

“I Respectfully Dissent”: Case of Alabama vs. Garrett
by Jeff Shields

Patricia Garrett and Milton Ash are both state employees for Alabama and they are suing their employer for violations of the Americans with Disabilities Act (ADA) of 1990 under Title I. The “General rule” of Title I in the ADA (volume 42 of the U.S. Code) states that “no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment” (EEOC, 1997).

As summarized by Justice Rehnquist (2001), Ms. Garrett was the Director of Nursing, OB/Gyn/Neonatal Services, for the University of Alabama and was demoted as a result of the time she spent out of work, being treated (underwent lumpectomy, radiation treatment, and chemotherapy) for breast cancer. Not only did she lose her position as Director of Nursing, but she also was given a pay cut as a result of her new position as a nurse manager (Supreme court decision).

Mr. Ash worked for the Alabama Department of Youth Services as a security guard before filing a discrimination claim against them. He suffered from chronic asthma and sleep apnea while at work receiving no accommodations for his condition. Mr. Ash had requested to be placed in work conditions away from carbon monoxide and cigarette smoke, which would have forced the agency to enforce its own already in place no smoking policy. He also wished to be reassigned to day shifts. Neither of the requests were met (Supreme court decision).

These two cases have been combined into one: Board of Trustees of the University of Alabama vs. Garrett. Two key Constitutional Amendments that factor largely into this case are the Eleventh and Fourteenth Amendments. It is important to understand the relationship between these amendments because there exists a delicate balance, often tilted by the interpretation of the court. The Eleventh Amendment states: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State” (Findlaw). The purpose of the Eleventh Amendment is to give states protection from the Federal government so they can function somewhat independently. However, if issues of constitutionality come into play, then the Fourteenth Amendment factors in. It serves to ensure equal protection of civil rights across state boundaries (Findlaw). In the 20th Century the Fourteenth Amendment was instrumental in breaking “Jim Crow” laws, desegregating our schools, and providing equal job opportunities. With this case I am reminded of its need today.

There is a negative pattern of discrimination occurring in the state of Alabama as well as the whole country. This case in particular has been illuminated because it represents one of many that exist all across the nation (Supreme Court Decision). Everyone deserves to be treated fairly by his or her employer, but some have either circumstantial or permanent conditions that need to be considered. The Americans with Disabilities Act addresses this issue. Additionally, it protects the employer from “undue hardship” (ADA, Title I). Meaning that the employer cannot be expected to cater to an employee beyond a “reasonable accommodation” (ADA, Title I). However, this does not seem to cause sway here. The employer in this case was perfectly able to allow Ms.

Garrett to return to her position. And it would not have caused an “undue hardship” (ADA, Title I) to put Mr. Ash on the day shift or simply enforce its own no smoking policy.

The court is being tested. This is a civil rights issue (2001) and the court must decide whether to allow states the ability to restrict these rights (Jones, Congressional Research Service). However, we cannot forget why the ADA was enacted, which was to set a national standard for each state to follow with regard to those with a disability. With the evidence before this court, it does not appear that states are meeting the standard.

To seek out violations of the ADA one does not have to look much further than the findings from the Task Force on the Rights and Empowerment of Americans with Disabilities (Supreme Court decision). Justice Breyer notes that here is where one can clearly find states refusing to promote blind people even though they are working at an agency for the blind; deaf employees being forced to test for “listening skills” as a teacher for the deaf; and children with down syndrome being turned away from the zoo because of false stereotypes (Supreme Court Decision). These are just a few. The list offered from this Task Force goes into the hundreds.

The evidence of discrimination towards people with a disability is overwhelming. Still, some may say (e.g. Justice Rehnquist) what lacks in this specific case is well-documented judicial evidence. But, this is because states are not being pressured sufficiently by the Federal government to abide by the ADA, which allows these unjust acts to slip through the cracks. Admittedly, the ADA is a very expansive piece of legislation. But, as believed by Justice Breyer, this broadness makes it all that

more important for the courts to interpret the legislation so states know how to enforce it (Supreme Court Decision). Judicial power must be used here to encourage a revision of preexisting or non-existing local laws. This ruling will help guide the states, not control them.

Immunity of the States will have to be abrogated in making this decision. Meaning that an individual will be using the Federal or high court system to prosecute against his or her own state, in turn, compromising the Eleventh Amendment. This is not something that I take lightly. That is why I must stress the definition of the Fourteenth Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (Findlaw). Alexandra Abboud of the Washington File points out that one function of the Supreme Court has been to expand the Fourteenth Amendment to "all people" so not to exclude certain types of people (U.S. Department of State). This helps serve groups, like those with disabilities, whose discrimination is not yet realized.

Before reaching the Supreme Court, the United States Court of Appeals reviewed this case and referred to another case of the Seminole Tribe of Florida Vs. Florida. This case also dealt with the Eleventh Amendment rights to the State. It was stated by Appeal Judge Roney that this Amendment can be exceeded if "Congress has 'unequivocally expressed its intent to abrogate the immunity,' " which "must be obvious from 'a clear legislative statement,' " and second, that Congress has acted "pursuant to a valid exercise of power" (Court of Appeals Decision, Garret v. Alabama). Basically, the Court of

Appeals was asking for plain and sufficient evidence and a just cause. Both of these exist in my writing here.

Throughout this brief I have discussed the issue of discrimination towards people with a disability. The case of the Board of Trustees of the University of Alabama vs. Garrett is but one. It encapsulates the large number of discriminatory acts occurring in states across the country. The Task Force's findings show this very fact. This case involves state employed individuals who were not given fair treatment. The state of Alabama as a result must pay the price. They violated a national law and the Fourteenth Amendment guarantees that each and every person living in the United States of America is not excluded from such a law. Therefore, I urge this court to rule in favor of Garrett in the lawsuit against the Board of Trustees of the University of Alabama.

References