services, and advantages of the District's emergency preparedness program.

11. The deficiencies in disaster planning for people with disabilities are particularly egregious because the federal courts, such as those in New York City and Los Angeles, have previously delineated the legal requirements that such planning take place and be effective.

JURISDICTION

12. This is an action for declaratory and injunctive relief brought pursuant to Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 794 *et seq.*; Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 *et seq.*; and the District of Columbia Human Rights Act ("DCHRA"), D.C. Code § 2-1402.01 *et seq.*

13. This Court has subject-matter jurisdiction over the Rehabilitation Act and ADA claims pursuant to 28 U.S.C. §§ 1331 and 1343 and supplemental jurisdiction over the DCHRA claims pursuant to 28 U.S.C. § 1367.

14. This Court has jurisdiction to issue declaratory relief pursuant to 28 U.S.C. § 2201 and 2202.

VENUE

15. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the District in which this Complaint is filed, because Defendants are located within this District and a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District.

PARTIES

16. Plaintiff United Spinal Association ("United Spinal") is a nonprofit, membership, disability rights and veterans service organization, founded in 1946.

17. The mission of United Spinal is to provide expertise and resources to people with spinal cord injuries so that they may enjoy active, productive, healthy, and independent lives and participate fully as members of their communities.

18. Every member of United Spinal has a spinal cord injury or disorder or is a friend or family member of a person with a spinal cord injury or disorder. A majority of United Spinal members use a wheelchair or other devices and assistive technology for mobility. Accordingly, advocating for accessible infrastructure and planning for persons who use wheelchairs (and other mobility devices and assistive technology) is critical to the mission of United Spinal.

19. United Spinal advocates for the rights of people with disabilities through state and federal legislation, the courts, grassroots advocacy, and education so that barriers in the fields of housing, employment, transportation, health care, and other programs and services are eliminated.

20. Members of United Spinal helped to draft significant portions of the ADA.

21. United Spinal has 86 members who live in Washington, D.C. 389 members live in the Washington, DC metro area.

22. The members of United Spinal who live, work in, or travel to Washington, D.C. are at risk of serious injury because the District has excluded them from its emergency preparedness programs and services.

23. United Spinal also has a national membership of 40,000 people who reside across the country and represents over one million individuals living with spinal cord injuries and disorders .

24. Every year, United Spinal organizes a Roll on Capitol Hill where a large number of their national members travel to DC and spend four days in the City. The primary purpose of

this event is for United Spinal members to communicate with, and visit their representatives and senators to advocate for the health, independence, and quality of life of individuals with spinal cord injuries.

25. Approximately 100 wheelchair using members of United Spinal attended the 2014 Roll on Capitol Hill.

26. United Spinal is concerned that a disaster may strike while its members are visiting DC. If this were to happen, it would leave these individuals vulnerable because the District has neither developed nor implemented emergency plans that serve individuals with spinal cord injuries.

27. United Spinal expends substantial time and resources on advocacy work related to emergency preparedness for people with disabilities in Washington, D.C. Its efforts include two aspects of emergency preparedness: evacuation from high-rise buildings and transportation away from areas impacted by a disaster.

28. United Spinal has worked to ensure that state and model building codes throughout the country include requirements that will improve the safety of people with mobility disabilities who must evacuate from newly-constructed buildings during disasters. For instance, United Spinal advocated for provisions in building codes that require areas of refuge where persons with disabilities who need assistance evacuating can wait for first responders to arrive, exit stairs with a clear width of 48 inches (44 inches in buildings equipped throughout with automatic sprinkler system) to allow firefighters to carry persons with mobility disabilities to safety, and means of egress elevators with standby power for continued operation during a disaster.

29. One of United Spinal's major policy priorities is improving the availability of wheelchair-accessible transportation. United Spinal is deeply concerned that the current inadequate access to accessible public transportation would have severe consequences for its members during disasters.

30. Most recently, United Spinal met with the Federal Transit Administration to challenge WMATA's practice of erecting construction barriers that obstruct paths of travel for persons with mobility disabilities.

31. That practice makes it more difficult for persons with disabilities to evacuate areas affected by emergencies using public transportation.

32. United Spinal also testified before the D.C. Council in the spring of 2014 and on multiple occasions to support requiring all taxicabs in the District to be wheelchair-accessible.

33. Each of these accessible public transportation advocacy projects is critical for effective and safe emergency evacuation planning.

34. United Spinal maintains an online resource center and published articles for emergency preparedness, including online training videos evacuation preparedness guides, personal preparedness resources, including tips from members about the best ways to prepare for disasters.

35. United Spinal has been injured as a direct result of Defendants' failure to ensure that their emergency preparedness programs and services are accessible to people with disabilities because United Spinal has expended significant resources on compiling this online resource center and on advocacy efforts for a more accessible public transportation infrastructure.

