

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

FILED
U.S. DISTRICT COURT
STATESBORO DIV.

2006 NOV 20 A 9:29

TRACY ANTHONY MILLER,

Plaintiff,

vs.

HUGH SMITH, Warden, Georgia
State Prison; STEVE ROBERTS, Deputy
Warden for Security, Georgia State
Prison, JOHNNY SIKES, former
Warden, Georgia State Prison;
CAROLYN MAILLOUX, M.D., Medical
Director, Georgia State Prison; LISA
WATERS JOHNSON, R.N., Health
Administrator, Georgia State Prison;
VICTOR L. WALKER, Warden, Augusta
State Medical Prison, DENNIS BROWN,
Deputy Warden for Security, Augusta
State Medical Prison, WAYNE
GARNER, former Commissioner of the
Department of Corrections, JAMES
DONALD, current Commissioner of the
Department of Corrections, JOSEPH
PARIS, M.D., Medical Director, Dept. of
Corrections, GEORGIA STATE
PRISON, AUGUSTA STATE
MEDICAL PRISON, and the GEORGIA
DEPARTMENT OF CORRECTIONS,

Defendants.

CIVIL ACTION
FILE NO. CV 6:98-109-JEG

AMENDED COMPLAINT

This is a lawsuit seeking declaratory relief, injunctive relief and damages for

the Defendants' ongoing violation of Tracy Miller's First, Eighth and Fourteenth Amendment rights, and his federal statutory rights under the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, and the Americans with Disabilities Act ("ADA"), and Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 *et seq.*

The Amended Complaint alleges ADA violations that amount to direct constitutional violations under the First, Eighth and Fourteenth Amendments, as well as violations that are prohibited under the ADA and are prophylactic protections of constitutional rights. Miller seeks proper treatment of his disability of paraplegia, a prison setting that appropriately accommodates his disability, an injunction against prison officials' retaliation against him for attempting to enforce his constitutional and statutory rights, and, given the long history of this litigation, during which the Department of Corrections has failed to take remedial action, Miller seeks compensatory and punitive damages and attorney's fees and the costs of this litigation, in an amount to be proven to the Court.

JURISDICTION, VENUE AND EXHAUSTION

1. This action arises under the authority vested in this Court by virtue of 42 U.S.C. § 1983, 29 U.S.C. § 701 *et seq.*, 42 U.S.C. § 12131 *et seq.*, 28 U.S.C. § 1331, and § 28 U.S.C. § 1343. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Plaintiff is presently imprisoned at Georgia

State Prison in Reidsville, Tattnall County, Georgia.

2. Declaratory relief is authorized by 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure.
3. Plaintiff has exhausted his administrative remedies pursuant to 42 U.S.C. § 1997e(a).

PARTIES

4. Plaintiff Tracy Miller, a wheelchair-bound paraplegic, is serving a life sentence in the Georgia state prison system.
5. Defendant Georgia State Prison (“GSP”) in Reidsville (Tattnall County), Georgia is a state prison facility within the Defendant Georgia Department of Corrections (“GDOC”).
6. Defendant Hugh Smith is the current Warden of GSP, and Defendant Steve Roberts is the Deputy Warden for Security at GSP. Defendant Johnny Sikes is a former Warden at GSP, and Smith’s predecessor.
7. Defendant Dr. Carolyn Mailloux is Medical Director of GSP, and Defendant Lisa Waters Johnson is a registered nurse who serves as Health Administrator at GSP.
8. Defendant Augusta State Medical Prison (“ASMP”) in Grovetown

(Richmond County), Georgia is a medical prison facility within the GDOC.

Defendant Victor Walker is the Warden of ASMP, and Defendant Dennis

Brown is the Deputy Warden for Security at ASMP.

9. Defendant James Donald is the current Commissioner of the Department of Corrections. Defendant Wayne Garner is the former Commissioner of the Department of Corrections. Defendant Dr. Joseph Paris is Medical Director for GDOC.
10. All of the individual defendants (the “Section 1983 Defendants”) are sued in both their official and individual capacities, except for the individuals who are former GDOC and prison officials, who are sued only in their individual capacities. The individuals sued in their official capacities (the “Injunctive Relief Defendants”) may be served through the Attorney General of the State of Georgia.
11. At all relevant times, the Section 1983 Defendants acted under color of state law and within the scope of their employment.
12. The defendant entities, GDOC, GSP and ASMP (together with the official-capacity Defendants, the “ADA Defendants”), are all public entities within the meaning of 42 U.S.C. § 12131, and also receive federal funds within the meaning of 29 U.S.C. § 794.

