

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

PASTOR JAMES KENNEDY,  
900 G Street, NE  
Apt 802  
Washington, DC 20002

KATHLEEN GOSSELIN  
1629 Columbia Road, NW  
Apt 322  
Washington, DC 20009

THE DISTRICT OF COLUMBIA COUNCIL  
OF THE BLIND,  
609 H Street, Northeast  
Suite 306  
Washington, DC 20002

Plaintiffs,

v.

LAQUANDRA S. NESBITT, in her official  
capacity as Director of the District of Columbia  
Department of Health,  
899 North Capitol Street, NE  
Washington, DC 20002

DISTRICT OF COLUMBIA, c/o  
Attorney General of the District of Columbia  
441 4th Street, NW  
Washington, DC 20001,

Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

(Violation of the Americans with Disabilities Act, the Rehabilitation Act, and the DC Human Rights Act)

Blind and low-vision individuals cannot use at-home COVID tests provided by the District of Columbia without assistance. The tests and their instructions can only be visually read. As a result, blind and low-vision individuals are denied equal access to this critical public health program. The District has refused to implement any reasonable accommodation, despite the District of Columbia Council of the Blind's request.

Plaintiffs Pastor James Kennedy, Kathleen Gosselin, and the District of Columbia Council of the Blind bring this Complaint against Defendants Laquandra S. Nesbitt, in her official capacity as Director of the District of Columbia Department of Health, and the District of Columbia for failing to create an accessible COVID-19 public testing program for residents of the District of Columbia with vision impairments, making it impossible for such residents to conduct at-home testing and administer and/or read the test results, all in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the District of Columbia Human Rights Act. For their Complaint against Defendants, Plaintiffs Pastor James Kennedy, Kathleen Gosselin, and the District of Columbia Council of the Blind hereby state and allege the following:

### **INTRODUCTION**

1. COVID-19, a highly communicable and potentially fatal virus, continues to spread in our community. In the District of Columbia, as of May 25, 2022, there have been 146,520 confirmed cases of COVID-19 and 1,342 deaths of District Residents as a result of

COVID-19 infections.<sup>1</sup> In the two weeks preceding May 25, 2022, the test positivity rate in the District increased by 351%.<sup>2</sup>

2. For individuals with vision impairments, the pandemic impacts many aspects of their lives, including access to healthcare and safe transportation, leaving these individuals largely isolated from our community.<sup>3</sup>

3. Since the start of the public health emergency resulting from the COVID-19 pandemic in March 2020, the Center for Disease Control (“CDC”) has provided guidance on mitigation strategies, including mask wearing, social distancing, quarantining, and, importantly, testing. The CDC highlights that “a robust and responsive testing infrastructure is essential to the success of stopping the spread of SARS-CoV-2, the virus that causes COVID-19,” and it instructs localities to proactively consider health equity in testing when implementing their COVID-19 testing infrastructure.<sup>4</sup> The CDC identifies that “...ensuring availability of resources, including access to testing for populations who have experienced longstanding, systemic health and social inequities,” as an essential component to improving health equity.<sup>5</sup> People with disabilities have experienced longstanding, systemic health and social inequities.<sup>6</sup>

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<sup>1</sup> *Tracking Coronavirus in Washington, D.C.: Latest Map and Case Count*, The New York Times (May 25, 2022), <https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Rosenblum et al., *American Foundation for the Blind*, *Flatten Inaccessibility: Impact of COVID-19 on Adults Who Are Blind or Have Low Vision in the United States* (2020), [AFB\\_Flatten\\_Inaccessibility\\_Report\\_Revised-march-2022.pdf](#).

<sup>4</sup> Testing Overview, *Overview of Testing for SARS-CoV-2, the virus that causes COVID-19*, CDC, (February 11, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html>.

<sup>5</sup> *Id.*

<sup>6</sup> 42 U.S.C. § 12101(a)(3).

4. In response to the COVID-19 pandemic and CDC’s guidance, the DC Department of Health (“DC Health”) has established one of the most robust public testing programs in the United States.<sup>7</sup> However, this testing program is not accessible for District residents with vision impairments that make it impossible for them to administer and/or read the test results.

