

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>CESAR MOSS,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 2:10cv-766-MEF</b>
	)	
<b>STATE OF ALABAMA DEPARTMENT</b>	)	
<b>OF CORRECTIONS; et al.,</b>	)	<b>(WO-Do Not Publish)</b>
	)	
<b>DEFENDANTS.</b>	)	

**MEMORANDUM OPINION AND ORDER**

It has come to this Court’s attention that the Complaint in this matter purports to seek relief pursuant to the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102, *et. seq.* (“ADA”). *See* Doc. # 1 at p. 2. Moreover, the Plaintiff’s brief in opposition to the Defendants’ motion for summary judgment also includes a reference to Plaintiff seeking relief pursuant to the ADA. Despite these two separate assertions, the Court has reviewed the Complaint and finds absolutely no factual basis for a claim pursuant to the ADA. Additionally, the evidentiary record contains no evidence which would support such a claim. While Defendants have asked for summary judgment on all of Plaintiff’s claims, they appear to have made no argument whatsoever about claims pursuant to the ADA.

Pursuant to the Federal Rules of Civil Procedure, this Court is authorized to grant summary judgment on grounds not raised by a party. In this case, this Court is inclined to grant a partial summary judgment to Defendants on the ADA claims pursuant to Federal Rule of Civil Procedure 56(f)(2) on the grounds that Plaintiff has neither alleged facts in support

of such claims, nor can support for such claims be found in the factual record before this Court. Any party wishing to oppose the Court's proposed actions shall show cause **on or before June 27, 2011**, with specific legal authority for their arguments, as to why such a partial summary judgment should not be granted to Defendants.

DONE this the 22<sup>nd</sup> day of June, 2011.

/s/ Mark E. Fuller  
UNITED STATES DISTRICT JUDGE