FACTUAL ALLEGATIONS

MILLER'S CONDITION

13. Tracy Anthony Miller has been serving a life sentence in the Georgia Prison System since 1989, and at various times both before and since this suit was filed, has been housed at ASMP and GSP. He is presently housed in K-building of GSP, and is now the only paraplegic inmate housed there.
14. As a result of a shotgun wound that injured his spinal cord and left buckshot lodged near his spine, Miller suffers from complete paralysis in his right lower extremity, partial paralysis in his left leg, and neurogenic bladder, as well as significant damage to his colon.
15. Miller's injuries have resulted in, among other things, back pain, urinary incontinence, an unstable left leg and knee, atrophy and ulcers in his right leg, and swollen knees and legs, bed sores as a result of being in his wheelchair for long periods of time.
16. To treat his condition, prison doctors have prescribed Miller physical therapy to avoid atrophy of his left leg; that he receive an orthopedic brace and shoe for his left leg; that he utilize leg supports for his wheelchair; and that he use urine catheters to avoid incontinence problems. He has periodically required

spinal surgery to correct ongoing back problems.

17. Although an orthopedic brace might permit Miller to use his left leg to move short distances without a wheelchair, prison doctors have indicated that it is unlikely he will ever be able to do entirely without a wheelchair.

CONDITIONS AT GEORGIA STATE PRISON

18. GSP houses disabled inmates in two places: the infirmary (which is air-conditioned) and K-building (which is not). Miller was moved from the infirmary to K-building as a result of disciplinary infractions, and remains housed in K-building.
19. As a general matter, GSP is not designed for disabled inmates. Common buildings and spaces such as the chapel and library either cannot be entered or traversed by persons in wheelchairs without assistance, or they do not have facilities in them (including toilets) that accommodate persons in wheelchairs, effectively preventing their use by such persons.
20. There is no physical therapist at GSP, and there is no van at the facility that may be used to safely transport wheelchair-bound inmates for consults, which are typically at ASMP. Miller has fallen from his seat and suffered injury as a result of being transported in a non-accommodating van.
21. K-building in particular is not equipped to handle disabled inmates, so

disabled inmates housed there must rely on assistance to go about daily activities. However, non-medical staff does not assist disabled inmates except to bring them in and out of the cells, and there are no medical staff stationed in K-building. Thus, K-building is not accommodating to prisoners such as Miller, who are confined to a wheelchair.

22. For instance, prison officials acknowledge that the cells in K-building are not large enough to accommodate both a bed and a wheelchair, so that the wheelchair can be maneuvered around the cell, and accordingly, prison policy is purportedly to remove the beds from the cells during the day.
23. However, in fact, the beds are not removed from the cells according to this purported policy. Accordingly, wheelchair-bound inmates are unable to maneuver their wheelchairs around the cell, for instance, to use the facilities in the cell, or look out the window.
24. The cells, showers and toilets are not fully and safely handicapped-accessible. To the extent the facilities are retrofitted with bars or other accommodations to allow transfer from chair to bed, toilet or shower, they are inadequate, unsafe, or block access to other facilities. Miller has frequently been left to sit in his own urine and feces, and unable to take a shower, because he did not have assistance in using the toilet and shower facilities. At other times,

Miller has fallen from his wheelchair due to the lack of assistance in the non-accommodating cells.

25. Alternatively, rather than independently attempting to use the shower, the inmate must be taken to the infirmary to be bathed. However, prison employees either provide such assistance only infrequently and at odd hours, or do not provide it at all.
26. Inmates at GSP may be placed in disciplinary segregation, or in more severe isolation. However, wheelchair-bound inmates are only placed in isolation units in K-building, even if they are classified for segregation, because GSP cannot accommodate inmates in segregation housing.
27. The law library available to inmates in segregation or isolation is separate from the main law library, and is very small, such that inmates in wheelchairs cannot fully access the law library facilities.
28. According to prison policy, inmates in isolation are to be allowed an hour of physical activity three times a week, and to be removed from isolation once every thirty days, and receive privileges such as yard call and gym call during this time period.
29. However, because the general population prison facilities are not accessible to those in wheelchairs and the prison does not provide assistance to disabled

inmates to access these privileges, disabled inmates are denied the privileges that are allowed able-bodied inmates in isolation, and in some cases are not even removed from isolation as provided by the policy.

