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University of Alabama v. Garrett: Federalism Limits on the Americans with Disabilities Act

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Summary

On Feb. 21, 2001, the Supreme Court in a 5-4 decision, held that the Eleventh Amendment bars suits to recover monetary damages by state employees under title I of the Americans with Disabilities Act (ADA). Although the ruling is narrowly focused concerning the ADA, it has broad implications regarding federal-state power and emphasizes the difficulty of drafting federal legislation under section 5 of the Fourteenth Amendment that will withstand Eleventh Amendment scrutiny. This report will briefly discuss *Garrett* and its implications for the ADA, federalism and congressional power. For more detailed information on the ADA see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*. This report will not be updated.

Supreme Court Interpretations of the Eleventh Amendment. Although federalism was for many years largely ignored, starting in 1992 with *New York v. United States*[1] the Supreme Court began what some commentators have referred to as a "rebirth of federalism."[2] A recent chapter in this "rebirth" involves a trio of cases from June 1999 where the Supreme Court expanded state sovereign immunity from suit under the Eleventh Amendment.[3] Essentially, these cases, combined with several from previous terms, limit

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[1] 505 U.S. 144 (1992).

[2] Curt A. Levey, "The Quiet Revolution Conservatives Continue Federalism Resurgence by Expanding State Immunity," 157 N.J.L.J. 707 (August 23, 1999). See also Thomas, "Federalism and the Constitution: Limits on Congressional Power," CRS Rep. No. 30315.

[3] *Alden v. Maine,* 527 U.S. 706 (1999)(Congress lacks the authority when exercising Article I powers to subject non-consenting states to private suits for damages in state courts); *College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.,* 527 U. S.666 (1999) (The Trademark Remedy Clarification Act, TRCA, which subjected states to suit for false and misleading advertising, did not validly abrogate state sovereign immunity; neither the right to be free from a business competitor's false advertising nor a more generalized right to be secure in (continued...)

the extent to which Congress can abrogate the state's sovereign immunity from suit. In other words, Congress may statutorily allow a state to be sued by individuals but this congressional power is limited and has become even more circumscribed with the Court's determination in *Garrett.*

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." The Supreme Court has found that the Eleventh Amendment applies to suits by citizens against their own states and cannot be abrogated by the use of Article I powers but that section 5 of the Fourteenth Amendment can be used for abrogation in certain limited circumstances. Section 5 of the Fourteenth Amendment states: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

The circumstances where section 5 of the Fourteenth Amendment can be used to abrogate the Eleventh Amendment were discussed in the recent Supreme Court decisions. They reiterated the principle that the Congress may abrogate state immunity from suit under the Fourteenth Amendment and found that there were three conditions necessary for successful abrogation.

- Congressional power is limited to the enactment of "appropriate" legislation to enforce the substantive provisions of the Fourteenth Amendment.
- The legislation must be remedial in nature.
- There must be a "congruence and proportionality" between the injury to be prevented and the means adopted to that end.

The clearest *pre-Garrett* discussion of these conditions is found in *City of Boerne v. Flores*[4] where the Supreme Court held that the Religious Freedom Restoration Act (RFRA) exceeded congressional power. In reaching its holding, the Court acknowledged that section 5 was a positive grant of legislative power to Congress. "Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional...."[5] The grant of authority to Congress is not unlimited, however. Acknowledging that "the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies," the Court emphasized that there must be a "congruence and proportionality between the injury to be

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[3] (...continued)
one's business interests qualifies as a property right protected by the Due Process Clause); *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank,*527 U.S. 627 (1999)(Congress may abrogate state sovereign immunity but must do so through legislation that is appropriate within the meaning of section 5 of the Fourteenth Amendment; Congress must identify conduct that violates the Fourteenth Amendment and must tailor its legislation to remedying or preventing such conduct).

[4] 521 U.S. 507 (1997).

[5] *Id.* at 518.

prevented or remedied and the means adopted to that end."[6] In applying this analysis to factual situations, the Court compared and contrasted RFRA and the Voting Rights Act. Congress had before it a record of state voting laws passed due to bigotry when it passed the Voting Rights Act; the Court found no such record of religious persecution occurring during the past forty years examined during the enactment of RFRA. But even if there had been a stronger legislative record, the Court found that RFRA could not be considered remedial. "RFRA is so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior."[7] The Court observed that RFRA would require a state to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest, a test that "is the most demanding test known to constitutional law."[8]

The Supreme Court's decision in *Kimel v. Florida Board of Regents*[9] used the same reasoning advanced in its earlier Eleventh Amendment cases to conclude that the Age Discrimination in Employment Act (ADEA) exceeded congressional authority under section 5 of the Fourteenth Amendment. The ADEA prohibits discrimination by an employer due to age and provides several exceptions, for example, where there is a "bona fide occupational qualification." In 1974 the ADEA was amended to extend its discrimination prohibition to the States.

