

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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**FILED**  
Apr 18, 2019  
DEBORAH S. HUNT, Clerk

O R D E R

Stansell filed a complaint alleging violations of Title II of the Americans with Disabilities Act (“ADA”), § 504 of the Rehabilitation Act (“RA”), and the Eighth Amendment. The district court dismissed the complaint pursuant to 28 U.S.C. § 1915(e) and certified that an appeal would not be taken in good faith. Stansell now argues that the district court erred in dismissing his ADA and RA claims. Stansell has forfeited review of any claims that he raised in the district

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court but did not raise in his appellate brief. *See Agema v. City of Allegan*, 826 F.3d 326, 331 (6th Cir. 2016).

We review de novo a district court's dismissal of a complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A. *Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2007). To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

The ADA and RA prohibit public entities from excluding disabled individuals from or denying them the benefits of services, programs, or activities on account of the individual's disability. 42 U.S.C. § 12132; 29 U.S.C. § 794. Stansell alleged that he is disabled due to emergency abdominal surgery in 2013 that makes it extremely difficult and painful for him to bend over, that the facility replaced 36-inch tables with 16-inch tables, that the use of the shorter tables causes him severe pain and discomfort, and that the use of the shorter tables deprives him of access to prison visitation. While we have not expressly determined that a prison's visitation program is a service, program, or activity, we have concluded "that the phrase 'services, programs, or activities' encompasses virtually everything that a public entity does." *Johnson v. City of Saline*, 151 F.3d 564, 569 (6th Cir. 1998). Because Stansell's allegations, taken as true, are sufficient to show interference with a service, program, or activity, the district court erred in dismissing his ADA and RA claims.

Accordingly, we **VACATE** the dismissal of Stansell's ADA and RA claims, **REMAND** the case to the district court, and **GRANT** the government's motion seeking leave to file an out of time brief.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk