

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

ANDREW MADDEN, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MISSOURI DEPARTMENT OF )  
CORRECTIONS, an executive agency of )  
the State of Missouri, )  
 ) Cause No.  
GEORGE LOMBARDI, in his official capacity )  
as Director of the Missouri Department )  
of Corrections, )  
 )  
STEVE LONG, in his official capacity as )  
Division Director of the Division of )  
Adult Institutions of the Missouri )  
Department of Corrections, )  
 )  
MATT STURM, in his official capacity as the )  
Deputy Division Director of the Division )  
of Adult Institutions of the Missouri )  
Department of Corrections, and )  
 )  
DAVE DORMIRE, in his official capacity as )  
Warden for the Jefferson City )  
Correctional Center, and )  
 )  
Defendants, )  
 )  
\_\_\_\_\_ )

COMPLAINT

I. Introduction

1. Plaintiff, Andrew Madden, has been incarcerated by the State of Missouri since 2003.

2. In April 2006, while a resident of South Central Correctional Center, Madden was given permission to purchase and use a personal electric wheelchair with the agreement that he be “financially responsible” for it.

3. After getting his electric wheelchair, Madden was transferred, along with his electric wheelchair, to Jefferson City Correctional Center (hereinafter “JCCC”).

4. Defendants have refused to allow Madden to replace this electric wheelchair at his own expense.

5. This is a lawsuit under American with Disabilities Act (42 USC §§ 12131-12134) and Section 504 of the Rehabilitation Act (29 U.S.C. §794), seeking only injunctive relief to compel Defendants to allow Madden to purchase a replacement electric wheelchair at his own expense.

## II. Jurisdiction and Venue

6. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 2201 and 29 U.S.C. §794a.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and Local Rule 3.1(a)(2). A substantial part of the events or omissions giving rise to the claim occurred in Cole County, Missouri.

## III. Parties

8. Plaintiff, Madden, is a citizen of the United States and an inmate at JCCC.

9. Defendant Missouri Department of Corrections (hereinafter “DOC”) is a state executive agency that has the power to sue and be sued pursuant to Mo.Rev.Stat. § 217.020.

10. Defendant George Lombardi is the Director of DOC. He is sued in his official capacity.

11. Defendant Steve Long is the Division Director of the Division of Adult Institutions of DOC. He is sued in his official capacity.

12. Defendant Matt Sturm is the Deputy Division Director of the Division of Adult Institutions of DOC. He is sued in his official capacity.

13. Defendant Dave Dormire is the Warden for JCCC. He is sued in his official capacity.

#### IV. Facts

14. Madden has been incarcerated in the Missouri DOC since 2003.

15. Madden has a physical impairment that substantially limits one or more of the major life activities.

16. Madden has a record of a physical impairment that substantially limits one or more of the major life activities, has been regarded as having such an impairment, or both.

17. While assigned to South Central Correctional Center, in April 2006, Madden requested and was granted permission to obtain a personal electric wheelchair on the condition that he “accept... financial[] responsib[ity] for purchase and shipment... as well as any and all repairs to the chair that may arise in the future.”

18. Madden agreed to these terms.

19. Subsequent to getting his electric wheelchair, Madden was transferred to JCCC.

20. When transferred, his electric wheelchair went with him and Madden has used it at JCCC continuously.

21. Having an electric wheelchair has allowed Madden the opportunity to participate in services, programs, and activities at JCCC, without discrimination.

22. Services, programs, and activities include the dining hall; medical services; educational programs; use of the library; use of the gym and the “yard” for recreation; social meetings such as Vietnam Veterans of America (VVA); religious activities and functions; etc.

23. Madden has had numerous repairs made to his electric wheelchair, the cost of each for which he has paid.

24. Madden has sought to replace his electric wheelchair given the costs of repairs for the current chair have increased with its age.

25. Defendants have refused to allow him to purchase a replacement.

26. Madden has exhausted administrative remedies in his effort to purchase a replacement.

27. These denials are in contravention to both the American with Disabilities Act (hereinafter “ADA”), 42 U.S.C. §§ 12131-12134 and Section 504 of the Rehabilitation Act (hereinafter “RA”) (29 U.S.C. §794).

28. Defendants have instead offered Madden “the opportunity to receive a [non-electric] wheelchair and pusher/assistant...”

29. A non-electric wheelchair with a “pusher/assistant” will not allow Madden the opportunity to participate in services, programs, and activities at JCCC to the same extent that he currently is able to do so, without discrimination, with a self-purchased and self-maintained electric wheelchair.

