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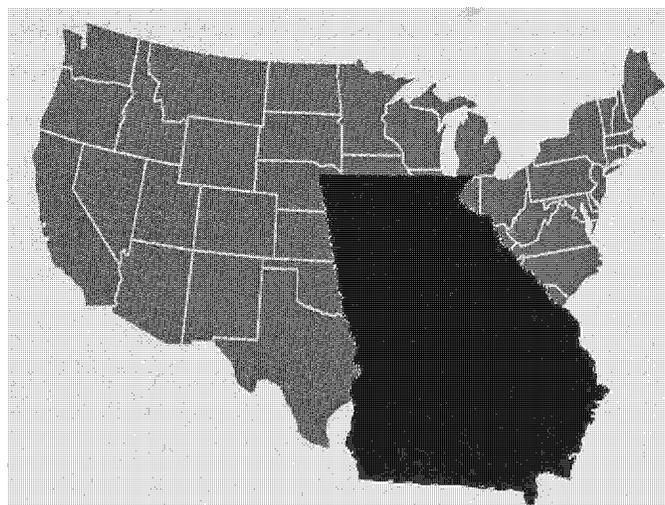
Re-Examining the Balance Between State and Federal Governments under Title II of the ADA

By Ameer Patel

On January 10, 2006, the U.S. Supreme Court unanimously reinstated a Georgia inmate's million dollar lawsuit giving him an opportunity to show that the state owes him damages for not accommodating his disability.¹

Plaintiff Tony Goodman, the paraplegic inmate, alleged that the state prison confined him for 23 to 24 hours per day in a narrow cell, in which he had trouble moving his wheelchair and did not accommodate his disability for using toilets and showers.² Goodman properly filed suit against the state of Georgia alleging that the conduct by the state prison violated the Eighth Amendment and a provision of Title II of the American with Disabilities Act ("ADA") that prohibits state governments from discriminating on the basis of a disability in public services or programs, such as prisons.³

Based on the precedent in *Miller v. King*, the Eleventh Circuit Court of Appeals ruled that the Eleventh Amendment precluded suits against states for money damages that are based on ADA



At issue is the federal government's ability to abrogate state immunity for Title II suits brought by state prison inmates.

provisions.⁴ The court expressed concern that the ADA "substantively rewrites the 8th Amendment" because it may require states to allow "qualified, disabled prisoners" to "participate in a broad array of services, programs, and activities" already offered to non-disabled prisoners.⁵

In early November, the case came before the U.S. Supreme Court on a writ of certiorari.⁶ The case was the latest episode of the Court's long history of reviewing the constitutional balance between the states and the federal government. At the heart of the review was the Supreme Court's examination of whether the Title II Act is a proper exercise of Congress's power under Section 5 of the Fourteenth Amendment, as applied to the administration of prison systems.⁷ The Court did not consider the merits of Goodman's Eighth Amendment claims.⁸

Georgia's amici arguments focused on the assertion that a state could not be sued due to the sovereign immunity of states under the Eleventh Amendment, which bars citizens from filing federal suits against the state except when Congress abrogates that immunity under the 14th Amendment.⁹ The United States and Goodman, however, focused on the prison's refusal to accommodate the inmate's disabilities as constituting "... den[ial of] the benefits of" the prison's "services, programs, or activities."¹⁰ Thus, they argued, the claim was valid because the conduct independently violated the provision of §1 of the Fourteenth Amendment.¹¹

After oral arguments on the amicus briefs, Justice Antonin Scalia, writing for the Supreme Court, said that "while the Members of this Court have disagreed regarding the scope of Congress's 'prophylactic' enforcement powers under § 5 of the Fourteenth Amendment, no one doubts that § 5 grants Congress the power to 'enforce...the provisions' of the Amendment by creating private remedies against the States for *actual* violations of those provisions."¹² Accordingly, at least "insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates

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state sovereign immunity,” Scalia stated in his opinion.¹³

The extent to which Goodman’s ADA claims exceeded conduct that actually violated the Constitution remains unclear. Consequently, Justice Scalia left it to the lower courts “to determine in the first instance, on a claim-by claim basis, (1) which aspects of the State’s alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth

“Insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity.” -Justice Scalia

Amendment, whether Congress’ purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.”¹⁴

“The decision was surprising since the Supreme Court usually splits 5-4 when determining how much power Congress has over the states,” said Jim Baker, press secretary for United Cerebral Palsy.¹⁵ “The resignation of Justice Sandra Day O’Connor might be an indication of why the court waited to address barring general suits by inmates under the ADA.”¹⁶

However, Justice Scalia did clearly address that the ADA is valid remedial § 5 legislation in a case where the state’s conduct violates the ADA and the Constitution.¹⁷ The plaintiff need not show that there were state constitutional violations prior to his claim; rather the mere fact that the conduct violated the Constitution is sufficient.¹⁸ Furthermore, the controversial as-applied analysis in *Tennessee v. Lane* was addressed when Justice Scalia held that the constitutionality of any application of the ADA must be determined on a claim-by-claim basis.¹⁹

¹ Scott Simmons, *Inmate Rights, States’ Rights Clash Before High Court*, FULTON DAILY REPORTER, (Nov. 10, 2005), available at <http://www.law.com/jsp/article.jsp?id=1131542411694>.

² *United States v. Georgia*, 126 S.Ct. 877, 879-80 (2006).

³ 42 U.S.C. § 12131 *et seq* (2005).

⁴ 254 F.3d 75, (11th Cir. 2001), *cert. granted*; 75 USLW 3558 (May 16, 2005) (No. 04-1236).

⁵ *Id.*

⁶ *United States v. Georgia*, 126 S.Ct. at 880.

⁷ *Id.*

⁸ *Id.*

⁹ Brief for Respondents at 2, *Georgia v. Goodman*, Nos. 04-1203, 04-1236 (Sept. 22, 2005).

¹⁰ Brief for Goodman at 8-9, *Georgia v. Goodman*, Nos. 04-1203, 04-1236 (S.Ct. July 29, 2005).

¹¹ *Id.*

¹² *United States v. Georgia*, 126 S.Ct. 877,882 (2006).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Telephone Interview with Jim Baker, Press Secretary, United Cerebral Palsy (Feb. 14, 2006).

¹⁶ *Id.*

¹⁷ *United States v. Georgia*, 126 S.Ct. at 882.

¹⁸ *Id.*

¹⁹ *Id.*

(AZT Patent, continued from page 8)

¹⁵ Telephone Interview with Tom Myers, General Counsel, AIDS Healthcare Foundation, Oct. 3, 2005

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Email Interview with Martin Delaney, Founding Director, Project Inform, (Oct. 12, 2005).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Steve Barry and Annabell Kanabus, *Providing Drug Treatment for Millions*, July 26, 2005, <http://www.avert.org/drugtreatment.htm>.

²² *Id.*

²³ *Chirac Blasts U.S. on AIDS Drugs*, July 13, 2004, <http://www.cbsnews.com/stories/2004/01/14/health/main629551.html>.

²⁴ *Anxiety Over Cost of New AIDS Drug*, Mar. 13, 2003, <http://www.cbsnews.com/storeis/2003/01/13/health/main62955.shtml>.

²⁵ *Glaxo’s Patent on First AIDS Drug, AZT ends, supra*, note 1.