

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK----- x
UNITED SPINAL ASSOCIATION, a
nonprofit organization,

Plaintiffs,

-against-

METROPOLITAN TRANSIT
AUTHORITY, A PUBLIC BENEFIT
CORPORATION, J. H. WALDER, in his
official capacity as chairman and chief
executive officer of the Metropolitan Transit
Authority, NEW YORK CITY TRANSIT
AUTHORITY, a public benefit corporation,
and THOMAS F. PRENDERGAST, in his
official capacity as president of the New
York City Transit Authority,Defendants.
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Case no.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF****INTRODUCTION**

1. This class action under the Americans with Disabilities Act ("ADA"), and the Rehabilitation Act of 1973 ("Rehab Act") arises out of the New York Metropolitan Transit Authority ("MTA") and the New York City Transit Authority ("NYCTA") refusal to comply with applicable law in the proposed Rehabilitation of the Dyckman Street Station. Defendants, in violation of federal law, intend to undertake a major renovation of the Dyckman Street Station, and to spend many millions of dollars doing so, without doing the disability access work that would allow people with disabilities and seniors to actually use

the facility. This action seeks equitable and injunctive relief for the named plaintiff and members of the plaintiff class.

2. Federal law requires that when alterations are made to an existing transit facility, at least 20% of the cost of the alterations must be spent on making the altered facility accessible to and usable by people with disabilities, including people who use wheelchairs, “to the maximum extent feasible.”

3. The MTA and NYCTA are aware of these legal requirements but freely admit that they are not going to spend the funds to make accessibility-related improvements at the Dyckman Street Station.

4. The ADA was signed into law in 1990 with the goal of enabling people with disabilities to be integrated participants in all aspects of community life. Specifically, Title II of the ADA was enacted to ensure that local governments provide programs, services and activities, such as local transit systems, in a way that is accessible to people with disabilities.

5. Access to the subway system is absolutely essential to life in New York City. The subway system enables New Yorkers to live productively in a fast-paced city. The subway is the only reliable and fast way for residents to travel long distances and interborough. Access to the subway enables relationships between people who live in different neighborhoods. Without the subway, most New Yorkers would find it difficult to get to work on time, attend a doctor’s appointment in a different part of the city, or move effectively from home to college and back.

6. A person who does not have access to the subway in New York does not have access to the range of professional opportunities, cultural events, and social relationships which are so essential to the fabric of life in the City.

7. As important as the subway system is for all New Yorkers, it is particularly essential for people with disabilities. Some disabilities make driving impossible. Accessible cabs are rare and cab fares are prohibitively expensive for many people with disabilities who are more likely than those without disabilities to be unemployed and consequently living in

poverty. Thus, people with disabilities need to take advantage of public transportation more than perhaps any other demographic group.

8. The MTA and NYCTA have not responded to these realities and instead operate one of the most inaccessible public transportation systems in the United States; in 2010, twenty years after the ADA was passed, only 86 of the 468 subway stations in New York City are accessible to people with disabilities.

9. Recently, the MTA and NYCTA began a 47-million-dollar project to totally rehabilitate the station at Dyckman and Nagle Streets (“Dyckman Street Station”) and the five stations directly to the north on the number 1 Broadway line.

10. Proposed improvements to the Dyckman Street Station include renovated staircases and the replacement of both the northbound and southbound platforms.

11. According to the MTA, the majority of the 47 million dollars allocated for the project will be spent on work done at the Dyckman Street Station.

12. Without judicial intervention defendants’ refusal to comply with federal law will result in the Dyckman Street Station continuing to be inaccessible to riders with disabilities. This is particularly detrimental to men, women, and children with disabilities and to seniors because of the lack of accessible stations in Northern Manhattan and along the 1 line in particular.

13. The nearest accessible station to Dyckman Street on the 1 line in Manhattan is about 128 blocks away at 72nd Street and Broadway.

14. If the MTA is not required to make the Dyckman Street Station accessible it is unlikely that people with disabilities will ever be able to use the station because once this major renovation is complete no project of this scope is likely to be undertaken at the Dyckman Street Station for decades.