30. Alternatively, if such privileges are provided, the disabled inmates are simply placed in the general population without assistance or protection, where they are susceptible to attack by able-bodied inmates.
31. Miller has complained about these conditions to GSP officials numerous times in grievances and complaints. The Warden and Deputy Warden for Security of GSP, the former Warden (when he was employed at GSP), and Dr. Mailloux all received or were made aware of Miller's complaints and grievances, and denied Miller relief.

MEDICAL TREATMENT AT GSP

32. In addition to its failure to accommodate disabilities generally, GSP has not provided Miller with the treatment prescribed by prison doctors.
33. Only minimal physical therapy that can be performed by Miller in his cell is available to him; there is no physical therapist at GSP, and there is no appropriate means of transporting him to ASMP where such physical therapy might be provided. As a result, his left leg continues to atrophy, and he suffers continued back pain.

34. Although a leg brace and leg supports were initially provided to Miller, they were confiscated for disciplinary reasons. Miller has not been provided an alternative means of either supporting his legs while he sits in his wheelchair, or supporting his weight on his left leg in order to move from his chair to, for instance, a bed or toilet, and back. He suffers bed sores as a result of being confined to his wheelchair for long periods of time.
35. Miller is not provided with urine catheters on a regular basis. As a result, he suffers from frequent urinary and kidney infections.
36. Miller has requested diapers to handle bowel incontinence on numerous occasions, but such requests have been refused. As a result he has accidents resulting in his sitting in his own bodily waste until he receives assistance.
37. Miller has requested further neurosurgical evaluation to correct ongoing back problems and pain, which has been repeatedly denied.
38. Miller has complained about his lack of appropriate treatment numerous times in grievances and complaints. The Warden and Deputy Warden for Security of GSP, the former Warden (when he was employed at GSP), Dr. Paris, Dr. Mailloux, and Lisa Waters Johnson all received or were made aware of Miller's complaints and grievances, and denied Miller relief.

CONDITIONS AT ASMP

39. ASMP is primarily intended to be an acute care facility for the Georgia Department of Corrections. It is not significantly more accommodating for wheelchair-bound inmates.
40. Inmates at ASMP are housed in units of twenty inmates, with insufficient staff to allow assistance of disabled inmates.
41. Although the cells at ASMP are somewhat larger than at GSP, they are still of inadequate size to allow wheelchairs to maneuver around the cell.
42. As at GSP, prison staff at ASMP do not assist inmates in everyday activities such as using showers or toilets.
43. Thus, during the times when Miller has been housed at ASMP, as at GSP, he has similarly been forced to sit in his own waste, and unable to shower, because he has not received proper assistance in using the facilities.
44. Miller complained about these conditions to ASMP officials numerous times in grievances and complaints. The Warden and Deputy Warden for Security of ASMP all received these complaints and grievances or were made aware of them, and denied Miller relief.

MEDICAL TREATMENT AT ASMP

45. ASMP, in spite of its name, has not provided significantly better treatment of

Miller's condition during the times he has been housed there.

46. As at GSP, at ASMP, Miller is denied use of braces and other assistive devices, and is also denied assistance in place of such devices.
47. Miller also has been denied diapers and appropriate supplies of catheters at ASMP.
48. ASMP similarly failed to provide Miller a neurosurgical consult when he was housed there.
49. Miller complained about these conditions to ASMP officials numerous times in grievances and complaints. The Warden and Deputy Warden for Security of ASMP all received these complaints and grievances or were made aware of them, and denied Miller relief.

TRANSFERS BETWEEN FACILITIES

50. Although Miller is not presently housed at ASMP, he has frequently been transferred between GSP and ASMP.
51. For instance, prior to filing this lawsuit, and while Miller was filing grievances about his conditions and care, he was moved to GSP on or about May 16, 1996; from there ASMP on or about September 5, 1996; and back GSP on or about September 16, 1996. Thus, Miller was transferred three times in four months, including twice within less than two weeks.

