

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

TIMOTHY RICHARDSON

and

JONATHAN STEELE,

Plaintiffs,

v.

CITY OF STEAMBOAT SPRINGS, COLORADO

Defendant.

COMPLAINT

Plaintiffs Jonathan Steele and Timothy Richardson, by and through their attorneys Fox & Robertson, P.C., hereby submit their Complaint for violation of the Americans with Disabilities Act and the Rehabilitation Act of 1973.

INTRODUCTION

1. Almost nine years after Congress passed our nation's landmark civil rights law for people with disabilities, Defendant -- which, through Steamboat Springs Transit, owns and operates the City of Steamboat Springs's public transportation system -- has not made several of its public services, including its public transportation system, accessible to individuals who use wheelchairs.

2. On July 12, 1990, Congress enacted the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., establishing the most important civil rights law for people with disabilities in our country's history.

3. Congress explicitly stated that among the purposes of the ADA are:
 - a. “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;”
 - b. “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities, . . .;” and
 - c. “to invoke the sweep of congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.”

42 U.S.C. § 12101(b).

1. In addition, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (the “Rehabilitation Act”) is “designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.” 34 C.F.R. § 104.1.

2. In spite of abundant lead time and the extensive publicity the ADA and the Rehabilitation Act have received since 1990, Defendant continues to discriminate against people who use wheelchairs in ways that include but are not limited to its failure to provide access for persons with disabilities to basic public services, including the public transportation system, that are available to all other members of the public.

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.
2. Venue is proper within this District pursuant to 28 U.S.C. § 1391.
- 3.

PARTIES

1. Plaintiff Timothy Richardson is and was at all times material hereto a resident of Colorado residing at 901 Mountain Village Circle, Steamboat Springs, Colorado, 80487. Mr. Richardson has cerebral palsy, is a paraplegic, and is substantially impaired in several major life activities. Mr. Richardson requires a manual wheelchair for mobility.

2. Plaintiff Jonathan Steele is and was at all times material hereto a resident of Colorado residing at 305 Mountain Village Circle, Steamboat Springs, Colorado, 80487. Seven years ago, Mr. Steele was injured in a skiing accident. As a result, Mr. Steele is a paraplegic and is substantially impaired in several major life activities. Mr. Steele requires a manual wheelchair for mobility.

3. Defendant, the City of Steamboat Springs is a public entity (i.e., a local government) located in Colorado with its principal place of business at 137 Tenth Street, Steamboat Springs, Colorado, 80477. On information and belief, the City of Steamboat Springs (hereinafter “Steamboat Springs”) receives federal financial assistance, and in particular, for the operation of its public transportation system through Steamboat Springs Transit (“SST”). SST operates a fixed route bus system.

GENERAL ALLEGATIONS

1. Plaintiff Timothy Richardson has lived in Steamboat Springs since November of 1998 and relies on SST’s buses as his primary means of transportation. Mr. Richardson is an active and contributing member of the Steamboat Springs community and has been employed at the Wal-Mart in Steamboat Springs, where he handles returns and exchanges, since December of 1998.

2. Plaintiff Jonathan Steele has lived in Steamboat Springs for the last twelve years. Mr. Steele has been employed at the Sheraton Hotel in downtown Steamboat Springs for nine years, where he controls the switchboard in the front office. He relies on SST as well as his own vehicle for transportation. Mr. Steele is an active member of the community who patronizes

many of the city's private businesses and public facilities. He is an outdoorsman who frequently uses the city's many parks, trails, and other recreational areas.

3. Plaintiffs have encountered various accessibility barriers throughout Steamboat Springs. There are numerous issues related to SST, the city's public transportation system, as well as several of the city's other programs and facilities.

4. Both Mr. Richardson and Mr. Steele have encountered buses without lifts or with broken lifts. Mr. Richardson must often wait as long as an hour — while three or four buses pass him by — before a properly equipped, accessible bus arrives at his stop.

5. As a result of Mr. Richardson's inability to access Steamboat Springs' buses, he has been forced to arrive more than an hour late for work on numerous occasions. In a town where most destinations are only minutes away and other members of the public receive prompt and efficient bus service, Mr. Richardson must arrive at the bus stop an hour early in order to reach his work on time.

6. On one occasion during the latter part of January of 1999, Mr. Richardson was required to wait for close to an hour in sub-zero temperatures for an accessible bus to arrive at the Shadow Run stop, near his apartment. As a result of this prolonged exposure to the elements, Mr. Richardson's hands were seriously frostbitten, the tips of all eight of his fingers badly burned and blistered from the cold, and his thumbs blistered as well. Since Mr. Richardson uses his hands to operate his manual wheelchair, this was a seriously debilitating injury that resulted in limitations on his mobility as well as his performance at work. Changes in the weather continue to cause the tips of Mr. Richardson's fingers to flare up in pain.

7. Mr. Steele has also experienced problems as a result of Steamboat Springs' inaccessible buses. For example, last winter, the lift on the first bus that arrived at Mr. Steele's stop was not working because there was ice on some of its components. Because the bus was inoperable, a

replacement bus was called, but this bus was not wheelchair-accessible. Finally an accessible bus arrived and picked up Mr. Steele, but he was more than thirty minutes late for work.

