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National Council on Disability

Policy Brief Series: Righting the ADA

No. 18, The Supreme Court's Refusal to Permit Punitive Damages in Private Lawsuits Under Section 202 of the ADA

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In *Barnes v. Gorman*, 536 U.S. 181 (2002), the Supreme Court ruled that punitive damages may not be awarded in private suits brought under Title VI of the 1964 Civil Rights Act, under Section 202 of the Americans with Disabilities Act (ADA), nor under Section 504 of the Rehabilitation Act. This policy brief in the National Council on Disability's *Righting the ADA* series examines the nature and purpose of punitive damages, their availability under the ADA, and the substance and ramifications of the Court's ruling in *Barnes*.

THE ROLE OF PUNITIVE DAMAGES IN THE ADA

In general, when a plaintiff proves that a defendant violated the law, the court can issue a court order -- referred to as an "injunction" -- directing the defendant to refrain from its unlawful conduct and to undo the resulting consequences. This type of remedy is called injunctive or equitable relief. Courts may also require the defendant to pay sums of money -- termed "damages" -- to the plaintiff as monetary compensation for the loss or injury the plaintiff suffered, or to penalize the defendant for engaging in especially reprehensible unlawful acts. "Actual" or "compensatory" damages are sums paid to a plaintiff to compensate for a proven injury or loss. "Punitive damages" are amounts awarded to a plaintiff in addition to actual damages when the defendant acted with malice, recklessness, or deception. Punitive damages are designed to punish the lawbreaker, and to deter future unlawful conduct by the defendant and by others who might be tempted to engage in similar conduct.

Congress included language in the ADA which establishes, in effect, that the remedies available in lawsuits under Title I of the ADA are the same as those available under Title VII of the Civil Rights Act of 1964.¹ Subsequently, with the enactment of the Civil Rights Act of 1991, which amended the Civil Rights Act of 1964, there are now more specific standards governing availability of damages against employers found to violate Title I. Relevant provisions authorize both compensatory and punitive damages for violations of Title I, but only for acts of "unlawful intentional discrimination."² Punitive damages can be awarded upon a showing that the employer acted "with malice or with reckless indifference to the federally protected rights of an aggrieved individual."³ The 1991 Act also contains provisions that set caps on the total combined awards of compensatory damages (other than actual physical injury and pecuniary loss) and punitive damages, depending on the number of employees of the defendant.⁴ Such damage awards cannot exceed \$50,000 for employers with 15 to 100 employees; \$100,000 for employers with 101 to 200 employees, \$200,000 for employers having 201 to 500 employees, and \$300,000 for employers having 501 or more employees.⁵ The 1991 Act further restricts damages in cases involving a failure to provide reasonable accommodation. Compensatory and punitive damages in such suits are not available if an employer has made "good faith efforts" to identify and provide reasonable accommodation that would give the disabled individual "an equally effective opportunity and would not cause an undue hardship on the operation of the business."⁶

In most circumstances, Title III of the ADA does not authorize either compensatory or punitive

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damages to be assessed against places of public accommodation found to have discriminated; the harshest remedy generally available against a public accommodation is an injunction ordering it to stop its discriminatory activity. The Attorney General does have the power to bring suits for damages in “pattern or practice” cases or cases raising an issue of “public importance,”⁷ but these are relatively rare. In such cases, courts are authorized to assess, in addition to actual damages requested by the Attorney General, a “civil penalty” that may not exceed \$50,000 for a first offense or \$100,000 for each subsequent violation.⁸

Title II of the ADA, which governs disability discrimination actions by state and local government entities, provides that the remedies set forth in Section 505 of the Rehabilitation Act will be the available remedies for discrimination in violation of Title II.⁹ Section 505, in turn, makes the remedies available under Title VI applicable to Section 504 claims.¹⁰ Accordingly, the same remedies are applicable to Title VI, Section 504, and the ADA’s Title II. The Civil Rights Act of 1991 amended Title VII of the 1964 Civil Rights Act and Title I of the ADA to declare that punitive damages are not available in cases against “a government, government agency or political subdivision.”¹¹ This provision does not apply, however, to Title VI of the 1964 Act or to Title II of the ADA, suggesting that Congress contemplated the possibility of punitive damages under Title VI and Title II. Moreover, during congressional consideration of the ADA, two committee reports indicated that a “full panoply of remedies” were to be available in actions under Title II.¹² The prospect of punitive damages under Title II received additional support in the ADA report of the House Committee on the Judiciary,¹³ which cited *Miener v. Missouri*,¹⁴ a Section 504 case where the court recited the principle that “[t]he existence of a statutory right implies the existence of all necessary and appropriate remedies.”¹⁵

