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VIEWPOINT

The ADA and the Supreme Court

A Mixed Record

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According to conventional wisdom, the Supreme Court has resisted the Americans with Disabilities Act (ADA) at every turn.¹ The Court, the story goes, has read the statute extremely narrowly and, as a result, stripped away key protections that Congress intended to provide. Its departure from congressional intent, indeed, was so extreme that Congress passed a statute that overturned several key decisions and codified broad statutory protections. That statute, the ADA Amendments Act of 2008 (ADAAA), passed with widespread bipartisan support, and President George W. Bush signed it into law.

The conventional wisdom leaves out a major part of the story. The Supreme Court has, in fact, read the ADA narrowly in interpreting the class of persons with “disabilities” protected by the statute, although it has not had a chance to revisit the issue since Congress passed the ADAAA. Indeed, one of the Court’s key decisions has helped transform state Medicaid programs to focus more fundamentally on providing services to people with disabilities in their own homes and communities.

What Is a “Disability”?

Most antidiscrimination laws are framed in universal terms. The Civil Rights Act of 1964, for example, protects everyone against race, sex, or religious discrimination; a plaintiff suing under that statute need not prove that she has any particular race, sex, or religion or any religion at all. The ADA is different. Perhaps because the requirement of reasonable accommodation is so central to its scheme, the statute extends its protections only to individuals discriminated against because of a “disability.” The statute contains a complex, 3-pronged definition of disability. The statute defines disability as “a physical or mental impairment that substantially limits one or more of the major life activities;” “a record of such an impairment;” or “being regarded as having such an impairment.” In a series of cases, the Supreme Court read this definition—and, accordingly, the scope of the statute’s protected class—quite narrowly.

The Court’s first encounter with the ADA’s disability definition, *Bragdon v Abbott* (1998), offered little hint of the restrictive interpretations to come. In *Bragdon*, the Court ruled that asymptomatic human immunodeficiency virus (HIV) infection was a disability under the statute. The Court reasoned that the infection substantially limited the major life activity of reproduction by making it impossible for the plaintiff to bear a child without a significant risk of passing the virus along to her baby.

Over the next 4 years, the Court changed course. The legal significance of the Court’s decisions was less about the particular conditions that they addressed—vision impairments corrected by eyeglasses (*Sutton v United Air Lines* [1999]), high blood pressure corrected by

medication (*Murphy v United Parcel Service* [1999]), monocular vision (*Albertson’s v Kirkingburg* [1999]), and carpal tunnel syndrome (*Toyota Motor Manufacturing v Williams* [2002])—than in the reasoning the Court used to reject the plaintiff’s claim in each case. Pointing to statutory findings that appeared at the beginning of the ADA, the Court explained that Congress believed that approximately 43 million Americans had disabilities.² An interpretation of the disability definition that disregarded the measures (like eyeglasses and medication) that individuals take to mitigate the symptoms of their impairments, the Court noted, would encompass many more than 43 million people. In the *Toyota* decision, the Court unanimously declared that the act’s protected-class provisions “need to be interpreted strictly to create a demanding standard for qualifying as disabled.” In other words, individuals with impaired sight corrected with lenses or individuals with hypertension were not considered disabled.

Congress Responds

Six years later, after a number of lower-court decisions confirmed that the Supreme Court’s analysis would exclude many worthy claimants from obtaining relief under the ADA, Congress responded decisively in the ADAAA. In response to the statement in the *Toyota* case that the disability definition must be interpreted narrowly, the ADAAA instructed courts to interpret that definition broadly. The Court had relied on the statutory finding that 43 million Americans had disabilities, but the ADAAA simply deleted that finding. The ADAAA also directed that the “determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures”—thus extending protection once again to persons with epilepsy, diabetes, mental illness, and other conditions that were ameliorated with medication. In addition, the ADAAA reinvigorated the third prong of the ADA’s disability definition, which covers those who are “regarded as having” a disabling impairment. The Supreme Court’s cases had reduced the third prong to a trifle. To be covered under that prong, the Court had held, an employee’s condition must be perceived by the employer to be disqualifying not just for the employee’s own job but for a broad class of other jobs—a mode of thinking in which few employers actually engage. The ADAAA reversed that holding and stated that an individual is “regarded as” disabled whenever the defendant discriminates against him or her because of an actual or perceived impairment.³

It is still too soon for many ADAAA cases to have been adjudicated. But early indications are that the new statute has had exactly the effect Congress intended.

