

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

MICHAEL HARRIS & KARLA HUDSON,)
Plaintiffs,) Case No. 2:14-cv-13630
v.) Hon. David M. Lawson
WAYNE COUNTY AIRPORT AUTHORITY,)
Defendant.)
/

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Attorneys for Plaintiffs

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiffs, Michael Harris and Karla Hudson, hereby sue the Wayne County Airport Authority, and state as follows:



INTRODUCTION

1. Plaintiffs bring this action to put an end to Defendant Wayne County Airport Authority's failure to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA") and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) by relocating public transportation services from the International Arrivals Level of the McNamara Terminal to the Ground Transportation Center ("GTC") at the

Detroit Metro Airport (“DTW”), a location posing numerous accessibility issues in violation of these statutes.

2. Defendant’s move of public transit services, which took place on Monday, September 22, 2014 discriminates against Plaintiffs, and others similarly situated, by forcing the public transportation companies to load and unload their passengers in an inaccessible area with numerous violations of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.
3. By ignoring the needs and dignity of Plaintiffs, and other disabled persons similarly situated, while traveling to and from the airport, Defendant treats them as second-class citizens, unjustly disregards their basic rights to equality and dignity, and causes embarrassment, humiliation, harassment, and emotional distress. Additionally, by moving transit access to an inaccessible area, Defendant needlessly subjects the Plaintiffs, and those similarly situated, to unnecessary risk of bodily injury and death. Therefore, Plaintiffs seek declaratory relief stating the Defendant’s course of conduct violates the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, and injunctive relief enjoining Defendant from continuing to operate public transportation in its new location at the inaccessible GTC rather than the previous accessible location at International Arrivals.



JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because Plaintiff’s claims arise under federal statutes, specifically the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. In addition, this Court has jurisdiction over Plaintiff’s claims for declaratory relief, pursuant to 28 U.S.C. §§ 2201-

02 and jurisdiction over Plaintiff's claims for injunctive relief pursuant to 15 U.S.C. § 1116.

5. Venue is proper in the Eastern District of Michigan, Southern Division, because the Defendant is situated within the district pursuant to 28 U.S.C. § 1391, and because the events, acts, and omissions giving rise to Plaintiffs' claims occurred in this district.

PARTIES

6. Plaintiff, Michael Harris, presently the Executive Director of the Michigan Paralyzed Veterans of America, is an individual who uses a wheelchair, living in Westland, Michigan.
7. Plaintiff, Karla Hudson, is a totally blind individual who lives in East Lansing Michigan.
8. Plaintiffs have standing to bring the present cause of action.
 - a. Plaintiffs are physically disabled according to the definition provided by the ADA as they are either "legally blind" or "substantially impaired in the major life activity of walking."
 - b. Plaintiffs are physically disabled according to the definition provided by Section 504 of the Rehabilitation Act as they have a physical impairment that "substantially limits one or more major life activit[y]." (42 U.S.C. section 12102(1)).
 - c. Both Plaintiffs have traveled through DTW in the past and plan to visit the facility in the future and wish to have equal access to public transit facilities.
 - d. Defendant's course of conduct results in Plaintiffs being denied proper access and mobility when using Detroit Metro Airport, where they both travel to and from,



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and thus deny their rights as provided to them by the ADA and Section 504 of the Rehabilitation Act.

9. Wayne County Airport Authority is a public, government entity within the meaning and definition of the ADA as it was chartered by the Michigan Legislature in 2002.

FACTUAL ALLEGATIONS

10. The Wayne County Airport Authority is the government chartered entity that oversees Detroit Metro Airport (“DTW”).
11. Plaintiffs used to have ADA-compliant access to and from DTW via public transportation companies, such as SMART and AirRide, and wish to continue to have ADA-compliant access in the future.
12. Prior to September 22, 2014, the drop-off location for SMART and AirRide was at the International Arrivals Level of the McNamara Terminal of DTW, which is an accessible and ADA-compliant location.
13. Effective Monday, September 22, 2014, SMART and AirRide transportation services were relocated to the Ground Transportation Center of the McNamara Terminal.
14. Defendant announced its plan to relocate SMART and AirRide transportation services on its website, made available to the general public and to the Plaintiffs at:
<http://www.metroairport.com/GroundTransportation.aspx>
15. Defendant claims the relocation of SMART and AirRide was due to safety and congestion concerns, however Great Lakes Bus, the shuttle for airport employees that makes approximately 168 roundtrips per day as compared to the 13 roundtrips by AirRide, was not relocated from the same location.



