



Shut Out of the Courthouse: Why People with Disabilities Need to Know What Sovereign Immunity Means

In 1991, the Americans with Disabilities Act (ADA) was signed by President Bush. The ADA makes it illegal to discriminate against people with disabilities in employment, public accommodations and public programs. The law can be enforced by the federal government or by individuals who claim that they have been harmed by discrimination.

Since the law went into effect, thousands of people with disabilities have sued to enforce their right to be free of discrimination in employment and in public programs. The ADA has also - through voluntary and court-ordered action - removed physical barriers that prevented people with disabilities from entering public and private buildings.

One of the problems that the ADA was designed to solve is discrimination by state governments. For example, Congress heard testimony that individuals with disabilities had been denied employment opportunities, the ability to participate in state-run health programs and unable to get in to state buildings because of physical barriers. To help individuals overcome such discrimination, the law gives people the right to sue state governments for money damages. States usually can't be sued by individuals because of a requirement in the U.S. Constitution called "sovereign immunity," or "Eleventh Amendment Immunity." To remove this barrier, the ADA provides that states are not immune from suits under the ADA and that individuals can even get an award of damages.

Courts allow states to avoid ADA protection against employment discrimination

Before 2001, individuals with disabilities could sue state government employers for back pay and other damages.

State Discrimination in Employment

Patricia Garrett, a nurse at the University of Alabama hospital, was demoted and fired from her job at the University of Alabama when she had breast cancer. She sued Alabama under the ADA provisions forbidding discrimination in employment.

When sued, Alabama admitted that Congress clearly intended that Mrs. Garrett be able to file this suit, but argued that Congress didn't have the power to authorize it. The trial court and appeals court didn't agree with the state's position, but the U.S. Supreme Court did. It ruled, in a five to four decision, that the right of the states not to be sued was more powerful than Congress' power to outlaw disability discrimination. After the Supreme Court's decision, the right of all state employees to hold states fully accountable for discriminating against disabilities was eliminated.

Courts consider ADA protection against discrimination in public programs

Another part of the ADA forbids states from discriminating against people with disabilities in public services and programs. For example:

- ▶ States and local governments cannot use unnecessary eligibility requirements that screen out people for disabilities in programs operated by those governments (such as health care or job training);
- ▶ People with disabilities must have reasonable access to government activities such as voting, jury service or attending local government hearings;
- ▶ People with disabilities must be able to use public telephone emergency services such as 911;
- ▶ New buildings must be constructed so that they are physically accessible to people with disabilities that affect their mobility.

Congress specified that this part of the ADA was also to be enforced against the states.

State Discrimination in Public Services

In 1996, George Lane, who uses a wheelchair or crutches for mobility, was required to appear in state court in Tennessee to answer a minor criminal charge. The courtroom was on the second floor and there was no elevator. In order to make it to his hearing, Mr. Lane had to crawl up the stairs. When he was required to go to court again, he refused to crawl up the steps and was arrested for failing to appear at his hearing.

Mr. Lane sued the state of Tennessee for violating the ADA's ban on disability discrimination in public programs. As Alabama had in *Garrett*, Tennessee argued that Congress did not have the power to make the state liable for damages under the ADA. Tennessee went even further, claiming that Congress didn't even have the power to pass the law.

Advocates were afraid that the Supreme Court would make a decision similar to *Garrett* and strike down the part of the ADA that would allow Mr. Lane to sue Tennessee for damages. They were even more fearful that the Court might strike down the law altogether, leaving states free to discriminate. However, advocates received better news than expected. In 2004, the Court, in another 5 to 4 decision, held that Tennessee could be sued for damages for what happened to Mr. Lane. The court did not go further, however, and did not make it clear what might happen in other cases where the discrimination in public accommodations did not affect access to court proceedings. So, it is still possible that some of the ADA's other protections against state discrimination could be cut back or eliminated in the future.

People with disabilities and others interested in these issues should follow developments in this area.

For more information:

- ✓ Monitor legal developments at www.healthlaw.org/courtwatch.shtml and www.napas.org;
- ✓ Find out more about the ADA at www.doj.gov (Americans with Disabilities Act, Questions & Answers);
- ✓ Follow news reports about the ADA and the Supreme Court;
- ✓ Track nominations to the Federal courts, including the Supreme Court, and let your Senators know your opinions.

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