52. Further, in the last two years, and while this case was pending on appeal, Miller was frequently transferred around the system, including from GSP to Men's State Prison on or about September 14, 2004; from Men's State Prison to GSP on or about June 20, 2005; and from GSP to ASMP on or about June 27, 2006. After being transferred at some point out of ASMP, Miller was transferred back to GSP on or about August 11, 2005; he was then transferred to ASMP a week later, on or about August 18, 2005, and finally was transferred from ASMP back to GSP on or about February 24, 2006. In all, Miller has been transferred at least six times in the past two years.

INTERFERENCE WITH MILLER'S REMEDIES

53. Prison officials have interfered in a number of ways with Miller's ability to pursue relief from the unconstitutional and unlawful conditions of his confinement.
54. For instance, the frequent transfers described in paragraphs 50-52 result in loss or temporary withholding of property, including legal materials, as well as interruption of mail. Additionally, once Miller is transferred, the State asserts in legal papers that all of Miller's claims regarding the prison from which he was just transferred are mooted by the transfer. By transferring Miller back and forth frequently, his attempts to seek injunctive relief are

thwarted.

55. Even outside of transfers, prison officials have interfered with Miller's attempting to pursue his and other similarly-situated prisoners' legal remedies, including in the following ways: withholding Miller's property, including legal materials, and failing to return it reasonably promptly, interfering with Miller's ability to draft pleadings and briefs and provide information to counsel; unreasonable delays in mail, particularly including legal mail reaching either Miller or his counsel, if it was received at all; on information and belief, unauthorized opening and review (outside Miller's presence) of privileged legal mail clearly marked as such; and being forbidden from or told not to assist other inmates in filing grievances.
56. Prison officials have often made reference to Miller's multiple grievances and lawsuits, as well as to his purported inability to file any more lawsuits (even those that allege imminent danger), in conjunction with or contemporaneously with disciplining Miller, transferring him, or responding to his grievances and complaints.

CLAIMS FOR RELIEF

SEC. 1983: EIGHTH AMENDMENT

57. The allegations set forth in the foregoing paragraphs 13 through 49 are

incorporated herein by reference.

58. Plaintiff Miller enjoys an Eighth Amendment right to be free of cruel and unusual punishment, a right which is enforced against the states through the Fourteenth Amendment.
59. That Eighth Amendment right includes the right to receive treatment for his serious medical needs.
60. As a wheelchair-bound paraplegic, Miller has serious medical needs. These needs include the need for sterile urine catheters; physical therapy; special leg supports and shoes; and surgery to correct ongoing spinal problems that cause persistent pain and other medical problems. As a result of his serious medical needs, Miller also needs assistance in order to perform routine tasks, including using the toilet and bathing. Without such assistance, he urinates and defecates on himself and is unable to clean himself.
61. Further, the cells in K-building at GSP are not sufficiently large to accommodate both a bed and a wheelchair, a fact which is known to prison officials. However, beds are not removed from K-building cells during the day, leaving Miller unable to maneuver about his cell. The cells at ASMP are similarly limited in space.
62. Additionally, the prisons do not have a wheelchair-accessible van, requiring

wheelchair-bound inmates to be transported in an unsafe fashion.

63. In a number of ways, including through multiple grievances, complaints and requests filed by Miller, the defendants have been made specifically aware of Miller's serious medical needs, and they are aware that he has not received necessary treatment for these needs, but they have failed to ensure that their respective prison staffs promptly provides proper treatment for those needs. As a result, the treatment of Miller's serious medical needs remains, at best, grossly inadequate.

64. Further, the defendant Commissioner is aware that these prisons fail to provide adequate medical care to wheelchair-bound paraplegic inmates, and he has failed to take corrective action to ensure that such inmates' serious medical needs are treated properly.

65. As a result of such deliberate indifference to Miller's serious medical needs, the Section 1983 Defendants have denied Miller his Eighth Amendment rights, as enforced through the Fourteenth Amendment, in violation of 42 U.S.C. § 1983.