16. The new location at the GTC presents serious accessibility problems, and thus is in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The violations of these statutes includes, but is not limited to, the following:
 - a. The traffic at the GTC is heavily congested as it also serves cabs, charter buses, and shuttle services for hotels, parking lots and rental cars, and fails to provide safe pedestrian access to persons with disabilities.
 - b. The area for public transit buses to stop takes place in three spots in two side-by-side lanes, one lane along the curb, and the other the middle lane with an active traffic lane on its other side.
 - c. If a bus is parked in each of the lanes, the bus in the curb-side lane blocks the bus in the middle lane from deploying its wheel chair lift as there is simply not enough room.
 - d. When all three unloading spots are occupied, passengers loading and unloading from a bus in the middle lane are forced to exit between vehicles and cross over a lane of traffic, an action which could result in severe bodily harm and/or death, especially if this person is blind and unable to see the potential dangers.
 - e. The new location at the GTC is approximately 200 yards from the nearest indoor area of the airport, as opposed to 50 feet in the McNamara Terminal at the present location, thus forcing people to either wait outside for their bus or run quickly once it arrives. Disabled persons, especially those with mobility limitations, who cannot “run” quickly enough are thus forced to wait outside, even in harsh weather conditions.



- f. The GTC severely limits a disabled person's access to and communication with Prospect Airport Services, a service used by disabled persons to assist them in getting around at the Airport, thereby leaving them stranded, and without access to reasonable accommodations.
- g. The obscure location of the elevators in the GTC is unclearly marked and difficult to find, creating further hurdles and frustration for disabled persons seeking to use them.
- h. The covered shelters at the GTC are not large enough for someone who uses a wheelchair to maneuver inside without blocking entrances and other people, which could result in embarrassment, frustration, and being forced to wait outside in treacherous weather.
- i. Unlike the old location at the International Arrivals level of the McNamara Terminal, the GTC does not have a service animal relief area, which could result in frustration and hardship for the disabled person and his or her service animal alike.
- j. Passengers traveling from the McNamara Terminal to the new transit pickup location outside of the GTC must either choose to travel directly out "side doors" that exit to active lanes of traffic, or go through a revolving door, which when often broken is inaccessible to those with mobility impairments. To wit, the Detroit Free Press in 2009 reported that the door had broken 33 times from April 1, 2008 to March 22, 2009.



17. Upon information and belief, Defendant was aware of the significant issues posed to the disabled when they moved SMART and AirRide to the GTC, yet they insisted in moving forward with their announced plan.
18. After numerous pleas to not move SMART and AirRide to the GTC went unanswered by the Defendant, their Board met one final time on September 18, 2014 and failed to take action to prevent the impending relocation from occurring.
19. Kirk Studley, Director of Michigan Department of Transportation, at a public hearing on September 18, 2014 before the Michigan Transportation Commission, stated he was going to request delay of the impending relocation due to unresolved issues related to accessibility for persons with disabilities. This statement was made in the presence of Plaintiff Hudson.
20. Jerrold M. Jung, Commission Chair of the Michigan State Transportation Commission, in a letter to Mr. Tom Naughton, CEO of the Wayne County Airport Authority dated September 18, 2014, requested the “immediate suspension of the Monday implementation date and that a public meeting of the airport board be held to address this important issue” stating concerns “regarding public safety at the new location, especially for persons with physical disabilities who rely on public transportation.”
(Exhibit-A, Letter from Commission Chair Jerrold M. Jung).
21. Michigan Governor Rick Snyder communicated his support in “maintaining the integrity of the current stop locations” in a letter to Mr. Tom Naughton, CEO of the Wayne County Airport Authority and to Mr. Michael Ford, CEO of the Ann Arbor Area Transportation Authority dated June 11, 2014. **(Exhibit-B, Letter from Governor Snyder).**