5. Specifically, beginning April 19, 2021, District of Columbia Mayor Bowser and DC Health, led by Dr. LaQuandra S. Nesbitt, launched Test Yourself DC. Test Yourself DC is a program operated by DC Health which currently offers at-home Polymerase Chain Reaction (“PCR”) tests at thirty-six locations and take-home rapid antigen tests (collectively, “COVID-19 At Home Tests”) at eleven locations across all eight Wards at no cost to District residents.

6. Plaintiff Pastor James Kennedy and Kathleen Gosselin, members of Plaintiff organization the District of Columbia Counsel of the Blind (“DCCB”) (collectively “Plaintiffs”), are unable to independently administer and/or read COVID-19 At Home Tests due to their disabilities, including blindness and low vision, (collectively herein, “vision impairments”).

7. The COVID-19 At Home Tests distributed by DC Health require the patient to read standard text, distinguish colors, distinguish between two physically identical test tubes, identify a faint line on a testing strip to determine the results, and distinguish the proper return envelope, which lacks any tactile indicator, to return the tests. Each of these requirements is a barrier to access for District residents with vision impairments.

8. The Test Yourself DC Program provides no alternatives to accommodate individuals with vision impairments to enable them to administer a COVID-19 At Home test. As a result, individuals with vision impairments, unlike individuals without these disabilities, must

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<sup>7</sup> Stephanie Mencimer, *DC Is One of the Easiest Places in the US to Get a Covid Test. Why?*, *Mother Jones* (Jan. 19, 2022), <https://www.motherjones.com/politics/2022/01/dc-is-one-of-the-easiest-places-in-the-us-to-get-a-covid-test-why/>.

travel to a DC Health COVID Center to receive a COVID-19 test, placing themselves and the community at risk of exposure to COVID-19. Such individuals must take the risk of traveling while infected with COVID-19 in order to be tested, while sighted individuals can pick-up their test kits when healthy and administer the tests at home. Needing to take public transportation to a facility for COVID-19 testing and treatment has caused extreme anxiety and concern for many individuals with vision impairments, including Plaintiffs, throughout the pandemic.<sup>8</sup>

9. Defendants, the District of Columbia Department of Health (“DC Health”) through its Director, LaQuandra S. Nesbitt, and the District of Columbia, are able, and are obligated to remedy this inequality for District residents.

10. In fact, DC Health has a mechanism in place whereby District residents can call a toll-free number and schedule an at-home COVID vaccination. This same type of accommodation, possibly even using the same toll-free number and staff, could be utilized to ensure that District residents with vision impairments can receive effective COVID-19 At Home Tests just as residents without disabilities receive effective COVID-19 At Home Tests. Health care workers could be dispatched to the homes of sick individuals with vision impairments to administer these tests.

11. This Complaint seeks declaratory and permanent injunctive relief on behalf of Plaintiffs under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the District of Columbia Human Rights Act.

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<sup>8</sup> Rosenblum et al., *American Foundation for the Blind*, Flatten Inaccessibility: Impact of COVID-19 on Adults Who Are Blind or Have Low Vision in the United States (2020), AFB\_Flatten\_Inaccessibility\_Report\_Revised-march-2022.pdf.

## **JURISDICTION AND VENUE**

12. Plaintiffs' federal claims are brought pursuant to Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 *et seq.*, and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794 *et seq.*

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

14. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201–2202.

15. This Court has supplemental jurisdiction over Plaintiffs' state law claim pursuant to 28 U.S.C. § 1367, as the state claim arises from the same set of operative facts as Plaintiffs' federal claim.

16. Venue is appropriate in the District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions that gave rise to Plaintiffs' claims occurred within this District.

## **PARTIES**

17. PLAINTIFF PASTOR JAMES KENNEDY is a blind individual who resides in the District of Columbia and is a member of DCCB. He wants the ability to be effectively tested for COVID-19 from the safety of his home, as District residents without disabilities are able to do.

18. PLAINTIFF KATHLEEN GOSSELIN is a blind individual who resides in the District of Columbia and is a member of DCCB. She wants the ability to be effectively tested for COVID-19 from the safety of her home, as District residents without disabilities are able to do.

