

All Eyes On Me

The Plaintiff's Architecture for Announced-Surveillance Exclusion from Public Space

The companion paper argued that camera networks shut a group of disabled people out of the street. This one works out who sues, on what, against which defences, and for what.

WHAT THIS PAPER IS

The companion made the case. This one builds the lawsuit.

The argument next door is that announced camera networks over the public street work as a barrier for a definable group of people with psychiatric disabilities, and that the ordinary disability-access rules already reach it without any new law.

This paper takes that as given and asks the practitioner's questions instead. Who brings the case, on what theory, against which defences, and what can a court actually order?

WHERE THE DIFFICULTY SITS

The claim is ordinary. The plaintiff is not.

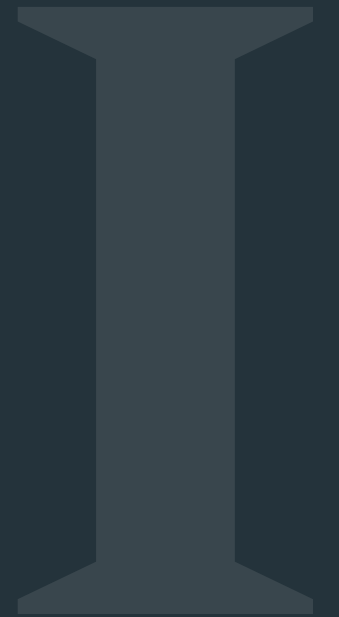
The core of the claim rides on about as settled a body of law as this area offers. The street is a programme the city runs. The measure is whether a disabled person can meaningfully use it. And the machinery for asking a city to change how it runs something reaches anything the city decided by policy.

The novelty is concentrated in the person bringing it. The harm here is exclusion felt from outside the covered area, by someone whose disability makes that area unusable, and every one of those words creates a problem.

PART ONE

The Settled Ground

and the single hazard sitting on it



The hazard is real, avoidable, and avoided by a decision made on day one.

SETTLED

The street is something the city runs

The Ninth Circuit holds pavements are a service the city provides, reasoning that the statute covers anything a public body does and that looking after the right of way is a perfectly normal thing for a city to do. The Fifth Circuit, sitting as a full court, holds the statutes plainly reach newly built and altered pavements, and grounds that in what pavements are for: getting about safely, and the oldest public meeting place there is.

Two more circuits fill it in. Resurfacing a road counts as an alteration that triggers the kerb ramp duty. And district courts have thrown out the familiar trio of dodges, that pavements are not a programme, that the neighbours must fix them, and that repair costs too much.

SOURCES Barden v. City of Sacramento, 292 F.3d 1073 (9th Cir. 2002); Frame v. City of Arlington, 657 F.3d 215 (5th Cir. 2011) (en banc); Kinney v. Yerusalim, 9 F.3d 1067 (3d Cir. 1993); Culvahouse v. City of LaPorte, 679 F. Supp. 2d 931 (N.D. Ind. 2009); Cohen v. City of Culver City, 754 F.3d 690 (9th Cir. 2014).

THE ONE HAZARD

Courts disagree about which rules a private person may enforce

The circuits have split over this. One enforces both the self-assessment and the transition-plan rules. Three hold the transition-plan rule cannot be enforced by a private plaintiff, on the ground that it demands more than the statute itself does. The sorting principle they share is whether a rule spells out what the statute already forbids or bolts on a freestanding procedure.

So build the claim to walk straight past that gate, which it can.

The claim rides on the statute's own prohibition, plus the two rules courts treat as spelling out what the statute forbids. Nothing in it needs the transition-plan machinery, so the split never engages.

The Claim

four routes to the same conduct, and one that is deliberately not taken



Frame it as denial of usable access, never as a bare statistical grievance.

THE STANDARD

Meaningful access, and the discipline that comes with it

One Supreme Court decision supplies both. A disabled person has to get access that actually means something, and the thing on offer cannot be described so as to write them out of it. That is the measure.

The same decision refuses the sweeping idea that every statistical gap makes out a case, and upheld a state's flat fourteen-day hospital limit because disabled recipients still got usable access to the benefit as defined. That is the discipline, and it dictates how the claim gets written.

What survives is a claim that a neutral feature shuts a group out of the benefit itself. What fails is a claim that the feature serves them less generously.