22. Ben Glardon, Michigan State Representative, 85th District, in a letter to MDOT Director Kirk T. Steudle dated September 18, 2014, expressed his concern with moving the location for public transit to pick-up and drop-off citing the “lack of loading/unloading space, greater traffic congestion, the inaccessibility for people with disabilities, inadequate waiting area, and the general inconvenience for passengers . . .” (**Exhibit-C**, Letter from Michigan State Representative Ben Glardon).
23. Plaintiffs, and others similarly situated, wish to continue using public transportation services to and from the airport, such as SMART and AirRide, but they are now effectively barred due to the inaccessibility of the location for disabled persons.
24. In short, the previous transportation stop at the International Arrivals Level of the McNamara Terminal is accessible to disabled individuals, and the action by Defendant to move that transportation stop to the GTC is not accessible to disabled individuals, needlessly and recklessly subjects them to bodily injury, and is patently in violation of the ADA and Section 504 of the Rehabilitation Act.

COUNT I

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT.

25. Plaintiffs incorporate by reference all allegations set forth in paragraphs 1 through 25, inclusive.
26. In enacting the ADA, Congress expressly determined that society tends to isolate and segregate people with disabilities; that individuals with disabilities continually encounter prejudice and discrimination, including outright exclusion and the failure to eliminate exclusionary criteria; that this nation should assure equality of opportunity for all participation, independent living, and economic self-sufficiency to individuals with



- disabilities; and that continuing discrimination impedes them from competing on an equal basis and pursuing opportunities available to other citizens. 42 U.S.C. § 12101(a)
- 27. The express purpose of the ADA is “to provide a clear and comprehensive national mandate for eliminating discrimination against individuals with disabilities; to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the federal government plays a central role in enforcing the standards established in the Act on behalf of individuals with disabilities.” 42 U.S.C. § 12101(b).
 - 28. The Plaintiffs are individuals who constitute “qualified individual(s) with a disability” under the ADA.
 - 29. The Defendant, to the extent that it is a government chartered entity, is subject to Title II of the ADA.
 - 30. Title II of the ADA states “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 subjected to discrimination by any such entity.” 42 U.S.C. § 12132.
 - 31. By moving the pick-up and drop-up location for public transportation from the International Arrivals area of the McNamara Terminal to the GTC, Defendant has acted in disregard of Plaintiffs’ disabilities, effectively subjecting them to discrimination by forcing them to use an inaccessible area, in violation of the ADA.
 - 32. Forcing public transportation service locations to the GTC denies Plaintiff’s the right to equal access, in violation of Title II of the Americans with Disabilities Act.



33. Defendants' course of conduct is in violation of the equal access and nondiscrimination requirements set forth in Title II of the ADA, and has resulted in injury to Plaintiffs, and others similarly situated,
34. Unless enjoined from doing so, Defendant's actions will inflict irreparable injuries for which Plaintiffs have no adequate remedy at law.

COUNT II

VIOLATION OF TITLE V OF THE AMERICANS WITH DISABILITIES ACT.

35. Plaintiff incorporates by reference all allegations set forth in paragraphs 1 through 34, inclusively.
36. Title V of the Americans with Disabilities Act states in pertinent part that "It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter." 42 U.S.C. 12203(b).
37. Through the acts and omissions alleged herein, Defendant has acted to interfere with Plaintiff's exercise or enjoyment of rights granted or protected by the ADA, specifically by interfering with Plaintiff's right to equal access and nondiscrimination, in utilizing public transportation services at DTW.
38. The Defendant, by implementing their move of public transit services on September, 22, 2014 to an inaccessible location, "interfered" with the Plaintiff's federally protected rights to access public transportation in violation of the ADA, as Smartbus and AirRide is forced by the Defendant to pick up the Plaintiffs, and others similarly



situated, in a dangerous manner, and in an environment devoid of adherence to the ADA.

39. Plaintiffs hereby allege that in knowingly forcing them, and those similarly situated, to access public transportation services through an inaccessible and dangerous location, the Defendant has acted with “discriminatory animus,” needlessly subjecting the persons with disabilities to the potential for loss of life and limb.

COUNT III

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. 794) ET SEQ AND RELATED.

