

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

VOICES FOR INDEPENDENCE, (VFI), )  
MICHAEL L. EAKIN; JAY SHUFFSTALL; )  
CAROLYN A. CREHAN; KATHY A. HERTZOG; )  
PAUL PECUNAS; SANDRA FULLER )  
MARY ANN PARSNIK; PAT WEAVER; )  
FELICIA BONGIORNO; MELVIN BORREO )  
STEPHEN CLARK; JILL HRINDA-PATTEN )  
MARY D. KRUG; and B. LYNNE VESTAL, )  
on behalf of themselves and all others )  
similarly situated )  
Plaintiffs, )  
v. )

Civil Action No.: 06 - 78 E

HON:

MAG. JUDGE:

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

**CLASS ACTION COMPLAINT**

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**I. PRELIMINARY STATEMENT**

1. The Cities of Erie and Meadville, Pennsylvania and their surrounding areas are not accessible to and readily usable by their citizens with disabilities. Among other things, Erie and Meadville’s sidewalks and intersections are not safe, and people using wheelchairs for mobility must travel in the streets.

2. The Department of Transportation of the Commonwealth of Pennsylvania, (hereinafter PennDOT), has spent federal and state taxpayer dollars altering sidewalks and street

intersections and certain other facilities in ways that violate federal accessibility building guidelines and standards. Because PennDOT has failed to meet minimum accessibility standards, Plaintiffs and similarly situated class members with disabilities are denied access to PennDOT's services, programs or activities, and must risk serious injury attempting to traverse Erie, Meadville and surrounding areas, or while attempting to use the facilities.

3. Beginning in 1973, under section 504 of the Rehabilitation Act, (the Rehab Act) Congress required PennDOT when receiving federal money to build or repair streets, sidewalks, bridges, buildings, parking lots, or any other service, program or activity, to meet detailed accessibility construction guidelines and standards codified in the Uniform Federal Accessibility Standards. Later, in 1990 with the Americans With Disabilities Act (ADA), Congress strengthened the law, ordering public entities, including PennDOT, to meet these same detailed disability accessibility construction guidelines, even when PennDOT did not use federal money to build or repair its streets, sidewalks, bridges, buildings, parking lots, or any other services, programs or activities. Both the ADA and Rehab Act also contain provisions requiring cities to make modifications in their services, programs and activities to make them readily accessible.

4. PennDOT has acted with deliberate and callous disregard of federal law, and has consistently failed to ensure that newly constructed, reconstructed and existing sidewalks, intersections and certain other facilities are built to meet required minimum accessibility guidelines and standards.

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

6. Plaintiffs file this class action lawsuit to seek court intervention to force PennDOT to live up to its federally mandated duties to ensure accessibility to its citizens with disabilities. Plaintiffs each live in Erie, Meadville or surrounding areas, and use services offered in those locales.

7. Plaintiffs ask the court to order PennDOT to retrofit its intersections and sidewalks to make them readily usable and safe for people with disabilities. Plaintiffs also ask the court to order PennDOT to put into place a detailed system to ensure that PennDOT complies with all federal law in the future so that the new construction and repairs 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 the defendant is located in the Western District and the events and/or omissions giving rise to Plaintiffs' claims occurred in the District.

### **III. PARTIES**

10. Plaintiff, Voices for Independence (VFI), is a membership organization which advocates to increase opportunities for independent living for persons with disabilities. It serves people with disabilities throughout Pennsylvania, including Erie, Meadville and surrounding areas in Pennsylvania. VFI's mission is to promote access and inclusion of persons with disabilities into housing, employment and recreation. PennDOT's failure to properly install curb ramps during resurfacing of streets and alteration of sidewalks frustrates VFI's mission and purposes. VFI has diverted significant resources documenting violations by PennDOT and attempting to correct those illegal patterns of conduct.

11. Each named individual Plaintiff lives in and/or travels through Erie, Meadville, or surrounding areas of Pennsylvania. Each cannot ambulate without a wheelchair or other assistive devices, and some have sight impairments that require the use of detectible warnings. Each named individual Plaintiff is a person with a disability under the ADA and the Rehab Act.

