

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

GARRET GERSIN, JASON TURKISH,
and MICHAEL HARRIS.

Plaintiffs,

v.

THE ROAD COMMISSION FOR OAKLAND COUNTY,

Defendant.

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COMPLAINT

Plaintiffs, Garret Gersin, Jason Turkish, and Michael Harris, state as follows:

INTRODUCTION

1. Plaintiffs bring this action to put an end to the Road Commission of Oakland County's (Road Commission) failure to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq. ("ADA"), in its planned removal of conventional intersections with signaled crosswalks, and installation of traffic roundabouts.
2. The Oakland County Road Commission is discriminating against Plaintiffs and others similarly situated by removing a modality which allows blind and disabled

individuals the ability to cross the intersections at Maple Road and Drake Road, Maple Road and Farmington Road, and Maple Road and Orchard Lake Road. The replacement for the conventional intersection being a traffic roundabout which lacks a safe mechanism for blind and disabled pedestrians to cross the road, thus denying them equal access to interstate commerce and travel in the Township of West Bloomfield.

3. The discriminatory acts and omissions of the Road Commission include, but are not limited to, the following:
 - a. The Road Commission has undertaken and plans to continue to undertake costly and substantial construction to the three aforementioned intersections, which it knows, or should know, requires compliance with the ADA.
 - b. Under ADA guidelines, the Road Commission is required to ensure that new and altered facilities constructed by, on behalf of, or for the use of state and local government entities be designed to be readily accessible to and usable by people with disabilities (28 CFR 35.151 et seq.)
4. By ignoring the rights of blind and/or otherwise disabled individuals, the Road Commission effectively treats Plaintiffs and others similarly situated as second-class citizens, unjustly disregarding their basic rights to equality and dignity, and causing embarrassment, humiliation, harassment and emotional distress. Therefore, Plaintiffs seeks injunctive relief and declaratory relief to redress Defendant's current and continuing violation of their rights under federal law.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1331, because Plaintiffs' claims arise under federal statutes, the ADA and Section 504. In addition, this Court has jurisdiction over Plaintiffs' claims for declaratory relief, pursuant to 28 U.S.C. 2201-02.
6. Venue is proper in the Eastern District of Michigan, Southern Division, because Oakland County and the Oakland County Road Commission are 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

7. Plaintiff, Garret Gersin, is a blind individual, living in Oak Park, Michigan, who frequents and wishes to continue to conduct interstate commerce in the affected areas of West Bloomfield, Michigan.
8. Plaintiff, Jason Turkish, is a legally blind individual, living in Huntington Woods, Michigan, who visits relatives in the affected area of West Bloomfield, and wishes to continue to have the right to conduct social and commercial business in the area.
9. Plaintiff, Michael Harris, an individual who uses a wheelchair, lives in Westland, Michigan, and wishes to continue to conduct interstate commerce in the affected areas of West Bloomfield, Michigan.
10. 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 “blind”, “legally blind” or “substantially impaired in the major life activity of walking”.
 - b. Plaintiffs are at risk of being denied access and mobility in a three mile stretch of West Bloomfield, Michigan, where they wish to visit, shop, and/or otherwise conduct business, as such, they are being denied their rights as provided to them by the ADA.
11. The Road Commission of Oakland County is a public, government entity within the meaning and definition of the ADA, as it is a municipal agency.

FACTUAL ALLEGATIONS

12. The Road Commission of Oakland County (Road Commission,) is the county level road agency in Oakland County, Michigan. It is responsible for maintaining numerous county roads, state highways and traffic signals in Oakland County, and as such, is subject to the provisions of Title II of the Americans with Disabilities Act.
13. The Road Commission has commenced construction of a roundabout at the intersection of Maple Road and Drake Road, in West Bloomfield, Michigan.
14. As part of said construction at the intersection of Maple and Drake Roads, a conventional intersection, containing signaled, timed crossings, has been removed.
15. The conventional pedestrian crossing being removed provided a mechanism which allowed a blind or mobility impaired individual to cross the road independently, with dignity and safety.