40. Plaintiffs incorporate by reference all allegations set forth in paragraphs 1 through 39, inclusive.
41. Section 504 states in part that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her 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 or under any program or activity conducted by any Executive agency . . .”
42. Plaintiffs are qualified individuals with disabilities as defined by Section 504, specifically; Plaintiffs are both persons with physical impairments which substantially limit one or more major life activities.
43. Upon information and belief, Defendant Wayne County Airport Authority receives federal financial assistance in its programs and activities and is an entity created by legislative enactment as it was chartered by the Michigan Legislature in 2002.
44. As referenced above, Defendant has consistently discriminated against Plaintiffs, and others similarly situated.



WHEREFORE, Plaintiff requests the relief set forth below.

PRAYER FOR RELIEF

Plaintiffs pray for the following relief:

45. A declaration that Defendant Wayne County Airport Authority's announced course of action unlawfully violates Plaintiff's rights under the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act.
46. A preliminary injunction enjoining the Wayne County Airport Authority's relocation of public transportation to the Ground Transportation Center, until such time as the GTC, or an alternative location, can be made accessible to qualified individuals with disabilities requesting reasonable accommodations.
47. A permanent injunction preventing Defendant from moving SMART and AirRide from the International Arrivals Level of the McNamara Terminal to the Ground Transportation Center, until such time as the GTC or an alternative location can be made accessible to qualified individuals with disabilities requesting reasonable accommodations.
48. Reasonable Attorneys fees and costs, including expert fees, for the prosecution of this matter.
49. Although the Plaintiff seeks no compensatory damages at this time, Plaintiff wishes to reserve the right to amend and request compensatory damages should it become necessary to encourage Defendant to comply with federal law.
50. All other relief that this honorable Court deems just and proper.



Respectfully submitted,

NYMAN TURKISH PC

/s/ Jason M. Turkish

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Dated: September 29, 2014

Co-Counsel for Plaintiffs

Certificate of Service

I certify that on September 29, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

/s/ Jason M. Turkish

By: Jason M. Turkish (P76310)



Exhibit-A

Letter from Commission Chair Jerrold M. Jung



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
STATE TRANSPORTATION COMMISSION
LANSING



September 18, 2014

Mr. Thomas Naughton, CEO
Wayne County Airport Authority
1 Detroit Metro Airport
Detroit, Michigan 48242

Dear Mr. Naughton:

At today's State Transportation Commission meeting, we heard public comments from many individuals about the Wayne County Airport Authority decision to relocate the Michigan Flyer drop-off point at Detroit Metropolitan Airport starting Monday, September 22, 2014. Numerous comments were made regarding public safety at the new location, especially for persons with physical disabilities who rely on public transportation.

Maintaining the integrity of the current stop locations to provide convenient, safe, handicapped-accessible, and direct access is important to keep services seamless and attractive for travelers. We understand that there are challenges in terms of safety, navigation, and congestion mitigation. These challenges should be resolved in a manner that is beneficial for all, and that contributes to the success of regional transportation improvements for visitors and residents alike.

On behalf of the commission, I am officially requesting the immediate suspension of the Monday implementation date and that a public meeting of the airport board be held to address this important issue. We are hopeful that a resolution that satisfies all parties is possible.

Sincerely,

Jerrold M. Jung
Commission Chair

cc: Dennis Schornack
Sara Wurfel
Kirk Steudle
Laura Mester
Michael Trout
Jeff Cranson
Frank Raha

• Jerrold M. Jung, Chair • Todd Wyett, Vice Chair • Angelynn A. Afendoulis • Ron J. Boji • Michael D. Hayes • Charles F. Moser •

Exhibit-B

Letter from Governor Snyder



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

BRIAN CALLEY
LT. GOVERNOR

June 11, 2014

Mr. Tom Naughton, CEO
Wayne County Airport Authority
L.C. Smith Terminal – Mezzanine Level
Detroit, MI 48242

Michael G. Ford, CEO
Ann Arbor Area Transportation Authority
2700 S. Industrial Hwy.
Ann Arbor, MI 48104

Dear Mr. Naughton and Mr. Ford:

It has come to my attention that relocating the AirRide Service boarding locations at the Detroit Metropolitan Airport's International Terminal is under consideration. AirRide is an innovative and important public transportation service that supports commerce and tourism in Southeast Michigan, as well as providing a convenient means to travel between Ann Arbor and the airport. AirRide is a public/private partnership that is successful because of your cooperation.

