No. 02-60048

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY,

Defendant-Appellee

BRIEF FOR THE UNITED STATES AS APPELLANT

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STATEMENT REGARDING ORAL ARGUMENT

This appeal presents important questions regarding the United States' authority to enforce Title I of the Americans with Disabilities Act. The Court's consideration of those questions will be aided by oral argument.

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JURISDICTIONAL STATEMENT

This is an appeal from a final order dismissing the complaint in an action brought by the United States and alleging violations of a federal statute. The district court had jurisdiction under 28 U.S.C. 1331 and 1345. The order dismissing the United States' complaint was entered on September 14, 2001 (R. 85-93).[1] The United States filed a timely motion to alter or amend judgment on September 27, 2001 (R. 94-104). The district court denied the United States' motion in an order entered November 15, 2001 (R. 107-109). The United States filed a timely notice of appeal on January 10, 2002 (R. 110). This Court has jurisdiction under 28 U.S.C. 1291.

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[1] "R.__" refers to pages in the Record on appeal.

STATEMENT OF THE ISSUE

Whether the United States is barred by the doctrine of sovereign immunity from bringing an action against a state agency to enforce Title I of the Americans with Disabilities Act where the action is premised on an individual charge of discrimination.

STATEMENT OF THE CASE

1. Title I of the Americans with Disabilities Act (ADA) prohibits discrimination in employment on the basis of disability. 42 U.S.C. 12112. By its terms, Title I applies to States and state agencies as employers. See *Board of Trustees of the Univ. of Ala.* v. *Garrett*, 531 U.S. 356, 360-361 (2001); *id.* at 364 (noting the ADA's express abrogation of States' Eleventh Amendment immunity).[2]

For enforcement of Title I, Congress adopted the enforcement provisions set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq*. See 42 U.S.C. 12117(a), which provides:

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[2] Title I prohibits discrimination by a "covered entity." 42 U.S.C. 12112(a). A "covered entity" is "an employer, employment agency, labor organization, or joint labor-management committee." *Id.* at 12111(2). An "employer" is "a person engaged in an industry affecting commerce who has 15 or more employees." *Id*. at 12111(5)(A). The terms "person" and "industry affecting commerce" are defined by reference to the definition of those terms in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(a). See 42 U.S.C. 12111(7). "[P]erson" includes "governments, governmental agencies, [and] political subdivisions." *Id.* at 2000e(a). The term "industry affecting commerce" "includes any governmental industry, business, or activity." *Id*. at 2000e(h).

> The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the [Equal Employment Opportunity] Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

Section 706 of Title VII, 42 U.S.C. 2000e-5, prescribes the procedures for resolution of individual charges of discrimination. Under Section 706, an individual alleging unlawful discrimination may file a charge with the Equal Employment Opportunity Commission (EEOC). *Id.* at 2000e-5(b). If the EEOC finds reasonable cause to believe that the charge is true, it is directed to seek to end the discriminatory practice through conciliation. *Ibid.* If the EEOC is unable to resolve the charge in this manner, it may bring a civil action in federal district court. *Id.* at 2000e-5(f). Where the respondent is a "government, governmental agency, or political subdivision," however, the EEOC is directed to refer the charge to the Attorney General "who may bring a civil action against such respondent in the appropriate United States district court." *Ibid.*

In any such "Section 706" action, whether brought by the EEOC or by the Attorney General, the court "may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without backpay * * * or any other equitable relief as the court deems appropriate." *Id.* at 2000e-5(g)(1). The EEOC and the Attorney General are

expressly authorized to seek damages in such actions as well. *Id.* at 1981a(a)(2), 1981a(a)(3); see *id.* at 1981a(d)(1)(B).

Section 706 also authorizes the aggrieved individual to file a civil action, if the EEOC or the Attorney General have not done so, or to intervene in an action brought by the EEOC or the Attorney General. 42 U.S.C. 2000e-5(f). Congress expressly abrogated the States' Eleventh Amendment immunity from such private actions for violations of the ADA. *Id.* at 12202. In *Garrett*, however, the Supreme Court invalidated the abrogation for private actions for damages to enforce Title I. In so holding, the Court noted that the standards established by Title I remained applicable to the States and that Title I "can be enforced by the United States in actions for money damages." 531 U.S. at 374 n.9.

In addition to actions premised upon an individual charge of discrimination, both the EEOC and the Attorney General also have the authority to bring civil actions alleging a pattern or practice of discrimination. 42 U.S.C. 2000e-6. As with Section 706 actions, the Attorney General is assigned responsibility for such pattern or practice or "Section 707" cases against public sector respondents. Reorg. Plan No. 1 of 1978, Section 5, 43 Fed. Reg. 19,807 [set out as a note under 42 U.S.C.A. 2000e-4.]