16. The removal of the safe pedestrian crossing is in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.
 - a. The planned traffic roundabout which will replace the conventional intersection fails to provide a safe mechanism for blind and/or disabled individuals to cross the road, and this is in direct violation of the ADA and Section 504, which require that new and altered facilities constructed by, on behalf of, or for the use of state and local government entities be designed to be readily accessible to and usable by people with disabilities (28 CFR 35.151 et seq.)
17. The Road Commission has announced plans to remove conventional intersections and replace them with roundabouts at Maple Road and Farmington Road, and Maple Road and Orchard Lake Road.
18. Upon information and belief, other roundabouts are being planned throughout Oakland County, each one further threatening to impede the mobility of blind or otherwise disabled individuals, unless a well defined policy of compliance with the ADA is adapted.
19. The planned de-construction of conventional intersections, which provide viable pedestrian crossings for blind and/or otherwise disabled individuals, and their replacement with roundabouts which are unsafe to the disabled pedestrian, constitutes violations of Title II of the ADA and Section 504.
20. That it is possible to construct safe mechanisms for the disabled to cross at a roundabout, including, but not limited to viable options such as:
 - a. construction of a pedestrian bridge
 - b. construction of a pedestrian tunnel

- c. construction of traffic signals, to momentarily stop traffic and allow for the safe crossing of all pedestrians

However, none of these mechanisms are currently being undertaken by the Road Commission.

- 21. That cessation of current construction plans and the restoration of the conventional intersection at Maple Road and Drake Road would also eliminate the threat currently being posed to disabled pedestrians.
- 22. Plaintiffs, and others similarly situated, wish to participate in the community of West Bloomfield, Michigan, but they will be effectively barred due to the lack of accessibility created by the three consecutive roundabouts planned along Maple Road.
- 23. The Road Commission appears to plan some steps to increase lighting and provide and indicated area for pedestrian crossings at the roundabouts, but as traffic does not stop in the roundabout as designed, the issue of safety and feasibility for a disabled person to cross the road remains unaddressed.
- 24. A blind or low vision individual crosses a conventional intersection by listening to the sound of traffic stopping. As traffic never stops in a roundabout, it is impossible and/or dangerously unsafe to cross the intersection.
- 25. Individuals who use wheelchairs are impaired at a roundabout, as there is a need for mobility to see the emerging traffic, which does not stop, as it emerges from the traffic circle.
- 26. Recent research sponsored by the Access Board, the National Eye Institute, and the American Council of the Blind suggests that some roundabouts can present

significant accessibility challenges and risks to the blind user (See Complaint attachment A)

27. Additionally, a study sponsored by the U.S. Department of transportation, Federal Highway Administration, indicates that mobility techniques used by individuals who are blind or have low vision are “confounded” by the characteristics of roundabout design. The study also adding that there is an overall need to improve transportation facility access and usability for pedestrians generally at roundabouts. (See Complaint attachment B)
28. Upon information and belief, the Road Commission for Oakland County is aware of the significant issues posed to the disabled due to the roundabout construction, but no resolution to these issues has been offered or proposed.
29. The denial of basic accessibility along the three miles of Maple Road directly affected by the roundabouts, impedes Plaintiffs and other people with disabilities from full and equal enjoyment of the rights of citizenship in a free society. In particular, this denial results in isolation, the perpetuation of social stigmas, loneliness, and social deprivation; it produces humiliation, frustration, and low self-image; limits recreational and business opportunities’ restricts participation in numerous programs, activities, and services, and imposes unnecessary irrational and unlawful obstacles to enjoying the benefits available to others without disabilities.
30. The Road Commission planned actions seriously injure Plaintiffs and others similarly situated in other ways as well. Plaintiffs’ injuries include, but are not limited to, the ability to participate in society, emotional distress, time lost from social interaction, loss of ability to conduct commerce, and pain and suffering.