36. One or more members of United Spinal have been injured as a direct result of Defendants' discriminatory programs and would have standing to sue in their own right.

37. United Spinal can bring this action on behalf of its members because the interests at stake are germane to United Spinal's purpose.

38. Plaintiffs' claims are limited to injunctive and declaratory relief which do not require the participation of individual members in the lawsuit.

39. Plaintiff The DC Center for Independent Living ("DCCIL") is a nonprofit organization whose mission is to aid Washington, D.C. residents with disabilities in living independently in their homes and communities.

40. DCCIL advocates for the elimination of architectural, communication, and attitudinal barriers that prevent people with disabilities from living fully-engaged and self-directed lives, and provides disability-specific information and referrals such as ADA compliance and know your rights information and consultation, benefits planning, relocation by choice, asset management advice, travel training to help persons with disabilities travel independently day to day, and help finding and obtaining accessible housing for consumers in the District.

41. In all these areas, DCCIL strives to ensure people with disabilities have access to information, and services that are needed to achieve or maintain independence in their communities.

42. In furtherance of their mission of integration and independent living, DCCIL also provides disability awareness training to non-disabled members of the public to develop a community that is inclusive of persons with disabilities and educated about the needs of persons with disabilities.

43. DCCIL also advocates on an individual and system-wide basis to protect the civil and human rights of people with disabilities in the following areas: independent living skills training, peer counseling and support, and assisting people with disabilities who are transitioning from nursing homes to independent living in their communities.

44. DCCIL's services are available to the more than 85,000 consumers with disabilities residing in the District of Columbia.

45. Centers for Independent Living ("CILs") were founded to embody the values of disability culture and serve as the organizational backbone of grassroots initiatives for the civil and human rights of people with disabilities.

46. CILs, including the DCCIL vest power in people with disabilities by ensuring persons with disabilities control the services, management and direction of the organization.

47. CILs base their priorities and actions on the belief that people with disabilities have the right to decide how to live, work, and participate in their communities and that they must organize for social change.

48. They are organizations for people with disabilities that are run by people with disabilities.

49. The services provided by the DCCIL are responsive to the needs of consumers with disabilities in the District.

50. The DCCIL's activities relating to emergency preparedness stem from consumers need for preparation in order to stay safe and healthy during a disaster.

51. The consumers of the DCCIL live in, work in, and travel through Washington, D.C., and are at risk of serious injury because the District has excluded them from its emergency preparedness programs and services.

52. DCCIL is concerned that a disaster or other unexpected emergency may occur, leaving its consumers and staff with disabilities vulnerable because the District has neither developed nor implemented emergency plans that serve individuals with disabilities.

53. DCCIL expends substantial time and resources on advocacy work concerning emergency preparedness for people with disabilities in Washington, D.C., including organizing and hosting emergency preparedness workshops for its consumers, where groups such as the Inclusion Research Institute, Inc. are invited to answer questions and educate the disability community about how to prepare for an emergency.

54. DCCIL hosted one such emergency preparedness workshop three years ago as part of its annual consumer forum event where Inclusion Research Institute, Inc. was invited to educate consumers about the essential items to have in the home for an emergency, such as a list of important phone numbers.

55. Individuals with disabilities and their families were in attendance.

56. Some of the main concerns at this workshop were regarding individuals who use wheelchairs, and who may have difficulty evacuating their homes in multi-story buildings and finding accessible emergency shelters.

57. In addition to workshops, the DCCIL organizes and hosts peer support group meetings to discuss emergency and disaster preparedness for persons with disabilities.

58. Earlier this year, the DCCIL invited the local fire department to host a workshop for the peer support group to educate consumers about what to do in case of a fire emergency in the home.

59. DCCIL has been injured as a direct result of Defendants' failure to ensure that their emergency preparedness programs and services are accessible to people with disabilities.

60. Because the District's emergency preparedness programs do not include affirmative plans for persons with disabilities, DCCIL must expend resources advocating for consumers who are harmed by unequal access to emergency services before, during, and after disasters.

61. This injury would be directly redressed by injunctive and declaratory relief.

62. One or more DCCIL consumers have been injured as a direct result of Defendants' discriminatory programs and would have standing to sue in their own right.

63. DCCIL can bring this action on behalf of its consumers because the interests at stake are germane to DCCIL's purpose.

64. DCCIL's claims are limited to injunctive and declaratory relief which do not require the participation of individuals in the lawsuit.

