No. 99-2725

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

_____

JEFFREY WEBB,

Plaintiff-Appellant

v.

CLYDE L. CHOATE MENTAL HEALTH AND DEVELOPMENTAL CENTER, a facility of the State of Illinois Department of Mental Health and Developmental Disabilities, THOMAS RICHARDS, Facility Director, in his official capacity, MIKE MOORMAN, Labor Relations Administrator, in his official capacity, ALICE KERNS, Human Resources Director, Equal Employment Opportunity Officer, Affirmative Action Office, Americans with Disabilities and Section 504 Coordinator, in her official capacity,

Defendants-Appellees

_____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ILLINOIS
(Hon. David R. Herndon)

_____

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANT AND URGING REVERSAL

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Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANT AND URGING REVERSAL

INTEREST OF THE UNITED STATES

This appeal involves the ability of individuals to seek judicial enforcement of Title I of the Americans with Disabilities Act (ADA) against state officials for injunctive relief. The Attorney General has authority to enforce Title I. See 42 U.S.C. 12117. However, because of the inherent limitations on administrative enforcement mechanisms and on the litigation resources of the United States, the United States has an interest in ensuring that the ADA be enforced in federal court by private parties acting as "private attorneys general."

STATEMENT OF THE ISSUES

The United States will address the following question:

Whether an individual may sue a state official in his official capacity to enjoin continuing violations of Title I of the Americans with Disabilities Act.

STATEMENT OF THE CASE

1. The Americans with Disabilities Act (ADA) targets three particular areas of discrimination against persons with disabilities. Title I, 42 U.S.C. 12111-12117, addresses discrimination by employers; Title II, 42 U.S.C. 12131-12165, addresses discrimination by governmental entities; and Title III, 42 U.S.C. 12181-12189, addresses discrimination in public accommodations operated by private entities. This case arises under Title I.

Title I provides that "[n]o 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." 42 U.S.C. 12112(a). A "covered entity" is defined to include an "employer," which in turn is defined as a "person engaged in an industry affecting commerce who has 15 or more employees * * * and any agent of such person." 42 U.S.C. 12111(2) & (5)(A). The term "person" incorporates the definition from Title VII of the Civil Rights Act of 1964, which includes States. 42 U.S.C. 12111(7); 42

U.S.C. 2000e(a); Fitzpatrick v. Bitzer, 427 U.S. 445, 449 & n.2 (1976).

Title I incorporates by reference the enforcement provisions of Title VII. 42 U.S.C. 12117(a). Title VII provides that after filing a charge with the Equal Employment Opportunity Commission against any "respondent" (defined to include an "employer," 42 U.S.C. 2000e(n)), and receiving a right-to-sue notice, "a civil action may be brought against the respondent named in the charge * * * by the person claiming to be aggrieved." 42 U.S.C. 2000e-5(f). A successful plaintiff is entitled to reinstatement, back pay, and "any other equitable relief as the court deems appropriate," 42 U.S.C. 2000e-5(g), as well as compensatory damages and attorneys fees. See 42 U.S.C. 1981a, 42 U.S.C. 2000e-5(k).

2. Plaintiff worked since 1982 for the Clyde L. Choate Mental Health and Developmental Center, a facility of the State of Illinois Department of Mental Health and Developmental Disabilities. After a medical leave of absence, plaintiff requested several accommodations to facilitate his return. Defendants declined to grant some of the accommodations and plaintiff did not return to work. Plaintiff sued the Center and various state officials in their official capacities under Title I of the ADA for monetary and injunctive relief. The district court granted summary judgment for defendants on the merits.

A timely appeal followed. In defendants' brief, they argued, as an alternative grounds for affirmance, that the

Eleventh Amendment barred the action from proceeding, relying on this Court's recent decisions in Stevens v. Illinois Department of Transportation, No. 98-3350, 2000 WL 365947 (Apr. 11, 2000), and Erickson v. Board of Governors, 207 F.3d 945 (2000). Defendants argued (Br. 18) that "[b]ecause the State is immune from a suit by an individual in federal court under the ADA, Webb's claim against Choate, and against the Choate employees in their official capacities, must be dismissed."

SUMMARY OF ARGUMENT

This case should be held in abeyance until the Supreme Court issues its opinion in University of Alabama Board of Trustees v. Garrett, No. 99-1240, which will definitively resolve the validity of the abrogation in the Americans with Disabilities Act (ADA). If this Court elects to proceed before Garrett is decided, however, it should consider the claims for injunctive relief against those defendants who are state officials and who are being sued in their official capacities because those claims are not barred by the Eleventh Amendment. Under the doctrine of Ex parte Young, a state official sued for prospective relief to enjoin a continuing violation of federal law is not entitled to invoke the State's sovereign immunity.