19. PLAINTIFF DISTRICT OF COLUMBIA COUNCIL OF THE BLIND is the District of Columbia affiliate of the American Council of the Blind. DCCB is a 501(c)(3) non-

profit corporation whose members include people who are blind, visually impaired, and sighted. DCCB brings this suit on behalf of its members.

20. DCCB's purpose is to support and promote the full independence and equality of opportunity for all blind and visually impaired residents of the nation's capital and surrounding metropolitan areas. DCCB works in furtherance of its members' right to participate fully and equally in all aspects of their lives in the District, including in government services provided by DC Health.

21. DCCB is a membership organization with many blind members, including Pastor James Kennedy and Ms. Katherine Gosselin, who reside in the District of Columbia and who wish to have equal access to the District's Test Yourself COVID-19 Program.

22. Many of DCCB's members, including Kathleen Gosselin, are particularly susceptible to getting COVID-19 and put themselves at heightened risk if they must go to a testing site to secure assistance with administering the COVID test and/or reviewing the results. Blind people are more likely to have the kinds of chronic health conditions, such as diabetes or high blood pressure,<sup>9</sup> that increase their risk of contracting or suffering serious consequences from COVID-19.<sup>10</sup> DCCB has members with such conditions.

23. In addition, many of DCCB's blind members, including Plaintiffs Pastor James Kennedy and Kathleen Gosselin, must rely on public transportation services, which necessarily bring them into close proximity with others and put them, and others, at risk of contracting COVID-19 if they must travel to the testing site in order to determine their COVID-19 status.

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<sup>9</sup> *COVID-19: People with Certain Medical Conditions*, CDC (May 2, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

<sup>10</sup> *Vision Health Initiative (VHI): Vision Impairment and Chronic Health Conditions*, CDC (June 17, 2020), <https://www.cdc.gov/visionhealth/living/index.html>.

24. DCCB's members, collectively and independently, face the threat of imminent injury and illness as a result of Defendants' illegal conduct.

25. DEFENDANT DISTRICT OF COLUMBIA is responsible for the Test Yourself COVID-19 Program provided to District residents.

26. The District of Columbia is a public entity as that term is defined in the ADA. 42 U.S.C. § 12131(1).

27. The District of Columbia is a recipient of federal funding and is responsible for complying with Section 504 of the Rehabilitation Act. DC Health, the District agency that oversees the Test Yourself COVID-19 Testing Program, receives an average of \$120 million annually in federal funding. These funds address priority public health and service needs of District of Columbia residents.<sup>11</sup>

28. The District of Columbia, including its agencies, is responsible for complying with the DC Human Rights Act, which requires that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the District. D.C. Code § 2-1402.01.

29. DEFENDANT LAQUANDRA S. NESBITT, M.D., M.P.H., is the Director of DC Health. Dr. Nesbitt is responsible for enforcement of all laws and regulations relating to public health and vital statistics. D.C. Code § 7-101. She is sued in her official capacity.

### **STATEMENT OF FACTS**

#### **COVID-19 At-Home Testing in the District of Columbia**

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<sup>11</sup> DC.Gov, *Grants Management*, DC Health (last visited May 25, 2022), <https://dchealth.dc.gov/service/grants-management#:~:text=DC%20Health%20is%20awarded%20an%20average%20of%20%24120,aland%20service%20needs%20of%20District%20of%20Columbia%20residents.>

30. Beginning April 19, 2021, District of Columbia Mayor Bowser and DC Health, led by Dr. LaQuandra S. Nesbitt, launched Test Yourself DC. Test Yourself DC is a program operated by DC Health which currently makes available at-home PCR tests at thirty-six locations and take-home rapid antigen tests at eleven locations across all eight Wards at no cost to District residents.

31. Test Yourself DC offers District residents the option to either take a COVID-19 test onsite at one of the COVID Center locations or to take the tests at home and drop off their test samples at the closest DC Library drop box.

32. Test Yourself DC allows District residents to take COVID-19 tests at home without having to wait in line at a testing site using a COVID-19 At Home Testing Kit (“Kit”). The Kit is intended for the collection of anterior nasal swabs from individuals ages 2 years and older.