TWO REGULATORY VEHICLES

How the claim actually travels

How the programme is run

A public body may not, by itself or through contracts and other arrangements, use methods of administering a programme that end up discriminating. An announced deterrence network over the right of way is a method of running the mobility programme if anything is: adopted by policy, tuned by policy, and sold as administration.

What it can be asked to change

A public body must make reasonable changes to policies and practices where needed to avoid discrimination, unless it can show the change would gut the programme. Every excluding feature here is a policy artefact: how loudly it announces, where the signs go, how dense the cameras are, how long records are kept, which zones are covered.

The contracts clause matters more than it looks. It anticipates the vendor arrangement exactly, and it shuts off the disclaimer practitioners report cities making about third-party kit planted in their own pavements.

THE CITY'S BEST MOVE

A watched street is just the street we offer

The strongest defence runs through the other edge of that same Supreme Court decision. Call camera coverage part of the definition of what is on offer, the way fourteen days was simply the benefit that state provided.

It fails on the statute's own sorting. That hospital cap set how much of the thing you received, and no benefit existed separately from the figure. Cameras and a street come apart without difficulty. Getting from place to place needs no reader at all, was on offer for a hundred years before any existed, and continues exactly as before in every town that has voted them out.

Coverage is something a city does to the programme while running it. The rules have a name for that, and it is not benefit definition.

A SECOND HOME

The segregation frame reaches the same conduct

A separate rule requires a public body to run its programmes in the most integrated setting suitable for disabled people. The Supreme Court has held that keeping disabled people isolated without justification is itself discrimination, because confinement props up unwarranted assumptions about what they can do and strips out ordinary daily life.

The camera barrier produces that injury by how the environment works rather than by anybody's placement decision. Somebody for whom the covered area is unusable is confined to whatever is left, and in the limit to the house, and the confinement comes from a policy the body adopted and could revise.

THE LANE NOT TAKEN

Marking the contested route honestly

One Supreme Court decision confined private enforcement of impact rules under a neighbouring statute, and defendants routinely try to carry that logic across. The Ninth Circuit holds it does not foreclose private impact claims here, and that the two statutes run together.

The claim built in this paper does not need that lane. It goes forward on usable access and reasonable change, the shape the controlling Supreme Court decision positively endorses, and impact vocabulary appears only to describe how the harm works, never as the name of the theory.

Where a court follows the Ninth, plead impact as a second count. Where a court will not, the primary claim loses nothing whatever.

Building The Plaintiff

where the real work is, and where the accessibility cases already did it



The harm is felt outside the covered zone, by people who cannot safely be named.

THE APPARENT TRAP

Past injury is not enough for an injunction

The classic obstacle is a case where a plaintiff who had been put in a chokehold could not get an injunction, because a future encounter depended on a chain of speculation.

That trap does not close here. This harm is happening now and carrying on, not finished and hypothetical. The network is switched on today, people are staying away today, and behind it is permanent council practice rather than a single incident.

Whether that chokehold would ever happen again rested on a long string of ifs. Whether the cameras are announcing rests on nothing at all. It is the permanent, advertised state of the street.

THE AFFIRMATIVE MODEL

Environmental plaintiffs already wrote this declaration

Environmental claimants make out their harm by stating that they use the place in question and that sensible concern about what the defendant is doing reduces or discourages that use. Cutting back is the harm, and no one has to show the thing they feared has actually come to pass.

The deterred resident's declaration writes itself in the same grammar. Where they live or why they need the covered area, what they know about the network, the clinically grounded reason the announcement makes it unusable, and then the concrete thing that was given up: the commute abandoned, the trip rerouted, the appointment missed.

ALREADY SETTLED DOCTRINE

Deterrence is the injury, and the accessibility cases said so

A person who stays away from a shop because they know what is in the way is being harmed continuously, and nobody makes them keep turning up to prove it. Running into the obstacle counts. So does staying away because you know it is there. Being put off somewhere you would otherwise have gone is the injury.

The statute writes the principle down for the private-business title: a person who has actual notice that a body does not intend to comply need not go through a futile gesture. The Tenth Circuit carries the whole architecture across to the public-body title, holding its text confers standing to the outer limits the Constitution allows.