12. Defendant PennDOT is a public entity 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 year 2003. He has ultimate decision and policy making authority over the matters at issue in this lawsuit.

#### **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 with mobility or sight impairment disabilities as defined by the Rehabilitation Act of 1974 and the Americans With Disabilities Act, who have used in the past, or will attempt to use in the future, the facilities, services, programs in the cities of Erie and Meadville and surrounding areas, that have been built, rebuilt or altered by PennDOT after January 26, 1992, the effective date of Title II of the Americans With Disabilities Act. 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. Several hundred people who must rely on ambulatory devices such as wheelchairs, scooters, canes or walkers reside in Erie, Meadville or adjacent areas. Additionally, many nonresidents who must rely on ambulatory devices such as wheelchairs or scooters travel in those areas to go to work, to patronize businesses or to visit family and friends. Plaintiffs and others similarly situated would travel in those more often if PennDOT complied with the ADA and Rehabilitation Act and made those area's streets and sidewalks fully accessible to persons with disabilities.

B. The named Plaintiffs are adequate class representatives because they

are directly impacted by PennDOT's failure to properly install, repair or adequately maintain curb ramps. 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 PennDOT has failed to properly install, repair or adequately maintain curb ramps.

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 PennDOT's failure to properly install, repair or adequately maintain curb ramps.

E. PennDOT has 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. For at least the last 28 years, and continuing to the present, PennDOT has engaged in a pattern of operating or building new services, programs and/or altering existing services, programs without making those programs or services accessible to Plaintiffs and class members.

15. The individually named Plaintiffs and the persons employed by or served by VFI can not currently ambulate or travel safely on Erie, Meadville and surrounding area streets or sidewalks without ADA-compliant curb ramps because each uses a wheelchair or scooter. They must travel on streets or sidewalks installed or resurfaced by PennDOT since January 26, 1992 that contain no curb ramps, or contain curb ramps that are not accessible to persons with mobility impairments due to their improper design or maintenance.

16. In each year beginning January 26, 1992 and continuing to the present, PennDOT has resurfaced city streets and altered or constructed sidewalks in Erie, Meadville and surrounding areas, but has failed either to install those curb ramps which are necessary for persons using mobility devices to travel on the sidewalks or where ramps were installed, PennDOT failed to construct such ramps properly. As a result, when the named Plaintiffs attempt to cross many of the streets in these areas, they are forced to enter the stream of traffic and travel along the curb until they can locate a private driveway or other private business to re-enter the sidewalk.

17. On information and belief, Plaintiffs allege that PennDOT routinely either fails to install curb ramps when resurfacing, altering, or installing streets and sidewalks or constructs

any such ramps improperly. Therefore, Plaintiffs allege, upon information and belief, many recently resurfaced roads and sidewalks in the relevant areas lack curb cuts required by law, or contain improperly installed curb cuts which fail to meet the minimum design standards under federal law. These standards require each ramp to be built with the least possible slope, and do not allow a direct running slope of more than 8.3%, a cross-slope of more than 2%, and require a level landing at the top of the ramp with slopes of no more than 2%. The transitions from ramps to walks, gutters, or streets must be flush and free of abrupt changes. Some examples of non-compliant ramps found at or along roads controlled and/or resurfaced by or at the direction of PennDOT are set out below.

18. The Bayfront Connector, Erie, PA was resurfaced in 2005. The resurfacing went into the intersection at Bayfront Connector and 12<sup>th</sup> Street. There are 2 ramps at the southeast and southwest corners that were installed in 2005.

A. The southeast corner has one new diagonal ramp.

The cross-slope is 5.5%

B. The sidewalk running along the east side of Bayfront Connector runs directly into the flared side of the ramp which has a running slope of 18.1% for over a 6 inch run. One of the Plaintiffs in this case fell out of her wheelchair as that Plaintiff attempted to cross this curb cut's excessive flared side.