65. Plaintiff Geraldine Hassell is a senior citizen who is blind and has brittle bones.

66. Ms. Hassell takes vitamin D once a day, and another form of Vitamin D once a week to strengthen her bones.

67. Ms. Hassell uses a white cane and a walker as mobility aids.

68. Ms. Hassell lives alone and has no family in the District who could help her during an emergency.

69. While she has a personal care attendant during the day, this attendant would likely not be able to travel to Ms. Hassell's home during an emergency or disaster.

70. Ms. Hassell most frequently uses DC Metro Access Paratransit for daily transportation.

71. Ms. Hassell lives in a basement apartment in Southwest DC that only has one entrance at the bottom of a flight of stairs.

72. Ms. Hassell relies on the audio portion of the television for emergency alerts, as she has no computer, radio, or cell phone and cannot read print or braille.

73. Because the District's emergency preparedness plans do not include provisions for persons with disabilities, Ms. Hassell is unaware of how to locate her nearest physically accessible emergency shelter and disaster recovery center.

74. Additionally, the visual television ticker alerts at the bottom of the screen have no audio component to the information displayed.

75. Thus, a blind individual only hears the voiceover on the TV screen or series of beeps but no audible information when the ticker is displayed.

76. Thus, Ms. Hassell is concerned that a disaster or other unexpected emergency will occur and she will not know what to do.

77. Because DC Metro Access Paratransit has shut down during past severe weather events, Ms. Hassell is also concerned that she would not be able to obtain accessible public transportation away from areas of the District impacted by a disaster.

78. When DC Metro Access Paratransit ceases to provide service during an emergency, Ms. Hassell and other individuals with disabilities who rely on this form of transportation are left stranded.

79. Ms. Hassell is also concerned that the District's emergency preparedness plans do not include provisions for accessing backup medications and medical equipment at emergency shelters.

80. If Ms. Hassell is unable to get to her walker and cane in a disaster or emergency, she would be immobile, as her legs easily give out.

81. Additionally, if Ms. Hassell misses dosages of her medication, her bones are in danger of becoming very weak and can easily fracture.

82. Ms. Hassell's insurance does not pay for her to stockpile medication or durable medical equipment.

83. During the DC earthquake in 2012, Ms. Hassell did not know what to do or where to go and remained in her home.

84. She felt that her home was unsafe during this disaster because the structure was shaking and objects were rattling, which could have easily fallen on top of her.

85. Ms. Hassell has been injured as a direct result of Defendants' failure to ensure that their emergency preparedness programs and services are accessible to people with disabilities.

86. This injury would be directly redressed by injunctive and declaratory relief.

87. Ms. Hassell has standing to sue in her own right.

88. Plaintiff Pamela Carreker is hard-of-hearing and is a graduate of Gallaudet University.

89. Ms. Carreker works as an Independent Living Specialist at the DCCIL.

90. Ms. Carreker relies on American Sign Language ("ASL") and printed text for daily communication.

91. She can speak but cannot hear well.

92. She also uses a video phone that connects to a real-time ASL interpreter who facilitates telephone conversations.

93. Ms. Carreker lives in a multi-story apartment building that does not have an elevator, only stairs.

94. Ms. Carreker lives alone and her nearest relative is her uncle who lives in Richmond, Virginia.

95. Ms. Carreker also has a few friends who live in the District.

96. However, they would likely not be able to travel to her home or workplace to assist her during an emergency.

97. Ms. Carreker relies on public transportation for daily travel.

98. As a hard-of-hearing individual, Ms. Carreker is very concerned that she will not be able to communicate effectively, receive proper assistance and support, or receive alerts during a natural disaster or emergency in the District.

99. Currently, Ms. Carreker receives alerts via text message on her phone about traffic accidents and bus or train delays.

100. However, she does not receive any emergency alerts.

101. During the earthquake in 2012, Ms. Carreker was at work, but outside her office building, and did not feel the quake.

102. She saw her co-workers evacuating the building but did not know why.

103. She was sent home early, but she still did not understand what the emergency was.

104. She felt scared and confused.

105. She did not learn that the emergency was an earthquake until she arrived at her home and was able to watch a captioned news broadcast.

106. Once she learned that the emergency had been an earthquake, Ms. Carreker thought about what would have happened if she was in her building during the quake.

107. Because of her experience that day, she worried that she would not know what the evacuation procedures would be, and would not have been able to understand emergency warnings or information.

108. Ms. Carreker has been injured as a direct result of Defendants' failure to ensure that their emergency preparedness programs and services are accessible to people with disabilities.

109. This injury would be directly redressed by injunctive and declaratory relief.

110. Ms. Carreker has standing to sue in her own right.

111. Plaintiff Amber Keohane has Cerebral Palsy and uses a wheelchair.

112. Ms. Keohane is unable to do any physical activity without assistance and uses a personal care attendant for 16 hours a day.