SEC. 1983: FOURTEENTH AMENDMENT (Equal Protection)

66. The allegations of paragraphs 13 through 31 and paragraphs 39 through 49 are incorporated herein by reference.

67. Miller has a Fourteenth Amendment right to equal protection of the laws.
68. That right includes the right to be free of arbitrary or irrational discrimination on the basis of disability.
69. Wheelchair-bound inmates at GSP and ASMP generally, and particularly in K-building at GSP, are not provided the same privileges as similarly-situated able-bodied inmates.
70. For instance, wheelchair-bound inmates at GSP and ASMP are unable to travel to and access the common buildings and areas available to able-bodied inmates without assistance, and no assistance is provided. Wheelchair-bound inmates are unable to use facilities such as toilets and shower, or to transfer themselves to and from bed, without risking injury to themselves, when able-bodied inmates face no such risk.
71. Wheelchair-bound inmates in K-building at GSP are unable to move about their cells, when able-bodied inmates can. Wheelchair-bound inmates in K-building are not taken out of isolation as prison policy provides for similarly-situated able-bodied inmates. Wheelchair-bound inmates in K-building are unable to fully access the small law library made available to able-bodied inmates in the building.
72. There is no legitimate penological interest or rational basis for failing to

provide even the most basic assistance or access to prison facilities.

73. Accordingly, the Section 1983 Defendants have denied Miller his right to equal protection guaranteed by the Fourteenth Amendment, in violation of § 1983.

SEC. 1983: FIRST AMENDMENT (Retaliation and Access to Courts)

74. The allegations of paragraphs 13 through 31 and 50 through 56 are incorporated herein by reference.
75. Miller has a First Amendment right to seek redress of grievances without fear of reprisal, as well as a First Amendment right of access to the courts.
76. Over the past several years, Miller has filed numerous grievances and several lawsuits seeking relief from the conditions described herein.
77. At various times following his lodging of complaints and lawsuits, Miller, among other things, has been transferred frequently from prison to prison; had his legal papers and other effects removed from his cell; has experienced unusual and even indefinite delays in received or sent mail, including legal mail and communications with counsel; has been punished for assisting other prisoners with claims; has not been granted access to the law library or to legal materials; and has frequently been placed in isolation. These events have directly interfered with Miller's ability to pursue his grievances and

lawsuits, as well as to assist others in doing the same.

78. Prison officials have referenced his grievances and legal activities in conjunction with one or more of these events; on information and belief, these grievances and legal activities bore a causal relationship to the adverse events Miller suffered.
79. The Warden and Deputy Warden Defendants are, either through their own action, or by failing to ensure the prison officials they supervise comply with applicable law and prison regulations, responsible for such interference with Miller's attempts to redress his grievances and pursue legal remedies.
80. Miller has been retaliated against for pursuing remedies for the unconstitutional and unlawful conditions of his confinement, in violation of his First Amendment rights, as enforced against the states through the Fourteenth Amendment.
81. Regardless of any retaliation, the acts and omissions of prison officials, including the Wardens and Deputy Wardens of GSP and ASMP, described herein have interfered with Miller's access to the courts, in violation of his First and Fourteenth Amendment rights, and in violation of 42 U.S.C. § 1983.

REHABILITATION ACT (29 U.S.C. § 794)

82. The allegations of paragraphs 13 through 73 are incorporated herein by

reference.

83. Section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 794, makes it unlawful to exclude an otherwise qualified individual with a disability from participation in, or from receiving the benefits of, any program or activity receiving Federal financial assistance, solely by reason of his disability.
84. Georgia's prisons receive federal financial assistance, including, but not limited to, federal grants, within the meaning of 29 U.S.C. § 794(b).
85. As a wheelchair-bound, paraplegic inmate, Miller is a qualified individual with a disability, within the meaning of 29 U.S.C. § 794(a).
86. By reason of his disability, Miller has been excluded from receiving adequate facilities and medical treatment. Specifically, as described above under the heading "Eighth Amendment," he does not have access to sterile urine catheters; physical therapy; special leg supports and shoes; and necessary spinal surgery, among other treatments specific to his disability. He also does not have access to appropriate toilets and showers, and is not provided assistance in using the non-accommodating toilets and showers. Further, he is unable to move about his cell because his bed is not removed from the cell, and he is not transported in a wheelchair-accommodating van.
87. Additionally, as described under the heading "First Amendment," Miller is

unable to access the law library.

