

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No.: 4:11cv125-RH/WCS

ATTORNEY GENERAL'S OFFICE
GENERAL LEGAL SERVICES

11 MAY -4 AM 10:00

RECEIVED

Denny R. Wood, Plaintiff

Vs.

State of Florida, Defendants

SECOND AMENDED COMPLAINT

Denny R. Wood, an individual with a disability, who requires a wheelchair for mobility, hereby sues The State of Florida for injunctive relief pursuant to 42 U.S. C. § 12131, et. seq., (Title II), (hereinafter referred to as the "Americans With Disabilities Act" or "ADA").

Jurisdiction and Venue

1. This Court has original jurisdiction over this action pursuant to Title II of the Americans with Disabilities Act, Title 42 U.S.C. §§1331 and 1343 for plaintiffs' claims arising under §§12131, et seq. based on defendant's violations of Title II of the Americans With Disability Act. See also 28 U.S.C. §§2201 and 2202 C.F.R. Part 35 and §504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et. Seq. (Rehabilitation Act) and the regulations implementing them. Plaintiffs seek declaratory and injunctive relief.
2. The Complaint alleges failure to implement a Transition plan pursuant to:

II-8.3000 Transition plan. Where structural modifications are required to achieve program accessibility, a public entity with 50 or more employees must do a transition plan by July 26, 1992, that provides for the removal of these barriers. Any structural modifications must be completed as expeditiously as possible, but, in any event, by January 26, 1995.
3. Further, the State of Florida did not perform structural modifications at the State Capitol Building or other State Buildings in Tallahassee, Florida. This process was under the Governor's Control under the Department of Management Services. The State of Florida remodeled restrooms in the Capitol Building and such renovations did not include the Americans with Disabilities Guidelines (ADAG) standards as required to make such restrooms accessible to persons with disabilities.

4. Specifically, the State of Florida, by not implementing a transition plan, failed to remove barriers covered in:

- i. II-8.3000 Transition plan. Where structural modifications are required to achieve program accessibility, a public entity with 50 or more employees must do a transition plan by July 26, 1992, that provides for the removal of these barriers. Any structural modifications must be completed as expeditiously as possible, but, in any event, by January 26, 1995
- ii. II-1.1000 General. Title II of the ADA covers programs, activities, and services of public entities. It is divided into two subtitles. Subtitle A is intended to protect qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It additionally extends the prohibition of discrimination on the basis of disability established by § 504 of the Rehabilitation Act of 1973, as amended, to all activities of State and local governments, including those that do not receive Federal financial assistance. By law, the Department of Justice's title II regulation adopts the general prohibitions of discrimination established under § 504, and incorporates specific prohibitions of discrimination from the ADA
- iii. II-1.4100 Rehabilitation Act. Title II provides protections to individuals with disabilities that are at least equal to those provided by the nondiscrimination provisions of title V of the Rehabilitation Act. Title V includes such provisions as § 501, which prohibits discrimination on the basis of disability in Federal employment; § 503, which addresses the employment practices of Federal contractors; and § 504, which covers all programs receiving Federal financial assistance and all the operations of Federal Executive agencies. Title II may not be interpreted to provide a lesser degree of protection to individuals with disabilities than is provided under these laws.
- iv. II-1.4200 Other Federal and State laws. Title II does not disturb other Federal laws or any State laws that provide protection for individuals with disabilities at a level greater or equal to that provided by the ADA. It does, however, prevail over any conflicting State laws.

5. Title II of the ADA prohibits discrimination against any "qualified individual with a disability." Whether a particular individual is protected by title II requires a careful analysis first, of whether an individual is an "individual with a disability," and then whether that individual is "qualified."

6. People commonly refer to disabilities or disabling conditions in a broad sense. For example, poverty or lack of education may impose real limitations on an individual's opportunities. Likewise, being only five feet in height may prove to be an insurmountable barrier to an

individual whose ambition is to play professional basketball. Although one might loosely characterize these conditions as "disabilities" in relation to the aspirations of the particular individual, the disabilities reached by title II are limited to those that meet the ADA's legal definition -- those that place substantial limitations on an individual's major life activities.