15. Even if the Dyckman Street Station cannot be made fully accessible during this renovation, federal law requires that MTA and NYCTA make whatever access improvements are possible with 20% of the budget allocated to the Dyckman Street Station project. By

making incremental improvements to accessibility now, even greater accessibility can be achieved when future projects are considered at the Dyckman Street Station.

16. This gradual movement towards accessibility is the only practical way to achieve the long-term goal of system wide access to the New York City subways and the even more long-term goal of a fully accessible society contemplated by Congress and embodied in the ADA.

JURISDICTION

17. This is an action for declaratory and injunctive relief brought pursuant to Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12131, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

18. This Court has jurisdiction to issue declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

19. Pursuant to 28 U.S.C. section 1391(b), venue is proper in the District in which this Complaint is filed, because Defendants are located within this District, a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District, and the property that is the subject of this action is situated in this District.

PARTIES

20. Organizational Plaintiff United Spinal Association (“United Spinal”) is a nonprofit disability rights and veterans service organization. The organization has national membership and was founded in 1946.

21. The mission of United Spinal is to provide expertise, create access to resources, and strengthen hope, thereby enabling people with spinal cord injuries to fulfill their potential as active members of their communities.

22. United Spinal drafted significant portions of the ADA and continues to advocate for the rights of people with disabilities through state and federal legislation, the courts, grass-roots advocacy, and education.

23. Almost 1,000 members of United Spinal reside in New York City. Many such members use the New York City Subway System on a frequent basis and would utilize the Dyckman Street Station were it made accessible.

24. Defendant Metropolitan Transit Authority (“MTA”) is a “public entity” within the meaning of 42 U.S.C. §12131. The MTA was created by the New York State Legislature in 1965 and is a public-benefit corporation responsible for public transportation in the State of New York. The MTA maintains and improves commuter transportation and related services within the Metropolitan Transportation Commuter District which encompasses the City of New York.

25. Defendant Jay H. Walder, in his official capacity, is Chairman and Chief Executive Officer of the MTA and is thus responsible for, and a participant in, the actions and omissions of the MTA.

26. Defendant New York City Transit Authority (“NYCTA”) was created by the New York State legislature in 1953 to operate all New York city-owned subway and bus lines. In 1968 the NYCTA became an operating subsidiary of the MTA. The NYCTA is a “public entity” within the meaning of 42 U.S.C. §12131.

27. NYCTA is the largest agency in the MTA regional transportation network and is responsible for the operation of public transportation in New York City.

28. The NYCTA operates the largest number of public transit subway stations of any system in the world.

29. The New York City subway system operated by NYCTA serves 1.5 billion riders every year. This includes an average of 5 million riders every weekday and 4 million riders every weekend.

30. NYCTA operates 27 subway lines that connect 468 active stations, including the Dyckman Street Station, as well as bus service and rail service on Staten Island.

31. Defendant Thomas F. Prendergast, in his official capacity, is President of the NYCTA and is thus responsible for, and a participant in, the actions and omissions of the NYCTA.

FACTUAL ALLEGATIONS

32. The New York City Subway system is one of the least accessible subway systems for people with disabilities in the nation and compares very unfavorably with many subway systems in other major international cities.

33. Twenty years after the passage of the ADA less than 18.5% of stations (86 stations of the total 468 stations) have been made accessible.

34. This lack of accessibility negatively affects not only riders with disabilities but also the elderly, people with temporary disabilities, tourist with packages or baggage, parents with strollers and many other riders who would benefit from increased station accessibility.

35. Many riders with disabilities have been forced to rely on accessible busses to navigate the city because of the overall inaccessibility of the subway system. However, this is no longer a viable option for many riders because of ongoing cuts to bus service—especially the elimination of bus service between Brooklyn and Manhattan. The actions of MTA and NYCTA in greatly reducing bus routes and services—which have historically been much more accessible than subway trains—have heightened the damage done by defendants in not making subways and stations accessible to people with disabilities.

36. Defendants are responsible for ensuring that new and altered MTA facilities comply with federal law, including applicable ADA requirements.

37. Federal law requires that when a public entity alters an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. 42 U.S.C. § 12147(a).

