

## U.S. Court of Appeals for the Sixth Circuit Rejects Congress's Abrogation of Immunity for Lawsuits Against States for ADA Retaliation Claims

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The U.S. Court of Appeals for the Sixth Circuit **has ruled** that the waiver of a State's immunity under Title V of the Americans with Disabilities Act (ADA) is unconstitutional. This ruling permits a State to defend a Title V claim under the ADA by asserting immunity.

The ADA contains two key sections. Title I of the ADA prohibits disability discrimination in the workplace and applies to both private employers and state governments, among other entities. Title V is the ADA's anti-retaliation provision and is frequently predicated on Title I claims, such as when a plaintiff alleges retaliation for complaining about the very disability discrimination he or she may have experienced at work.

The U.S. Supreme Court has already ruled that an employee cannot sue a State—or its various arms, such as state universities—under Title I of the ADA. *Bd. Of Trs. Of Univ. of Ala. v. Garrett*, 531 U.S. 356, 360 (2001). This is because the 11th Amendment to the U.S. Constitution has been interpreted broadly to bar suits against states unless they consent, or Congress says so. But can an employee sue the State—or its various arms—under Title V of the ADA? On June 24, 2024, the Sixth Circuit joined its sister Ninth and Fifth Circuits and answered in the negative.

Benjamin Stanley worked for Western Michigan University for one month before he was terminated. Stanley sued the University, alleging various claims of disability discrimination and retaliation. The district court dismissed Stanley's ADA claims, and he appealed.

Congress's legislative findings on a "history and pattern of retaliation by the States against public employees for opposing disability discrimination" was lacking, and so the Court of Appeals ruled that Congress unconstitutionally removed immunity for ADA retaliation claims predicated on a violation of Title I of the ADA. This holding, explained the Sixth Circuit, was consistent with *Garrett*: if Congress did not validly get rid of immunity for ADA disability discrimination claims under Title I, then it surely could not have done so for Title V claims either.

The decision represents an important pointer for State entities—including public institutions—to consider advancing immunity arguments early on in litigation. Many states have an anti-disability discrimination statute, such as Michigan's Persons with Disabilities Civil Rights Act (PDCRA). Public employers in Michigan and elsewhere should also remain mindful of their obligations under such statutes.

If you have any questions on how the decision may affect your workplace, please do not hesitate to contact your Miller Canfield attorney or one of the authors of this alert.