The Supreme Court had provided indirect support for the availability of punitive damages under Title II by its decision in *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 70-71 (1992), in which the Court stated that it would “presume the availability of all appropriate remedies, unless Congress has expressly indicated otherwise.” While *Franklin* was a Title IX case,¹⁶ the framework of analysis it applied led some lower courts to award punitive damages under Section 504.¹⁷ At the time that the Supreme Court took up the *Barnes* case, the Court of Appeals for the Sixth Circuit had ruled that punitive damages could not be obtained under Section 504,¹⁸ while the Eighth Circuit had ruled that punitive damages were available under both Section 504 and Title II of the ADA.¹⁹

THE COURT’S DECISION IN *BARNES* v. *GORMAN*

In *Barnes*, the Supreme Court ruled unanimously that punitive damages were not available to the plaintiff under either Section 504 or Title II of the ADA. The Court began its analysis by noting that Section 203 of the ADA provides that the remedies for violations of Section 202 (the prohibition of discrimination by state and local government entities) are the same remedies as provided in Section 505(a)(2) of the Rehabilitation Act for violations of Section 504.²⁰ Section 505(a)(2) of the Rehabilitation Act, in turn, provides that the remedies for violations of Section

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504 shall be the same as those in Title VI of the Civil Rights Act of 1964.²¹ As a result, the remedies for violations of Section 202 of the ADA and Section 504 of the Rehabilitation Act are coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination in federally funded programs and activities.²²

The Supreme Court stated that it had not previously resolved the issue of what remedies are available in private lawsuits under Title VI. The Court declared that Title VI is Spending Clause legislation, enacted pursuant to Congress's power under the Constitution to raise and spend federal money. The Court stated that legislation that places conditions on the grant of federal funds should be considered "much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions."²³ The Court held that while not all contract-law rules would automatically apply to Spending Clause legislation, it is appropriate to apply contract analysis to questions about damages remedies available in private lawsuits under such legislation.

Using this "contract law analogy," the Court held that recipients of federal funds should only be liable for remedies which they were provided reasonable notice that they would be subjecting themselves to, either by explicit reference in the legislation or as part of traditional remedies for breaches of contract. Legal rules applicable to breaches of contract generally do not authorize punitive damages. Nor, said the Court, should punitive damages be considered as implicitly authorized either from language of Title VI or from community standards of fairness. The Court termed punitive damages as constituting "unorthodox and indeterminate liability," and considered it unlikely that funding recipients would subject themselves to such liability.²⁴

The Court stated that the disallowance of punitive damages under Title VI is not inconsistent with the traditional rule that federal courts are empowered to use "any available remedy" to make good the wrong done in a violation of a federal law.²⁵ The Court concluded that compensatory damages were adequate to right the wrong done in violations of Spending Clause legislation. Having decided that punitive damages may not be awarded in private causes of action brought under Title VI, the Court reasoned that such damages were therefore unavailable for violations of Section 202 of the ADA or of Section 504 of the Rehabilitation Act of 1973. The Court, with all of the Justices agreeing, reversed the judgment of the Eighth Circuit, and held that Mr. Gorman was not entitled to punitive damages, thus removing a potent potential sanction against egregious violators of Title II of the ADA.

IMPACT OF THE DECISION

The factual situation from which the *Barnes* case arose is illustrative of the kinds of cases that seem to cry out for punitive damage relief. The plaintiff, who was paraplegic, was arrested for trespass after fighting with a nightclub bouncer. While waiting for a police van to transport him,

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he was denied permission to use a restroom to empty his urine bag. When the van arrived, it was not equipped to transport a wheelchair and, over the plaintiff's objections, police officers removed him from his wheelchair and used a seatbelt and the plaintiff's own belt to strap him to a narrow bench in the rear of the van. During the ride to the police station, the belts came undone and the plaintiff fell to the floor, rupturing his urine bag and injuring his shoulder and back. The plaintiff subsequently suffered serious medical problems -- including a bladder infection, serious lower back pain, and uncontrollable spasms in his paralyzed areas -- that left him unable to work.²⁶ The callous disregard of the man's hygienic and safety needs provided an obvious circumstance for considering punitive damages, and the jury awarded the plaintiff \$1.2 million in punitive damages.²⁷ The Supreme Court, however, vacated the jury's punitive damage award.