38. Federal law further requires that where the alterations affect a primary function of the transit facility, the path of travel to the altered areas must also be made accessible to and usable by people with disabilities, including people who use wheelchairs, to the maximum extent feasible, unless the alteration to the path of travel would be disproportionate to the overall alterations in terms of cost and scope. 42 U.S.C. § 12147(a). The regulations implementing this section of the ADA specify that an accessibility improvement is “disproportionate” if its cost exceeds 20 percent of the cost of the alteration to the primary function area. 49 C.F.R. § 37.43(e)(1). Defendants are aware of these requirements.

39. Defendants are planning at least all of the following alterations to Dyckman Street Station:

- Repair of stairs from sidewalk into Station
- Restoration of concrete station wall along Hillside Avenue
- Replacement of stairs from Control Area to Platforms
- Repair and Painting of Ceiling
- Repair of Damaged Tiles
- Demolishment and Reconstruction of Northbound and Southbound Platforms
- Demolishment and Reconstruction of Platform Structure and Canopy
- Installation of New Platform Windscreens and Repair of Guardrails
- Replacement of Track at Entire Length of Station

40. The estimated cost of these renovations is at least 20 million dollars (\$20,000,000) and may be as much as 45 million dollars. Therefore, at least 4 million dollars and as much as 9 million dollars should be set aside for improving accessibility to the station.

41. Defendants have failed to allocate any of this money towards improving accessibility and in doing so have failed to comply with the ADA.

42. MTA personnel have stated that no accessibility-related improvements will be made to the Dyckman Street Station because it is not a “key station.”

43. Federal law clearly states that the requirement to make “key stations” accessible to people with disabilities is “separate from and in addition to” the section of law that mandates any alterations to transit facilities or portions thereof be made accessible to the “maximum extent feasible.” 49 CFR § 37.51(a).

44. The inability to make a station fully accessible is not a lawful excuse for failing to make any access improvements at all. Where the cost to make a facility or portions thereof fully accessible exceeds 20% of the budget of the project federal law requires that at least twenty percent of the project’s value be spent on accessibility-related improvements and provides a method of prioritizing those improvements that will result in the greatest access. 49 CFR § 37.43(f). Specifically, the first two elements that must be made accessible at the Dyckman Street Station are the entrance and the paths of travel to the altered areas (in this case the platforms), respectively. 49 C.F.R. § 37.43(f)(2)(i)-(ii). This approach contemplates incremental improvements to accessibility such that access will continue to be enhanced as additional funding becomes available.

45. The problems caused by the Dyckman Street Station remaining inaccessible are exacerbated by the fact that the other five stations under construction have also failed to allocate the required amount for accessibility or ADA improvements.

46. Because of defendants’ failure to comply with federal law, the number 1 line will not be usable by people with disabilities in Inwood, the northern Manhattan neighborhood where the Dyckman Street Station is located.

47. The need for accessible stations in this part of Manhattan is especially pronounced because, according to the 2000 U.S. Census, 25.1% of residents in the zip code covering the Dyckman Street Station self-identified as having a disability. This is 5.8 percent higher than the rate of disability among the U.S. population as a whole. In addition, 8.7% of residents in this area identified themselves as 65 years old or older.

CLASS ACTION ALLEGATIONS

48. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the named Plaintiff United Spinal Association brings this action for injunctive and declaratory relief on its own behalf, on behalf of its members, and on behalf of all persons similarly situated. The class the named Plaintiff seeks to represent consists of all people with disabilities who cannot presently use the Dyckman Street Station because of accessibility barriers at that station and who would use the station if it were made accessible.

49. The persons in the class are so numerous that joinder of all members of the class is impracticable and the disposition of their claims in a class action is a benefit to the parties and to the Court.

50. Data from the United States Census conducted in 2000 indicate that more than 1.6 million residents over the age of 21 in New York City self-identify as having a disability. Such data further show that more than 220,000 non-institutionalized New York City residents over the age of 16 have a sensory disability, which includes visual disabilities, and more than 588,000 non-institutionalized New York City residents over the age of 16 have a physical disability, which includes mobility disabilities.

51. According to the 2000 U.S. Census there are 9,711 persons with disabilities living in the zip code encompassing the Dyckman Street Station. In addition, 3,622 persons over the age of 65 live in the same area.

