

NICHOLAS LESKOVISEK,
AND CHAD UNDERWOOD

Plaintiffs,

-VS-

ILLINOIS DEPARTMENT OF
TRANSPORTATION AND
DEPARTMENT OF CENTRAL
MANAGEMENT SERVICES

Defendants.

No. 17-3251-SEM-EIL

Defendants, ILLINOIS DEPARTMENT OF TRANSPORTATION and ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES, by and through their attorney, LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), move to dismiss Plaintiffs' complaint. In support, Defendants state as follows:

1. Plaintiffs filed a complaint alleging violations of the Americans with Disabilities Act. Specifically, Plaintiffs allege Defendants failed to accommodate and hire them for full-time State employment by using pre-employment testing and interview requirements that had the effect of screening out individuals with disabilities. Plaintiffs further allege Defendants retaliated against them after they filed charges with the EEOC.

2. Plaintiffs' complaint should be dismissed for lack of subject matter jurisdiction because the complaint fails to allege that they ever applied for a vacant position; as such, they lack standing to bring suit.

3. Plaintiffs' complaint should be dismissed for failure to state a claim because they fail to allege that they ever applied for a vacant position, that Defendants did not provide reasonable accommodations, and that CMS retaliated against them. Plaintiffs also fail to allege a disparate impact claim.

4. Plaintiffs' requests for certain injunctive relief and certain monetary damages should be dismissed because they lack standing, the relief they request is not permitted by the ADA, and the complaint does not allege sufficient facts to show facial plausibility.

5. Filed simultaneously and incorporated herein is a memorandum of law in support of Defendants' motion to dismiss.

WHEREFORE, Defendants request this honorable Court dismiss Plaintiffs' complaint.

Respectfully submitted,

ILLINOIS DEPARTMENT OF
TRANSPORTATION and ILLINOIS
DEPARTMENT OF CENTRAL
MANAGEMENT SERVICES,

Defendants,

LISA MADIGAN, Attorney General,
State of Illinois

Attorney for Defendants,

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By: s/Anupama Paruchuri
ANUPAMA PARUCHURI
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2018, the foregoing document, *Motion to Dismiss*, was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to the following:

Rachel Weisberg rachelw@equipforequality.org

Respectfully Submitted,

s/Anupama Paruchuri
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