31. On information and belief, Plaintiffs alleges that the Road Commission, through their agents and employees, have acted intentionally, willfully, in bad faith, and/or with reckless indifference for the federal legal rights of Plaintiffs and other with disabilities, in committing the acts and omissions stated here.
32. Defendant continues to discriminate against Plaintiffs and others based on their disabilities, by denying plaintiff and others with equal access to the West Bloomfield community, resulting in ongoing injury to plaintiffs and other disabled individuals.
33. Plaintiffs have no adequate remedy at law. While Plaintiffs reserves the right to seek monetary relief, they are not expressly doing so through this complaint. Plaintiff seeks equitable relief for Defendant's ongoing acts and omissions, as stated herein, and wishes for the planned intersections to be brought into compliance with the ADA.
34. In short, the conventional intersections along Maple and Drake Roads are accessible to disabled individuals, and the planned traffic roundabouts are not accessible to the disabled, and as such, The Road Commission for Oakland County is in violation of the American with Disabilities Act.

COUNT 1

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT, SPECIFICALLY, SECTION 504, 34 C.F.R. ET SEQ AND RELATED

35. Plaintiff incorporates by reference all allegations set forth in paragraphs 1 through 33, inclusive

36. 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).
37. 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).
38. The Plaintiffs are individuals who constitute “qualified individual(s) with a disability” under the ADA.
39. The Road Commission for Oakland County is a “municipal entity” as defined by the ADA.
40. Through the acts and omissions alleged here, Defendant has acted in disregard of Plaintiff’s disabilities, planning to effectively exclude Plaintiffs and others similarly situated from the West Bloomfield community, and subjected them to discrimination, in violation of the ADA.

41. Defendant's acts and omissions are in violation of the equal access and nondiscrimination requirements set forth in Title II of the ADA, and the regulations promulgated thereunder, and have resulted in injury to Plaintiffs and others similarly situated.
42. Defendant's acts and omissions constitute an ongoing and continuous violation of Title II of the ADA. Unless restrained and enjoined from doing so, Defendant will continue to violate this statute and to inflict irreparable injuries for which Plaintiffs have no adequate remedy at law.
43. The Road Commission plans continued roundabout construction and has not implemented a plan to provide safe crossings for disabled pedestrians.
44. Upon information and belief, the planned construction does not comport with the ADA or Section 504's requirements to provide accessibility to disabled individuals.
45. Upon information and belief, the removal of conventional intersections which provides modalities for disabled pedestrian crossings is in violation of Title II of the ADA and Section 504.
46. As stated above, the Road Commission has failed to comply with even the most minimal provisions of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, and is woefully in violation of their obligations to provide accommodation to Disabled citizens.

WHEREFORE, plaintiff requests the relief set forth below.

PRAAYER FOR RELIEF

Plaintiff prays for the following relief:

47. A declaration that the Road Commissions of Oakland County's acts, planned acts, and omissions unlawfully violate plaintiffs' rights under the American's with Disabilities Act of 1990 (ADA).
48. An injunction restraining the Road Commission of Oakland County from continuing further construction of the Maple Road roundabouts until it actually provides an acceptable plan to allow for the safety of disabled pedestrians, and allows Plaintiffs, or Plaintiff's representative to review all plans and drawings prior to construction.
49. A further injunction requiring the Road Commission for Oakland County to provide individuals with disabilities with full and equal access at pedestrian crossings under its jurisdiction and restraining the Road Commission from discriminating against individuals with disabilities who wish pedestrian access along Maple Road.
50. Although Plaintiffs seek no compensatory damages at this time, Plaintiffs wish to reserve the right to amend and request compensatory damages should it become necessary to encourage the Road Commission to comply with federal law.
51. Although Plaintiffs seek no actual attorney's fees or costs, Plaintiffs wishes to reserve the right to amend and request attorney's fees and costs should it become necessary to encourage the Road Commission to comply with Federal law.

52. All other relief that this Court deems just and proper.

Respectfully submitted,

By: _____

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