88. Further, because of his confinement to a wheelchair, Miller is excluded from a number of other benefits or activities, including the library building, dining hall facilities, yard call, and physical activities at the prison.
89. The ADA Defendants have excluded Miller from these programs, facilities, and activities solely by reason of his disability of paraplegia, which requires his confinement to a wheelchair.

AMERICANS WITH DISABILITIES ACT (Discrimination)

90. The allegations of paragraphs 13 through 73 are incorporated herein by reference.
91. Title II of the ADA, makes it unlawful to exclude an otherwise qualified individual with a disability from participation in, or from receiving the benefits of, any program or activity of a public entity, solely by reason of his disability, or for the public entity to subject that person to discrimination.
92. As a wheelchair-bound, paraplegic inmate, Miller is a qualified individual with a disability, within the meaning of 42 U.S.C. § 12132.
93. By reason of his disability, Miller has been excluded from receiving adequate facilities and medical treatment. Specifically, as described above under the heading "Eighth Amendment," he does not have access to sterile urine

catheters; physical therapy; special leg supports and shoes; and necessary spinal surgery, among other treatments specific to his disability. He also does not have access to appropriate toilets and showers, and is not provided assistance in using the non-accommodating toilets and showers. Further, he is unable to move about his cell because his bed is not removed from the cell, and he is not transported in a wheelchair-accommodating van.

94. Additionally, as described under the heading "First Amendment," Miller is unable to access the law library that is accessible to similarly-situated able-bodied inmates.
95. Further, because of his confinement to a wheelchair, Miller is excluded from a number of other benefits or activities of the prisons, including the library building, dining hall facilities, yard call, and physical activities at the prison.
96. The ADA Defendants have excluded Miller from these programs, facilities, and activities solely by reason of his disability of paraplegia, which requires his confinement to a wheelchair.

AMERICANS WITH DISABILITIES ACT (Retaliation)

97. The allegations of paragraphs 13 through 31, 50 through 56, and 90 through 96 are incorporated herein by reference.
98. As described under the heading "First Amendment," on information and

belief, prison officials have retaliated against Miller in response to grievances and lawsuits he has filed. These grievances and lawsuits have alleged violations of the ADA, and have requested reasonable accommodations of his disability.

99. Accordingly, the ADA Defendants and the Warden and Deputy Warden Defendants, by their acts and/or omissions, have violated 42 U.S.C. § 12203(a), in addition to violating Miller's First Amendment rights.

INJUNCTIVE RELIEF

100. The allegations of paragraphs 13 through 99 are incorporated herein by reference.
101. Miller has a substantial likelihood of success on the § 1983 claims stated above.
102. By reason of the Injunctive Relief Defendants' continued indifference to Miller's serious medical needs, Miller faces imminent and ongoing serious physical harm.
103. By reason of the Injunctive Relief Defendants' interference with Miller's attempts to pursue available remedies, Miller also may be prevented from obtaining relief from the threatened physical harm.
104. Placing Miller in an accommodating facility (either at GSP or elsewhere

within the GDOC system), and ensuring appropriate access to the courts and legal materials pending resolution of the litigation will not damage the defendants, nor would it be adverse to the public interest.

105. Miller is thus entitled to a preliminary injunction ordering the Injunctive Relief Defendants to place Miller in an accommodating facility during the pendency of this litigation, and enjoining defendants' interference with this litigation.
106. As Miller is serving a life sentence, there is also a substantial likelihood the harm Miller suffers, and the defendants' constitutional violations and unlawful discrimination, will continue.
107. Miller is thus entitled to a permanent injunction ordering that the Injunctive Relief Defendants ensure that, during the remainder of his sentence, in any facility in which he is housed, he receives proper treatment of his serious medical needs, that the facilities accessible to able-bodied inmates are not made unavailable to him solely because those facilities are not wheelchair accessible, and that prison officials at all times comply with legal and regulatory requirements relating to Miller's access to a grievance procedure, legal materials, and the courts.
108. Pursuant to 29 U.S.C. § 794a and 42 U.S.C. § 12133, Miller is also entitled

to a permanent injunction requiring the Injunctive Relief Defendants to provide reasonable accommodations as provided by the ADA and the Rehabilitation Act and their respective implementing regulations.