C. The pedestrian crossing buttons for the traffic light at this corner are 51 inches high. The button for crossing 12<sup>th</sup> Street is placed at the back of the pole. There is no sidewalk behind the pole and the button hangs over a steep cliff. People in wheelchairs



(and many other pedestrians, including children) are not able to reach this button at all. Most wheelchair users are also unable to reach the other button for crossing the Bayside Connector that is placed too high on the pole.

D. There is a steep drop-off along the east edge of the sidewalk along the Bayfront Connector. Pedestrians are protected from the drop-off by a fence which runs along the sidewalk to the corner of Bayfront and 12<sup>th</sup> Street. However, the fence ends just before the pole with the crossing buttons. There is no fence around the pole or around the southern and eastern edges of the ramp landing. Anyone trying to use the buttons or trying to maneuver a wheelchair at the top of the ramp risks falling over the steep drop-off onto the broken rocks that have been placed there by PennDOT and their agents.

19. The sidewalk on the east side of the Bayfront Connector just south of the curb ramp has a direct slope of 17.2% for over a 16 inch run. As the sidewalk continues south across the over-pass, there are a series of gutters crossing the sidewalk that stop wheelchairs when their front wheels fall into the trenches. These gutters cannot be avoided and make the sidewalks not accessible to nor readily usable by Plaintiffs and similarly situated class members.

A. On the street adjacent to this sidewalk, a pedestrian approaching the corner at 12<sup>th</sup> Street cannot see that the curb goes around the corner to the diagonal ramp. There is no contrast between the edge of the curb and the concrete gutter and it appears that there is a ramp crossing the Bayfront connector. This curb should have a stripe painted along the top to alert pedestrian traffic to the curb and the missing ramp.

B. The ramp on the southwest corner facing east was installed in 2005.

The north facing ramp was installed slightly earlier.

C. There is no level landing at the top of these ramps ( Slopes of 7.3% X 3.3%).

D. There is a ramped sidewalk between the two ramps with running slopes of 12.5% for over a 6 inch run.

E. The ramps have no detectable warnings.

20. At the intersection of Buffalo Road and Pennsylvania Avenue, Erie, PA, the asphalt pedestrian walkway runs along the southeast side of Pennsylvania, crosses Pennsylvania at Buffalo Road and turns down along the southwest side of Pennsylvania and goes under the overpass to join with the Bayfront Connector. The pedestrian walkway and two ramps crossing Pennsylvania Avenue at Buffalo Road were constructed in 2005. The ramp on the southeast corner is a diagonal ramp. It has a counter-slope of 6% and a 1 inch lip at the bottom of the ramp, and no level landing (landing has slopes of 8.2% by 2.4%). The ramp on the southwest corner is a diagonal ramp. It has a counter-slope of 5.7% and a 1/2 inch lip at the bottom of the ramp, a cross-slope of 6.3% and no level landing (landing has slopes of 10.2% by 8.7%).

A. The counter-slope at the top of the pedestrian walkway is 8.8%, making it extremely difficult to maneuver off the ramp and onto the walkway. The beginning section of the walkway has a running slope of as much as 14%.

B. The pedestrian walkway, from Buffalo Road down the hill to under the overpass, has a cross-slope up to 3.5%. Starting about 3 feet from the top of the ramp, the walkway has a running slope exceeding 5% for a minimum of 18 feet. The running slope

along this section is between 5% to 10%.

C. The surface of the walkway is not smooth and has “waves” in it which causes wheelchairs traveling over it to bounce and rock.

D. The geography along this section of the walkway is controlled and was deliberately built-up for its installation. There is an abundance of space available for building the walkway with room for switchbacks and gentler slopes.

21. The City of Erie does not replace ramps at resurfaced intersections where a city road touches a PennDOT road. If PennDOT fails to replace ramps when they resurface these intersections, old, non-compliant ramps are never replaced. The following are examples of this situation, which can be found throughout the City.

22. At the intersection of McClelland Avenue and Buffalo Road there are seven old, non-compliant ramps. Buffalo Road was resurfaced by PennDOT in 2004-2005. McClelland Avenue was resurfaced by the City in 2002 -2003. The City resurfacing runs past the ramps crossing McClelland Avenue on the northeast and northwest corners of the intersection and PennDOT resurfacing runs through the entire intersection.