113. Ms. Keohane needs a personal care attendant's assistance for all daily living activities including eating and toileting.

114. Ms. Keohane lives in a senior citizens home in an apartment building on the 4th floor and uses the elevator each time she goes in or out of her apartment.

115. Her building has no emergency generator to her knowledge, and she is not aware of any plan that the District has in place to evacuate persons who cannot self-ambulate from upper stories of a multi-story building.

116. There is no lift on her stairs, and she relies solely on the elevator for egress.

117. She is deeply concerned because in a power outage, she would be trapped on the 4th floor with no ability to evacuate, get emergency food, supplies or medication.

118. Ms. Keohane takes medication twice a day, as needed, for stress and anxiety.

119. Ms. Keohane's Cerebral Palsy symptoms are exacerbated by anxiety and stress.

120. In stressful situations she particularly needs her anti-anxiety medication as her functionality worsens when she becomes anxious in a stressful situation.

121. The medication that Ms. Keohane uses is a prescription drug and her insurance will only pay for her to have a supply for one month at a time.

122. Ms. Keohane has no financial ability to purchase surplus or stockpile anxiety medications, and she does not know how she would obtain extra medication if she ran out during or before an emergency.

123. Ms. Keohane is concerned that the stress and anxiety caused by an emergency situation would greatly exacerbate her Cerebral Palsy symptoms.

124. She is also concerned that she would not be able to control or mitigate those symptoms during an emergency because she has no ability to get access to back up medication.

125. Ms. Keohane is also concerned that the District's emergency preparedness plans do not include provisions for accessing backup medications at emergency shelters or elsewhere.

126. Even if Ms. Keohane were able to evacuate her building, she is worried and feels very vulnerable because the District does not provide any information regarding the accessibility of emergency shelters.

127. Ms. Keohane is unaware of how to locate her nearest physically accessible emergency shelter and disaster recovery center.

128. In fact, she does not believe there are any accessible emergency shelters nearby, and she would likely have to go to the hospital during an emergency.

129. Ms. Keohane lives alone and has no family in the area.

130. While she has some friends in the District, she does not feel she would be able to count on them assisting her during an emergency, as they cannot lift her and help her with the basic tasks that she needs help with.

131. Currently, Ms. Keohane's personal care attendant does not get paid to live with her.

132. During an emergency, if her personal care attendant was elsewhere, Ms. Keohane is concerned that it would be difficult for her personal care attendant to come to her location to assist her.

133. Ms. Keohane mostly relies on DC Metro Access Paratransit for daily transportation.

134. Because DC Metro Access Paratransit has shut down during past severe weather events, Ms. Keohane is also concerned that she would not be able to obtain accessible public transportation away from areas of the District impacted by a disaster.

135. Ms. Keohane is also concerned that without accessible public transit options, even if there were accessible emergency shelters, she would not be able to get to an emergency shelter during an emergency.

136. Ms. Keohane's apartment building has no evacuation plan in place for persons who use wheelchairs.

137. During a recent fire drill, Ms. Keohane was actually told by her building to go wait on the balcony for the fire department.

138. Ms. Keohane felt extremely vulnerable and worried that if her only option was to wait on the balcony during an emergency or a fire, she might die or suffer serious bodily injury due to not having a better plan.

139. During the fire drill, however, Ms. Keohane went onto the balcony as she was told.

140. When on the balcony, she discovered that the balcony space was too narrow for her wheelchair.

141. Once out on the balcony, she found she was unable to turn around.

142. Additionally, the fire department took at least 20 minutes to arrive.

143. Had there been a real fire, this would have put Ms. Keohane in great danger from either fire or smoke.

144. Also, the door to the balcony is a sliding door and has no automatic opener.

145. During the drill, Ms. Keohane had her personal care attendant open the balcony door for her.

146. Had the personal care attendant not been with Ms. Keohane, she would be trapped inside her apartment.

147. Ms. Keohane has no cell phone.

148. She has a television, radio, and computer with internet where she can receive emergency alerts.

149. Ms. Keohane has been injured as a direct result of Defendants' failure to ensure that their emergency preparedness programs and services are accessible to people with disabilities.

150. This injury would be directly redressed by injunctive and declaratory relief.

151. Ms. Keohane has standing to sue in her own right.

152. Defendant District of Columbia is the public entity at the first level of response for assisting its residents during an emergency and is responsible for closely monitoring all serious emergencies under its jurisdiction.

153. The Homeland Security and Emergency Management Agency (“HSEMA”) has specific responsibility for emergency planning, preparedness, response, recovery, and mitigation activities.