PUNITIVE DAMAGES

109. The allegations of paragraphs 13 through 66 and paragraphs 75 through 81 are incorporated herein by reference.
110. The Section 1983 Defendants knew that Miller, as a wheelchair-bound paraplegic, had serious medical needs.
111. The Section 1983 Defendants knew that Miller was not receiving treatment, services or assistance for his serious medical needs, at least in part because they had received or been made aware of Miller's repeated grievances seeking such treatment, services or assistance.
112. The Section 1983 Defendants acted with deliberate indifference to Miller's serious medical needs, in reckless disregard or indifference to Miller's rights and safety.
113. Additionally, the Section 1983 Defendants have interfered with Miller's First Amendment rights to access to legal materials and the courts, and to seek redress of his grievances.
114. Accordingly, the individual defendants are liable, in their individual

capacities, for punitive damages for their violations of Miller's Eighth and First Amendment rights.

ATTORNEY'S FEES

115. Pursuant to 42 U.S.C. § 1988, as a prevailing party, Miller is entitled to his reasonable attorneys' fees, costs and expenses in pursuing violations of 42 U.S.C. § 1983.
116. Further, pursuant to the Rehabilitation Act (29 U.S.C. § 794a) and the ADA (42 U.S.C. § 12205), Miller is entitled to his reasonable attorneys' fees, costs and expenses in pursuing his disability discrimination claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Declare Section 1983 Defendants' deliberate indifference to Miller's serious medical needs to be in violation of the Eighth Amendment.
2. Declare ADA Defendants' failure to provide reasonable accommodation of Miller's disabilities, which in at least some cases rises to the level of a violation of the Eighth Amendment, to be in violation of the Rehabilitation Act and the ADA.
3. Declare the Defendants' interference with Miller's grievances and litigation, as described herein, and their failure to provide him access to legal materials,

to be in violation of the First Amendment and the 42 U.S.C. § 12203(a).


4. Enter a preliminary injunction ordering the Injunctive Relief Defendants to place Miller in an accommodating facility during the pendency of this litigation, and enjoining defendants' interference with this litigation;
5. Enter a permanent injunction ordering that the Injunctive Relief Defendants ensure that, during the remainder of Miller's sentence, in any facility in which he is housed, he receives proper treatment of his serious medical needs, that the facilities accessible to able-bodied inmates are not made unavailable to him solely because those facilities are not wheelchair accessible, and that prison officials at all times comply with legal and regulatory requirements relating to Miller's access to a grievance procedure, legal materials, and the courts.
6. Award Miller compensatory damages for pain and suffering (both physical and mental/emotional) as a result of the Defendants' failure to treat his serious medical needs.
7. Award Miller punitive damages against the Section 1983 Defendants, in their individual capacities, for their willful failure and deliberate indifference to Miller's serious medical needs, in an amount to be determined by the Court.
8. Award Miller reasonable attorneys' fees and costs pursuant to 29 U.S.C.

§ 794a, 42 U.S.C. § 1988, and 42 U.S.C. § 12205.

9. Order such additional relief as the Court may deem just and proper.

DATED this the 17th day of November, 2006.

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CERTIFICATE OF SERVICE

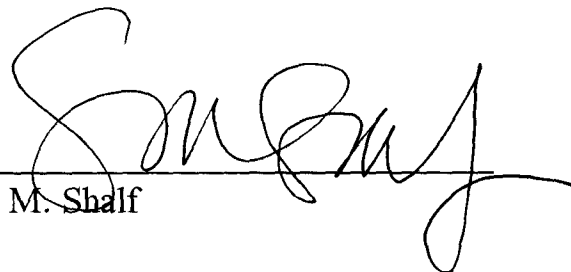
I hereby certify that I have this day caused a true and correct copy of the foregoing **AMENDED COMPLAINT** to be served upon counsel of record by United States mail in a properly addressed envelope, postage prepaid, as follows:

David V. Weber
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Stephen E. Curry
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Atlanta, GA 30334-9003

This 17th day of November, 2006.



Sarah M. Shalf