

4th Circuit affirms ruling for deaf fans

Redskins must provide song lyrics at FedEx Field

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In a victory for deaf sports fans, a federal appellate court has affirmed their right to equal access to aural content broadcast at the Washington Redskins' FedEx Field, including lyrics to the music played during the game.

In an unpublished holding exactly a year after lawyers argued the case in Richmond, a divided panel of the **4th U.S. Circuit Court of Appeals** upheld the groundbreaking 2008 ruling regarding the scope of the Americans with Disabilities Act.

"Whatever the poetic merit of the lyrics and their relevance to the sport of football," the two-judge majority said in an unsigned opinion Friday, "we agree with the district court that the music played over the public address system during Redskins home games is part of the football game experience that defendants provide as a good or service, and that the ADA requires full and equal access to the music lyrics."

The dissent came from North Carolina's Chief U.S. District Judge James A. Beaty Jr., who was sitting by designation on the panel with 4th Circuit judges M. Blane Michael and André M. Davis.

Beaty said U.S. District Judge Alexander Williams "erred by announcing a broad declaratory judgment that required 'equal access' to all 'aural content' at FedEx Field, rather than focusing on whether the auxiliary aids provided by Defendants were sufficient to ensure 'effective communication.'"

All three judges agreed with Williams that the three longtime Redskins fans' complaint against **WFI**



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Brown, Goldstein & Levy

Inc. and **Pro Football Inc.**, the Landover stadium's owner and operator, did not adequately request auxiliary access to a radio program that plays in the concessions areas.

Joseph B. Espo, the plaintiffs' attorney, said he believes the 4th Circuit decision could have far-reaching effect, even though it's not binding precedent.

"I assume that the team and the stadium owner will continue to comply with the terms of Judge Williams' order as they have been," said Espo, of **Brown, Goldstein & Levy LLP** in Baltimore. "And I would hope that other professional sports venues and the large college venues take note, if they haven't already, of the obligation to make the experience accessible to all fans."

Roger W. Yoerges, who represents the Redskins, said his clients are "considering our options, which would include asking the [panel] to reconsider it or asking the entire 4th Circuit to take the case up."

"We agree with the dissenting opinion that the Americans with Disabilities Act shouldn't be requiring stadiums to make accessible the unintelligible lyrics from songs that are being played for 10 or 15 seconds while cheerleaders do routines," said Yoerges, a partner at Steptoe & Johnson LLP in Washington, D.C.

Redskins General Counsel David Donovan underscored that the team long ago began providing its deaf fans with the accommodations the suit requested.

"The most important thing for us is this doesn't require us to do anything we haven't done for years," said Donovan. "This case really has only been about attorneys' fees for five years. We've been providing to these folks really everything they've ever asked for."

The case is *Feldman v. Pro Football Inc.*, No. 09-1021.