SOURCES Pickern v. Holiday Quality Foods Inc., 293 F.3d 1133 (9th Cir. 2002); Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939 (9th Cir. 2011) (en banc); Kreisler v. Second Ave. Diner Corp., 731 F.3d 184 (2d Cir. 2013); Tandy v. City of Wichita, 380 F.3d 1277 (10th Cir. 2004); 42 U.S.C. § 12188(a)(1).

A TURBULENCE, AND ITS CLOSURE

The tester question is open, and nothing here rides on it

The Supreme Court took a case on tester standing and then dismissed it as moot, wiping the decision below, so that split is unresolved.

It does not matter here. The plaintiffs contemplated are residents with real, pre-existing reasons to use their own streets, deterred from doing so. That is the exact configuration the deterrence line credits, and the opposite of a manufactured encounter.

ONE EXTRA PLEADING LAYER

The barrier is not self-evident on sight

A step excludes a wheelchair visibly. This barrier does not, so the complaint has to join the announcement to the exclusion through the plaintiff's disability. So the pleading has to carry three things: what the condition is, or what it stops the person doing; how treatment for it works; and how the announcement breaks that.

The layer is familiar rather than exotic. Every plaintiff under this title pleads a qualifying disability and how it interacts with the challenged feature, and courts routinely take treating clinicians' declarations on the interaction.

What that layer costs is exposure, and exposure is what the next piece of architecture exists to manage.

THE EXPOSURE PROBLEM

The people with the strongest claims are the ones least able to be named

This group carries two stigmas at once: a psychiatric diagnosis, and the particular content of that diagnosis. A rule requiring a named plaintiff to identify himself publicly as somebody who holds persecutory beliefs would price the courthouse out of reach for precisely the people the barrier hits hardest.

The severity runs the wrong way. Foreclosure is sharpest exactly where standing up in public and saying so is hardest.

THE ANSWER

Two routes that let the class sue without exposing anybody

Through an association

A body may bring a case where the people in it could have brought it, where what is at stake fits the body's purpose, and where neither proving the claim nor granting the remedy requires any individual member to appear. That fits injunctive and declaratory relief, and member declarations can go in under seal or pseudonymously where the court's practice allows.

In the organisation's own right

An organisation may also sue over harm to itself, where the conduct gets directly in the way of the work it does. The Supreme Court has tightened that: money spent campaigning, or on collecting information, will not do it any more.

So the configuration that survives the narrowing is a mental health service whose clients, staff escort arrangements and treatment plans all have to be routed around the covered zone. That is interference with the service itself. A complaint built on campaigning expenditure is not.

THE CLASS

This inverts the usual commonality problem

The rule governing classes that seek an order was written for exactly this situation, where the defendant has behaved in a way that applies across the group, so one order disposes of it for all of them. The obstacle is a Supreme Court decision demanding a common question whose answer resolves something central to every claim in one go, and holding that you cannot get there when what is complained of is a spray of separate judgement calls.

Here it is the reverse. What is being challenged is a single declared policy. One network. One announcement. One decision about how to run things, landing the same way on everyone's ability to use the street. Does the announced network deny this group meaningful access, and is modification reasonable? Those are answered for everyone at once, or for nobody.

Remedies And Their Limits

what a court can order, and what this class will never recover

IV

The injuries here are mostly the kind the Supreme Court has put out of reach.

THE MAIN REMEDY

The modification conversation, conducted with authority behind it

An order requiring the body to examine and change how loudly it announces, how dense and where the cameras sit in residential walking areas, how long records are kept, whether coverage maps are published so somebody can plan a usable route, and whether low-value areas need announcing at all.

The line about what would gut the programme then gets argued on a record rather than asserted in the abstract, and the kerb ramp cases supply the template of supervised compliance on a schedule.

If a deployment gets paused after the complaint arrives, that does not end the case. The body carries a formidable burden to show it is absolutely clear the conduct could not reasonably be expected to restart.

THE DAMAGES GATE

Money requires showing the city did not care

Money for harm suffered requires discrimination that was intended, and most courts test that by asking whether the body was deliberately indifferent: aware a protected right was very likely to be breached, and doing nothing about it. It is about refusing the accommodation, never about proving ill will.