7. Title II protects three categories of individuals with disabilities:
 - i. Individuals who have a physical or mental impairment that substantially limits one or more major life activities;
 - ii. Individuals who have a record of a physical or mental impairment that substantially limited one or more of the individual's major life activities; and
 - iii. Individuals who are regarded as having such an impairment, whether they have the impairment or not.

Parties

8. Plaintiff: DENNY R. WOOD, paraplegic and wheelchair user, is a resident of unincorporated Miami-Dade County, Florida, and is a qualified individual with disabilities under the ADA. Plaintiff WOOD was subjected to discrimination, as defined U.S.C. § 12182, 42 U.S.C §12132, and 29 U.S.C. §§ 794(c) during the years 1993, 1994, 2004, 2005, 2006 at the State Capitol Building, Department of Education Building, Department of Motor Vehicles Building, Department of Insurance Building and the State Library Building.
9. The primary purpose of the Association and DENNY R. WOOD is to assure that public services, programs, facilities, activities, buildings, spaces, premises and accommodations, employment sites are available and accessible to and useable by their members, to assure their members that they will not be excluded from participation in or be denied access to or the benefits of public services, programs, facilities, activities, buildings spaces, premises or accommodations, employment sites, to insure their members that they will not be discriminated against because of their disabilities, and to bring appropriate action when ADA violations exist.
10. The Association, and their members, have "suffered", and without the immediate relief requested herein will continue to "suffer", direct and indirect discrimination, injury and damage as a result of the defendant's actions or inaction described herein.

VIOLETION OF AMERICANS WITH DISABILITIES ACT

INTRODUCTION

11. On July 26, 1990, Congress enacted the Americans with Disabilities Act. ("ADA"), 42 U.S.C. §§12101, Congress provided commercial businesses and government facilities one and a half years from the enactment of the ADA to implement the requirements of the ADA. The effective date of Title II was January 26, 1992. 42 U.S.C. §§12181; 28 CFR §§ 36.508 (a).
12. Defendant has discriminated against the Plaintiffs, and continues to discriminate against the Plaintiffs and others who are similarly situated by denying them access to, and full and equal enjoyment of, the services, facilities, privileges, advantages, and/or accommodations of the facilities; as prohibited by 42 U.S.C. §§12182(b)(2)(A)(iv).
13. Pursuant to 42 U.S.C. §§12181(7)(f) and 28 CFR §§ 36.104, the buildings and parking lots that are subject of this action are public accommodations covered by the ADA and must be in compliance therewith.
14. Defendant has discriminated against the Plaintiffs and other persons with disabilities by denying them full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations as prohibited by 42 U.S.C. § 12182 et seq., and by failing to remove architectural barriers pursuant to 42 U.S.C § 12182(b)(2)(A)(iv) where such removal is readily achievable.
15. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice, Office of Attorney General, promulgated federal regulations to implement the requirements of the ADA, known as the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"). 28 CFR, Part 36.
16. Defendant is in violation of 42 U.S.C § 12181 et seq., and 28 CFR 36.302 et. seq., and the provisions of ADAAG, and is discriminating against Plaintiffs by failing to, inter alia
 - i. provide properly configured and/or properly designated accessible parking and van accessible parking and/or drop-off areas with requisite signage;
 - ii. provide restrooms with accessible toilet stalls that are accessible;
 - iii. provide signage that is located correctly and configured for the blind;
 - iv. provide ramps with required handrails;
 - v. provide water fountains that meet the ADAAG guidelines
 - vi. provide counters that meet the ADAAG guidelines;

vii. Provide tables in cafeterias and snack bars that meet the ADAAG guideline by January 26, 1992.