154. Defendant Vincent Gray, in his official capacity, is the Mayor of the District of Columbia.

155. Under the District of Columbia Public Emergency Act of 1980, D.C. Code § 7-2301 *et seq.*, Mayor Gray is authorized to establish the District of Columbia’s emergency preparedness program; enter into mutual aid agreements with neighboring state and local governments; issue emergency executive orders to protect the public peace, health, safety, or welfare of the District; and request federal assistance during or after disasters.

156. During an emergency, Mayor Gray leads and manages District agencies and departments conducting emergency response activities.

157. In addition, as the chief executive officer of the District of Columbia, Mayor Gray has ultimate responsibility and authority over the policies and practices at issue in this litigation.

158. Hereafter, reference to “Defendants” shall be deemed to include all named Defendants, and each of them, unless otherwise indicated.

FACTUAL ALLEGATIONS

A. Persons with Disabilities who Live and Work in Washington, D.C. Are Vulnerable to Severe Emergencies.

159. Washington, D.C. is the capital of the United States of America.

160. It is an urban municipality that covers approximately 67 square miles.

161. In addition to being the location of the federal government, the District of Columbia is home to 4 military installations, 12 colleges and universities, hundreds of museums and monuments, and over 45,000 businesses.

162. The District of Columbia's resident population is more than 600,000.

163. During the workday, that number rises to over 1 million as commuters enter the District from the surrounding metropolitan area in Maryland and Virginia.

164. In addition, Washington, D.C. is a major tourist destination, with more than 18 million tourists visiting the District in 2012.

165. Washington, D.C. is vulnerable to damage from natural disasters such as hurricanes, severe summer and winter storms, extreme heat and cold, and flooding.

166. Over the last 15 years, the District has endured numerous emergencies and disasters, ranging from hurricanes (such as Hurricanes Sandy, Irene, and Isabel) to earthquakes (such as the 2011 earthquake that damaged the Washington Monument) to power outages (such as the derecho of 2012) to winter storms (such as blizzards in the winter of 2009-10 that shut down the city).

167. FEMA has also awarded the District of Columbia over 30 million dollars in public assistance during this time period to respond to and recover from these disasters.

168. As the nation's capital, it is a potential target for terrorism, as demonstrated during the September 11, 2001 terrorist attacks in the D.C. metro area, several anthrax scares in the intervening years, and the recent Navy Yard shootings.

B. An Effective Emergency Preparedness Program Must Include Core Components for People With Disabilities.

169. An effective emergency preparedness program must include a number of essential components and must speak with particularity as to how the needs of persons with disabilities will be met as to each of these components.

170. Washington, D.C.'s District Response Plan attempts to prepare the general public for an emergency with respect to each component, but does not sufficiently describe how the needs of persons with disabilities will be met in any regard.

171. First, an emergency preparedness program must include comprehensive emergency plans that both address specific procedures that a public entity will implement in case of emergency (such as sheltering) and address specific types of emergencies that may strike a public entity (such as hurricanes).

172. Washington, D.C.'s primary plan, entitled the District Response Plan, contains 16 functional annexes devoted to fields of emergency response such as transportation, mass care, and firefighting, as well as specific disasters such as hazardous materials emergencies and terrorist attacks.

173. The District also has an incident-specific plan for extreme heat.

174. These plans do not describe with particularity how the District will serve the needs of persons with disabilities during a disaster.

175. Second, an emergency preparedness program must incorporate methods of assessing the effectiveness of emergency plans.

176. Those assessment must include exercises and drills that simulate emergencies so that officials can understand how well their plans will in fact serve the purpose for which they are designed.

177. The Training and Exercise Division of HSEMA is dedicated to developing an exercise program to measure the effectiveness of Washington, D.C.'s emergency plans.

178. Under the Districts' plans there is no one specifically assigned to examining the efficacy of the plans with respect to persons with disabilities.

179. Third, emergency preparedness must include advance identification of anticipated needs and resources that will be available to meet those needs when an emergency strikes.

180. The District has made no specific assessment of the needs of persons with disabilities, or any inventory of resources that this population might need during an emergency.

181. Fourth, an emergency preparedness program must include plans for public notification and communication with affected persons before, during, and after emergencies.

182. There is no provision in the Districts' plan for ASL, captioning, or any other alternative formats which a person with a disability may require to receive emergency information.

183. Moreover, there is no guidance in the plan for how information regarding accessible services will be disseminated or even requiring that this information be disseminated at all.

184. Fifth, an emergency preparedness program must include procedures for "sheltering in place," a method of emergency response that consists of staying indoors and closing windows and doors for the duration of the emergency.

185. Although Washington, D.C.'s emergency plans advise individuals how to shelter in place, there is no discussion of, or provision for, the unique needs that many persons with disabilities would have when sheltering in place.

186. Sixth, an emergency preparedness program must include the provision of shelter and mass care when individuals must evacuate their homes during emergencies.