8. In addition to the difficulties caused by buses without lifts or with broken lifts, Mr. Richardson and Mr. Steele have also experienced problems as a result of Steamboat Springs' failure to properly train and supervise its drivers. For example:

a. Mr. Richardson and Mr. Steele have had to give step-by-step instructions to the drivers on the use of the lifts.

b. On several occasions, bus drivers have been uncooperative and have refused to assist Mr. Richardson in securing his wheelchair in the bus so as to prevent movement and reduce risk of injury in the event of an accident or sudden stop. Instead, Mr. Richardson must hold on to rails beside the driver.

c. At times, when an inaccessible bus has been the last bus available for Mr. Richardson to take and still be on time for work, he has offered to hoist himself on to the bus, requiring only that the driver assist him by retrieving his chair from outside the bus. Drivers have routinely refused to assist Mr. Richardson.

d. Mr. Richardson has been told by bus drivers that their buses do not have lifts or that their lifts are not working. This has happened in instances where Mr. Richardson has ridden the particular bus claimed to be without a lift earlier that day or the previous day and thus knows that the lift does in fact work.

e. On information and belief, the portion of SST's driver-training covering the operation of the buses' lifts is minimal, consisting of only a few minutes of instruction.

9. Other aspects of Steamboat Springs' public transportation system are inaccessible to Mr. Richardson and Mr. Steele. For example, some of the bus stops have shelters inside of which patrons of the bus system may shield themselves from the winter wind and cold as they wait. Some of these shelters are inaccessible to persons who use wheelchairs. Mr. Richardson's case of frostbite was at least partially due to the inaccessibility of a shelter. In addition, at SST's stop at the Gondola Transportation Center in Steamboat Springs, the "lanes" where passengers load and unload from buses are inaccessible to persons who use wheelchairs.

10. Mr. Richardson and Mr. Steele have repeatedly made their concerns and complaints known to SST. Steamboat Springs, however, has failed to address these issues.

11. Mr. Richardson and Mr. Steele have been and continue to be injured by the inaccessibility of Steamboat Springs' public transportation system. They have also been injured by the stigma of Defendant's discrimination, which has been and continues to be a barrier to the full participation of people with disabilities in the Steamboat Springs community.

12. In addition to the accessibility barriers to Steamboat Springs' public transportation system, there are several other facilities in Steamboat Springs that are inaccessible to individuals with disabilities, particularly persons who use wheelchairs. For example:

a. The parking lot at Spring Creek Reservoir, a city-owned and -operated park that Mr. Steele frequents, is almost exclusively reserved for persons with disabilities. Steamboat Springs, however, removed a wheelchair-accessible portable restroom from this location, leaving only an inaccessible, standard portable restroom.

- b. Mr. Steele has attended the Chariot Races held in the winter at Romick Rodeo Arena, part of the City's Howelsen Hill Complex. These races are inaccessible to persons who use wheelchairs. There is no disabled parking available for this event. In addition, persons sitting in the only wheelchair-accessible seating at the arena cannot see the Chariot Races.
- c. Steamboat Springs Stables, also located at the City's Howelsen Hill Complex, offers extensive horseback-riding services to area residents and visitors, but has no ramp or other devices by which persons who use wheelchairs can mount horses. Mr. Steele was turned away from the facility because it lacks the means to serve disabled patrons.
- d. The City of Steamboat Springs sponsors various events at the Howelsen Hill ski jump outrun, a location that is inaccessible to individuals who use wheelchairs. Mr. Steele has attempted to attend events at this location in the past.

13. As a result of the accessibility barriers to the City of Steamboat Springs' public transportation system as well as to many of its other programs and facilities, Plaintiffs Mr. Richardson and Mr. Steele have suffered injuries, including but not limited to physical pain and suffering with respect to Mr. Richardson, as well as humiliation, emotional distress, embarrassment and anguish.

14. Plaintiffs would like to -- and are ready, willing and able to -- utilize Defendant's services, programs and activities when the discriminatory barriers are removed or cured.

FIRST CLAIM FOR RELIEF

(Violation of the Americans with Disabilities Act)

1. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 - 24 above as if fully set forth herein.

2. Title II of the ADA prohibits public entities from denying, on the basis of disability, the benefits of the services, programs, or activities of the public entity, and from subjecting persons with disabilities to discrimination. 42 U.S.C. § 12131 et seq.

3. Further, it is considered discrimination for purposes of the ADA “for a public entity to fail to operate a designated public transportation program or activity conducted in [existing] facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.” 42 U.S.C. § 12148.

4. Defendant is a public entity under the ADA.

5. Defendant has violated the ADA by failing to make its public transportation system readily accessible to and usable by Plaintiffs and other persons who use wheelchairs.

6. In addition, Defendant Steamboat Springs has violated the ADA by denying Plaintiffs and other persons who use wheelchairs the benefits of its services, programs, and activities, as more fully set forth above.

7. Plaintiffs have been harmed by Defendant’s violations of the ADA.

8.

SECOND CLAIM FOR RELIEF

(Violation of Rehabilitation Act of 1973)

1. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 - 31 above as if fully set forth herein.

2. The Rehabilitation Act prohibits recipients of federal funding from denying to persons with disabilities, on the basis of disability, the benefits provided by the recipient, or from subjecting persons with disabilities to discrimination. 29 U.S.C. § 794.

3. On information and belief, Defendant receives federal funding.

4. Defendant has violated the Rehabilitation Act by denying Plaintiffs and other persons who use wheelchairs its benefits, including access to its public transportation system, as more fully set forth above.

5. Defendant's violations of the Rehabilitation Act have harmed Plaintiffs.

6.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction.

2. That this Court issue an injunction ordering Defendant to comply with the ADA and the Rehabilitation Act by making its services, programs, and activities, including its public transportation system, readily accessible to and usable by Plaintiffs and other persons who use wheelchairs.

3. 3. That this Court award compensatory damages to Plaintiffs.

4. 4. That this Court award Plaintiffs' reasonable attorneys' fees and costs.

5. 5. That this Court award such additional or alternative relief as may be just, proper and equitable.

6. **JURY DEMAND:** Plaintiffs demand a jury on all issues which can be heard by a jury.

Respectfully submitted,

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