

R.H.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN PARALYZED VETERANS
OF AMERICA,

Plaintiff,

v.

No. 07-11702
Honorable Sean F. Cox
Magistrate Judge Pece

THE UNIVERSITY OF MICHIGAN,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

THE UNIVERSITY OF MICHIGAN AND
THE REGENTS OF THE UNIVERSITY
OF MICHIGAN

Defendants.

FILED
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COMPLAINT IN INTERVENTION

Plaintiff Intervenor United States of America, by its attorneys, allege, upon
information and belief:

PRELIMINARY STATEMENT

1. The United States of America brings this civil action to enforce the provisions of Title
II of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12131 *et seq.*, and

Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"), 29 U.S.C. § 794, and the regulations implementing Title II and Section 504, 28 C.F.R. Part 35, and 34 C.F.R. Part 104, against defendants University of Michigan and the Regents of the University of Michigan (collectively, the "University" or the "defendants").

2. As set forth more fully below, defendants have discriminated, and continue to discriminate, against individuals with disabilities, including individuals who use wheelchairs, by excluding them from participation in and denying them the benefits of the services, programs, and activities at the University's football stadium (the "Stadium"), in violation of the ADA and Section 504, by failing to provide program accessibility at the Stadium and by failing to make alterations and additions to the Stadium so that the altered and added portions are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 12133, and 29 U.S.C. § 794a. The Court may grant the relief sought in this action pursuant to 42 U.S.C. § 12133, 29 U.S.C. § 794a, and 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391, in that all of the claims and events giving rise to this action occurred in this district.

THE PARTIES

5. Plaintiff-Intervenor is the United States of America.

6. Defendant University of Michigan is a "public entity" within the meaning of the ADA,

42 U.S.C. § 12131, and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, and its implementing regulations, 28 C.F.R. Part 35.

7. Defendant University of Michigan is a “recipient” of “federal financial assistance” within the meaning of Section 504, 29 U.S.C. § 794, and 34 C.F.R. § 104 and is therefore subject to Section 504 and the relevant implementing regulations, 34 C.F.R. Part 104.

8. Defendant University of Michigan owns the University of Michigan Stadium.

9. Defendant University of Michigan operates “services, programs, or activities” within the meaning of the ADA, including at its Stadium.

10. The Regents of the University of Michigan is the corporate body having general supervision of the University of Michigan, including control and direction of expenditures from the University of Michigan’s funds.

11. Upon information and belief, the Regents of the University of Michigan is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131, and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, and its implementing regulations, 28 C.F.R. Part 35.

12. Defendant Regents of the University of Michigan is a “recipient” of “federal financial assistance” within the meaning of Section 504, 29 U.S.C. § 794, and 34 C.F.R. § 104 and is therefore subject to Section 504 and the relevant implementing regulations, 34 C.F.R. Part 104.

13. Defendant Regents of the University of Michigan owns or operates the University of Michigan Stadium.

14. Defendant Regents of the University of Michigan operates “services, programs, or activities” within the meaning of the ADA, including at its Stadium.

15. Defendant Regents of the University of Michigan approves the expenditure of funds for construction projects at the University of Michigan Stadium.

PROCEDURAL BACKGROUND

16. On April 17, 2007, plaintiff Michigan Paralyzed Veterans of America filed a Complaint in this Court against the University of Michigan alleging violations of Title II of the ADA and Section 504 at the Stadium.

17. The plaintiff, a chapter of the Paralyzed Veterans of America, has members who are "individual[s] with a disability" within the meaning of the ADA, 42 U.S.C. § 12131, and Section 504, 29 U.S.C. § 794, and have attended, or have tried to attend, football games at the Stadium. Members of plaintiff's organization have been injured by the defendants' failure to make the University of Michigan's Stadium and the services, programs, and activities at the Stadium accessible to people with disabilities.

18. Upon information and belief, there are other persons who have been injured by the defendants' failure to make the Stadium and the services, programs, and activities at the Stadium accessible to people with disabilities.

CLAIMS FOR RELIEF

COUNT ONE

19. The allegations of Paragraphs 1 through 18 of the Complaint in Intervention are hereby realleged and incorporated by reference.

20. The University of Michigan and the Regents of the University of Michigan, as public entities, are required to operate each of their services, programs, and activities so that the service,

program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12132; 28 C.F.R. 35.150(a). *See* 29 U.S.C. § 794; 34 C.F.R. § 104.22.