187. While The Department of Human Services is responsible for providing mass care, food, and first aid to individuals who must evacuate their homes during a disaster, there is no provision in the plans specifically calling for using accessible entrances or clear paths of travel within shelters.

188. There is also no provision for programmatic accessibility inside the shelters.

189. Seventh, an emergency preparedness program must include assistance with evacuation and transportation out of the affected area.

190. The District has made no specific plans for the operation of paratransit during an emergency.

191. It also has not conducted an inventory of accessible vehicles that will be available to evacuate persons with disabilities from the city.

192. Moreover, many Amtrak trains and stations which service the District are not accessible.

193. Eighth, an emergency preparedness program must include temporary housing for persons who cannot return to their homes after a disaster.

194. In the District's plans, there is no protocol for prioritizing giving accessible hotel rooms to persons with disabilities and no inventory of the accessible hotel rooms in participating hotels.

195. Ninth, an emergency preparedness program must provide individuals with assistance in recovery and remediation efforts after a disaster.

196. There is no requirement that Disaster Recovery Centers operating incident to an emergency in the District will be placed in accessible buildings, provide information in alternative formats, or provide information in American Sign Language.

197. The foregoing identification of components of disaster plans which are necessary to protect the lives and effectively respond to the unique needs of people with disabilities is not an exhaustive nor a detailed list of planning elements necessary to plan for protecting residents and visitors with disabilities when disaster strikes.

CLASS ACTION ALLEGATIONS

198. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the named Plaintiffs bring this action for injunctive and declaratory relief on their own behalf, on behalf of their members, and on behalf of all persons similarly situated.

199. The class that the named Plaintiffs seek to represent consists of all persons with disabilities in the District of Columbia who have been and are being denied meaningful access to, and the benefits of, the District's emergency preparedness program.

200. The persons in the class are so numerous that joinder of all members of the class is impracticable and the disposition of their claims in a class action is a benefit to the parties and to the Court.

201. According to the United States Census American Community Survey from 2012, almost 72,000 non-institutionalized residents of the District of Columbia have one or more disabilities.

202. Such data further show that more than 11,000 non-institutionalized District of Columbia residents have a hearing disability, more than 15,000 non-institutionalized District of Columbia residents have a vision disability, more than 30,000 non-institutionalized District of

Columbia residents have a cognitive disability, and more than 40,000 non-institutionalized District of Columbia residents have a mobility disability.

203. In addition, many people with disabilities work in and/or travel to Washington, D.C.

204. According to the 2010 census, the population of the District of Columbia increases by almost 80% during the work day as commuters enter the city, resulting in a daytime population of over 1 million.

205. Destination D.C., a tourism bureau, estimated that 18.9 million tourists visited Washington, D.C. in 2012.

206. Both commuters and tourists with disabilities are subjected to the discrimination at issue while in Washington, D.C.

207. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.

208. The named Plaintiffs, members of the organizational Plaintiffs, and individuals in the class have been and continue to be denied their civil rights of access to, and benefits and advantages of, Washington D.C.'s emergency preparedness program due to Defendants' discriminatory implementation of their program.

209. Defendants are thus denying persons with disabilities meaningful access to their emergency preparedness program and imposing an extreme and unacceptable risk of death or serious injury upon such persons.

210. Common questions of law and fact predominate, including questions raised by Plaintiffs' allegations that Defendants have failed to adequately address the needs of persons with disabilities in their emergency planning, and that, as a result, key components of

Defendants' emergency preparedness program exclude and discriminate against persons with disabilities.

211. The claims of the named Plaintiffs, and their members, are typical and are not in conflict with the interests of the class as a whole.

212. Defendants' omissions and violations of the law as alleged herein have deprived named Plaintiffs, members of the organizational Plaintiffs, and class members of the opportunity to effectively utilize Defendants' emergency preparedness program.

213. All class members have suffered or will suffer the same or similar injuries for the purposes of the injunctive and declaratory relief sought.

214. Plaintiffs' claims are thereby representative of and co-extensive with the claims of the class.

215. The named Plaintiffs are adequate class representatives because they and their members are directly affected by Defendants' discriminatory implementation of their emergency preparedness program.

216. The interests of the named Plaintiffs are neither antagonistic to nor in conflict with the interests of the class as a whole.

217. The attorneys representing the class are experienced both in disability law and in class action litigation.

218. Class counsel is qualified to fully prosecute this litigation and possesses adequate resources to see this matter through to resolution.

219. Plaintiffs will fairly and adequately represent and protect the interests of the class.

220. Defendants have acted and/or failed to act on grounds generally applicable to the class as a whole, thereby making final declaratory and injunctive relief appropriate with respect to the class as a whole.