2. This is a Section 706 action brought by the United States against the Mississippi Department of Public Safety, pursuant to 42 U.S.C. 12117(a) and 2000e-5(f) (R. 1). The dispute originated with a charge of discrimination by Ronnie Collins, who alleged that the Mississippi Department of Public Safety had

discriminated against him on the basis of disability (R. 2-3). After investigation, the EEOC found reasonable cause to believe that the charge was true, but was unable to resolve the charge through conciliation (R. 3). Because the respondent is a public entity, the EEOC referred the charge to the Attorney General (R. 3). In its complaint, the United States alleged that the defendant had violated Title I of the ADA by refusing to make reasonable accommodation to Collins's physical limitations and by dismissing him from the training academy for the Mississippi Highway Safety Patrol because of his disability (R. 2). The United States sought an injunction prohibiting the defendant from engaging in unlawful employment practices against individuals with disabilities, and individual relief for Collins, including hiring, retroactive seniority, back pay, and compensatory damages (R. 3-4).

Defendant filed a motion to dismiss the United States' complaint, contending that the United States' action was barred by the Eleventh Amendment (R. 8-9). The motion was held in abeyance pending the Supreme Court's decision in *Garrett* (R. 22). After *Garrett* was decided, the stay was lifted (R. 25), and the parties filed supplemental pleadings on the motion to dismiss (R. 30-84).

On September 14, 2001, the district court granted the defendant's motion to dismiss (R.85-93). The court acknowledged the Supreme Court's statement in *Garrett* that Title I "can be enforced by the United States in actions for money damages" (R. 88 (quoting *Garrett*, 531 U.S. at 374 n.9)). The question, as posed by the district court, was "under what circumstances and in what manner may the

United States sue states for money damages" (R. 88). The court characterized this action as one brought "on behalf of Ronnie Collins, a private individual and resident of Mississippi" (R. 87). Because the United States had filed its complaint pursuant to Section 706 rather than Section 707, the district court asserted, the action was brought on behalf of the individual and not on behalf of the United States (R. 89-90):

> By bringing its suit under section 706 rather than section 707, the United States makes clear that it does not seek to remedy a pattern of intentional discrimination on behalf of the United States or the citizens of Mississippi. Rather, the United States seeks only to vindicate the rights of an individual allegedly discriminated against by an agency of the State of Mississippi in violation of the ADA. *See* Complaint. The United States has, in essence, stepped into the shoes of a private individual. In this capacity, the United States has no more power to sue a state than the individual it represents.

The United States' claims for money damages in this action, the district court held, were therefore barred by the Eleventh Amendment (R. 90). Following the same reasoning, the court also dismissed the United States' claims for injunctive relief, because its action had been brought against a state agency, not a state official, as the court believed was required under *Ex parte Young*, 209 U.S. 123 (1908) (R. 90-91).

The United States filed a motion to Alter or Amend Judgment, arguing that the States have no sovereign immunity from suit by the federal government, and that, even in a Section 706 action, the United States acts, not on behalf of the individual charging party, but to vindicate the public interest in remedying

discrimination (R. 94-104). The district court denied the United States' motion (R. 107-109).

SUMMARY OF ARGUMENT

The district court's ruling that this action is barred by the Eleventh Amendment is wrong, both as a matter of Eleventh Amendment law and in the court's characterization of the United States' role in the enforcement of Title I of the ADA. The dismissal of the United States' complaint should therefore be reversed.

The States have no sovereign immunity from actions brought by the United States to enforce a federal statute. That principle was most recently reaffirmed by the Supreme Court in *Board of Trustees of the University of Alabama* v. *Garrett*, 531 U.S. 356, 374 n.9 (2000), with respect to Title I of the ADA -- the very statute at issue in this case.

The district court misconstrued the role of the United States in the enforcement of the ADA and other employment discrimination statutes. Contrary to the district court's understanding, the Supreme Court has made it clear that when the United States brings an enforcement action under these statutes -- even one premised upon an individual charge of discrimination -- it is not a mere proxy for the employee. Rather the United States acts to vindicate the public interest in nondiscrimination. See *EEOC* v. *Waffle House, Inc.*, 122 S. Ct. 754 (2002); *General Tel. Co.* v. *EEOC*, 446 U.S. 318 (1980); *Occidental Life Ins. Co. of Cal.* v. *EEOC*, 432 U.S. 355 (1977).