52. According to the MTA 2,406,407 riders used the Dyckman Street Station in 2009 with an average of 7,248 riders per day during the week and an average of 10,229 riders per weekend.

53. Assuming that the proportion of riders with disabilities using the Dyckman Street Station would match the proportion of residents in the area with disabilities, as reported by the 2000 U.S. Census, if the station were made accessible, then approximately 604,008 people with disabilities would have used the Dyckman Street Station in 2009 if it were accessible to them.

54. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented, in that Plaintiff's members and individuals in the class will continue to be denied access to the renovated Dyckman Street Station.

55. Common questions of law and fact predominate, including the primary question of whether Defendants' failure to allot 20% of the cost of the Dyckman Street Station alterations to improving accessibility violates the ADA and discriminates against riders with disabilities.

56. The claims of the named Plaintiff, or its members, are typical and are not in conflict with the interests of the class as a whole. Defendants' course of conduct and violation of the law as alleged herein has caused Plaintiff and class members to be deprived of the opportunity to use the Dyckman Street Station following its renovation. Therefore, all class members will suffer the same or similar injuries for the purposes of the injunctive and declaratory relief sought. Plaintiff's claims are thereby representative of and co-extensive with the claims of the class.

57. The named Plaintiff is an adequate class representative because it does not have any conflicts of interest with other class members, and will prosecute the case vigorously on behalf of the class.

58. The attorneys representing the class are experienced in disability law and in class action institutional reform litigation. Counsel representing Organizational Plaintiff and the plaintiff class are qualified to fully prosecute this litigation and possess adequate resources to see this matter through to resolution. Plaintiff will fairly and adequately represent and protect the interests of the class.

59. Defendants have acted and/or failed to act on grounds generally applicable to the class as a whole, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

**FIRST CAUSE OF ACTION FOR VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT 42 U.S.C. §12131, ET SEQ.**

60. Plaintiff hereby incorporates by reference each of the preceding allegations as if fully set forth herein.

61. Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, 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.”

62. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2). The members of Organizational Plaintiff United Spinal and the class Plaintiff seeks to represent have mobility disabilities that substantially limit the major life activities of walking, standing, and/or moving about in their communities without aids such as wheelchairs, canes, service dogs, and/or similar assistance. Thus, Plaintiff’s members are, or Plaintiff represents, qualified individuals with disabilities within the meaning of 42 U.S.C. § 12102, 42 U.S.C. § 12131, and 28 C.F.R. § 35.104.

63. A “public entity” includes state and local governments, their agencies, and their instrumentalities. 42 U.S.C. § 12131(1). Defendants qualify as public entities within the meaning of 42 U.S.C. § 12131 and 28 C.F.R. § 35.104.

64. The Dyckman Street Station is an “existing facility . . . used in the provision of designated public transportation services” within the meaning of 42 U.S.C. §§ 12141(2) and 12147(a).

65. The project being undertaken at the Dyckman Street Station includes “remodeling,” “renovation,” “rehabilitation,” “reconstruction,” and “changes or

rearrangement in structural parts or elements” and thus falls within the definition of “alteration” as that term is defined in 49 CFR 37.3.

66. The term “discrimination” within the meaning of 42 U.S.C. § 12132 includes the failure to alter existing facilities used in the provision of designated public transportation services “in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.” 42 U.S.C. § 12147(a).

67. The ADA further provides that “[w]here the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.” 42 U.S.C. § 12147(a).

68. Congress authorized the United States Department of Transportation to promulgate regulations interpreting the ADA. 42 U.S.C. § 12149. One of these regulations, codified at 49 CFR §37.43(a)(2), requires that when a public entity undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and

drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alterations. Provided, that alterations to the path of travel, drinking fountains, telephones and bathrooms are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.

69. A “primary function” is defined in 49 CFR §37.43(c) as a major activity for which the facility is intended. Areas of transportation facilities that involve primary functions include, but are not limited to ticket purchase and collection areas, passenger waiting areas and train platforms. The renovations planned for the Dyckman Street Station qualify as alterations which involve areas containing primary functions.

70. A “disproportionate” cost of providing an accessible path of travel to the altered area is defined in 49 CFR §37.43(e)(1) as where the cost of the alteration to provide accessibility exceeds 20% of the cost of the alteration to the primary function area.