**FIRST CAUSE OF ACTION
FOR VIOLATION OF THE AMERICANS WITH DISABILITIES ACT,
42 U.S.C. § 12131, *ET SEQ.***

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

222. Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, forbids a public entity from excluding a person with a disability from participating in or denying the benefits of a program of the public entity to a person with a disability or otherwise discriminating against a person on the basis of disability.

223. Title II provides, in pertinent part, 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.

Id.

224. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2).

225. A “qualified individual with a disability” means an “individual with a disability who, 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, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

226. The named Plaintiffs, members of the organizational Plaintiffs, and the class members are persons with disabilities within the meaning of the statute because they have impairments that substantially limit one or more major life activities (e.g., walking, hearing, seeing).

227. They are also qualified individuals with disabilities within the meaning of 42 U.S.C. § 12102, 42 U.S.C. § 12131, and 28 C.F.R. § 35.104 because they live and/or work in, or travel to, Washington, D.C.

228. Thus, they are eligible for the benefits of the District's emergency preparedness program.

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

230. Defendant District of Columbia is a public entity within the meaning of 42 U.S.C. § 12131 and 28 C.F.R. § 35.104.

231. Mayor Gray is being sued in his official capacity as the chief executive of Washington, D.C.

232. By failing to plan to meet the needs of persons with disabilities during an emergency, Defendants have excluded them from participation in, denied them the benefits of, and discriminated against them in an emergency preparedness program offered by a public entity in violation of 42 U.S.C. § 12132.

233. Congress directed the Department of Justice ("DOJ") to promulgate regulations implementing Title II's prohibition against discrimination. 42 U.S.C. § 12134.

234. Pursuant to this mandate, the DOJ has issued regulations defining the forms of discrimination prohibited by Title II of the ADA. 28 C.F.R. § 35.101 *et seq.*

235. Under 28 C.F.R. § 35.130(b)(1)(i), (ii), and (vii), a public entity, when providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of disability: (1) deny qualified individuals with disabilities the opportunity to participate in or benefit from the aid, benefit, or service; (2) afford qualified individuals with disabilities an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others; or (3) otherwise limit qualified individuals with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others who receive the aid, benefit, or service.

236. Defendants' emergency preparedness program is an aid, benefit, or service that it provides to its citizens.

237. However, Defendants provide that aid, benefit, or service in an unequal manner that denies persons with disabilities the same level of opportunity to enjoy its benefits as their peers can.

238. Pursuant to 28 C.F.R. § 35.130(b)(3)(i), a public entity may not, directly or through contractual or other arrangements, utilize methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.

239. Defendants may not avoid their responsibility to address the needs of persons with disabilities during emergencies by delegating responsibility to other agencies or organizations such as the American Red Cross.

240. Washington, D.C. bears the ultimate responsibility to ensure that persons with disabilities have access to all of the benefits and services of the emergency preparedness programs provided directly or indirectly by the District.

241. Pursuant to 28 C.F.R. § 35.130(b)(4), a public entity may not, in determining the size or location of a facility, make selections that have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination.

242. Pursuant to 28 C.F.R. § 35.130(b)(7), a public entity shall make reasonable modifications in policies, practices, or procedures when modifications are necessary to avoid discrimination on the basis of disability.

243. Defendants have failed to provide reasonable modifications.

244. Plaintiffs have been injured, as set forth herein, as a proximate result of Defendants' violations of Title II of the ADA.

245. Defendants' conduct constitutes an ongoing and continuous violation of the ADA. Unless restrained from doing so, Defendants will continue to violate said law and thus will continue to inflict injuries for which Plaintiffs have no adequate remedy at law.

246. Plaintiffs will suffer irreparable harm, as Defendants will continue to discriminate against them and deny them access to the District of Columbia's emergency preparedness program.

247. Therefore, Plaintiffs are entitled to injunctive relief pursuant to 42 U.S.C. § 12133, as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**SECOND CAUSE OF ACTION
FOR VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973,
29 U.S.C. § 794, ET SEQ.**

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

249. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations, prohibit discrimination against persons with disabilities by recipients of federal funding.

250. Section 504 of the Rehabilitation Act provides, in pertinent part, that no otherwise qualified individual with a disability . . . shall, solely by reason of his or her 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 . . .

Id.

251. The statute defines an “individual with a disability” as “an individual who has a physical or mental impairment that substantially limits one or more major life activities of such individual.” 29 U.S.C. § 705(20)(B) (citing 42 U.S.C. § 12102).

252. “Otherwise qualified” means a person who “meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.” 28 C.F.R. § 39.103.

253. The named Plaintiffs, members of organizational Plaintiffs, and the class members are individuals with disabilities within the meaning of the Rehabilitation Act because they have impairments which limit one or more major life activities (e.g., walking, hearing, seeing).