In enacting Title I of the ADA, Congress intended to authorize suits against state officials in their official capacity. The statute specifically authorizes suits against "agents," which easily encompasses official-capacity suits. Title I incorporates the definitions and remedial scheme of Title

VII of the Civil Rights Act of 1964, which has consistently been found (by this Court and others) to permit suits against government officials in their official capacities. To hold otherwise would cast aside clear precedent of this and every other circuit to address the issue and would deprive individuals of an established tool to vindicate federal rights without intruding on States' sovereign immunity.

ARGUMENT

PLAINTIFF MAY SEEK INJUNCTIVE RELIEF AGAINST STATE OFFICIALS SUED IN THEIR OFFICIAL CAPACITIES TO ENJOIN CONTINUING VIOLATIONS OF TITLE I OF THE AMERICANS WITH DISABILITIES ACT

Defendants argue (Br. 16-18) that this Court must dismiss this appeal on the ground that all defendants are entitled to Eleventh Amendment immunity for all the relief plaintiff seeks. That argument reflects a misunderstanding of the nature of Eleventh Amendment immunity and this Court's holdings in Stevens v. Illinois Department of Transportation, No. 98-3350, 2000 WL 365947 (Apr. 11, 2000), and Erickson v. Board of Governors, 207 F.3d 945 (2000). The Eleventh Amendment does not bar claims against state officials sued in their official capacities for prospective injunctive relief, so such claims may proceed without any abrogation.

The Supreme Court has granted a writ of certiorari to address whether the Americans with Disabilities Act (ADA) validly abrogates Eleventh Amendment immunity in University of Alabama Board of Trustees v. Garrett, No. 99-1240, 2000 WL 122158 (Apr. 17, 2000). This Court should hold this appeal until Garrett is

resolved. For if Garrett holds that the ADA contains a valid abrogation, plaintiff's suit will be able to proceed for all the relief he initially sought, including retrospective relief. Should this Court elect to proceed in advance of the Supreme Court's decision in Garrett, we explain below why the Eleventh Amendment is no bar to plaintiff's suit for injunctive relief against state officials in their official capacity regardless of whether the abrogation is valid.

A. The Eleventh Amendment Is No Bar To Private Suits Against State Officials To Enjoin Future Violations Of Federal Law

The Eleventh Amendment bars private suits against a State or an arm of a State sued in its own name, absent a valid abrogation by Congress or waiver by the State. See Alden v. Maine, 119 S. Ct. 2240, 2267 (1999). In Stevens and Erickson, this Court held that the ADA's abrogation of States' Eleventh Amendment immunity for Title I was not a valid exercise of Congress' power.[1] And no one in this case has suggested defendants waived their Eleventh Amendment immunity to this suit. Compare Board of Educ. v. Kelly E., 207 F.3d 931 (7th Cir. 2000) (State waived immunity by accepting federal funds under Individuals with Disabilities Education Act). Thus, if this private suit had been brought only against the State in its own name, under Erickson and Stevens, it

[1] The United States intervened in Erickson to defend the constitutionality of the abrogation as a valid exercise of Congress' power under Section 5 of the Fourteenth Amendment. We continue to believe that the Court's holding in that case and in Stevens was incorrect, but recognize that this panel is bound to follow it absent intervening Supreme Court precedent to the contrary.

would be barred by the State's Eleventh Amendment immunity.

However, it does not follow that States no longer need to comply with the ADA or that private parties cannot seek relief in federal court. "The ADA is valid legislation, which both private and public actors must follow." Erickson, 207 F.3d at 952. The Supreme Court reaffirmed in Alden that Eleventh Amendment immunity does not authorize States to violate federal law. "The constitutional privilege of a State to assert its sovereign immunity * * * does not confer upon the State a concomitant right to disregard the Constitution or valid federal law." 119 S. Ct. at 2266; accord Osteen v. Henley, 13 F.3d 221, 223 (7th Cir. 1993) ("The immunity that the Eleventh Amendment grants does not go so far as to allow state officials to ignore federal law with impunity.").