17. Since 2004, and annually since that date, the Department of Management Services for the capital has failed to:

- i. Conduct barrier removal within the Capitol and Capitol Building (This Department renovated many restrooms on Floors LL, PL and floor 22 and did not include the ADA required wheelchair accessible stall in each restroom. (Violation of the ADAAG Requirements))
- ii. Provide compliant parking for the disabled, required by State Law, The Florida Building Code and the ADA Guidelines, and entrances without signage to accessible entrances, ramps. . (Violation of the ADAAG Requirements)
- iii. Provide compliant door hardware (door knobs are round and unable to be operated without grasping, twisting or using two hands).
- iv. Provide Compliant Restroom Facilities - 20 different floors of the Capitol building do not provide any restroom facilities complying with ADAAG 4.17 or ADAAG 4.22. No toilet stalls on any of those 20 floors provide a side approach conforming to figure 30a of the ADAAG.

18. Plaintiff has documented attempts of informing Defendant throughout each of the years of these violations, and Defendant has failed to accomplish any modifications to increase accessible components. (Violation of the ADAAG Requirements).

ENTRANCE INDICATOR SIGNS

19. People with disabilities coming to the Capitol, as guests cannot find the accessible entrances. All around the Capitol, there is not one sign that indicates where the accessible ramp is located. (Violation of the ADAAG Requirements)

UNIVERSAL VIOLATION 1

20. The toilet paper dispensers in the Knott Building, Senate Office Building and House Office Building are located too near the rim of the toilet and located too low in the side approach toilet stalls. Each time someone in a wheelchair makes a transfer it is a “knee banger” and “leg and knee trap” between the toilet rim and tissue dispensers.

21. The ADA guidelines have two figures, 29(b) and 30(d) which clearly suggest that a 19-inch high standard is required. In short all of the side approach toilet rooms are out of compliance. (Violation of the ADAAG Requirements).

22. Beginning at the lower level of the Capitol Building every toilet stall is out of compliance to the 22nd floor. This includes the toilet stalls on the Senate side of the Capitol.
23. This essentially means that almost all people who use a wheelchair visiting the Governor, Cabinet Members, House Member Offices and other Offices on 6-22 floors cannot use the rest rooms.
24. Worse, new partitions have been added to some of these stalls and access has been removed, in the ambulatory stalls that used to have two handrails that ran parallel to the floor. In these stalls the one handrail is now completely missing. This constitutes a retreat into the dark ages. It also reveals an implemented plan to evade ADA compliance by not creating side approach toilet stalls. . (Violation of the ADAAG Requirements)
25. These inaccessible rest-rooms need to remove the international symbol of accessibility as these signs just fool the general public and staff that work on these floors.
26. The computers are positioned close to a table that blocks wheelchair access if the computer nearest the table is being used. The printers are on a table too high to see the controls. (Violation of the ADAAG Requirements).

HANDRAILS MISSING ON RAMPS FOR OVER 20 YEARS

27. The ramps to the Senate Office Building need handrails on the ramps on floors 2, 3, and 4. They need to be on both sides. (Violation of the ADAAG Requirements).

DOOR HANDLES NOT LEVER HANDLE OPERATED

28. In the Capitol, Senate Side, there are many doors with round handles: Room 513, The Capitol, round door handles. Rooms 303, 302, The Capital Office of the Governor, 7th Floor, round door handles. 207 Capitol, Round handles no maneuvering space that is next to impossible to get out when in a wheelchair. 208 round door handles, Office of Governor 206 round door handles, no latch side space to get out door. 215, 211 House Capitol, round door handles. 322 House side, round door handles. (Violation of the ADAAG Requirements)

MEN'S, WOMEN'S RESTROOM SIGNS NOT VISIBLE

29. The Men's Restroom signs on floors 7-21 are not visible to the general public and guests in the building. Further, the accessibility symbol should be removed, as the toilet stalls are not accessible. (Violation of the ADAAG Requirements).