The record here is unusually favourable, because notice is the system's whole design. A demand letter and a refusal turn a standing policy into a documented one, and the deterrence purpose is itself a concession that the body intends the announcement to change how people behave.

THE HARD LIMIT

The injuries this barrier causes are the ones the law will not pay for

According to the Supreme Court, this family of statutes does not permit damages for emotional distress, on an analogy with contract: whoever took the funding was never clearly warned they might be liable for that. Two circuits have carried the bar across to the public-body title.

State the consequence without softening it. The harm this does is mostly to feeling, mind and dignity, and that is exactly the category the door has just shut on. So the damages case has to be built on the economic skeleton of the exclusion instead.

List the financial consequences of staying away, from the very first filing. However genuine the distress at the centre of this, it will not hold the claim up.

WHAT THE SKELETON IS MADE OF

Four economic categories that survive

1 Replacement transport

What it costs to get there another way once a route has been abandoned.

2 Lost wages and lost work

Where the covered zone sits between the person and their job.

3 Treatment costs

Where the network's operation drives up what care the person needs.

4 Lost opportunity

The category the Ninth Circuit preserved in the education setting, carried across to the benefits the mobility programme itself provides.

Defences

one retired, one real, one usually absent



The first defence anybody reaches for lost when the barrier was made of stairs.

THREE DEFENCES

Taken in turn

1 Everybody is filmed alike

This is the staircase defence, and the accessibility canon retired it long ago. A facially neutral feature that shuts a protected group out is exactly what the meaningful access standard exists to catch.

2 Changing it would gut the programme

A genuine defence, and it disciplines the remedy rather than defeating the claim. With a wide palette of possible adjustments, the body has to litigate which particular ones alter the programme's nature rather than asserting that any of them would.

3 You cannot sue the sovereign

Against the usual defendant this is simply absent, because municipalities have never had that immunity. Where a state body runs the right of way, three routes remain open, including the funding waiver that operates wherever the money was taken.

The Same Problem, Elsewhere

other instruments are already reaching this barrier

VI

A court has already struck down a police surveillance deployment under an equality statute.

TWO ANTICIPATORY DUTIES

Access owed before anybody asks

The disability rights convention obliges states to ensure access to the physical environment on equal terms, and to recognise a right to live in the community with the same choices as anybody else. Those two articles are the treaty's versions of programme access and the integration rule, and a layer of surveillance that shuts a psychosocial disability group out of community life runs into both, on the treaty's own wording.

The United Kingdom goes further in one respect worth noticing. Its equality legislation lays a forward-looking duty of reasonable adjustment on anyone providing a service or exercising a public function, owed to disabled people as a whole and before any particular person has asked for anything. What the duty attaches to is how the practice is designed, ahead of anybody being turned away.

IT HAS ALREADY HAPPENED

A police surveillance programme held unlawful under an equality duty

The Court of Appeal in England held a police force's automated facial recognition programme unlawful. The appeal succeeded on two grounds at once, the intrusion into private life and the equality duty owed by public bodies, because the force had never made any sensible effort to establish whether the software was skewed by race or by sex.

Map that across and it barely needs translating. Here was equality legislation biting on a surveillance rollout while it was still being designed, because whoever rolled it out had never worked out how it would land differently on a protected group. Working that out is precisely what this claim says American cities never did for the psychiatric disability group.

THE CONSTITUTIONAL ANALOGUE

Once you provide a benefit, you provide it without discrimination

Canada's highest court decided that a government which hands out a benefit has to hand it out without discriminating, and that refusing to pay for sign language interpreters in hospital care people medically needed left deaf patients without equal benefit of the law. Being able to communicate was part of the benefit.

Read that against a street the city provides and then administers in a way that shuts a group out of using it.

THE CLAIM, ASSEMBLED

No new law is being asked for

The street is already a programme the city runs. The measure is already whether access means anything. The machinery for asking a city to change how it administers something already exists, the funding hook is already attached wherever federal money flows, and the defence that the barrier treats everybody alike already lost when the barrier was made of stairs.

What gets added here is the person suing. Standing based on being put off, borrowed from the access cases. An organisation carrying the claim so no individual has to be named. A single class seeking an order, built around one declared policy. And a money claim resting on financial loss, because the law will not pay for anything else.

Every piece of this was built by somebody else, for a different barrier, and is sitting there unused.

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