Quoting extensively from *City of Boerne v. Flores,* the *Kimel* Court adhered to its conditions for abrogation limiting congressional power to (1) the enactment of "appropriate legislation," (2) remedial legislation, and (3) a "congruence and proportionality" between the injury to be prevented and the means adopted to that end. The ADEA requirements were not found to be "appropriate." The Court stated that "the substantive requirements the ADEA imposes on state and local governments are disproportionate to any unconstitutional conduct that conceivably could be targeted under the Equal Protection Clause."[10] Age classifications were not seen as "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy."[11] In addition, the Court found, older persons have not been subjected to a "history of purposeful unequal treatment" and "old age does not define a discrete and insular minority because all persons, if they live out their normal life spans, will experience it."[12] As a consequence, the ADEA was found to prohibit "substantially more state employment decisions and practices than would likely be held unconstitutional under the applicable equal protection, rational basis standard."[13]

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[6] *Id.* at 519-520.

[7] *Id.* at 532.

[8] *Id.* at 534.

[9] 528 U.S. 62.

[10] *Kimel* at 82-83.

[11] *Id.* at 83 citing *Cleburne v. Cleburne Living Center,* 473 U.S. 432, 440 (1985).

[12] *Id.*

[13] *Id.* at 86.

University of Alabama v. Garrett. In *Garrett* the Supreme Court expanded upon its interpretation of federalism and found that the Eleventh Amendment bars the recovery of monetary damages by state employees under title I of the ADA. *Garrett* involved two consolidated cases brought by separate Alabama employees. One of the employees, Patricia Garrett, had been undergoing treatment for breast cancer when, she alleged, she was transferred to a lesser position after having been told that her supervisor did not like sick people. The second plaintiff, Milton Ash, alleged that the Alabama Department of Human Services did not enforce its non-smoking policy and that, therefore, he was not able to control his asthma. The Eleventh Circuit held that the state was not immune from suits for damages. The Supreme Court reversed.

Writing for the majority, Chief Justice Rehnquist briefly examined the ADA's statutory language and the general principles of the Eleventh Amendment immunity. He observed that the first step in applying these principles was to identify the scope of the constitutional right at issue, in other words, to identify constitutional rights to individuals with disabilities have to be free from discrimination. Discussing *Cleburne v. Cleburne Living Center*,[14] Chief Justice Rehnquist emphasized that discrimination against individuals with disabilities is entitled to only "minimum 'rational-basis' review" and stated: "Thus, the result of *Cleburne* is that States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions towards such individuals are rational. They could quite hard headedly - and perhaps hardheartedly - hold to job qualification requirements which do not make allowance for the disabled. If special accommodations for the disabled are to be required, they have to come from positive law and not through the Equal Protection Clause."[15]

After examining the constitutional rights of individuals with disabilities, the majority opinion in *Garrett* examined whether Congress had identified a history and pattern of unconstitutional employment discrimination by the states against individuals with disabilities. Chief Justice Rehnquist observed that the authority of Congress under section 5 of the Fourteenth Amendment "is appropriately exercised only in response to state transgressions."[16] He found that the legislative history of the ADA did not identify such a pattern. Although the record was replete with examples of discrimination, Chief Justice Rehnquist noted that most of these examples were drawn from units of local government and not the states and that "the Eleventh Amendment does not extend its immunity to units of local government."[17] Although the examples regarding state discrimination involved, among others, a department head at the University of North Carolina who refused to hire and applicant who was blind, a microfilmer at the Kansas Department of Transportation who was fired due to his epilepsy; and deaf workers at the University of Oklahoma who were paid a lower salary than those who could hear, the *Garrett* majority observed that whether such actions would rise to irrational constitutional discrimination was debatable.

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[14] 473 U.S. 432 (1985). In *Cleburne*, the Supreme Court applied the Fourteenth Amendment to individuals with mental retardation and found that, although such individuals were not part of a suspect class, a zoning ordinance which excluded group homes from certain locations violated the Fourteenth Amendment.

[15] Slip op. at 9-10.

[16] Slip op. at 10.

[17] Slip op. at 11.