RESTROOMS RENOVATED INCORRECTLY AND TAKE AWAY ACCESS

30. Newly renovated restrooms on the 22nd floor have illegal configuration and one handrail missing on the Lower Level near the Cabinet meeting room. Also, the latch side of door

maneuvering space is not provided. There are many other restrooms in the capitol building that are not accessible per the ADAAG. The State renovated all toilet stall partitions without using the required ADAAG modifications. (Violation of the ADAAG Requirements)

31. The Men's restroom near "Historically Florida" has been renovated. They took away handrail which is not a side approach configuration. This restroom serves the governor, cabinet and entrance level areas.
32. In the Capitol Building, Senate side, men's restroom, floors 2, 3, & 4; no side approach stall, and d handrail was removed. Back grab bar is missing. New partitions were installed which did not comply with ADA Guidelines.
33. 5th Floor Senate Gallery Area, renovated rest room, wrong configuration, new partitions, handrails missing. (Violation of the ADAAG Requirements)
34. 5th Floor House Gallery area renovated rest room, wrong configuration. (Violation of the ADAAG Requirements)

10TH FLOOR CAFETERIA RESTROOM FOR GUESTS AND STAFF

35. This restroom should have been one of the first modified. It is a required restroom due to the cafeteria. It has not been modified and the maneuvering space on the latch side of doors to get out of the vestibule is not sufficient. (Violation of the ADAAG Requirements)

CAFETERIA ON LOWER LEVEL FLOOR

36. This restroom was renovated, but the renovations did not include bringing the men's toilet stall up to ADA requirements.

WASTE CANS IN LATCH SIDE MANEUVERING SPACE IN VESTIBULES

37. The placing of trash cans, any size, defeats the inches of clear space needed for wheelchairs to use to open the door. (Violation of the ADAAG Requirements)

WATER FOUNTAINS

38. The water fountain on forth floor, close to the House Chamber is not accessible.
39. Water fountains at the Knott Building designed to be low and accessible are not accessible. The spout is too close to the middle of the rim, when it needs to be closer to the user.
40. Water Fountain near LL08 is too high.
41. Entrance Level, Water Fountain near "Historically Florida" is not accessible.

42. 208 Capitol, water fountain not accessible.
43. 5th Floor, House Gallery Water Fountain, not accessible. (Violations of the ADAAG Requirements)

REST ROOM DOOR CLOSERS

44. In the House Office Building the door closers need adjusting so that the doors open with the force as required by ADA. (Violation of the ADAAG Requirements)

STAIRS WITH ILLEGAL HANDRAILS

45. A series of stairs exist at the Lower Level leading to St Augustine St. do not have legal handrails. (Violation of the ADAAG Requirements)

RAMP FROM LOWER LEVEL ILLEGAL

46. This long ramp is missing the required level landings to stop at on the ramp. The ramped section is a straight up or down with no level safety areas that one can catch their composure at. (Violation of the ADAAG Requirements)

PODIUMS IN HOUSE OF REPRESENTATIVES COMMITTEE ROOMS

47. All of the Speaker Podiums in the House Committee rooms are designed for people who can stand up and do not meet the ADAAG requirements. Podiums in the Senate have existed for years that go up and down accommodating every speaker possible, at every height. (Violation of the ADAAG Requirements)
48. End of items noticed on April 1, 2004, 2005 and 2006, on simple inspection by DENNY R. WOOD for the Lt. Governor, Toni Jennings, following her question of how does the Capitol stand on ADA.
49. In March of 2009, plaintiff Denny R. Wood visited the Capitol and found barriers listed above still intact, with no ADA remedies. Plaintiff Denny R. Wood witnessed new House of Representatives Suite construction that did not provide maneuvering space on the latch side of the door; a suite occupied legislators on the 4th floor. (Violation of the ADAAG Requirements)
50. The list does not represent a professional ADA inspection. Plaintiff Denny R. Wood took notes of the ADA violation highlights. Plaintiff visited one women's restroom. This restroom was not accessible and was like the inaccessible men's restrooms in the capitol building on floors 7-22 and other locations in the Capitol Building. (Violation of the ADAAG Requirements)