Lower court decisions have begun to reflect the impact of the *Barnes* decision. Illustrative is *Swenson v. Lincoln County School Dist. No. 2*,²⁸ in which a child with cerebral palsy who used a wheelchair sued her school district for its ongoing failure to make school facilities accessible. The court noted evidence of the plaintiff's and her family's "long, hard struggle" with the School District "to try to achieve accessibility of school buildings and activities during her attendance in junior high and high school."²⁹ The court noted that, despite the fact that the high school was newly constructed and "[n]otwithstanding the School District's recognition that it was violating the ADA, Plaintiff was still experiencing difficulty gaining access to the high school on a day-to-day basis."³⁰ Problems included the school personnel's locking accessible entrance doors to the school and not correcting inoperative automatic door openers ("[o]n countless occasions," noted the court); filling designated accessible seating in the auditorium, gymnasium, and other school facilities with desks and chairs; placing video filming equipment so that it blocked lines of sight from the accessible seating; removing money for accessible parking space signs from the construction contract; not ensuring accessibility of home economics course facilities; excluding the plaintiff from some extracurricular activities; not ensuring accessibility of the senior trip and graduation activities.³¹

The court found that the plaintiff had "presented ample evidence that Defendant was aware that its policies were in violation of Plaintiff's federally protected rights" and that the school district "knowingly violated Title II of the ADA."³² The court concluded that "[P]laintiff has alleged that the School District discriminated against her by treating her as a second-class citizen, which caused her humiliation and mental anguish. In support [to] sic this claim, Plaintiff has pointed to evidence that the School District had a negative attitude towards ADA compliance, and that as a result of this attitude, every school day was a struggle for Plaintiff."³³ In spite of this egregious factual situation, citing *Barnes*, the court was constrained to observe: "The Supreme Court has held that punitive damages may not be awarded in a private suit brought under Title II of the ADA or section 504 of the Rehabilitation Act."³⁴

Similarly, another district court held that university students with disabilities could not seek punitive damages against the state university for its ongoing failure to provide the students access to campus programs, services, activities, and facilities.³⁵

In another case, a woman who was deaf brought an action under Title II of the ADA and Section 504 of the Rehabilitation Act because of the failure of a city police department to provide her a sign language interpreter in responding to her distress call, after she had repeatedly requested an interpreter.³⁶ The court noted that the city provided no evidence that the provision of a sign language interpreter would have constituted an undue burden or resulted in a fundamental alteration of the department's activities. Although the plaintiff stated that she was not proficient in written English and was frustrated by the responding police officer's attempts to communicate with her through written notes, he persisted in continuing to try to do so and refused her multiple requests for a sign language interpreter.³⁷ As a result, she reported that she suffered emotional distress.³⁸ The court found that, accepting the plaintiff's version of the events, "a reasonable trier of fact could conclude that Officer Brodbeck acted with deliberate indifference to Plaintiff's requests for an interpreter and to her federal rights."³⁹ The court nonetheless ruled that "[b]ased on the Supreme Court's ruling in *Barnes*, Plaintiff may not obtain punitive damages for her ADA or Rehabilitation Act claim."⁴⁰

Another federal district court ruled that a fire paramedic, who allegedly was denied reemployment with his city employer because of his back condition, was not granted a reasonable accommodation for his condition, and yet was denied disability benefits on the grounds that he was no longer "disabled," could not seek punitive damages against his employer.⁴¹ In another case, a municipal employee with dyslexia charged that the town officials refused to afford him a reasonable accommodation in administering a promotion examination, failed to keep medical information related to his disability confidential, manipulated the promotion process to prevent him from being promoted, and retaliated against him for requesting an accommodation by denying him a fair opportunity for a promotion.⁴² He claimed that these actions constituted violations of Titles II and V of the ADA, and Section 504 of the Rehabilitation Act. In light of the *Barnes* decision, however, the plaintiff withdrew his claims for punitive damages in the pending lawsuit.⁴³

CONCLUSION

The inability of plaintiffs to recover punitive damages acts as a disincentive for individuals to pursue their claims in court, and also eliminates the deterrent value of such damages to egregiously discriminatory conduct. In some cases, the removal of the possibility of an award of punitive damages also serves to make defendants less likely to engage in settlement negotiations. Without the remedy of punitive damages, individuals are dramatically impaired in their ability to enforce civil rights protections and to hold their governments accountable for the most extreme acts of intentional discrimination. One attorney provided the following description of the impact of the *Barnes* decision on a class action the attorney had filed against a city Housing Authority:

Liability is not the real issue, as the case is clear. [The defendant agency] has acted for years to deny non-elderly people with disabilities housing opportunities to which they were legally entitled. [The defendant agency] has also failed miserably to comply with

