



States Department of State (hereinafter the “Department”) to hire Mr. Taylor as a Foreign Service Officer because he is infected with the human immunodeficiency virus (hereinafter “HIV”). To remedy this violation of the Rehabilitation Act, Mr. Taylor seeks declaratory and injunctive relief, compensatory damages, and attorneys’ fees and costs.

3. Mr. Taylor learned that he was infected with HIV in March 1985. In the eighteen years since his initial diagnosis, he has remained asymptomatic, and has suffered no serious illnesses or AIDS-defining opportunistic infections. His only HIV-related medical needs are semi-annual checkups and a daily regimen of medication. Mr. Taylor is in good health.

4. Mr. Taylor has a long record of public service, having worked for the Department from 1979 to 1988, and for the United States Department of Health and Human Services since 1999. He has long wanted to be a Foreign Service Officer and still hopes to serve his country in that capacity.

5. Mr. Taylor applied for a position as a Foreign Service Officer in July 2001, passed the requisite written and oral examinations, and received a conditional offer of employment from the Department in November of that year. After Mr. Taylor disclosed his HIV status during a physical examination, however, the Department informed him that he would not be granted the medical clearance required for service abroad. Given his good health, Mr. Taylor sought a waiver of the denial of medical clearance, but his request was denied in July 2002. After timely contacting an Equal Employment Opportunity (hereinafter “EEO”) counselor in August 2002, Mr. Taylor filed a formal administrative complaint which produced no relief.

6. The Department rejected Mr. Taylor’s application for employment pursuant to its policy against hiring HIV-positive candidates for positions as career Foreign Service Officers.

Indeed, during Mr. Taylor's medical examination in December 2001, he received a form stating that "[b]ecause new applicants for the Foreign Service must be worldwide available (Class 1), those who are HIV positive will not be eligible for employment." Similarly, in August 2001, the Department publicly issued a "media note" stating that "those [Foreign Service Officer candidates] testing positive are not offered employment in the Foreign Service." In contrast, the Department will retain Foreign Service Officers who test positive for HIV while employed but who exhibit no signs of immune suppression. Such individuals are granted Class II medical clearance and approved for limited overseas duty.

7. The Department's discriminatory policy against job applicants who are HIV-positive reflects the widespread misunderstanding and fear of HIV that persist throughout American society even in the face of greatly expanded scientific knowledge about the virus, its modes of transmission, and treatment of those who are infected. The course and treatment of HIV has changed dramatically since the Department first conceived its policy banning HIV-positive candidates two decades ago. Today, thanks in part to significant medical breakthroughs, people living with HIV like Mr. Taylor often live long and healthy lives with few, if any, symptoms of HIV. Nonetheless, the Department clings to the antiquated assumption that *all* people living with HIV, regardless of their actual physical condition, are especially fragile and require near-constant monitoring and medical attention.

8. Mr. Taylor belies this stereotype. He has never suffered a serious HIV-related illness, has never been hospitalized for an HIV-related illness, and has traveled throughout the world without medical incident. By concluding that Mr. Taylor's health is too poor to permit overseas work, the Department has capitulated to an outdated and inaccurate generalization about

people with HIV.

9. The Department's discriminatory refusal to hire qualified candidates like Mr. Taylor violates the Rehabilitation Act and the Department's own regulations, both of which mandate that candidates be assessed on the basis of their individual qualifications rather than according to stereotype. By refusing to grant Mr. Taylor the medical clearance or waiver that his good health warrants, the Department violated federal law.

10. The Department's discriminatory treatment of Mr. Taylor also ran afoul of Secretary Powell's own public exhortation not to discriminate against people with HIV. In a speech to international business leaders in June 2002, Secretary Powell urged corporate leaders to "implement fair employment practices to ensure there is no discrimination related to a person's HIV status – no stigmatization. They are just like anyone else. This is one of those lessons we have to get to all employers and nations around the world." Less than one month after issuing this plea for equal treatment, Secretary Powell's Department finally informed Mr. Taylor that it would not offer him a position in the Foreign Service.

#### JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4). This action is authorized pursuant to 29 U.S.C. §§ 791 and 794, and 29 C.F.R. § 1614.203. This court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

12. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Defendant Colin L. Powell resides in this judicial district and a substantial part of the events or omissions giving rise to this complaint occurred in this judicial district.

## PARTIES

13. Plaintiff Lorenzo Taylor is a citizen of the United States and resides in Arlington, Virginia. At all times relevant hereto, Mr. Taylor has been a person living with HIV, which is a disability within the meaning of the Rehabilitation Act.

14. Defendant Colin L. Powell is the United States Secretary of State, head of a federal department in this judicial district that is subject to the Rehabilitation Act. The United States Foreign Service is an agency of the State Department and is therefore prohibited, pursuant to the Rehabilitation Act, from discriminating against otherwise qualified people with disabilities in the terms or conditions of employment.

