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**CURB RAMPS AND THE AMERICANS WITH
DISABILITIES ACT: WHEN LOCAL GOVERNMENT IS
LIABLE**

*April Gore**

New York City is one of the few remaining metropolises known for its pedestrianism. *The New York Times* describes the city as “best and only authentically grasped by sauntering through it,”² and popular culture³ has used local street life to characterize New Yorkers since the mid-1800s.⁴ The invention of the motor car threatened and drastically changed this previously celebrated way of life. Motorcades undercut the freedom of pedestrianism and rendered its practitioners vulnerable; this conflict culminated when nationally renowned transcontinental pedestrian Edward Payson Weston was struck by a taxicab and never walked again.⁵ Despite the subsequent rules and regulations enacted to ensure the mutual safety of pedestrians and drivers, pedestrianism remains the mainstay of transportation in New York. If pedestrianism “is not merely a way to get around New York [but] the way to be a New Yorker,”⁶ then it is also a right that must be equally accessible to all.

As a social construct, ableism is embedded in cultural customs and laws. People who are differently abled (handicapped) are only disabled when they live in a society that privileges one form of engagement with the world (e.g. walking) over another. The battle to extricate ableism from pedestrian practices includes the implementation of curb ramps across New York City—an evaded legal requirement that local courts have parsed in recent years. The existence of legal loopholes and the absence of specificity in the initial plaintiff’s agreement with local government caused this battle to extend over decades, and people living with a disability in New York City ultimately bore the burden.

The life-changing injury of Edward Payson Weston in 1927 highlighted the necessity for pedestrian protections, but it was not until more than 60 years later that these protections were legally extended to Americans with disabilities. The Americans with Disabilities Act of 1990 (ADA) guarantees

¹ Writer for Volume II of the Fordham Undergraduate Law Review.

² Nathaniel Rich, *The History of a City Underfoot*, *New York Times*, (April 23, 2015), <https://www.nytimes.com/2015/04/26/magazine/the-history-of-a-city-underfoot.html>.

³ Edwin G. Burrows and Mike Wallace, *Gotham: A History of New York City to 1898* (Oxford University Press 1998).

⁴ Nathaniel Rich, *op. cit.*

⁵ *Id.*

⁶ Nathaniel Rich, *op. cit.*

disabled people an equal opportunity to participate in mainstream life,⁷ which includes pedestrianism. As of 2016, 570,560 New Yorkers identify having an ambulatory disability and 201,134 as visually impaired.⁸ Title II of the ADA delegates implementation of accessible pedestrian crossings to state and local governments.⁹ A curb ramp secures safe travel between a road and a curbed sidewalk for people with disabilities. Curb ramps must also meet the Americans with Disabilities Act Standards to furnish compliance. To name a few: they must appear anywhere a sidewalk or pedestrian walkway meets a curb, the slope of the curb ramp must have a 1:12 ratio or less, the width of the curb ramp must stretch at least 36 inches, truncated domes must be present throughout the entirety of the curb ramp to act as detectable warnings, and the transition from the ramp to the walkway or curb must be level.¹⁰ Without a compliant curb ramp, it is deemed unsafe or impossible for a disabled person to maneuver across streets with a wheelchair, scooter, walker, or other mobility aids. Absent compliant curb ramps, New York violates the accessibility demands of the ADA.

In 1994, the Eastern Paralyzed Veterans Association filed a civil lawsuit against the City of New York in *EPVA v. City of New York* on the grounds that most intersections were not ADA compliant.¹¹ The lawsuit specifically claimed that the City violated Title II, given its failure to produce a compliance timeline, failure to install curb ramps along altered roads, and failure to demonstrate expediency.¹² In 2002, the judge ordered a Stipulation of Settlement specifying sums of money committed to curbing ramp installations.¹³ In 2014, Disability Rights Advocates and Sheppard Mullin Richter & Hampton LLP filed a class-action lawsuit against the City of New York in *Center for Independence of the Disabled New York, et al. v. City of New York* on the grounds that a number of pedestrian routes through Lower Manhattan remained dangerous and inaccessible to people with disabilities.¹⁴ The complaint emphasized the injury that befell disabled people absent compliance: an increased tendency to fall into traffic and an inability to travel

⁷ Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2013) (amended 2008).

⁸ Elizabeth Kim, *NYC Agrees To Make All Sidewalk Curbs Accessible To The Disabled*, Gothamist, (March 21, 2019), <https://gothamist.com/news/nyc-agrees-to-make-all-sidewalk-curbs-accessible-to-the-disabled>.

⁹ Americans with Disabilities Act, op. cit.

¹⁰ *Id.*

¹¹ Report and Recommendations of the Special Master, Eastern Paralyzed Veterans Associations vs. City of New York, 13, (S.D.N.Y. July 31, 2017).

¹² *Id.*

¹³ Eastern Paralyzed Veterans Associations vs. City of New York, op. cit., 14

¹⁴ Complaint, Center for Independence of the Disabled, New York vs. City of New York, 2, (S.D.N.Y. July 30, 2014).

from one destination to another.¹⁵ The complaint alleged three decades of illegal inaction against New York City.¹⁶

Nearly 15 years after court-mandated investments and improvements from *EPVA v. City of New York*, a survey of 1066 corners at Lower Manhattan intersections found more than 75% of curbs ramps to be noncompliant.¹⁷ 22% of corners were missing a curb ramp, forcing people with mobility devices to travel in the street.¹⁸ 28% of ramps were too steep and threatened wheelchair users with rolling into the street.¹⁹ 20% of ramps were not level with the street and put people at risk of tipping out of their wheelchairs.²⁰ More than 50% of ramps were missing truncated domes, which warn those with vision impairments that they are entering vehicle traffic.²¹

In 2019, *CIDNY v. City of New York* marked a historic class action settlement. The settlement agreement mandates that the City survey every corner in all five boroughs, identifying the presence of curb ramps and the 13 accessibility elements of said curb ramp.²² The initial survey, due October 31, 2019, will set benchmarks for two subsequent surveys in 2033 and 2046.²³ Noncompliant ramps and corners must be scheduled for upgrade and further implemented at the 800 substandard corners by 2020.²⁴ By 2021, the city must install compliant curb ramps at all standard corners and, by 2030, at all complex corners.²⁵ A court-appointed monitor will oversee term fulfillment.²⁶

This agreement supersedes the settlement reached by *EPVA v. City of New York* in 2002.²⁷ The exclusion of a final deadline in the original agreement created a legal loophole for delay. Whereas, the new agreement reached in *CIDNY v. City of New York* clearly illustrates a schedule for standard compliance almost thirty years after these standards became law.

Ableism required advocates to file nearly identical complaints 15 years apart, wasting advocate resources and burdening the disabled in the interim. Future plaintiffs in civil rights suits can learn from this mistake: accountability hinges upon specificity in settlement agreements. In the case

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Settlement Agreement, Center for Independence of the Disabled, New York vs. City of New York, 13, (S.D.N.Y. March 19, 2019).

²³ *Op. cit.*, 14-15.

²⁴ *Ibid*; *op. cit.*, 17.

²⁵ *Op. cit.*, 18.

²⁶ *Op. cit.*, 31.

²⁷ *Op. cit.*, 12.

of New York City curb ramps, a legally mandated compliance timeline will finally provide justice to the disabled people that deserve the right of pedestrianism.

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