51. The State Library did not have any restroom in the building that was ADA Compliant. (Violation of the ADAAG Requirements).
52. These witnessed highlights of ADA violations were presented to the Governor's Office in 2004 and posted on a for the public web site www.dignity4disabled.com. Still the Governor refused to address the ADA Violations that abounded in the Capitol Building and adjacent State Buildings in the Capitol. The Capitol violations were pursued by Plaintiff Denny R. Wood in 2004, 2005 and 2006, including failing efforts to have the Federal Department of Justice, Civil Rights § intervene.
53. State leased facilities. Such as facilities leased and maintained by the Division of Blind Services are not fully accessible. The counter of such a facility in Miami-Dade County, 111 NW 1st Street, 18th floor, snack shop has a counter devoid of the required 36 x 36 inch counter area for little people and people in wheelchairs. This facility was remodelēd in 2010 and still the State of Florida did not implement the ADA Guidelines. (Violation of the ADAAG Requirements)
54. Some state legislators have occupied district office for years in buildings that do not have ramped access to entrance door or parking spaces for people with disabilities. This is a law violation of Chapter 255.21, passed in 1972. Two such locations are 6255 Bird Road, Miami, Florida and 13701 SW 88 Street, Miami, Florida. (Violation of the ADAAG Requirements)
55. The State of Florida Division of Vocational Rehabilitation Office at 10700 Caribbean Blvd, Cutler Bay, Florida has never had disabled parking that met the Florida Building Code and County ordinances.
56. The Court of Appeals does not have a door 36 inches wide to get into the courtroom, the disabled parking signs do not have the Miami-Dade County Ordinance language on them, the ramps do not have handrails, the counters, at the information desk and Clerk of the Court, do not have a 36 inch x 36 inch counter area, doors to the Clerk and other doors do not have lever operated handles, and the counter in the Clerk's Room is too low for wheelchairs. Other barriers at this building will be determined on inspection by an ADA Expert on inspection.
57. Plaintiffs are seeking written transition plans for all buildings under the state control and leased by the state. These facilities are used by the general public and a time certain should be established to remove the ADA violations. These time periods should be reached in a mediated settlement or order of the Federal Court.
58. A professional ADA expert will disclose other existing ADA violations.
59. The Court is advised that multiple requests were made to the Federal Department of Justice-Civil Rights Division for relief of the ADA violations at the Capitol of Florida in 2004, 2005, 2006, 2007, 2008, 2009 and 2010. No legal relief was forthcoming.

59. Plaintiff's may retain counsel during this lawsuit and will seek reasonable attorney's fees, including costs and expenses incurred in this action, including expert witness fees. Plaintiff is entitled to recover those attorney's fees costs and expenses from Defendant pursuant to 42 U. S. C. § 12205.
60. Pursuant to 42 U.S.C. § 12188, this Court is provided authority to grant Plaintiffs' injunctive relief, including an order to alter the subject premises to make the readily accessible to and usable by individuals with disabilities to the extent required by the ADA, and closing the subject facilities until the requisite modifications are completed.

WHEREFORE, Plaintiff respectfully requests that the Court issue a permanent injunction enjoining Defendant from continuing its discriminatory practices, ordering the Defendant to do the required transition plan for all state buildings and alter the subject premises as appropriate to comply with the ADA and awarding Plaintiffs any attorney's fees, expert ADA consultants and any ADA experts costs and expenses incurred in this act

Respectfully Submitted,

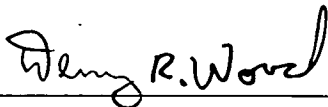
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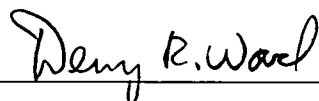


May 2, 2011

Denny R. Wood, Pro Se

Plaintiff's certify that a copy of this complaint, following the filing and case number assignment have been served by process server to the Office of the Attorney General, Department of Legal Affairs, care of Attorney General, ~~William "Bill" McCullum~~, PL 01., The Capitol Building at 400 South Monroe Street, Tallahassee, Florida 32399-1050.

Denny R. Wood, Pro se



Date: May 2, 2011