A. The northwest corner has a diagonal ramp with a running slope of 18%, a cross-slope of 9.7% and no level landing (landing has slopes of 5.7% by 6.2%). This ramp should have been included in both the City resurfacing on McClelland Avenue and PennDOT resurfacing of Buffalo Road.

B. The northeast corner ramp facing west has a running slope of 14%, a

cross-slope of 4.4% and steeply flared sides (34%) and no level landing. This ramp should have been included in the City resurfacing of McClelland Avenue.

C. The northeast corner ramp facing south has a 1 inch lip, steeply flared sides (20%) and no level landing. There is a bench for a bus stop at the top of the ramp where the level landing should be. This ramp should have been included in PennDOT resurfacing of Buffalo Road.

D. The southeast corner ramp facing north has a running slope of 9.2%. This ramp should have been included in PennDOT resurfacing of Buffalo Road.

E. The southwest corner ramp facing north has a running slope of 13.5% and no level landing. This ramp should have been included in PennDOT resurfacing of Buffalo Road.

23. The City of Erie resurfaced Pennsylvania Avenue in 2005 and replaced the ramps along the resurfaced stretch until the intersection of Pennsylvania Avenue and 26<sup>th</sup> Street. 26<sup>th</sup> Street is a PennDOT street. Two old, non-compliant ramps were left untouched even though the resurfacing runs into the intersection and includes the ramps.

A. The southwest corner ramp facing east has a running slope of 9.6% and no level landing (landing has slopes of 3.5% by 3.3%).

B. The southeast corner ramp facing west has a running slope of 9.1%, steeply flared sides (20%) and no level landing (landing has slopes of 4.1% by 4.2%).

24. PennDOT resurfaced Buffalo Road from Broad Street (Rt. 20) to the City

line. It did not install a single ramp along this stretch. A majority of these intersections have non-compliant ramps or are lacking ramps entirely. When the City of Erie resurfaces any of the streets touching Buffalo Road, it will also refuse to install curb ramps at these intersections, turning Buffalo Road into a permanent roadblock for anyone traveling in a wheelchair.

25. In Meadville, during year 2005, PennDOT resurfaced Chestnut at Main (Diamond Park) heading North. The intersections of Chestnut with North Main, Liberty and Grove each contain defective ramps that are not accessible to readily usable by Plaintiffs and similarly situated class members.

26. During years 2004-05, PennDOT rebuilt 38<sup>th</sup> Street in Erie from Peach Street to Glendale Avenue, including the adjacent sidewalks, near the Erie Zoo. The sidewalks have cross slopes exceeding 2%, and the curb cuts have cross slopes exceeding 2% and running slopes exceeding 8.33%, they lack level landings, and the entire project is not accessible to and readily usable by Plaintiffs and similarly situated class members.

27. Upon information and belief, these violations are examples of many similar violations committed by PennDOT in Erie, Meadville and their surrounding areas during years 1992 through present.

**VI. CAUSES OF ACTION**  
**FIRST CAUSE OF ACTION: CLASS-WIDE INJUNCTIVE RELIEF CLAIM UNDER**

## TITLE II OF THE AMERICANS WITH DISABILITIES ACT

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

29. 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 PennDOT as a “public entity.” 42 U.S.C. § 12131(1).

30. One form of prohibited discrimination is the exclusion from a public entity’s services, programs, or activities because of the inaccessibility of the entity’s facility. The United States Department of Justice has issued binding program accessibility regulations that Plaintiffs now seek to enforce.

31. 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).

32. Section 28 C.F.R. § 150(a) requires PennDOT to “operate each service,

program, or activity, (so) when viewed in its entirety, (it) is readily accessible to and usable by individuals with disabilities. “The phrase ‘services, programs, or activities’ encompasses virtually everything that a public entity does.” *Johnson v. City of Saline*, 151 F.3d 564, 569 (6<sup>th</sup> Cir.1998).