It was to reconcile these very principles — that States have Eleventh Amendment immunity from private suits, but that they are still bound by federal law — that the Supreme Court adopted the rule of Ex parte Young. Id. at 2267.[2] Ex parte Young, 209 U.S. 123 (1908), held that when a state official acts in violation of the Constitution or federal law (which the Constitution's Supremacy Clause makes the "supreme Law of the Land"), he is acting ultra vires and is no longer entitled to the State's

[2] The Eleventh Amendment is also no bar to the United States suing the State. See Alden, 119 S. Ct. at 2267 ("In ratifying the Constitution, the States consented to suits brought by other States or by the Federal Government."); id. at 2269 (noting that United States could sue a State to recover damages under the Fair Labor Standards Act). The United States is not a party to this action, however, and takes no position on the merits.

immunity from suit. The doctrine permits only prospective injunctive relief. See Edelman v. Jordan, 415 U.S. 651, 664, 667-668 (1974). Because any monetary award against state officials in their official capacities to remedy past injuries "must inevitably come from the general revenues of the State," such an award "resembles far more closely the monetary award against the State itself" and thus is prohibited by the Eleventh Amendment. Id. at 665. By limiting relief to prospective injunctions of officials, the Court avoided a judgment directly against the State but, at the same time, prevented the State (through its officials) from continuing illegal action.

The Ex parte Young doctrine has been described as a legal fiction, but it was adopted by the Supreme Court almost a century ago to serve a critical function in permitting federal courts to bring state policies and practices into compliance with federal law. "Both prospective and retrospective relief implicate Eleventh Amendment concerns, but the availability of prospective relief of the sort awarded in Ex parte Young gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." Green v. Mansour, 474 U.S. 64, 68 (1985); see also Alden, 119 S. Ct. at 2268 ("The principle of sovereign immunity as reflected in our jurisprudence strikes the proper balance between the supremacy of federal law and the separate sovereignty of the States. Established rules provide ample means to correct ongoing

violations of law and to vindicate the interests which animate the Supremacy Clause." (citations omitted)).

Indeed, in Stevens this Court noted the "limited nature" of its holding. 2000 WL 365947, at *6. It explained that the Eleventh Amendment immunity enjoyed by States under Title I came with the "limitations on that immunity" embodied in cases such as Ex parte Young and Edelman. Ibid. In addition to back pay and compensatory damages barred by the Eleventh Amendment under Stevens and Erickson, plaintiff's complaint seeks accommodations to permit reinstatement to his job. This is clearly the type of forward-looking relief permissible under Ex parte Young. See Elliott v. Hinds, 786 F.2d 298, 302 (7th Cir. 1986) (reinstatement and removal of damaging information from the plaintiff's work record is available under Ex parte Young). Thus, the Eleventh Amendment is no bar to a suit proceeding against defendant state officials for such relief.

B. State Officials In Their Official Capacities Are Appropriate Defendants In An Action To Enforce Title I

Defendants suggest (Br. 1 n.1) that a suit against a state official for injunctive relief to cure a continuing violation of federal law is not available under Title I because Congress only intended the "employing entity" and not its officials, to be named as defendants. This is a question of statutory construction, which this Court reviews de novo.

Title I, by incorporating the enforcement scheme of Title VII of the Civil Rights Act of 1964, see 42 U.S.C. 12117(a), authorizes private suits against a "respondent," which is defined

to include an "employer." 42 U.S.C. 2000e-5(f), 2000e(n). The term "employer" is defined in both Title I and Title VII to include a "person engaged in an industry affecting commerce who has 15 or more employees * * * and any agent of such person." 42 U.S.C. 12111(5)(A); 42 U.S.C. 2000e(b) (emphasis added).

Defendants argue (Br. 1 n.1) that employees sued in their official capacities are not appropriate defendants because they are not plaintiff's "employer." But this glosses over the distinction between suing an individual in his or her personal capacity and suing an individual in his or her official capacity. "Official-capacity suits * * * 'generally represent only another way of pleading an action against an entity of which an officer is an agent.' As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity." Kentucky v. Graham, 473 U.S. 159, 165 (1985); see also Hafer v. Melo, 502 U.S. 21, 25 (1991).

By definition, then, an official sued in his or her official capacity is an "agent" of the state employer. Indeed, in interpreting Title I's definition of "employer," this Court noted that while employees sued in their individual capacities are not appropriate defendants under Title I, Title I suits could be brought against an employee in "his official, strictly representative capacity, which is simply one method of bringing

suit against the employer." EEOC v. AIC Sec. Investigations, Ltd., 55 F.3d 1276, 1280 n.4 (7th Cir. 1995) (emphasis added); see also Silk v. City of Chicago, 194 F.3d 788, 797 n.5 (7th Cir. 1999) (dismissing Title I suit against official in individual capacity, but permitting it to proceed against official in official capacity). This Court has reached the same result in cases brought under Title VII of the Civil Rights Act of 1964.[3] These Title VII holdings are highly persuasive authority because Title I of the ADA utilizes a virtually identical definition of "employer."[4]

