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The Americans with Disabilities Act (ADA): Pending Supreme Court Decisions 2002-2003

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Summary

The Supreme Court has granted certiorari in two cases for the 2002-2003 term. In *Medical Board of California v. Hason* the Court will address the issue of whether the Eleventh Amendment bars suit under title II of the ADA against the California Medical Board for the denial of a medical license due to the applicant's mental illness. This case is the latest in a series of federalism cases and will be closely watched. The Court has also granted certiorari in *Clackamas Gastroenterology Associates P.C. v. Wells* to determine whether or not to apply the economic reality test to determine if the clinic's physician-shareholders are counted as "employees" for the purpose of determining whether the clinic is a covered entity under the ADA. This case also has implications for other federal civil rights statutes, such as title VII of the Civil Rights Act of 1964, which have similar language. This report will be update as appropriate. For a more detailed discussion of all of the Supreme Court cases decided under the ADA see CRS Report RL31401, *The Americans with Disabilities Act: Supreme Court Decisions*, by Nancy Lee Jones. For a more detailed discussion of the ADA see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

Introduction and Background

The Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 *et seq.*, provides broad nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services operated by private entities, transportation, and telecommunications. Enacted in 1990, the ADA is a civil rights statute that has as its purpose "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[1] It has been the subject of numerous lower court decisions, and the Supreme Court has decided fifteen ADA cases.

[1] 42 U.S.C. §12102(b)(1).

Medical Board of California v. Hason

Medical Board of California v. Hason[2] involves a doctor who was denied a medical license by the medical board of California because he had been treated for depression and drug dependency. He sued under title II of the ADA which prohibits discrimination against individuals with disabilities by states or localities. The state argued that the Eleventh Amendment barred suits against the state medical board under the ADA but the ninth circuit court of appeals rejected this argument, finding that the state was subject to suit under the ADA. The Supreme Court granted *certiorari* to address the Eleventh Amendment issue.

Hason follows on the heals of *Garrett v. University of Alabama*[3] where 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.[4] Although this ruling was narrowly focused concerning the ADA, it had broad implications regarding federal-state power[5] and emphasized the difficulty of drafting federal legislation under section 5 of the Fourteenth Amendment that will withstand Eleventh Amendment scrutiny. The majority opinion in *Garrett* 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...."[6] A strong dissent by Justice Breyer, joined by Justices Stevens, Souter and Ginsburg, argued that the *Garrett* majority ignored powerful evidence of discriminatory treatment.

One important distinction between *Garrett* and *Hason* is that *Garrett* involved a challenge to title I of the ADA which prohibits employment discrimination while *Hason* concerns title II, which prohibits discrimination against individuals with disabilities by states and localities. *Garrett* is limited to state employees while the potential reach of *Hason* is much broader and could include participants in activities covered by title II such as education, public transportation, and voting. More significantly, *Hason* may establish the parameters of the Court's holdings with regard to the state's Eleventh Amendment immunity from suit. The Supreme Court has emphasized in prior decisions that there must be a pattern of discrimination by the states that is documented by Congress in order for a statute to withstand Eleventh Amendment scrutiny. In *Garrett* the record in the

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[2] 279 F.3d 1167 (9th Cir. 2002), *cert.* granted 71 U.S.L.W. 3347 (Nov. 19, 2002).

[3] 531 U.S. 356 (2001). For a more detailed discussion of *Garrett* see Nancy Lee Jones, "*University of Alabama v. Garrett:* Federalism Limits on the Americans with Disabilities Act," CRS Rept. RS20828.

[4] The Supreme Court, starting in 1992 with *New York v. United States*, 505 U.S. 144 (1992), began what some commentators have referred to as a "rebirth of federalism." For a more detailed discussion of these cases which led up to *Garrett* see Nancy Lee Jones, "*University of Alabama v. Garrett:* Federalism Limits on the Americans with Disabilities Act," CRS Rept. RS20828.

[5] For a detailed discussion of federalism see Kenneth Thomas, "Federalism and the Constitution: Limits on Congressional Power," CRS Rept. RL30315.

[6] 531 U.S. 356, 374 (2001).

ADA regarding employment discrimination was found to be insufficient to abrogate Eleventh Amendment immunity. However, Chief Justice Rehnquist writing for the majority in *Garrett* contrasted the ADA's legislative history on employment discrimination with that on state conduct that violates title II, noting that the evidence regarding employment was sparse compared with the evidence of state conduct. The decision in *Hason* may well be critical not only for the interpretation of the ADA but also for the development of constitutional doctrine on federalism.

Clackamas Gastroenterology Associates P.C. v. Wells

Title I of the ADA, like title VII of the Civil Rights Act of 1964, covers employers engaged in an industry affecting commerce who have fifteen or more employees.[7] In *Clackamas* the Court is presented with the issue of whether a federal court should apply the economic realities test to determine if the medical clinic's physician-shareholders are counted as "employees" for the purpose of determining if they are covered by the ADA.[8]

Clackamas Gastroenterology Associates was sued by a former employee who alleged that her employment had been terminated because of her disability in violation of the ADA. Clackamas had four physician-shareholders who all participated in the management and operations of the medical practice and were the shareholders and directors of the clinic. The ninth circuit held that the physician-shareholders were to be counted as employees and rejected the application of the "economic realities" test that had been used by the seventh circuit. The economic realities test, the ninth circuit opined, could be applied "under appropriate circumstances" to prevent a firm "from labeling the bulk of its employees as partners simply to insulate itself from liability for discrimination."[9] However, the ninth circuit found that "because the decision to incorporate is presumably a voluntary one, there is no reason to permit a professional corporation to secure the 'best of both possible worlds' by allowing it both to assert its corporate status in order to reap the tax and civil liability advantages and to argue that it is like a partnership in order to avoid liability for unlawful employment discrimination."[10]

On the other hand, the dissent to the ninth circuit decision argued that "it is apparent that a physician's professional corporation in Oregon retains important legal aspects of a partnership.... the four physician-shareholders...participate in the management and operation of the entity's medical practice, attend monthly management meetings, and share profits from the professional corporation through an annual bonus system."[11] The dissent described the purpose of the limitation of coverage to entities with fifteen or more employees as a way to divide larger businesses from smaller ones and to "spare very

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[7] 42 U.S.C. §12111(5).

[8] 71 U.S.L.W. 3062 (July 16, 2002), *cert.* granted, 71 U.S.L.W. 3233 (Oct. 8, 2002). Oral argument will be on Tuesday, February 25, 2003.

[9] 271 F.3d 903, 905 (9th Cir. 2001).

[10] *Id.*

[11] *Id.* at 908.

small firms from the potentially crushing expense of mastering the intricacies of the antidiscrimination laws."[12]

There are reported to be approximately 430,000 employers with between fifteen and nineteen employees as of 1999.[13] *Clackamas* could be a significant decision not only for ADA cases but also for cases brought under title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act, since their similar language would most likely be construed in the same manner.

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[12] *Id.* quoting *Papa v. Katy Industry Inc.*, 166 F.3d 937, 940 (7th Cir. 1999).

[13] "Supreme Court Ruling in *Wells* Case will have Broad Impact, Lawyer Says," 24 *Disability Compliance Bulletin* (Oct. 18, 2002).