## FACTS

15. Mr. Taylor realleges paragraphs 1-14 of this Complaint as if fully set forth herein.

16. On information and belief, a Foreign Service Officer's duties include performance of the following functions: establishing and maintaining relations with the government of the Officer's country of residence, advising policymakers on economic and political matters in the country of residence, and communicating with the United States regarding events in the country of residence.

17. On information and belief, according to the current policy of the Department, Foreign Service Officer candidates must pass written and oral examinations, receive a security clearance, and receive a Class I medical clearance or a Class II medical clearance via a medical waiver before being offered employment.

18. On information and belief, the Department has a policy of denying HIV-positive

candidates Class I medical clearances.

19. On information and belief, the Department has a corresponding policy of denying HIV-positive candidates Class II medical clearances or medical waivers.

20. On information and belief, the Department has a policy of retaining Foreign Service Officers who test positive for HIV while employed but exhibit no signs of immune suppression. Such individuals are granted Class II medical clearance and approved for limited overseas duty.

21. Mr. Taylor was diagnosed as having HIV in March 1985. As a result of his HIV infection, Mr. Taylor is a person with a disability within the meaning of the Rehabilitation Act. Additionally, the Department regards Mr. Taylor as a person with a disability within the meaning of the Rehabilitation Act.

22. For a number of years, Mr. Taylor has been on a regimen of anti-retroviral medications to manage his HIV. The combination of medication that he currently takes keeps Mr. Taylor's viral load (the measure of HIV in his system) at very low or undetectable levels, and his CD4+ T-lymphocyte cell count (the measure of his immune system health) in a healthy range. Mr. Taylor receives his medication by mail in 90-day supplies. He currently sees his HIV physician only for routine monitoring of his condition. Eighteen years after his initial diagnosis as HIV-positive, Mr. Taylor remains in good health, shows no signs of immune suppression, and is not at risk for HIV-related complications.

23. In the years since he learned he was HIV-positive, Mr. Taylor has never suffered a serious HIV-related illness, has never been hospitalized because of his HIV, and has never suffered any AIDS-defining illness. He has engaged in full-time graduate study and work,

successfully performing in positions requiring extensive travel and long hours. Upon receiving the appropriate vaccinations and immunizations, Mr. Taylor has traveled without medical incident to Brazil, China, Costa Rica, Germany, Russia, Senegal, South Africa, Turkey, and Zimbabwe.

24. After being recruited to apply for a position in the Foreign Service, Mr. Taylor formally applied to become a Foreign Service Officer on or about July 14, 2001. He passed the required written and oral examinations and received a conditional offer of employment dated November 13, 2001.

25. On or about December 27, 2001, Mr. Taylor presented for his pre-employment medical examination and was given a form stating that “[b]ecause new applicants for the Foreign Service must be worldwide available (Class 1), those who are HIV positive will not be eligible for employment.” During this examination, Mr. Taylor disclosed his HIV status to a Department doctor.

26. On or about January 7, 2002, Dr. John Triplett, who was then Chief of the Department’s Medical Examination Clinic, told Mr. Taylor that he would not be eligible for employment as a Foreign Service Officer because he was HIV-positive. Dr. Triplett informed Mr. Taylor that he could seek a medical waiver from the Department’s Employment Review Committee (hereinafter “ERC”), but that two other candidates with HIV had sought and been denied waivers in the recent past despite having excellent credentials and unique skills.

27. By letter dated January 17, 2002, Tamale Walton, a Human Resources Specialist at the State Department, formally informed Mr. Taylor that he had been denied the necessary medical clearance.

28. By letter dated January 25, 2002, Mr. Taylor requested a medical waiver from the

ERC. In his request, Mr. Taylor asked the Committee to conduct an individualized assessment of his application instead of relying on the Department's blanket policy against hiring HIV-positive candidates. The ERC denied the requested waiver in a letter dated July 15, 2002.

29. On or about August 28, 2002, Mr. Taylor timely contacted the Department's Office of Civil Rights (hereinafter "OCR") to initiate EEO counseling. On or about November 7, 2002, Meta R. Fitzgerald, the EEO Counselor assigned to Mr. Taylor's case, issued a letter to Mr. Taylor informing him that he had the right to file a formal administrative complaint with the OCR.

30. On or about November 13, 2002, Mr. Taylor filed a formal administrative complaint with the OCR. By letter dated December 2, 2002, the OCR accepted Mr. Taylor's complaint for investigation.

31. On or about June 2, 2003, the OCR completed its investigation, offering no conclusions regarding the allegations in Mr. Taylor's complaint.

32. By letter dated June 2, 2003, the OCR informed Mr. Taylor of his right to file a civil action in this matter.

33. Mr. Taylor has exhausted the administrative remedies available to him under the Rehabilitation Act. All conditions precedent to the institution of this suit have been fulfilled.

#### COUNT ONE - REHABILITATION ACT § 501

34. Mr. Taylor realleges paragraphs 1-33 of this Complaint as if fully set forth herein.

35. Section 501 of the Rehabilitation Act, 29 U.S.C. § 791, prohibits the federal government from discriminating against otherwise qualified people with disabilities in the terms or

conditions of employment, and requires the federal government to take affirmative action to employ people with disabilities who can perform, with or without reasonable accommodation, the essential functions of a particular job. This prohibition and mandate similarly protects people whom the federal government regards as disabled.

