

For Opinion See [2008 WL 3833764](#)

United States District Court, E.D. Michigan,
CENTER FOR COMMUNITY ACCESS, INC., Plaintiff,

v.

CITY OF DETROIT, MICHIGAN, Defendants.

Case Number: 2:05CV73475.

September 9, 2005.

Deck: S. Division Civil Deck

Complaint

[J. Mark Finnegan](#) (P68050), [Denise M. Heberle](#) (P64145), Heberle & Finnegan, PLLC, 2580 Craig Road, Ann Arbor, MI 48103, (734)-302-3233, (734)-302-3234 Telefax, Attorneys for Plaintiff.

Judge: [Rosen](#), Gerald E.

Magistrate Judge [Komives](#).

Preliminary Statement

1. The Center for Community Access (“CCA”), is a 501(c)(3) non-profit, membership based, grassroots organization dedicated to assisting individuals with disabilities in becoming all that they can be. CCA's mission is to raise the status of people with disabilities, which is accomplished through educating, advocating and celebrating our differences and the commonality we share as human beings. CCA educates people with disabilities about their rights, and also educates the public on the obligations and responsibilities society has toward people with disabilities. CCA advocates for the individual and collective rights of people with disabilities in order to gain freedom of movement and access to the greater community.

2. CCA is located in the Hannan Building at 4750 Woodward Avenue, on the Southeast corner of the intersection of Woodward with Hancock. Recently the City of Detroit has resurfaced or otherwise altered intersections and sidewalks close to CCA's offices, but has failed to ensure that those altered intersections meet all federal and Michigan accessibility standards and guidelines. The City of Detroit has failed to make these sidewalks and intersections accessible to and readily usable by Plaintiff and its members and clients.

3. The Center is seeking for the City to ensure that these intersections are corrected and brought into compliance with the law.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiff's claims pursuant to [28 U.S.C. § 1331](#) and [28 U.S.C. § 1343\(a\)\(3\)](#); [29 U.S.C. § 794\(a\)](#) (Rehabilitation Act); and [42 U.S.C. § 12133](#) (Title II of the Americans With Disabilities Act);

5. Venue is proper under 28 U.S.C. § 1391(b) because the Defendant is located in the Eastern District and the events and/or omissions giving rise to Plaintiff's claims occurred in the Eastern District.

6. Jurisdiction in Count II is based on this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367, because the Michigan State law claims arise out a common nucleus of facts with the federal law claims.

III. PARTIES

A. PLAINTIFF

7. The Center for Community Access, Inc., operating in central Detroit, Michigan, is a nonprofit Michigan Corporation. Its Board of Directors and staff, is composed of a majority of people with mobility and/or sight disabilities, along with volunteers. These people have disabilities as defined under the Americans with Disabilities Act, under Section 504 of the Rehabilitation Act, and under applicable Michigan law. The CCA was created to assure equality of opportunity, full participation, independent living and economic self-sufficiency Defendants' conduct has and is frustrating the CCA's mission, and the Center has suffered financial harm attempting to overcome discrimination by the City, and it has many members and clients who are suffering from the City's violations of accessibility law. CCA and its employees, members and clients will continue to suffer exclusion from full participation in the grand concourse of life unless and until the court remedies the City's continuing, over-arching pattern and practice of discrimination against people with disabilities.

B. DEFENDANTS

8. Defendant City of Detroit is authorized under the State of Michigan and is a public entity as that term is defined under 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. Upon information and belief, the City has received and will continue to receive federal funds for purposes of the Rehabilitation Act and for the Civil Rights Restoration Act, 29 U.S.C. § 794(b)(1)(A). The City has a continuing and overarching pattern and practice of discriminating against people with disabilities when it builds or repairs city facilities services, programs or activities.

IV. FACTS

9. Beginning at least in 1992, and continuing each year until the present, the City of Detroit has resurfaced or otherwise altered intersections and sidewalks without ensuring that those altered intersections and sidewalks meet federal and Michigan accessibility standards, and so those sidewalks and intersections remain not accessible to and readily usable by the CCA, its employees, members and clients, as they attempt to transact the business and goals of the CCA. The lack of proper ramps at these intersections and on these sidewalks force the CCA and its members to travel in traffic, and to attempt to negotiate the defective curb ramps and sidewalks.

10. A few of the many examples of these defective sidewalks and intersections near to CCA include intersections on Anthony Wayne, Third Avenue, and West Warren at the John Lodge. Each of these intersections contain ramps that suffer from one or more of the following defects:

- A. Running slope in excess of 8.33%;
- B. Cross slope in excess of 2%;
- C. No level landing at the top of the ramp;

D. Obstructions or “lips” at the juncture of the ramp with the street; and/or,

E. Improperly oriented or maintained truncated dome detectible warnings.

Plaintiff demands that these ramps, sidewalks and intersections be brought into compliance as soon as possible. In addition, work is currently occurring on John R., from Woodward to Adams, as well as on other sidewalks and intersections close to CCA. CCA believes that without Court intervention, the City will leave these intersections and sidewalks not accessible to and readily usable by Plaintiff.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION: CLAIM UNDER TITLE II OF THE AMERICANS WITH DISABILITIES ACT

11. Plaintiff brings this count under Title II of the Americans With Disabilities Act (ADA) for declaratory and injunctive relief, and for damages.

