

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

STEVEN M. PRYE, individually and by his)
guardian, OFFICE OF STATE GUARDIAN,)
Plaintiffs,)

v.)

MATT BLUNT, in his official capacity as Secretary of)
State of the State of Missouri; JEREMIAH W.)
(JAY) NIXON, in his official capacity)
as Attorney General of the State of Missouri;)
LEO G. (GARY) STOFF, JR. and)
JAMES P. O'TOOLE, in their capacity as directors)
of the Board of Elections for the City of St. Louis;)
MICHAEL A. LUEKEN, in his capacity as)
secretary and member of the Board of Elections)
for the City of St. Louis; DERIO L. GAMBARO,)
in his capacity as chairman of the Board of)
Elections for the City of St. Louis; ANGELA)
DA SILVA and YVONNE B. HUNTER, in their)
capacity as members of the Board of Elections for)
the City of St. Louis; and BOARD OF ELECTION)
COMMISSIONERS FOR THE CITY OF)
ST. LOUIS,)
Defendants.)

04-4248-CV-C-ODS

Civil Action No.:

Complaint

Injunctive Relief Sought

INTRODUCTION

1. The Missouri Constitution prohibits from voting any individual who has “a guardian of his or her estate or person by reason of mental incapacity[] appointed by a court of competent jurisdiction.” Mo. Const. Art. 8, § 2. By statute, Missouri restricts any person who has been “adjudged incapacitated” from registering to vote and from voting. V.A.M.S. 115.133.
2. Plaintiff Steven M. Prye (Prye) has been adjudged incapacitated and appointed a guardian of his person and estate because of mental incapacity. Prye would like to vote in the upcoming general election and in future elections; consequently, he

seeks a judgment declaring that the prohibition on registering to vote or voting violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, the Americans with Disabilities Act, and section 504 of the Rehabilitation Act of 1973. Prye also seeks a preliminary and permanent injunction enjoining Defendants from disenfranchising him from his fundamental right to vote on the ground that he has been adjudged incapacitated and appointed guardian of his estate or person by reason of mental incapacity.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1343(a)(4).
4. Venue is proper in this Court under 28 U.S.C. §1391(b) and Local Rule 3.2(a)(2). The primary offices of Defendants Blunt and Nixon, from which they implement the challenged provisions of Missouri law, are located in Cole County.

PARTIES

5. Prye brings this action individually and by his guardian, Plaintiff Office of State Guardian. Prye has been diagnosed with a mental illness, adjudged incapacitated, and appointed a guardian as a result of mental illness. Prye is substantially limited in the major life activities of self-care, taking care of his personal needs (*e.g.*, eating, dressing, bathing, hygiene, household chores, managing money), and interactions with others. The record of Prye's substantial limitation in major life activities extends back at least three years.

6. Defendant Matt Blunt is the Secretary of State of the State of Missouri. As Secretary of State, Defendant Blunt is responsible for such duties in relation to elections as the law provides. Mo. Const. Art. 4, § 14. He is the state's chief election official. See V.A.M.S. 28.035; V.A.M.S. 115.136. Defendant Blunt is also required to notify local election authorities of persons within their respective jurisdictions who have been adjudged incapacitated. V.A.M.S. 115.195(3). Defendant Blunt has the responsibility to oversee the administration of elections in Missouri. Defendant Blunt's primary office is located in Jefferson, Missouri.
7. Defendant Jeremiah W. (Jay) Nixon is the Attorney General of the State of Missouri. Defendant Nixon is charged with instituting proceedings to enforce Art. 8, § 2 of the Missouri Constitution and statutes that disenfranchise persons who have been adjudged incapacitated and appointed a guardian. See V.A.M.S. 27.060. Defendant Nixon's primary office is located in Jefferson City, Missouri.
8. Defendants Leo G. (Gary) Stoff, Jr., and James P. O'Toole are directors of the Defendant Board of Election Commissioners for the City of St. Louis. Defendant Michael A. Lueken is secretary and member of Defendant Board of Election Commissioners for the City of St. Louis. Defendant Derio L. Gambaro is chairman of Defendant Board of Election Commissioners for the City of St. Louis. Defendants Angela da Silva and Yvonne B. Hunter are members of Defendant Board of Election Commissioners for the City of St. Louis. Defendant Board of Election Commissioners for the City of St. Louis is the election authority for St. Louis City. V.A.M.S. 115.015. By statute, the election authority

is required to supervise the registration of voters within its jurisdiction and insure persons are qualified to register. V.A.M.S. 115.141.