ARGUMENT

THE DISTRICT COURT ERRED IN DISMISSING THE UNITED STATES' COMPLAINT

Because the district court erred as a matter of law, this Court's review on appeal is *de novo*.

A. *The States Have No Sovereign Immunity From Actions By The Federal Government To Enforce Federal Law*

The district court erred in holding that the States' sovereign immunity bars actions brought by the United States to enforce a federal statute. The Supreme Court has held, repeatedly and unequivocally, "that States retain no sovereign immunity as against the Federal Government." *West Virginia* v. *United States*, 479 U.S. 305, 311-312 & n.4 (1987) (citing *United States* v. *Texas*, 143 U.S. 621 (1892)); see *Garrett*, 531 U.S. at 374 n.9; *Alden* v. *Maine*, 527 U.S. 706, 755-756 (1999).

The United States' authority to sue the States in federal court is derived from the powers allocated to the federal government by the Constitution itself. "That instrument extends the judicial power of the United States 'to *all* cases,' in law and equity, arising under the Constitution, laws and treaties of the United States, and to controversies in which the United States shall be a party." *United States* v. *Texas*, 143 U.S. at 644 (quoting Art. 3, § 2, emphasis in the original). "In ratifying the Constitution, the States consented to suits brought by other States or by the Federal Government." *Alden*, 527 U.S. at 755.

In *Alden*, the Court held that the States are immune from private actions for damages in state courts for violations of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq*. But this immunity, the Court took pains to emphasize, "does not confer upon the State a concomitant right to disregard the Constitution or valid federal law." 527 U.S. at 754-755. In particular, the States are subject to enforcement actions by the United States. As the Court explained, the concerns underlying States' immunity from suit by private individuals are inapplicable to actions brought by the United States:

> A suit which is commenced and prosecuted against a State in the name of the United States by those who are entrusted with the constitutional duty to "take Care that the Laws be faithfully executed," U.S. Const., Art. II, § 3, differs in kind from the suit of an individual: While the Constitution contemplates suits among the members of the federal system as an alternative to extralegal measures, the fear of private suits against nonconsenting States was the central reason given by the Founders who chose to preserve the States' sovereign immunity. Suits brought by the United States itself require the exercise of political responsibility for each suit prosecuted against a State, a control which is absent from a broad delegation to private persons to sue nonconsenting States.

Id. at 755-756; cf. *id.* at 748-749 (principle of sovereign immunity protects States from indignity of responding to judicial process at the instance of private individuals).

This principle is fully applicable to actions brought by the United States to enforce Title I of the ADA, as the Supreme Court recognized in *Garrett*. After invalidating the abrogation of Eleventh Amendment immunity for *private* actions for damages under Title I of the ADA, the Court made it clear that Title I "can be

enforced by the United States in actions for money damages." See 531 U.S. at 374 n.9.[3]

The district court was therefore wrong in ruling that the States' sovereign immunity bars this action by the United States.

B. *The United States Acts To Vindicate The Public Interest In Non-Discrimination When It Brings An Action To Enforce Title I Of The ADA*

The district court erroneously ruled that the United States is nonetheless subject to a State's sovereign immunity when it brings an action to enforce the ADA under Section 706 of the 1964 Civil Rights Act. In the district court's view, when the United States brings such an action it "seeks only to vindicate the rights of an individual" and therefore "has, in essence, stepped into the shoes of a private individual" (R. 90). This assumption is directly contrary to the Supreme Court's construction of the federal government's role in the enforcement of Title VII and, by incorporation, of Title I of the ADA. See *EEOC* v. *Waffle House, Inc.*, 122 S. Ct. 754 (2002); *General Tel. Co.* v. *EEOC*, 446 U.S. 318 (1980).

In *General Telephone*, the Supreme Court held that the EEOC is not required to comply with the class action requirements of Federal Rule of Civil Procedure 23,

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[3] Because the States are not immune from suit by the federal government, the district court was wrong in ruling that the United States was required to proceed in this case against a state official, rather than against the state agency, pursuant to *Ex parte Young*. Cf., *Brennan* v. *Stewart*, 834 F.2d 1248, 1252-1253 (5th Cir. 1988) (*Ex parte Young* doctrine requires private individual to bring action for injunctive relief against state official, rather than state agency, where sovereign immunity would bar suit against the State or state agency).

when it brings an enforcement action under Section 706. In such actions, the Court explained, the federal government "is not merely a proxy for the victims of discrimination." *General Tel. Co.*, 446 U.S. at 326. Although the federal agency acts "at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination." *Ibid.* Indeed, the agency's role as representative of the public interest means that it may find it necessary to proceed in a manner that conflicts with the charging party's interests: "The individual victim is given his right to intervene for this very reason. The EEOC exists to advance the public interest in preventing and remedying employment discrimination, and it does so in part by making the hard choices where conflicts of interest exist." *Id.* at 331.