254. Such individuals are otherwise qualified, because they live and/or work in, or travel to, Washington, D.C. and are thus eligible to participate in and benefit from the District’s emergency preparedness program.

255. Therefore, the named Plaintiffs, members of the organizational Plaintiffs, and class members are otherwise qualified individuals with disabilities within the meaning of 29 U.S.C. § 705(20)(B) and the implementing regulations.

256. Defendants receive federal financial assistance to operate and provide the District's emergency preparedness program.

257. By failing to plan to meet the unique needs of persons with disabilities during an emergency, Defendants have excluded them from participation in, denied them the benefits of, and discriminated against them in an emergency preparedness program that receives federal financial assistance, solely by reason of their disabilities, in violation of 29 U.S.C. § 794 and its implementing regulations.

258. Defendants' violations of Section 504 of the Rehabilitation Act have proximately caused injuries to Plaintiffs, as set forth herein.

259. Defendants' conduct constitutes an ongoing and continuous violation of Section 504 of the Rehabilitation Act.

260. Unless restrained from doing so, Defendants will continue to violate said law, and their conduct will continue to inflict injuries for which Plaintiffs have no adequate remedy at law.

261. Plaintiffs will suffer irreparable harm because Defendants will continue to discriminate against them and deny them access to Washington D.C.'s emergency preparedness program.

262. Therefore, Plaintiffs are entitled to injunctive relief, as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**THIRD CAUSE OF ACTION
FOR VIOLATION OF THE DC HUMAN RIGHTS ACT,
D.C. CODE § 2-1401.01 *ET SEQ.***

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

264. Under the DC Human Rights Act, D.C. Code § 2-1402.01, “every individual shall have an equal opportunity to participate fully in the economic, cultural, and intellectual life of the District and to have an equal opportunity to participate in all aspects of life, including, but not limited to, in employment, in places of public accommodation, resort or amusement, in educational institutions, in public service, and in housing and commercial space accommodations.”

265. In 2002, the DC Council amended the DCHRA to prohibit the District government from discriminating against individuals with disabilities. *Id.* § 2-1402.73.

266. The pertinent provision reads as follows:

Except as otherwise provided for by District law or when otherwise lawfully and reasonably permitted, it shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual’s actual or perceived: . . . disability

Id.

267. The DCHRA defines “disability” as “a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such impairment or being regarded as having such an impairment.” D.C. Code § 2-1401.02(5A).

268. The named Plaintiffs, members of the organizational Plaintiffs, and the class members are persons with disabilities within the meaning of the statute because they have impairments that substantially limit one or more major life activities (e.g., walking, hearing, seeing).

269. Defendants administer District government agencies and offices.

270. By failing to plan to meet the needs of persons with disabilities during an emergency, Defendants have limited or refused to provide their emergency preparedness

program and the benefits of that program to the named Plaintiffs, members of the organizational Plaintiffs, and class members on the basis of their disabilities in violation of D.C. Code § 2-1402.73.

271. Defendants' violations of the DC Human Rights Act have proximately caused injuries to Plaintiffs, as set forth herein.

272. Defendants' conduct constitutes an ongoing and continuous violation of the DC Human Rights Act.

273. Unless restrained from doing so, Defendants will continue to violate said law, and their conduct will continue to inflict injuries for which Plaintiffs have no adequate remedy at law.

274. Plaintiffs will suffer irreparable harm because Defendants will continue to discriminate against them and deny them access to Washington D.C.'s emergency preparedness program.

275. Therefore, Plaintiffs are entitled to injunctive relief, as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**FOURTH CAUSE OF ACTION
FOR DECLARATORY RELIEF**

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

277. Plaintiffs contend that Defendants have failed and are failing to comply with applicable laws prohibiting discrimination against persons with disabilities in violation of Title II of the ADA, 42 U.S.C. § 12131 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and the DC Human Rights Act, D.C. Code § 2-1402.01 *et seq.*

278. Defendants disagree with Plaintiffs' contention.

279. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

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

280. A declaration that Defendants' failure to adequately plan to meet the emergency preparedness needs of persons with disabilities violates the ADA, the Rehabilitation Act, and the DCHRA.

281. An order and judgment enjoining Defendants from violating the ADA, the Rehabilitation Act, and the DCHRA, and requiring Defendants to develop and implement an emergency preparedness program that addresses the needs of persons with disabilities during emergencies.

282. Plaintiffs' reasonable attorneys' fees and costs.

283. Such other and further relief as the Court deems just and proper.

Dated: September 9, 2014

Respectfully submitted,

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* Applications for *pro hac vice* admission to be filed shortly

** Application for admission forthcoming