33. Neither the PCR nor the rapid antigen test is available in a format that is accessible to persons with vision impairments.

34. The Kit instructions are not available in a format that is accessible to persons with vision impairments such as braille or audio instructions.

35. In order for an individual to administer the PCR Kit, they must:

- a. Take their Kit home and prepare to test themselves using directions written in standard print on a paper pamphlet folded inside the Kit;
- b. Log onto [testyourself.dc.gov](https://testyourself.dc.gov);
- c. Enter the blue numbers printed on their sample tube when prompted on the website;
- d. Enter the red numbers printed on their sample tube when prompted on the website;
- e. Provide their name, demographic information, and insurance information;
- f. Conduct a Nasal Self Swab as directed on the printed instructions on the reverse side of the Kit;
- g. Package the Kit as instructed in print on the reverse side of the Kit;

- h. Drop off their Kit by 8 pm on the same day he/she takes the test to closest drop box;
  - i. Wait to receive his/her results by email and/or text.
- 36. In order for an individual to administer the Rapid Antigen Kit, they must:
  - a. Conduct a Nasal Self Swab as directed on the printed instructions;
  - b. Visually distinguish whether there is one line or two lines (sometimes the second line is incredibly faint) on the testing strip to read their results.
- 37. Each step required to administer the test or view the results requires the ability to read standard font and/or distinguish color, sometimes even a very faint line. Each of these tasks is a barrier for individuals with vision impairments.
- 38. The system places individuals with vision impairments at a higher risk of inaccurate results and/or misreading their test result.
- 39. Public health and government officials consider testing critical to prevent the spread of COVID-19. On January 21, 2022 the CDC reiterated its guidance that “[p]eople who have symptoms of COVID-19 or who have had known close contact to someone with COVID-19 should be tested for COVID-19.”<sup>12</sup>
- 40. Similarly, on March 23, 2022, DC Health recommended to District residents to “[g]et tested if you have symptoms of COVID-19 or if you are exposed to someone with COVID-19.” In that guidance DC Health specifically highlights that “[a]t home viral test kits are available, easy to use, and produce rapid test results.”<sup>13</sup>

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<sup>12</sup> *Overview of Testing for SARS-CoV-2, the virus that causes COVID-19*, CDC (February 11, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html>.

<sup>13</sup> *Coronavirus 2019 (COVID-19): Community COVID-19 Guidance*, DC Health (March 23, 2022), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/Community\\_COVID-19\\_Guidance\\_DCHHealth\\_COVID-19\\_032322.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Community_COVID-19_Guidance_DCHHealth_COVID-19_032322.pdf).

## **COVID-19 Forces Plaintiffs To Risk Their Safety and Public Safety to Determine Their COVID-19 Status**

41. While Test Yourself DC offers District residents the option either to take a COVID-19 test onsite at one of the COVID Center locations or to drop off their test sample at the closest DC Library drop box, there is no such option for District residents with vision impairments. Because District residents must read standard print, distinguish colors, and distinguish between physically identical sample tubes to administer the COVID-19 At Home Tests, District residents with vision impairments are not able to use the District's at-home testing program. In order to be tested, such residents must go to the COVID Centers.

42. In order to go to the COVID Centers, individuals with vision impairments, including Plaintiffs, must take public transportation, either risking exposure to COVID-19 themselves or risking exposure of others to COVID-19. Residents without disabilities who can administer the Kits do not have to expose themselves and the community to such risks.

43. Defendants' Test Yourself DC Program puts Plaintiffs and other individuals with vision impairments who cannot independently administer the Kits at risk of contracting COVID-19 by requiring them to travel to the District's COVID Centers to receive a test in person.

44. The history of the COVID-19 pandemic is well-known, and an extensive body of evidence shows that COVID-19 is a highly communicable deadly respiratory virus that spreads through close contact.

45. For some who survive COVID-19, it is known to cause post-COVID syndrome, commonly referred to as "long COVID," organ damage, blood clots and blood vessel problems, and problems with mood and fatigue.<sup>14</sup>

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<sup>14</sup> *COVID-19 (coronavirus): Long-term effects*, Mayo Clinic (October 22, 2021), <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-long-term-effects/art-20490351>.