The majority opinion went on to note that even if constitutional discrimination were assumed for these instances, they do not suggest the pattern of unconstitutional discrimination necessary for enactment of legislation under section 5 of the Fourteenth Amendment. Chief Justice Rehnquist further stated that "had Congress truly understood this information as reflecting a pattern of unconstitutional behavior by the States, one would expect some mention of that conclusion in the Act's legislative findings. There is none."[18]

The *Garrett* majority observed that even if a pattern of unconstitutional discrimination by states was found, issues relating to whether there was a "congruence and proportionality" between the injury to be prevented and the means adopted would raise concerns. Chief Justice Rehnquist observed that "it would be entirely rational (and therefore constitutional) for a state employer to conserve scarce financial resources by hiring employees who are able to use existing facilities" but that the ADA requires that existing facilities be readily accessible to and usable by individuals with disabilities."[19] The ADA's accommodation requirements were seen as "far exceed(ing) what is constitutionally required."[20] The ADA's requirements forbidding standards, criteria, or methods of administration that disparately impact individuals with disabilities were also seen as inconsistent with the requirements for legislation under section 5 of the Fourteenth Amendment.

In conclusion, the majority opinion stated that "Congress is the final authority as to desirable public policy, but in order to authorize private individuals to recover money damages against the States, there must be a pattern of discrimination by the States which violates the Fourteenth Amendment, and the remedy imposed by Congress must be congruent and proportional to the targeted violation. Those requirements are not met here...."[21] However, after reaching this holding, the *Garrett* majority went on to note that it does not mean that individuals with disabilities have no federal recourse. The opinion was limited to the recovery of monetary damages and the standards of title I of the ADA were seen as still applicable to the states. In addition, the Court noted that the federal government could enforce those rights in actions for monetary damages and that state law would offer some means of redress.

In a concurring opinion, Justices Kennedy and O'Connor, emphasized the limited nature of the opinion stating that "what is in question is not whether the Congress, acting pursuant to a power granted to it by the Constitution, can compel the States to act. What is involved is only the question whether the States can be subjected to liability in suits brought not be the Federal Government but by private persons seeking to collect moneys form the state treasury without the consent of the State."[22]

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[18] Slip op. at 13.

[19] Slip op. at 14.

[20] Slip op. at 14.

[21] Slip op. at 16.

[22] Concurring op. at 3.

Justice Breyer, joined by Justices Stevens, Souter and Ginsburg, strongly disagreed with the majority's opinion and stated that Congress could have reasonably concluded that the title I remedies of the ADA were appropriate legislation under the Fourteenth Amendment. The emphasis in the majority opinion on the limited legislative history was described as ignoring the "powerful evidence of discriminatory treatment throughout society in general" which "implicates state governments as well, for state agencies form part of that same larger society."[23] The rules the majority used to find the legislative record inadequate were seen as flawed, using standards more appropriately applied to judges than to Congress. In the view of the dissenters, Congress has broad authority to remedy violations of the Fourteenth Amendment. "There is simply no reason to require Congress, seeking to determine facts relevant to the exercise of its §5 authority, to adopt rules or presumptions that reflect a court's institutional limitations. Unlike courts, Congress can readily gather facts from across the Nation, assess the magnitude of a problem, and more easily find an appropriate remedy."[24]

The dissent also took issue with the interpretation of the congruency and proportionality standard and compared the majority's "harsh review of Congress' use of its §5 power" to the restrictions on the commerce power made by the Supreme Court in the 1930's and later rejected. In conclusion, Just Breyer stated: "The Court, through its evidentiary demands, its non-deferential review, and its failure to distinguish between judicial and legislative constitutional competencies, improperly invades a power that the Constitution assigns to Congress....Its decision saps §5 of independent force, effectively 'confin(ing) the legislative power...to the insignificant role of abrogating only those state laws that the judicial branch [is] prepared to adjudge unconstitutional.'"[25]

Implications of *Garrett*. *University of Alabama v. Garrett* is a major decision, further emphasizing the Court's federalism theories and raising separation of powers issues as well.[26] Although the majority does not rule out all legislation enacted pursuant to section 5 of the Fourteenth Amendment, it has made the enactment of such legislation significantly less likely to withstand Eleventh Amendment scrutiny. In addition, the Court's comments on disparate impact discrimination could signal a challenge to other uses of this approach and some commentators have stated this could have implications for other statutes, including title VII of the Civil Rights Act which prohibits racial discrimination.[27] More specifically, with regard to the ADA, the majority took pains to describe the limited nature of the holding. It is limited to title I of the ADA, deals only with monetary damages and leaves open other avenues of relief such as enforcement by the Equal Employment Opportunities Commission and state laws. However, the absence of monetary damages does make individual suits against states much less likely and has been described as a significant blow to ADA enforcement.

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[23] Dissenting op. at 3.

[24] Dissenting op. at 9.

[25] Dissenting op. at 14, citing *Katzenbach v. Morgan,* 384 U.S. 641, 648, n.7.

[26] Linda Greenhouse, "The High Court's Target: Congress," *The New York Times* wk 3 (Feb 25, 2001.)

[27] *Id.*

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