Maintaining the integrity of the current stop locations which provide convenient, direct access and ideal customer service is important to keep the service attractive and convenient for travelers. I understand that there are challenges to providing this service in terms of safety, way-finding, congestion mitigation, and traffic enforcement, but the most important goal is to provide a convenient and attractive service to visitors from around the world.

I am hopeful that you will continue to work together to resolve these challenges in a manner that is beneficial for your respective organizations. Your continued cooperation is vital to the success of the region as it works to develop improved transportation options for visitors and residents alike.

Sincerely,

A handwritten signature in blue ink that reads "Rick Snyder".

Rick Snyder
Governor

Exhibit-C

Letter from Michigan State Representative Ben
Glardon



P.O. BOX 30014
 LANSING, MICHIGAN 48909-7514
 PHONE: (517) 373-0841
 TOLL-FREE: (877) 558-5426
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 E-MAIL: benglardon@house.mi.gov

HOUSE OF REPRESENTATIVES
BEN GLARDON
 STATE REPRESENTATIVE
 85TH DISTRICT

COMMITTEES:
 TRANSPORTATION, VC
 AGRICULTURE
 COMMERCE
 INSURANCE

September 18, 2014

Director Kirk T. Steudle
 Michigan Department of Transportation
 425 W. Ottawa St.
 P.O. Box 30050
 Lansing, MI 48909

Dear Director Steudle:

I write you concerning the proposed change to public the transit passenger boarding and de-boarding location at Detroit Metropolitan Airport (DTW). Currently, passengers board and de-board AirRide motorcoaches curbside at the north end of the McNamara Terminal. Due to unspecified safety concerns, DTW officials propose moving the boarding and de-boarding location to door #402 at the North end of the Ground Transportation Center (GTC).

This proposed change would create numerous problems. AirRide and its partner Michigan Flyer carried 175,582 passengers to and from DTW in the year between July 2012 and June 2013. It is not unusual for 500 Ann Arbor or Lansing-area convention –goers- or 500 international students attending the University of Michigan or Michigan State University to arrive at DTW's McNamara Terminal all at once. The arrival hall at International Arrivals can accommodate hundreds of people adequately while they wait for their AirRide bus to pull up at the curb just outside. The proposed change would force these groups, with each person carrying luggage, to make the long trek to the GTC in the Parking Ramp across the street from the terminal, where the waiting room can only accommodate approximately 30 people.

In addition, there are only three spaces available for boarding at the GTC which are to be shared with AirRide, Suburban Mobility Authority for Regional Transportation (SMART) and charter services. Bus Parking will be available on a first-come, first-served basis, with the first two buses parking adjacent to the curb and the third bus parking in the roadway next to them. This causes serious safety concerns as this will force some AirRide buses to load and unload passengers between buses during busy periods. More importantly, this could violate laws regarding access to airport facilities by people with disabilities. AirRide buses are equipped with wheelchair lifts that require 9 feet of space from the right rear side of the bus for safe passenger loading and unloading. If an AirRide bus parks at the GTC in the through lane next to the two other buses, there will not be adequate space for the wheelchair lift to deploy.

DTW's relocation plan would also have a negative fiscal impact to DTW, the state of Michigan and a crippling effect on AirRide operations. AirRide and Michigan Flyer help extend DTW's reach beyond its primary market of the surrounding ten-county Detroit Air Trade Area, all the way to Ingham and other

mid-Michigan counties. As evidence, AirRide's 175,582 passengers have more than doubled the positive economic impact on DTW and its air carriers. About one-third (57,942) of AirRide-Michigan Flyer passengers are visitors from other states and countries that directly spend \$82,576,040 in Michigan per year, and have a total positive impact of \$151,099,506 on the state's economy. The success of public transit like AirRide depends on adherence to published schedules. The lack of loading/unloading space, greater traffic congestion, the inaccessibility for people with disabilities, inadequate waiting area, and the general inconvenience for passengers of AirRide would force people to look for alternative means of transportation.

Given AirRide's impeccable safety record at its current boarding location, the economic impact to our state, and the concerns I've stated, I strongly encourage you to please consider postponing the effective date of this proposed change to allow for further discussion. Thank you and please feel free to contact me with any questions or comments on this issue.

Sincerely,



Ben Glardon
State Representative
85th District

cc: Sally Durfee, Office of Governor Rick Snyder