MISSOURI CONSTITUTION AND STATUTES

9. The Missouri Constitution states, *inter alia.*, “[N]o person who has a guardian of his or her estate or person by reason of mental incapacity[] appointed by a court of competent jurisdiction ... shall be entitled to vote.” Mo. Const. Art. 8, § 2.
10. By statute, the State of Missouri prohibits any persons who have been adjudged incapacitated by a court from registering to vote or voting. V.A.M.S. 115.133.
11. Persons under guardianship, and persons who assist them, may be subject to criminal charges for casting or encouraging an illegal vote. V.A.M.S. 115.175; V.A.M.S. 115.631. A class one election offense is a felony punishable “by imprisonment of not more than five years or by fine of not less than two thousand five hundred dollars but not more than ten thousand dollars or by both such imprisonment and fine[.]” V.A.M.S. 115.631. What is more, the State of Missouri permanently declares persons convicted of a misdemeanor or felony related to the right of suffrage ineligible to register to vote or vote. V.A.M.S. 115.133(3).

FACTS

12. Plaintiff Prye was born on November 13, 1952, in Memphis, Tennessee. He was one of the first black students to attend Central High School, the city’s best high school, during desegregation. He was at school on April 4, 1968 when—about a mile away-- Martin Luther King, Jr., was killed at the Lorraine Motel. Other students and some teachers celebrated. This event, amongst others, convinced

Prye that he would do whatever it took to overcome disadvantage and discrimination. Upon graduating from high school, Prye received a scholarship from Yale University and completed his undergraduate studies in New Haven. After college Prye attended law school at Harvard, where he was on the staff of the Public Law Review. Prye began his legal career by working for two firms in New York City. He sometimes taught legal writing courses at New York University, and he was awarded an L.L.M. in taxation by N.Y.U. Prye left New York City because he wanted to teach fulltime. He taught several years at the Vermont Law School, then at the University of Illinois School of Law. During several of these years, Prye wrote a regular column in the Memphis newspaper on estate planning and related issues, including guardianship. It was at the University of Illinois and around age 49 that Prye's condition deteriorated. He is now diagnosed with schizoaffective disorder. On December 12, 2003, Office of State Guardian was appointed as guardian of Prye's person by the Circuit Court of Sangamon County, Illinois. The same Court appointed Office of State Guardian as guardian of Prye's estate on March 11, 2004. Since April 2004, Prye has resided in St. Louis, Missouri. There is currently pending a petition for appointment of a guardian in the Missouri Circuit Court, Twenty-second Judicial Circuit, Probate Division, in St. Louis.

13. The Circuit Court of Sangamon County, Illinois, appointed a guardian without limitation and did not consider Prye's competence to vote. Illinois law does not disenfranchise its residents simply because they have been appointed a guardian. 10 ILCS 5/3-1 (qualifications to vote in Illinois); see *Miller v. State Board of*

Elections, 1989 WL 36212 (N.D.Ill. 1989) (discussion of fact that mental incapacity is not a disqualification for voting under Illinois law).

14. The Circuit Court in St. Louis, in considering the case pending before it, is not authorized by Missouri law to consider Prye's capacity to vote or to reserve to him the right to vote in the event a guardian is appointed. The Court will adjudge Prye incapacitated and appoint a guardian if it finds Prye is a person who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he or she lacks capacity to meet essential requirements for food, clothing, shelter, safety, or other care such that serious physical injury, illness, or disease is likely to occur. See V.A.M.S. 475.010, *et seq.* The determinations the Court is required to make have no bearing on or relation to the capacity to vote.
15. Prye is interested in politics. He has regularly voted in the past. He understands the nature of the political process and is competent to vote. He only learned that he was ineligible to vote in Missouri when he recently sought to register to vote.
16. Prye meets all of the qualifications to vote in the State of Missouri except that he has been adjudged incapacitated and appointed a guardian. Mo. Const. Art. 8, § 2; V.A.M.S. 115.133. The sole reason he is ineligible to register to vote and vote in Missouri is that he is under guardianship.
17. On September 24, 2004, Prye attempted to register to vote in the State of Missouri by completing a Missouri Voter Registration Application. In order to make his application truthful, Prye struck the assertion contained on the form application that he had not been adjudged incapacitated. Defendant Stoff, on behalf of

Defendant St. Louis Board of Election Commissioners, denied Prye's application on the sole basis that Prye had been adjudged mentally incapacitated.

COUNT I

Violation of Due Process Clause

18. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 17 as if fully incorporated herein.
19. The Missouri Constitution and statutes deny Plaintiff Prye due process in violation of the Fourteenth Amendment to the Constitution of the United States by disenfranchising him without a process to determine his capacity to vote.
20. Missouri's guardianship statutes do not provide due process because they provide neither notice nor the opportunity to be heard on the issue of voting. Further, Missouri deprives its residents of the right to vote based on guardianship proceedings of other states without regard for whether those states' guardianship proceedings consider the individual's capacity to vote.
21. Because the right to vote is a fundamental right and, thus, a fundamental liberty interest, Missouri's statutes do not apply the appropriate burden of proof in guardianship proceedings to consider infringing upon an individual's right to register and vote.
22. Because the fundamental right to vote is implicated, the Missouri Constitution and statutes that disenfranchise individuals who have been appointed a guardian should be reviewed under the strict scrutiny standard.
23. Prye is entitled to injunctive and declaratory relief because he is injured by Defendants' acts that deprive him of the right to vote in violation of the Due

Process Clause of the Fourteenth Amendment. His claim is brought pursuant to 42 U.S.C. § 1983.