33. Beginning in at least 1992, and continuing up to the present, PennDOT has engaged in a continuing pattern and practice of over-arching discrimination against Plaintiffs and class members by operating several of its services, programs, or activities which, when viewed in their entirety, are not readily accessible to and usable by Plaintiffs and other class members with disabilities. These services, programs, or activities include, among others, Erie, Meadville and surrounding areas’ sidewalks, curb-ramps, and walkways.

34. 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. §§ 12146 & 12147; 28 C.F.R. § 35.151(a) & (b). Compliance with federal building and design standards provides a safe harbor to public entities, 28 C.F.R. § 35.151(c).

35. Beginning January 26, 1992, and each year continuing to the present, PennDOT has constructed new services, programs or activities or altered parts of services, programs or activities in Erie, Meadville and surrounding areas, but has failed to ensure that those services, programs or activities are readily accessible to and usable by Plaintiffs and similarly situated persons with disabilities. For example, PennDOT has:

A. Resurfaced intersections and/or rebuilt sidewalks after 1992, without installing curb ramps that meet federal standards;

B. Installed after 1992, sidewalks and curb ramps that violate federal standards; and,

C. Operated after 1992, recreational or other services, programs or activities that are not accessible to Plaintiffs and others similarly situated, including, but not limited to, intersections, cross-walk controls and detectable warnings.

36. The failures by PennDOT has made each of these existing and or newly altered services, programs or activities not readily accessible and usable by Plaintiffs and others similarly situated. By their actions complained of herein, PennDOT has intentionally discriminated against Plaintiffs and class members due to their disabilities. Plaintiffs are entitled to injunctive relief ordering PennDOT to bring these and future services, programs or activities into compliance, and to pay attorneys fees and costs.



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

37. Plaintiffs bring this count for class-wide declaratory and injunctive relief. The Rehabilitation Act requires that “[n]o otherwise qualified individual with a disability...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). Upon information and belief, PennDOT receives Federal financial assistance. The Rehabilitation Act defines “program or activity” as “all of the operations of” a qualifying local government. 29 U.S.C. § 794(B)(1)(A).

38. Beginning with the effective date of the Rehabilitation Act, and continuing each year to the present, PennDOT 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. Among other things, PennDOT has:

A. Resurfaced intersections and/or rebuilt sidewalks after 1974, without installing curb ramps that meet federal standards;

B. Installed after 1973, sidewalks and curb ramps that violate federal standards; and,

C. Operated after 1973, recreational or other services, programs or activities that are not accessible to Plaintiffs and others similarly situated, including, but not limited to, intersections, cross-walk controls and detectable warnings and walkways.

39. Each of these failures by PennDOT has made each of these programs or activities not readily accessible and usable by and others similarly situated. By their actions complained of herein, PennDOT has intentionally discriminated against Plaintiffs and class members due to their disabilities. Plaintiffs are entitled to injunctive relief ordering PennDOT to bring these services, programs or activities into compliance, and attorneys fees and costs.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff class seeks judgment against PennDOT as follows:

1. That the Court declare the rights and duties of the parties consistent with the relief sought by Plaintiffs;
2. That Defendant, its agents, employees and all persons in concert or participation with any of them be permanently enjoined from:
  - a. Discriminating against persons with disabilities in the construction, resurfacing, and maintenance of roadways and sidewalks; and
  - b. Refusing or failing to comply with the requirements of the ADA and the Rehabilitation Act and their implementing regulations;

3. That Defendant establish and implement an effective plan to insure, retrospectively and prospectively, that all construction, resurfacing, and maintenance of roadways and sidewalks--including but not limited to the installation of curb ramps or other sloped areas at all intersections of streets and/or pedestrian walkways--that has occurred any time after January, 1992 complies with the ADA and its implementing regulations;

4. That Defendant submit to the Court and class counsel periodic reports on implementation of the plan referenced immediately above;

5. That Plaintiffs recover an award of their reasonable attorneys fees, costs, and expenses.

Plaintiffs further pray for such additional relief as the interests of justice may require.