71. Under 49 CFR §37.43(f)(1)-(2) when the cost of the alterations necessary to make a path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, then such areas shall be made accessible to the maximum extent without resulting in disproportionate costs. In this situation federal law requires that the public entity should give priority to accessible elements that will provide the greatest access, in the following order: (1) an accessible entrance; (2) an accessible route to the altered area; (3) at least one accessible restroom for each sex or a single unisex restroom; (4) accessible telephones; (5) Accessible drinking fountains; (6) other accessible elements. Defendants have

failed to comply with this requirement and have not allocated any money at all for accessibility improvements.

72. Defendants' acts and omissions alleged herein are in violation of the equal access to transportation requirements set forth in Title II of the Americans with Disabilities Act, 42 U.S.C. §12131, et. seq., and the regulations promulgated there under, and constitute discrimination on the basis of disability against Plaintiff and class members.

73. Defendants' conduct constitutes an ongoing and continuous violation of the ADA and unless restrained from doing so, defendants will continue to violate said law. Said conduct, unless enjoined, will continue to inflict injuries for which plaintiff has no adequate remedy at law. Consequently, plaintiff is entitled to injunctive relief pursuant to section 203 of the ADA, 42 U.S.C. §12133, and attorney's fees.

74. WHEREFORE, Plaintiff prays for judgment as set forth below.

SECOND CAUSE OF ACTION
FOR VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

75. Plaintiff re-alleges and incorporates herein all previously alleged paragraphs of the Complaint.

76. Section 504 of the Rehabilitation Act provides 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." 29 U.S.C. § 794(a).

77. An "individual with a disability" is defined under the statute, in pertinent part, as "an individual who has a physical or mental impairment that substantially limits one or more major life activities of such individual." 29 U.S.C. § 705(20)(B) (referencing 42

U.S.C. § 12102). Plaintiff's members include, or Plaintiff represents, qualified individuals with disabilities within the meaning of the applicable statutes.

78. Upon information and belief Defendants' program or activity of maintaining and improving the New York City Subway system, including the Dyckman Street Station project, has received substantial federal financial assistance.

79. The term "discrimination" as defined by section 504 of the Rehabilitation Act includes the failure to alter existing facilities used in the provision of designated public transportation services "in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations." 42 U.S.C. § 12147(a).

80. The actions and/or inactions of Defendants as alleged herein discriminate against Plaintiffs' members because of their disabilities by excluding them from accessing and utilizing the Dyckman Street Station, in violation of 29 U.S.C. § 794.

81. Plaintiff's class has no adequate remedy at law, and unless the relief requested herein is granted, Plaintiff's members and the class that Plaintiff seeks to represent will suffer irreparable harm in that they will continue to be discriminated against and denied access to the programs, services, and activities operated and overseen by Defendants.

THIRD CAUSE OF ACTION **FOR DECLARATORY RELIEF**

82. Plaintiff hereby incorporates by reference each of the preceding allegations as if fully set forth herein.

83. Plaintiff contends, and is informed and believe that Defendants deny, that Defendants have failed and are failing to comply with applicable laws prohibiting

discrimination against persons with disabilities in violation of Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and section 504 of the Rehabilitation Act, 29 U.S.C. §794, *et seq.*

84. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

85. WHEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

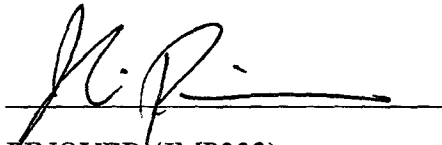
Plaintiff prays for judgment as follows, including but not limited to:

- A. For an order finding and declaring that Defendants' acts and practices as alleged herein violate the Americans with Disabilities Act;
- B. For an order finding and declaring that Defendants' acts and practices as alleged herein violate the Rehabilitation Act;
- C. For injunctive relief prohibiting Defendants from continuing to violate the Americans with Disabilities Act and Rehabilitation Act through the policies and practices alleged herein;
- D. An award of Plaintiff's reasonable attorney's fees and costs;
- E. Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

Dated: October 13, 2010
New York, NY

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*Motions for admission *pro hac vice* pending

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