The Supreme Court recently reaffirmed this construction of the agency's role in a Title I case. In *EEOC* v. *Waffle House, Inc.*, the Court reversed a ruling limiting the relief that the EEOC can seek in an action to enforce Title I of the ADA when the charging party has signed an agreement to submit to arbitration any disputes with his employer. In reaching this decision, the Court emphasized that it had previously "recognized the difference between the EEOC's enforcement role and an individual employee's private cause of action." *Waffle House*, 122 S. Ct. at 761 (citing *General Tel. Co.*, and *Occidental Life Ins. Co. of Cal.* v. *EEOC*, 432 U.S. 355 (1977)). "[U]nder the procedural structure created by the 1972 amendments [to Title VII], the EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties." 122 S. Ct. at 761 (quoting

Occidental Life, 432 U.S. at 368). The Court reiterated its holding in *General Telephone*, 446 U.S. at 326, that "the EEOC is not merely a proxy for the victims of discrimination[.]" 122 S. Ct. at 761; see also *id.* at 763 (emphasizing that the EEOC is "in command of the process" when it brings a Section 706 action); *id.* at 766 (EEOC's claims against employer are not "merely derivative" and the agency is not "a proxy for the employee").

There is no foundation for the district court's assertion that there is a distinction, in this regard, between actions brought under Section 706 and pattern or practice actions brought under Section 707. The EEOC's actions in *General Telephone*, *Waffle House*, and *Occidental Life* were all premised upon individual charges of discrimination and filed pursuant to Section 706. *General Telephone* expressly rejected a distinction between the government's role in Section 706 cases and its role in Section 707 cases, finding that Congress intended for Section 706 cases to proceed in the same manner as did pattern or practices cases prior to the 1972 amendments to Title VII. 446 U.S. at 327-329.

When it brings enforcement actions against public employers, the Department of Justice fulfills the same role as does the EEOC in actions against private employers. In bringing this action, the United States was acting to vindicate the public interest in the enforcement of Title I of the ADA. The United States' allegations of discrimination in this case concerned only the claims of Ronnie Collins. But, as it does in most Section 706 cases, the United States sought not only relief for the charging party, but also more general injunctive relief to

prohibit the defendant from engaging in unlawful employment practices against individuals with disabilities.

Even victim-specific relief serves a public purpose. As the Supreme Court has recognized, Congress intended the remedial measures in employment discrimination statutes to serve a deterrent as well as a compensatory purpose: "to serve as a 'spur or catalyst' to cause employers to 'self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges' of discrimination." *McKennon* v. *Nashville Banner Publ'g Co.*, 513 U.S. 352, 358 (1995) (quoting *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 417-418 (1975)). For that reason, an action asserting the claims of even a single employee may serve an important public purpose: "The disclosure through litigation of incidents or practices that violate national policies respecting nondiscrimination in the work force is itself important, for the occurrence of violations may disclose patterns of noncompliance resulting from a misappreciation of the Act's operation or entrenched resistance to its commands, either of which can be of industry-wide significance." *McKennon*, 513 U.S. at 358-359. Thus, as the Court recognized in *Waffle House*, even when the federal government seeks "entirely victim-specific relief" in an enforcement action under Title VII or Title I of the ADA, it "may be seeking to vindicate a public interest, not simply provide make-whole relief for the employee." 122 S. Ct. at 765.

The district court was therefore wrong in ruling that the United States sought only to vindicate the rights of the charging party in this case and was therefore subject to the State's sovereign immunity.

CONCLUSION

The district court's order dismissing the United States' complaint in this case should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that paper and electronic copies of the foregoing brief for the United States as Appellant were sent by first class mail this 12th day of March, 2002, to the following counsel of record:

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CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir. R. 32.2 and .3, I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7).

1. Exclusive of the exempted portions in 5th Cir. R. 32.2, the brief contains 3,507 words.

2. The brief has been prepared in proportionally spaced typeface using Wordperfect 9, in Times New Roman, 14 point type.

3. I understand that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Fed. R. App. P. 32(a)(7), may result in the court's striking the brief and imposing sanctions against the person signing the brief.

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