21. Because the Stadium and the services, programs, and activities provided by the defendants are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, the defendants have excluded individuals with disabilities from participating in or receiving the benefits of the services, programs, or activities of a public entity and have discriminated against individuals in violation of Title II of the ADA, 42 U.S.C. § 12132, 28 C.F.R. §§ 35.130, 35.149, 35.150, 35.151, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, 34 C.F.R. §§ 104.4, 104.21, 104.22, 104.23.

22. The defendants' violations of Title II and Section 504 with regard to failing to provide program accessibility at the Stadium include, but are not necessarily limited to:

- A. Failing to provide a sufficient number of accessible wheelchair seats in the Stadium;
- B. Failing to disperse accessible wheelchair seating throughout the Stadium's seating area;
- C. Failing to provide accessible ramps and routes into and around the Stadium for individuals with disabilities;
- D. Failing to provide accessible toilets and appropriate signage directing patrons with disabilities to accessible toilets;
- E. Failing to provide accessible concession stands in the Stadium and appropriate

signage directing patrons with disabilities to concession stands;

F. Failing to provide accessible souvenir stands in the Stadium and appropriate signage directing patrons with disabilities to souvenir stands ;

G. Failing to provide accessible parking at the Stadium.

H. Failing to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

COUNT II

23. The allegations of Paragraphs 1 through 22 of the Complaint in Intervention are hereby realleged and incorporated by reference.

24. Upon information and belief, the defendants have made alterations and additions to the Stadium since January 18, 1991.

25. Upon information and belief, alterations and additions to the Stadium made after January 18, 1991, affect or could affect the usability of the Stadium. 28 C.F.R. §§ 151(b), (c), 35 C.F.R. § 104.23(b), (c).

26. Upon information and belief, defendants have violated Title II of the ADA and Section 504 by failing to make alterations and additions in such a manner that, to the maximum extent feasible, the altered and added portions of the Stadium are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 28 C.F.R. § 35.151(b), *see* 34 C.F.R. § 104.23(b).

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court:

A. Grant judgment in favor of the United States on its Complaint in Intervention and declare that the defendants have violated Title II of the ADA, 42 U.S.C. §§ 12131 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the relevant implementing regulations;

B. Enjoin the defendants, its agents and employees, and all persons in active concert or participation with them, from engaging in discriminatory policies and practices against members of the public based on their disabilities, and specifically from failing or refusing to take appropriate steps to ensure compliance with the requirements of Title II of the ADA, 42 U.S.C. §§ 12131 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the relevant implementing regulations;

C. Order the defendant to modify its policies, practices, and procedures as necessary to bring the University of Michigan football Stadium into compliance with Title II of the ADA, 42 U.S.C. §§ 12131 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the relevant implementing regulations;

D. Award compensatory damages in an appropriate amount to individuals with disabilities for injuries suffered as a result of the defendant's failure to ensure compliance with the requirements of Title II of the ADA, 42 U.S.C. §§ 12131 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, according to proof; and

E. Order such other appropriate relief as the interests of justice require.

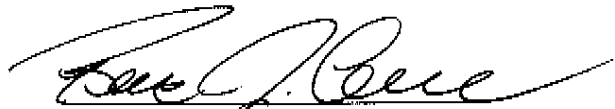
Jury Demand

The plaintiff-intervenor hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

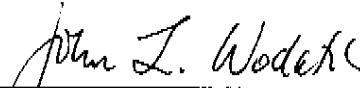
Dated this NOV 20 2007

RESPECTFULLY SUBMITTED:

MICHAEL B. MUKASEY
Attorney General of the United States

A handwritten signature in black ink, appearing to read "Rena J. Comisac", written over a horizontal line.

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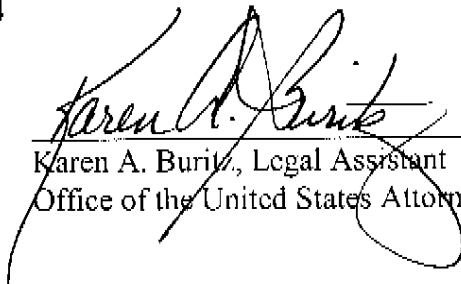
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CERTIFICATE OF SERVICE

It is hereby certified that service of the Complaint in Intervention and Certificate of Service has this 27th day of November, 2007, been made upon defendants' counsel, KEEFE A. BROOKS, by placing same in an envelope, and depositing said envelope in a United States Postal receptacle at Detroit, Michigan addressed:

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