12. 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 the City of Detroit as a “public entity.” 42 U.S.C. § 12131(1).

13. 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, and so the United States Department of Justice has issued binding program accessibility regulations that Plaintiff now seeks to enforce.

14. 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).

15. Section 28 C.F.R. § 150(a) requires the City to “operate each service, program, or activity, when viewed in its entirety, 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 (6th Cir. 1998). Sidewalks and intersections are city services and programs, and maintaining them is covered by Title II of the ADA and also Section 504 of the Rehabilitation Act. *Barden v. City of Sacramento*, 292 F.3d 1073, 1076-77 (9th Cir. 2002), citing *Johnson v. City of Saline*.

16. Beginning in at least 1992, and continuing up to the present, the City has engaged in a continuing pattern and practice of over-arching discrimination against Plaintiff by operating several of its services, programs, or activities, when viewed in their entirety, are not readily accessible to and usable by Plaintiff. These services, programs, or activities include, among others, the City's sidewalks, intersections, and intersection crossing signals near the CCA's offices.

17. 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) & (e); *Ability Center of Greater Toledo v. City of Sandusky, Ohio*, 133 F.Supp. 2d 589, 591-92 (N.D. Ohio 2001), *aff'd* 385 F.3d 901 at 904 (6th Cir. 2004)(City must install ADA-compliant curb ramps at all resurfaced

intersections). Compliance with federal building and design standards provides a safe harbor to public entities, 28 C.F.R. § 35.151(c); *Tennessee v. Lane*, 541 U.S. 509, 124 S.Ct. 1978, 1993 (2004).

18. Beginning January 26, 1992, and each year continuing to the present, the City has constructed new services, programs or activities or altered parts of services, programs or activities, but has failed to ensure that those services, programs or activities are readily accessible to and usable by Plaintiff. For example, among many other things, the City has resurfaced intersections and/or rebuilt sidewalks nearby CCA's offices after January 26, 1992, without installing curb ramps that meet federal standards. Some of these violations have occurred within the last three years, and are occurring now.

19. Each of these failures by the City has made each of these existing and or newly altered services, programs or activities not readily accessible to and usable by Plaintiff. By their actions complained of herein, Defendants have intentionally discriminated against Plaintiff due to its disabilities. Plaintiff is entitled to injunctive relief ordering the City to bring these and future services, programs or activities into compliance, individual compensatory damages and attorneys fees and costs.

SECOND CAUSE OF ACTION: CLAIM UNDER THE REHABILITATION ACT OF 1973

20. Plaintiff brings this claim for declaratory and injunctive relief and for damages. The Rehabilitation Act requires that when a public entity that receives federal funding builds or alters any part of a facility, it shall to the maximum extent possible, be made so that it is readily accessible to and usable by individuals with disabilities. 29 U.S.C. § 794. “[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, the City 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).

21. Beginning with the effective date of the Rehabilitation Act, and continuing each year to the present, the City has received federal money and has operated, constructed or altered parts of services, programs or activities, but has engaged in a continuing pattern and practice of over-arching discrimination against Plaintiff by denying the benefits of, or subjecting it to discrimination under several programs or activities receiving Federal financial assistance. The City has failed to ensure that those services, programs or activities are readily accessible to and usable by Plaintiff. Many of the sidewalks and curb ramps within its jurisdiction nearby the CCA's offices violate minimum accessibility design standards and guidelines. Also, the City has resurfaced intersections and/or rebuilt sidewalks after 1982, without installing curb ramps that meet federal standards. Some of these violations have occurred within the last three years.

22. Each of these failures by the City has made each of these new or altered services, programs or activities not readily accessible to and usable by Plaintiff. By their actions complained of herein, Defendants have intentionally discriminated against Plaintiff due to its disabilities. Plaintiff is entitled to injunctive relief ordering the City to bring these services, programs or activities into compliance, individual compensatory damages, and attorneys fees and costs.

THIRD CAUSE OF ACTION: CLAIMS UNDER MICHIGAN LAW

23. Plaintiff brings this count for injunctive relief and damages. The above complained of failure by the City to construct, alter and maintain its services, programs or activities nearby CCA's offices to be accessible to

Plaintiff also violates Michigan law at [M.C.L. § 37.1301-02](#). Plaintiff is entitled to individual compensatory damages, as well as injunctive and declaratory relief, attorneys fees and costs.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants as follows:

- 1 That the Court declare the rights and duties of the parties and issue injunctive relief consistent with the relief sought by Plaintiff;
2. That Defendants compensate the Plaintiff for damages under law in an amount according to proof; and
3. That Plaintiff recovers an award of reasonable attorneys fees, costs, and expenses.

Plaintiff further prays for such additional relief as the interests of justice may require.

Respectfully Submitted,

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Appendix not available.

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