30. The Defendants refusal to continue accommodating Madden’s disability-related needs, constitutes exclusion from participation in, or denial of, the benefits of the prison’s services, programs, or activities.

Count I

*Violation of Americans with Disabilities Act*

31. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

32. Subtitle A of Title II of the Americans with Disabilities Act (ADA) prohibits public entities from discriminating against persons with disabilities in their programs, services, and activities. 42 U.S.C. §§ 12131-12134. Regulations implementing subtitle A are codified at 28 C.F.R. part 35.

33. Title II's definition of "public entity" includes any state or local government or "any department, agency... or other instrumentality" of a state or local government. 42 U.S.C. § 12131(1)(A), (B).

34. Defendant DOC is a "public entity" within the meaning of 42 U.S.C. § 12131(1)(A) and 28 C.F.R. § 35.104.

35. All Defendants are officials responsible for the operation of public entities for the purposes of Title II.

36. Plaintiff has a disability within the meaning of 42 U.S.C. § 12102(1) and 28 C.F.R. § 35.104.

37. Plaintiff is a "qualified individual with a disability" within the meaning of 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104 because he meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants other than the fact that he requires reasonable modifications to rules, policies, or practices, the removal of barriers, or the provision of auxiliary aids and services.

38. Defendants subject Plaintiff to discrimination by not allowing him to replace his electric wheelchair he has been using in prison since 2006. This denial and discrimination violate 42 U.S.C. § 12132 (and the regulations promulgated under it - 28 C.F.R. Part 35) which states: “Subject to the provisions of this subchapter, 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.”

39. As a result of Defendants’ violations of the ADA and its implementing regulations, Defendants are liable to Plaintiff for injunctive and declaratory relief pursuant to 42 U.S.C. § 12133.

WHEREFORE, the Plaintiff prays this Court:

- A. Enter declaratory judgment finding Defendants’ denial of Plaintiff’s request to purchase a replacement electric wheelchair violates the Americans with Disabilities Act.
- B. Issue appropriate injunctions compelling Defendants to allow Plaintiff to purchase a replacement electric wheelchair;
- C. Issue appropriate injunctions to prevent the future deprivation of Plaintiff’s rights;
- D. Award Plaintiff’s costs, including reasonable attorneys’ fees under 42 U.S.C. § 12133; 12205, 29 U.S.C. § 794; and other relevant provisions of law; and
- E. Allow such other and further relief to which Plaintiff may be entitled.

## Count II

### *Violation of §504 of the Rehabilitation Act*

40. Plaintiff repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

41. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), provides, *inter alia*, “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his 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 or under any program or activity conducted by any Executive agency...”

42. Plaintiff is a “qualified individual with a disability” as defined by 29 U.S.C. §705(20).

43. Plaintiff meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants other than the fact that he requires reasonable modifications to rules, policies, or practices, the removal of... barriers, or the provision of auxiliary aids and services.

44. Defendants are a “program or activity” that receive federal assistance for the purposes of § 504. 29 U.S.C. §794(b).

45. Defendants discriminate against Plaintiff by not allowing him to replace his electric wheelchair he has been using in prison since 2006.

46. As a result of Defendants’ violations of § 504 of the Rehabilitation Act of 1973, Defendants are liable to Plaintiff for injunctive and declaratory relief pursuant to 29 U.S.C. §794a.

WHEREFORE, the Plaintiff prays this Court:

- A. Enter declaratory judgment finding Defendants' denial of Plaintiff's request to purchase a replacement electric wheelchair violates §504 of the Rehabilitation Act.
- B. Issue appropriate injunctions compelling Defendants to allow Plaintiff to purchase a replacement electric wheelchair;
- C. Issue appropriate injunctions to prevent the future deprivation of Plaintiff's rights;
- D. Award Plaintiff's costs, including reasonable attorneys' fees under 29 U.S.C. § 794a and other relevant provisions of law; and
- E. Allow such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF  
EASTERN MISSOURI

/s/ Anthony E. Rothert

ANTHONY E. ROTHERT, #44827MO

GRANT R. DOTY, #60788MO

454 Whittier Street

St. Louis, Missouri 63108

(314) 652-3114

FAX: (314) 652-3112

tony@aclu-em.org

grant@aclu-em.org

*ATTORNEYS FOR PLAINTIFF*