46. The District's failure to provide an equally accessible option for at home COVID testing to residents with vision impairments places them at undue risk of these irreparable harms to their life and health.

47. In light of the continuing nature of COVID-19, significant numbers of District residents will need COVID-19 testing as the virus continues to spread and mutate in our community. Plaintiffs would use the Kits available through DC Health in the future if they were accessible to them.

### **Mechanisms Available To Provide Equitable Access to At-Home COVID Testing Program**

48. DC Health offers at-home COVID-19 vaccinations to District residents who cannot leave their home due to a disability. The residents simply need to call a toll free number to schedule an appointment with DC Health, which sends a qualified medical professional to a resident's home to administer the vaccine.

49. A similar system, potentially even using the same toll free number staffed by the same DC Health employees, could be deployed to administer Kits for residents with vision impairments.

### **Individual Plaintiffs' Need for At Home COVID Testing**

50. Plaintiff Pastor James Kennedy resides in the District of Columbia and is a member of DCCB.

51. Pastor Kennedy is blind and cannot read print or distinguish a colored line on a COVID test. He cannot independently administer or read a Kit.

52. Pastor Kennedy cannot travel independently using public transportation and instead uses MetroAccess. Pastor Kennedy does not currently have a home health aide who can administer a Kit for him.

53. Pastor Kennedy recently had symptoms of COVID-19 and was unable to test himself to confirm that he had the virus. Instead, he was faced with the untenable decision to either risk exposing the individuals with disabilities on MetroAccess, a high risk population, to COVID-19 or to risk exposing a friend to COVID-19 by having them come to his home to administer a Kit. After a few days of symptoms, his friend, who has no medical training, came over to administer the test for him. The test administered by Pastor Kennedy's friend confirmed that he did in fact have COVID-19.

54. Pastor Kennedy does not want to have to reveal his private health information to family and friends. He wants the ability to access a private at-home COVID test like all other DC residents.

55. If DC Health were to implement an accessible at-home testing option, Mr. Kennedy would use it when necessary.

56. Kathleen Gosselin resides in the District of Columbia and is a member of DCCB.

57. Ms. Gosselin is blind and cannot read print or distinguish a colored line on a COVID test. She cannot independently administer or read a Kit.

58. Ms. Gosselin currently has a Kit at her house but, because none of the instructions or packaging are accessible, she does not even know whether it is a PCR or a rapid test. She has never opened it because she is afraid she will lose or break one of the components because she is unable to tell what they are and there are no accessible instructions.

59. Ms. Gosselin has epilepsy, diabetes, and high blood pressure, placing her at high risk of severe illness or death were she to contract COVID-19.<sup>15</sup> Due to her high risk status, Ms.

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<sup>15</sup> *COVID-19: People with Certain Medical Conditions*, CDC (May 2, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

Gosselin works from home, has not visited her friends or family since the onset of the pandemic, and goes out as little as possible.

60. She cannot travel independently on public transportation to a COVID Center. Ms. Gosselin typically travels by taxi, and in order for her to do so, she often enlists assistance hailing a cab from someone on the street. She is afraid to take public transportation such as the Metro or a bus because the mask mandate has been lifted and she is high risk. Thus, travelling would expose Ms. Gosselin and others to the risk of exposure to COVID-19. Ms. Gosselin would feel guilty if she were to ever give another person COVID-19.

61. Ms. Gosselin does not want to have to reveal her private health information to family and friends. She wants the ability to access a private at-home COVID test like all other DC residents.

62. If DC Health were to implement an accessible at-home testing option, Ms. Gosselin would use it when necessary.

### **Communications with Defendants**

63. DCCB and its members have requested that Defendants make Test Yourself DC accessible to residents with vision impairments.

64. On February 25, 2022, DCCB and its members, including individual Plaintiffs, through counsel, wrote to Dr. Nesbitt, in her capacity as the Director of DC Health.

65. DC Health provided a confirmation of receipt of the February 25, 2022 correspondence, but it provided no substantive response. To the date of this Complaint, despite Plaintiffs' effort to resolve this matter without litigation, Defendants have not responded to DCCB's correspondence and have taken no action to make DC Health's Test Yourself DC Program accessible to residents with vision impairments.