36. Due to his HIV status, Mr. Taylor has a physical impairment that substantially limits one or more of his major life activities, such that he is a person with a disability within the meaning of the Rehabilitation Act.

37. Additionally, the Department regards Mr. Taylor as a having a physical impairment that substantially limits one or more of his major life activities, such that he is a person with a disability within the meaning of the Rehabilitation Act.

38. Given his job skills and physical condition, Mr. Taylor is capable of safely performing all the essential functions of a Foreign Service Officer without accommodation. The Department therefore violated section 501 of the Rehabilitation Act when it denied Mr. Taylor a Class I medical clearance or medical waiver on account of his HIV status.

39. In the alternative, given his job skills and physical condition, Mr. Taylor is capable of safely performing all the essential functions of a Foreign Service Officer with reasonable accommodation such as, but not limited to, granting Mr. Taylor a Class II medical clearance or waiver. The Department violated section 501 of the Rehabilitation Act when it denied Mr. Taylor such accommodation and discriminated against him on the basis of his HIV status.

40. The Department violated the Rehabilitation Act by failing to offer Mr. Taylor a position and by failing to accommodate Mr. Taylor in violation of section 501's requirement that federal employers take affirmative action to hire otherwise qualified candidates with disabilities.

COUNT TWO - REHABILITATION ACT § 504

41. Mr. Taylor realleges paragraphs 1-40 of this Complaint as if fully set forth herein.

42. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, prohibits federal programs or activities from discriminating against otherwise qualified people with disabilities in the terms or conditions of employment.

43. Due to his HIV status, Mr. Taylor is a person with a disability within the meaning of the Rehabilitation Act, and is regarded as such by the Department.

44. Given his job skills and physical condition, Mr. Taylor is capable of safely performing all the essential functions of a Foreign Service Officer without accommodation. The Department therefore violated section 504 of the Rehabilitation Act when it denied Mr. Taylor a Class I medical clearance or waiver solely on account of his HIV status.

45. In the alternative, given his job skills and physical condition, Mr. Taylor is capable of safely performing all the essential functions of a Foreign Service Officer with reasonable accommodation such as, but not limited to, granting Mr. Taylor a Class II medical clearance or waiver. The Department violated section 504 of the Rehabilitation Act when it denied Mr. Taylor such an accommodation and discriminated against him solely on account of his HIV status.

REQUEST FOR DECLARATORY JUDGMENT

46. Mr. Taylor realleges paragraphs 1-45 of this Complaint as if fully set forth herein.

47. An actual and present controversy exists between Mr. Taylor and the Department relating to their respective legal rights and duties:

- (a) Mr. Taylor contends that Defendant Colin Powell and the Department have discriminated against him on the basis of his disability in violation of the Rehabilitation Act of 1973, and that Mr. Taylor has been damaged thereby, and that, as a result, Mr. Taylor is entitled to relief from this Court; and
- (b) On information and belief, Defendant and the Department deny these contentions, and aver that the Department's policy of declining to hire people living with HIV as Foreign Service Officers does not violate federal law.

48. A judicial declaration among the parties is necessary and appropriate at this time in order that they promptly may ascertain and enforce their respective rights and obligations.

49. Mr. Taylor is entitled to a declaratory judgment that the Department has discriminated against him on the basis of disability; that the Department's policy of refusing to hire HIV-positive applicants as Foreign Service Officers violates the Rehabilitation Act; and that Mr. Taylor has been damaged thereby, and, as a result, is entitled to relief from this Court.

#### DEMAND FOR JURY TRIAL

50. Plaintiff Lorenzo Taylor demands a trial by jury on all issues.

#### RELIEF REQUESTED

51. Mr. Taylor realleges paragraphs 1-50 of this Complaint as if fully set forth herein.

WHEREFORE, Mr. Taylor respectfully requests the following:

- a) a trial by jury;

- b) that this Court enter a declaratory judgment that the Department has discriminated against Mr. Taylor on the basis of disability; that the Department's policy of refusing to hire HIV-positive applicants as Foreign Service Officers violates the Rehabilitation Act; and that Mr. Taylor has been damaged thereby, and, as a result, is entitled to relief from this Court;
- c) that this Court permanently enjoin the Department from enforcing its policy against hiring HIV-positive Foreign Service Officer candidates, including Mr. Taylor;
- d) that this Court order the Department to grant Mr. Taylor a Class I or II medical clearance or waiver; or to hire Mr. Taylor as a Foreign Service Officer with appropriate reasonable accommodation;
- e) that this Court order the Department to pay Mr. Taylor the value of his lost wages and benefits, as well as compensatory and punitive damages as authorized by the Rehabilitation Act;
- f) that this Court order the Department to pay attorneys' fees and costs as authorized by law; and

g) that this Court order any such further relief as it deems just and proper.

Respectfully submitted, this \_\_\_\_ day of September, 2003.

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