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accessibility requirements of Section 504 [and] the ADA . . . [However], since the *Gorman* decision has stripped us of our claim for punitive damages, the remedial claims become quite difficult. . . . As our clients generally receive SSI and aren't able to work, their lack of shelter cannot be said to interfere with their ability to receive normal wages. Many of our clients have not paid rent, as they live from person to person, in the street or in shelters. . . . Their harm has been extreme, yet their claims for compensatory damages are complex and uncertain. . . . When we still had a claim for punitive damages, we were convinced that the illegal action of the Authority could be punished and that the victims could expect some genuine relief. As significantly, the Authority would know in the future that they may not violate the law with impunity. Now, without the relief of punitive damages, government can continually discriminate against people with disabilities with no true accountability for its wrongdoings.⁴⁴

Simply put, the inability to recover punitive damages leaves people with disabilities more vulnerable to disability discrimination, with fewer tools to remedy egregious unlawful conduct.

This policy brief was written for the National Council on Disability by Professor Robert L. Burgdorf Jr. of the University of the District of Columbia, David A. Clarke School of Law.

ENDNOTES

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1. 42 U.S.C. § 12117(a).
 2. 42 U.S.C. § 1981a(a)(2).
 3. 42 U.S.C. § 1981a(b)(3).
 4. 42 U.S.C. § 1981a(b)(3).
 5. *Id.*
 6. 42 U.S.C. § 1981a(a)(3).
 7. 42 U.S.C. § 12188(b)(1)(B).
 8. 42 U.S.C. § 12188(b)(2)(C).
 9. 42 U.S.C. § 12133.
 10. 29 U.S.C. § 794a(a)(2).
 11. 42 U.S.C. § 981a(b)(1).
 12. *See* H.R. REP. NO. 101-485, pt. 2, 98 (1990) (Committee on Education and Labor), *reprinted in* 1990 U.S.C.C.A.N. 303, 381; H. REP. NO. 101-485, pt. 3, 52 (1990) (Committee on the Judiciary), *reprinted in* 1990 U.S.C.C.A.N. 445, 475.
 13. H.R. REP. NO. 101-485, pt. 3, at 52 (1990).
 14. 673 F.2d 969 (8th Cir. 1982).
 15. *Id.* at 977 (citing *Sullivan v. Little Hunting Park*, 396 U.S. 229, 239 (1969)).
 16. Title IX of the Education Amendments of 1972 prohibits sex discrimination by any educational institution receiving federal funds. 20 U.S.C.A. Section 1681 – 1689.
 17. *See, e.g., DeLeo v. City of Stamford*, No. 592 CV80, 4 A.D. Cases 427, 430 (D.Conn. Mar. 14, 1995).
 18. *Moreno v. Consolidated Rail Corp.*, 99 F.3d 782 (6th Cir. 1996).

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19. *Gorman v. Easley*, 257 F.3d 738, 745 (8th Cir. 2001).
 20. 42 U.S.C. § 12133.
 21. 29 U.S.C. § 794a(a)(2).
 22. 42 U.S.C. § 2000d *et seq.*
 23. 122 S.Ct. at 2100-01, quoting *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981).
 24. 122 S.Ct. at 2102.
 25. *Id.*, quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946).
 26. 122 S. Ct. at 2099.
 27. 122 S. Ct. at 2100.
 28. 260 F.Supp.2d 1136 (D.Wyo. 2003).
 29. *Id.* at 1139.
 30. *Id.* at 1141.
 31. *Id.* at 1140-41.
 32. *Id.* at 1146.
 33. *Id.*
 34. *Barnes v. Gorman*, 536 U.S. 181, 189 (2002).
 35. *Denmeade v. King*, 2002 WL 31018148 (W.D.N.Y. 2002).
 36. *Center v. City of West Carrollton*, 227 F.Supp.2d 863 (S.D.Ohio 2002).
 37. *Id.* at 871.
 38. *Id.* at 865.
 39. *Id.* at 871.
 40. *Id.* at 871-72.
 41. *King v. City of Chicago*, 2002 WL 31101273 (N.D. Ill. 2002).

42. *Filush v. Town of Weston*, 266 F.Supp.2d 322 (D.Conn. 2003).

43. *Id.* at 332.

44. Correspondence from Lauren Young, Legal Director, Maryland Disability Law Center, to Sharon Masling, November 11, 2002 quoted in <http://www.ncd.gov/newsroom/publications/decisionsimpact.html>.