## **FIRST CLAIM FOR RELIEF**

### **TITLE II OF THE AMERICANS WITH DISABILITIES ACT**

#### **42 U.S.C. § 12131 *et seq.***

66. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the foregoing numbered paragraphs 1 through 65 as if fully set forth herein.

67. Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, guarantees individuals with disabilities an equal opportunity to access the benefits of the services, programs, or activities of a public entity. 42 U.S.C. § 12132.

68. Title II mandates, *inter alia*, 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.

69. In providing aids, benefits, or services, public entities may not “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” nor may public entities provide qualified individuals with disabilities “an aid, benefit, or service that is not as effective in affording equal opportunity” to gain the same result or benefit as provided to others. 28 C.F.R. §35.130(b)(1)(ii)–(iii).

70. Furthermore, public entities “shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others,” and “shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to

participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R. § 35.160.

71. Defendant District of Columbia is a public entity under Title II of the ADA. Individual Defendant Dr. Laquandra S. Nesbitt is sued in her official capacity as the person responsible for carrying out the operations of the District agency.

72. DC Health’s Test Yourself DC Program administered by DC Health is a service, program, or activity provided by Defendants.

73. Individual Plaintiffs are individuals with disabilities under the ADA.

74. Individual Plaintiffs are residents of the District of Columbia who intend to use the District’s Test Yourself DC at-home testing program and thus are qualified individuals entitled to the protections of the ADA.

75. Organizational Plaintiff DCCB works to protect the rights of blind people in the District and has members who are qualified individuals with disabilities under the ADA.

76. Reasonable accommodations to increase equitable access to Test Yourself DC for residents with vision impairments are readily available to Defendants.

77. Defendants have failed to meet their obligations to provide residents with disabilities an opportunity to benefit from Test Yourself DC that is equal to the opportunity provided to other residents, inasmuch as residents with vision impairments are unable to access COVID-19 At Home Testing.

78. By failing to implement readily available appointments for at-home testing for individuals with vision impairments, Defendants have refused to provide an auxiliary aid or service necessary to allow Plaintiffs with access to at-home COVID testing that is equally effective to at-home COVID testing provided to residents without disabilities.

79. By failing to provide accessible Kit instructions, in Braille, large font, or accessible via a screen reader, Defendants have deprived Plaintiffs of equal access to at-home COVID testing that is as effective as that provided to residents without disabilities.

80. Providing accessible Kit instructions and implementing at-home appointments for individuals with vision impairments to be tested by DC Health employees would enable District residents with vision impairments to know their COVID-19 status without compromising their health or their lives by risking exposure to COVID-19.

81. Accordingly, Defendants have discriminated against Plaintiffs because their service, program, or activity of at-home COVID testing is inaccessible.

82. As a result of Defendants' actions, Plaintiffs have suffered and will continue to suffer irreparable harm: they have suffered and continue to suffer from discrimination and unequal access to Defendants' Test Yourself DC Program, they will be unable to safely determine their COVID-19 status, and in order to know their COVID-19 status they will be forced to risk their health and safety due to the threat of COVID-19.

83. In the absence of injunctive relief, Defendants will continue to deny Plaintiffs their right to equal access to DC Health's Test Yourself DC Program.

84. Plaintiffs are entitled to injunctive and declaratory relief and to reasonable attorneys' fees and costs.

### **SECOND CLAIM FOR RELIEF**

#### **VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973 29 U.S.C. § 794 *et seq.***

85. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the foregoing numbered paragraphs 1 through 84 as if fully set forth herein.

86. Section 504 of the Rehabilitation Act mandates 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).

87. Section 504 defines “program or activity,” in pertinent part, as “all of the operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government[.]” 29 U.S.C. § 794(b)(1).

88. Such federally funded entities may not, *inter alia*, in providing aids, benefits, or services, “[d]eny a qualified handicapped person the opportunity accorded others to participate in the program or activity receiving Federal financial assistance.” 28 C.F.R. § 2.503(b)(1)(i).

89. Such federally funded entities must also “insure that communications with their . . . beneficiaries are effectively conveyed to those having impaired vision and hearing,” 28 C.F.R. § 42.503(e), and, if the entity has 15 or more employees, must “provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the participation of such persons in a program or activity receiving Federal financial assistance.” 28 C.F.R. § 42.503(f).