This Court's decisions are consistent with the views of every other court of appeals to address the issue under Title I of the ADA and Title VII of the Civil Rights Act of 1964. "The consensus of these courts is that Title VII actions brought

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[3] See, e.g., Bennett v. Schmidt, 153 F.3d 516, 519 (7th Cir. 1998) ("The first two iterations of the complaint did make the employer a party--not directly, but by naming the members of the school board in their official capacity, which is the same thing as naming the school district."); Council 31, Am. Fed. of State, County & Mun. Employees, AFL-CIO v. Ward, 978 F.2d 373, 375 n.1 (7th Cir. 1992) (dismissing suit against official in individual capacity, but permitting it to proceed against official in official capacity); Maxey v. Thompson, 680 F.2d 524, 526 (7th Cir. 1982) ("We think the district court was correct to dismiss the Title VII charges against Thompson and Boys * * * , but not against Johnson, the 'Successor-Director' of the Department of Revenue. It is clear from this method of styling Johnson in the complaint that the plaintiff wanted to sue him in his official rather than personal capacity--wanted, in other words, to sue the Department of Revenue, as of course he could since state agencies are suable under Title VII.").

[4] See AIC Sec. Investigations, 55 F.3d at 1279-1280 (holding that case law under Title I, Title VII, and Age Discrimination in Employment Act (ADEA) is interchangeable on this point because all three statutes utilize same definition); Williams v. Banning, 72 F.3d 552, 553-554 (7th Cir. 1995) (same).

against individual employees are against those employees in their 'official' capacities, and that liability can be imposed only upon the common employer of the plaintiff and of the individual fellow employees who are named as defendants." Lenhardt v. Basic Inst. of Tech., Inc., 55 F.3d 377, 380 (8th Cir. 1995).[5] Thus, defendants are simply wrong when they suggest that the state officials sued in their official capacities are not appropriate defendants under Title I.

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[5] See, e.g., Gary v. Long, 59 F.3d 1391, 1399 (D.C. Cir.) ("while a supervisory employee may be joined as a party defendant in a Title VII action, that employee must be viewed as being sued in his capacity as the agent of the employer, who is alone liable for a violation of Title VII"), cert. denied, 516 U.S. 1011 (1995); Baird v. Rose, 192 F.3d 462, 472-473 (4th Cir. 1999) (upholding dismissal of Title I claims against officials in individual capacities, but reversing dismissal of claims against officials in official capacities); Harvey v. Blake, 913 F.2d 226, 227-228 (5th Cir. 1990) ("Because Ms. Blake's liability under Title VII is premised upon her role as agent of the city, any recovery to be had must be against her in her official, not her individual capacity. * * * [T]he suit may proceed against her in her official capacity only."); York v. Tennessee Crushed Stone Ass'n, 684 F.2d 360, 362 (6th Cir. 1982) ("Miller could be sued [under the ADEA] in his official capacity as executive director, i.e. agent, of the association, provided the association was the employer of 20 persons"); Bales v. Wal-Mart Stores, Inc., 143 F.3d 1103, 1111 (8th Cir. 1998) ("the District Court properly decided that Vallejo could be liable only in his capacity as an employee of Wal-Mart"); Ortez v. Washington County, 88 F.3d 804, 808 (9th Cir. 1996) ("employees cannot be held liable in their individual capacities under Title VII. However, we conclude that Ortez did state a Title VII claim against defendants * * * in their official capacities" (citations omitted)); Sauers v. Salt Lake County, 1 F.3d 1122, 1125 (10th Cir. 1993) ("Under Title VII, suits against individuals must proceed in their official capacity; individual capacity suits are inappropriate."); Yeldell v. Cooper Green Hosp., Inc., 956 F.2d 1056, 1060 (11th Cir. 1992) (Title VII "suits may be brought only against individuals in their official capacity and/or the employing entity").

The Supreme Court has "frequently acknowledged the importance of having federal courts open to enforce and interpret federal rights." Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 293 (1997) (O'Connor, J., joined by Scalia, J., and Thomas, J., concurring in part and concurring in judgment). As Congress intended to allow a Title I suit to proceed against a state official in his official capacity, this case may proceed against the defendant officials for injunctive relief even absent a valid abrogation of Eleventh Amendment immunity.

CONCLUSION

This Court should hold this case pending the decision of the Supreme Court in University of Alabama Board of Trustees v. Garrett, No. 99-1240. In the alternative, this Court has jurisdiction over plaintiff's claims for injunctive relief against the state officials sued in their official capacities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2000, two copies of the foregoing Brief for the United States as Amicus Curiae Supporting Appellant and Urging Reversal and one disk containing the brief's text were served by first-class mail on the following counsel:

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