Respectfully submitted,

HEBERLE & FINNEGAN

By /s/ J. Mark Finnegan  
J. Mark Finnegan, Esquire  
2580 Craig Road  
Ann Arbor, MI 48103  
(734) 302-3233

ELDERKIN, MARTIN, KELLY & MESSINA

By /s/ Craig A. Markham  
Craig A. Markham, Esquire  
150 East Eighth Street  
Erie, Pennsylvania 16501  
(814) 456-4000

Attorneys for Plaintiffs

CA 06-78 E

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

**I. (a) PLAINTIFFS**

Voices for Independence, et al.

(b) County of Residence of First Listed Plaintiff ERIE  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

Commonwealth of Pennsylvania  
Department of Transportation

County of Residence of First Listed \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Elderkin, Martin, Kelly & Messina  
150 East Eighth Street  
Erie, PA 16501 (814) 456-4000

Attorneys (If Known)

**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)

- |   |                            |                                       |   |                            |
|---|----------------------------|---------------------------------------|---|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 88 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition

**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

**CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

*Americans with Disabilities Act ; Rehabilitation Act*

**I. REQUESTED IN COMPLAINT:**

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

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**II. RELATED CASE(S) IF ANY**

(See instructions): JUDGE *McLaughlin*

DOCKET NUMBER *02-203/04-328*

3-28-06

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

REVISED OCTOBER, 1993

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 any 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/CRAWFORD County and that the Plaintiff resides in ERIE/CRAWFORD 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 02-203 Judge McLaughlin
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

1. **CIVIL CATEGORY** (Place x 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), VA Overpayment, Overpayment of Social Security, Enrollment 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: 3-28-06

[Signature]  
ATTORNEY AT LAW

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

# United States District Court

WESTERN

DISTRICT OF

PENNSYLVANIA

VOICES FOR INDEPENDENCE, et al.

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER: CA 06-78 E

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION, et al.

TO: (Name and Address of Defendant)

Allen D. Biehler, P.E., Secretary of Transportation of  
Commonwealth of Pennsylvania Department of Transportation  
555 Walnut Street  
9th Floor, Forum Place  
Harrisburg, PA 17120

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Craig A. Markham, Esquire  
150 East Eighth Street  
Erie, PA 16501

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK

AO 440 (Rev. 5/85) Summons in a Civil Action

<b>RETURN OF SERVICE</b>		
Service of the Summons and Complaint was made by me <sup>1</sup>	DATE	
NAME OF SERVER	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<p><input type="checkbox"/> Served personally upon the defendant. Place where served: _____</p> <p>_____</p> <p><input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____</p> <p><input type="checkbox"/> Returned unexecuted: _____</p> <p>_____</p> <p><input type="checkbox"/> Other (specify): _____</p> <p>_____</p> <p>_____</p>		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ <span style="margin-left: 100px;"><i>Date</i></span></p> <p>_____ <span style="margin-left: 100px;"><i>Signature of Server</i></span></p> <p>_____ <span style="margin-left: 100px;"><i>Address of Server</i></span></p>		

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.



# United States District Court

WESTERN

PENNSYLVANIA

DISTRICT OF

VOICES FOR INDEPENDENCE, et al.

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER: CA 06-78 E

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION, et al.

TO: (Name and Address of Defendant)

Commonwealth of Pennsylvania Department of Transportation  
Office of Chief Counsel  
555 Walnut Street  
9th Floor, Forum Place  
Harrisburg, PA 17120

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Craig A. Markham, Esquire  
150 East Eighth Street  
Erie, PA 16501

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

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<input type="checkbox"/> Returned unexecuted: _____ _____		
<input type="checkbox"/> Other (specify): _____ _____ _____		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL
<b>DECLARATION OF SERVER</b>		
<p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p>		
Executed on _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <span style="text-align: center;"><small>Date</small></span> <span style="text-align: center;"><small>Signature of Server</small></span> </div>		
_____ <div style="text-align: center;"><small>Address of Server</small></div>		

<sup>1</sup> As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES  
DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
ERIE Division

# 06000277 - JD  
March 28, 2006

Code	Case #	Qty	Amount
CIVIL	06-78ca e	1	250.00
			250.00 00
TOTAL →			250.00

CA 06-78 E  
Filing Fee  
Receipt # 06-279