90. Defendant District of Columbia, receives federal financial assistance for the administration of DC Health, thereby subjecting itself to the requirements of Section 504.

Individual Defendant Dr. Laquandra S. Nesbitt is sued in her official capacity as the individual responsible for carrying out the operations of Defendant District of Columbia.

91. Defendant District of Columbia has 15 or more employees.

92. Test Yourself DC is a service, program, or activity provided by DC Health.

93. Individual Plaintiffs are people with disabilities under Section 504.

94. Individual Plaintiffs are lawful residents with disabilities in the District of Columbia and thus are otherwise qualified individuals entitled to the protections of Section 504.

95. Organizational Plaintiff DCCB has members who are qualified individuals with disabilities under Section 504.

96. Reasonable accommodations to increase equitable access to Test Yourself DC for residents with vision impairments are readily available to Defendants.

97. Defendants have failed to meet their obligations to provide residents with vision impairments with an opportunity to access at-home COVID-19 testing that is equal to the opportunity provided to other residents.

98. By failing to implement readily available appointments for at-home testing for individuals with vision impairments, Defendants have refused to provide an auxiliary aid or service necessary to allow Plaintiffs to have access to at-home COVID testing as effective as access provided to as residents without disabilities.

99. By failing to provide accessible Kit instructions, in Braille, large font, or accessible via a screen reader, Defendants have deprived Plaintiffs of access to at-home COVID testing equally as effective as access provided to residents without disabilities.

100. Implementing at-home appointments for individuals with vision impairments to be tested by DC Health employees would enable District residents with vision impairments to

know their COVID-19 status without compromising their health or their lives by risking exposure to COVID-19.

101. Accordingly, Defendants have discriminated against Plaintiffs because their service, program, or activity of at-home COVID testing is inaccessible.

102. As a result of Defendants' actions, Plaintiffs have suffered and will continue to suffer irreparable harm: they have suffered and continue to suffer from discrimination and unequal access to Defendants' COVID-19 at-home Program and in order to know their COVID-19 status they will be forced to risk their health and safety.

103. In the absence of injunctive relief, Defendants will continue to deny Plaintiffs their right to equal access to DC Health's Test Yourself DC Program.

104. Plaintiffs are entitled to permanent injunctive and declaratory relief and to reasonable attorneys' fees and costs.

### **THIRD CLAIM FOR RELIEF**

#### **VIOLATION OF THE DISTRICT OF COLUMBIA HUMAN RIGHTS ACT**

105. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the foregoing numbered paragraphs 1 through 104 as if fully set forth herein.

106. The DCHRA makes it an "unlawful discriminatory practice to deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations. D.C. Code § 2-1402.31. This prohibition of discrimination applies to Defendants. D.C. Code § 2-1403.03.

107. Plaintiffs are persons otherwise qualified to use or access the facilities, services, programs, or benefits of any program or activity operated by Defendants.

108. For all the reasons described above with regard to the Rehabilitation Act and ADA claims, Defendants' actions and inactions violate the DCHRA.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the Court to provide relief as set forth below:

109. A declaration that Defendants have violated and continue to violate the ADA, Section 504 of the Rehabilitation Act, and the DCHRA by failing to provide individuals with vision impairments equal access to the DC Test Yourself Program;

110. A permanent injunction prohibiting Defendants from violating the ADA, Section 504 of the Rehabilitation Act, and DCHRA and requiring them to offer a toll-free number for residents with vision impairments to contact DC Health to schedule an appointment for a DC Health employee to come to the resident's home to administer an at-home COVID-19 test;

111. A permanent injunction requiring Defendants to provide accessible testing instructions;

112. A permanent injunction requiring Defendants to provide immediate notice to residents with vision impairments throughout the District of Columbia regarding the availability of accessible instructions and appointments for at-home COVID-19 testing by DC Health;

113. An award of Plaintiffs' reasonable attorneys' fees and costs; and

114. Such other and further relief as the Court may deem just and proper.

DATED: June 3, 2022

Respectfully submitted,

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