COUNT II

Violation of Equal Protection Clause

24. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 17 as if fully incorporated herein.
25. The Equal Protection Clause of the Fourteenth Amendment provides, “[N]o state shall deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV.
26. Plaintiff Prye is similarly situated to individuals who have the capacity to vote but who have not been appointed a guardian. Because they have not been appointed a guardian, the individuals retain the fundamental right to vote.
27. Defendants, by their acts and omissions under color of state law, are depriving Plaintiff Prye of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States by disenfranchising him on the ground that he is under guardianship.
28. Voting is a fundamental right, yet Mo. Const. Art. 8, § 2 and the Missouri statutes that disenfranchise Prye are not narrowly tailored to achieve a compelling state interest.
29. Prye is entitled to injunctive and declaratory relief because being denied the right to vote in violation of the Equal Protection Clause of the Fourteenth Amendment injures him. His claim is brought pursuant to 42 U.S.C. § 1983.

COUNT III

Violation of Americans with Disabilities Act

30. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 17 as if fully incorporated herein.
31. 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.
32. 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).
33. Defendants are responsible for the operation of public entities for the purposes of Title II.
34. Prye has a disability within the meaning of 42 U.S.C. § 12102(2) and 28 C.F.R. § 35.104.
35. Prye 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 all voting eligibility requirements other than the requirement that he not be under guardianship.
36. The State of Missouri is a "public entity" within the meaning of 42 U.S.C. § 12131(1)(A) and 28 C.F.R. § 35.104.
37. Defendants subject Prye to discrimination by excluding him from voting in federal, state, and local elections. The exclusion and discrimination violate 42 U.S.C. § 12132, 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.

38. Defendants are violating the regulations promulgated under the ADA in the following respects:
- a. Defendants, on the basis of Prye's disability, exclude him from participation in federal, state, and local elections, thereby subjecting him to discrimination. See 28 C.F.R. 35.130(a) ("No qualified individual with a disability shall, on the basis of 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 public entity.").
 - b. Defendants, on the basis of Prye's disability, deny him the opportunity to participate in or benefit from their services, programs, and activities, to wit: voter registration and voting. See 28 C.F.R. 35.130(b)(1)(i) ("A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability[,] [d]eny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service[.]").
 - c. Defendants, on the basis of Prye's disability, to limit him in the enjoyment of his right to vote. See 28 C.F.R. 35.130(b)(1)(vii) ("A public entity, in providing any aid, benefit, or service, may not, directly or through contractual,

licensing, or other arrangements, on the basis of disability[,] [o]therwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.”).

- d. Defendants utilize criteria for eligibility to register to vote and to vote that have the effect of subjecting Prye to discrimination on the basis of disability. See 38 C.F.R. 35.130(b)(3)(i) (“A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability[.]”).
- e. Defendants impose eligibility criteria for voting that screen out or tend to screen out individuals with disabilities, including Prye, from fully and equally enjoying voting and elections even though the criteria are not necessary for voting and elections in Missouri. See 28 C.F.R. 35.130(b)(8) (“A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.”).

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

COUNT IV

Violation of §504 of the Rehabilitation Act of 1973

40. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 17 as if fully incorporated 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. Prye is a “qualified individual with a disability” as defined by 29 U.S.C. §705(20).
43. Prye meets all of the qualifications to vote in the State of Missouri except for that he has been adjudged incapacitated and appointed a guardian.
44. Defendants receive federal assistance for the purposes of Section 504. 29 U.S.C. § 794(a).
45. Defendants discriminate against Prye by not allowing him to register to vote or to vote although registering to vote and voting fit within the definition of “program or activity” provided by section 504. 29 U.S.C. § 794(b)(1)(A).
46. As a result of Defendants’ violations of § 504 of the Rehabilitation Act of 1973,

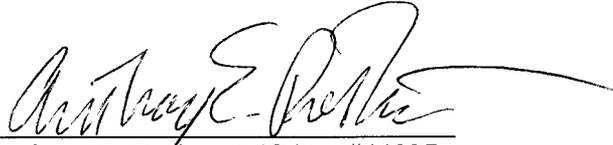
Defendants are liable to Prye for injunctive and declaratory relief pursuant to 29 U.S.C. §794a.

RELIEF

Plaintiffs request judgment in their favor and the following relief:

- A. A preliminary and permanent injunction requiring Defendants to register Prye to vote before the November 2, 2004 election and to vote in the November 2, 2004 election and future elections;
- B. A declaratory judgment holding that the Missouri Constitution and statutes that disenfranchise Prye on the ground that he is under guardianship or has been adjudged incapacitated are facially invalid because they violate the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973;
- C. Costs and reasonable attorneys fees under 42 U.S.C. §§ 1988, 12133, 12205; 29 U.S.C. § 791, *et seq.*, and other relevant provisions of law;
- D. Such other and further relief as this Court deems just and proper.

Dated: October 8, 2004.



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