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Courts appear to be allowing ADA cases to proceed past the threshold “disability” determination at higher rates than before 2008. Many physical and mental conditions that did not satisfy courts’ standards to qualify as disabilities before the ADAAA, such as bipolar disorder, cancer, and diabetes—not to mention back injuries, carpal tunnel syndrome, and obesity—are now forming the basis for successful claims.⁴

Beyond the Threshold Question

The Supreme Court has done much more than simply elaborate on the ADA’s definition of disability. The Court has also resolved a number of cases in which the plaintiffs had conditions that it concluded or that the parties acknowledged constituted disabilities under the statute. In those cases, the Court has construed the ADA’s protections reasonably broadly.

The Court, for example, has adopted a fairly liberal approach to determining when a defendant must provide an accommodation or modification of its ordinary policies or practices. It has gone as far as requiring the PGA Tour to waive its no-cart rule for a disabled professional golfer (*PGA Tour v Martin* [2001]) and saying that systems assigning jobs and benefits based on worker seniority must, in at least some circumstances, give way to the need to accommodate employees with disabilities (*US Airways v Barnett* [2002]).

Two of the Court’s ADA cases have been extremely consequential for health policy. In *Olmstead v LC* (1999), the Court ruled that the unnecessary institutionalization of individuals with disabilities at least presumptively violates the statute. Disability rights advocates have dubbed *Olmstead* “the *Brown v Board of Education* of the disability rights movement,” and that decision has spurred a new wave of deinstitutionalization. *Olmstead* has played a crucial role in many states in mitigating Medicaid’s long-standing “institutional bias”; that is, the preference of Medicaid to hospitalize patients with mental illness rather than provide services as outpatients.

Settlements in *Olmstead* cases have generated community-based services and support for thousands of individuals with mental illness and intellectual and developmental disabilities who formerly lived in state-operated institutions. Other cases have gone even further by providing community-based services to individuals who had previously been forced to reside in privately operated

institutions such as nursing homes. And when the economic downturn of 2008 placed severe pressure on state finances, *Olmstead* litigation in a number of states helped ensure that Medicaid budget cuts were substantially less on services that enable individuals with disabilities to live at home and avoid institutionalization.⁵

The other Supreme Court ADA case with a direct effect on the medical profession was the *Bragdon* decision. The defendant in *Bragdon*, a dentist, refused to fill the tooth cavity of the plaintiff patient after the patient revealed that she had been infected with HIV. After determining that her HIV infection constituted a protected disability, the Court went on to address the defense that filling her cavity would pose a “direct threat” to the health and safety of the dentist, his staff, and his other patients.

The Court articulated a very stringent standard for the defense: The dentist could refuse treatment only if treating the patient posed a “significant risk” based on “objective, scientific information.” In determining whether such a risk exists, the Court declared, “the views of public health authorities, such as the US Public Health Service, CDC, and the National Institutes of Health, are of special weight and authority.” The Court emphasized that health care practitioners could not demand the elimination of *all* risks. “Because few, if any, activities in life are risk free,” the Court said, “the ADA do[es] not ask whether a risk exists, but whether it is significant.” The Supreme Court remanded to the lower courts, which applied that stringent standard and concluded that the risk of HIV transmission through an accidental needlestick did not justify the dentist’s refusal to treat the plaintiff’s cavity. *Bragdon* thus stands as an important precedent in guaranteeing the rights of HIV-infected patients to receive medical care without discrimination.⁶

A Mixed Record

The standard story of a Supreme Court stridently opposing expansive interpretations of the ADA thus stands as incomplete. The Court did read the coverage provisions extremely narrowly, though it has not had an opportunity to return to the question since Congress passed remedial legislation. However, in other ADA cases, the Court has given the statute a reasonably generous interpretation, one that has had important effects in employment and health care.

ARTICLE INFORMATION

Conflict of Interest Disclosures: The author has completed and submitted the ICMJE Form for Disclosure of Potential Conflicts of Interest and none were reported.

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