IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY A Department of the State of Mississippi, Defendant.	)	CIVIL ACTION NO. 3:00CV377BN

MEMORANDUM OF AUTHORITIES IN SUPPORT OF
UNITED STATES' MOTION TO ALTER OR AMEND JUDGMENT

The United States respectfully moves the Court, pursuant to Federal Rule of Civil Procedure 59(e), to alter or amend its Judgment dismissing with prejudice the United States' Complaint. Because the Court's Opinion and Order conflicts with Supreme Court and Fifth Circuit authority supporting the United States' suit against Defendant for money damages and injunctive relief, the Court's Judgment should be altered or amended to deny Defendant's Motion to Dismiss, thereby correcting a clear error of law and preventing manifest injustice.

STATEMENT OF THE CASE

On May 17, 2000, the United States filed a Complaint in this Court alleging that Defendant violated Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12111-12117, by failing to make reasonable accommodations for, and then discharging, Ronnie Collins. The Complaint cites as a basis for the United States' enforcement authority § 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference § 706 of Title VII of the Civil

Rights Act of 1964,[1] 42 U.S.C. § 2000e-5, which in turn provides that the Attorney General may bring a civil action against a state government agency believed to have engaged in unlawful employment discrimination.[2] The Complaint seeks injunctive relief prohibiting Defendant from engaging in unlawful employment practices against individuals with disabilities; equitable "make-whole" relief for Collins, including reinstatement and back pay; and money damages compensating Collins for his injuries.[3]

On July 20, 2000, the Court ordered proceedings on the Complaint stayed pending the Supreme Court's decision in Board of Trustees v. Garrett, 121 S. Ct. 955 (2001). The Supreme Court issued an opinion in Garrett on February 21, 2001, holding that individuals may not sue state government employers for money damages under Title I of the ADA. Defendant then filed a Supplemental Memorandum to an earlier Motion to Dismiss the Complaint, arguing that, under the Supreme Court's rationale in Garrett, the United States may not sue Defendant for money damages because "the ADA [is] unconstitutional, as to application to the States, in its entirety or

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[1] Section 107(a) states:

> The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title 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 Act, or regulations promulgated under section 106, concerning employment.

[2] Under § 706, the Attorney General may only bring such an enforcement action after a charge is filed with the Equal Employment Opportunity Commission (EEOC) by a person alleging that a government agency employer has engaged in an unlawful employment practice, and after the EEOC, upon investigation and a reasonable cause determination, is unable to secure from the employer an acceptable conciliation agreement. See 42 U.S.C. § 2000e-5(f)(1).

[3] Section 706(g) authorizes a federal court to award various equitable remedies, including injunctive relief, reinstatement, and back pay, upon a showing of intentional employment discrimination. Additionally, under § 107(a) of the ADA the United States may also recover compensatory damages against an employer engaged in intentional employment discrimination. See 42 U.S.C. § 1981a(a)(2).

alternatively that the provisions or regulations relied upon by [the United States] are unconstitutional and unenforceable."

On September 14, 2001, this Court granted Defendant's Motion to Dismiss, stating, in part, that by filing suit pursuant to its enforcement authority under § 706 of Title VII, as incorporated in § 107(a) of the ADA, "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. . . . In this capacity, the United States has no more power to sue a state than the individual it represents. . . . the claims of the United States for money damages are barred by the Eleventh Amendment." The Court further held that the United States' claims for injunctive relief were also barred, because the Complaint did not name as a defendant any official of the Mississippi Department of Public Safety, in violation of the pleading requirements for individuals seeking injunctive relief from state officials set forth in Ex Parte Young, 209 U.S. 123 (1908).

STANDARD OF REVIEW

Any motion that challenges the correctness of a court's final judgment order and that is filed within ten days of the entry of the order is deemed a motion to alter or amend the judgment pursuant to Federal Rule 59(e). Bass v. United States Dep't of Agriculture, 211 F.3d 959, 962 (5th Cir. 2000) (citing Harcon Barge Co., Inc. v. D&G Boat Rentals, 784 F.2d 665, 667 (5th Cir. 1986) (en banc)). Such a motion should be granted if there is an intervening change in controlling law; if new evidence, previously unavailable and materially affecting the judgment, becomes available; or if it is necessary to grant the motion to correct a clear error of law or

prevent manifest injustice. Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990); see also Waltman v. International Paper Co., 875 F.2d 468, 473 (5th Cir. 1989).[4]

ARGUMENT

THE JUDGMENT SHOULD BE ALTERED OR AMENDED BECAUSE IT CONFLICTS WITH SUPREME COURT AND FIFTH CIRCUIT AUTHORITY SUPPORTING THE UNITED STATES' SUIT FOR MONEY DAMAGES AND INJUNCTIVE RELIEF AGAINST DEFENDANT

In the present case, the Court denies the applicability of the Supreme Court's statements in Garrett that "Title I of the ADA . . . prescribes standards applicable to the States. Those standards can be enforced by the United States in actions for money damages." Garrett, 121 S. Ct. at 968 n.9. In doing so, the Court distinguishes between the United States' authority to file a civil complaint premised upon a charge filed with the EEOC, pursuant to § 706 of Title VII as incorporated into § 107(a) of the ADA, and its authority to file a complaint alleging a pattern or practice of discrimination pursuant to § 707 of Title VII, also incorporated by reference into § 107(a).[5] This distinction, not briefed by the parties, is based upon a misunderstanding of the federal government's authority to enforce the federal civil rights laws against the states, and

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[4] This Motion may be granted under the third ground stated in Atkins because neither parties' briefing of Defendant's Motion to Dismiss discussed whether the United States' enforcement authority under § 706 includes the authority to sue state government agencies for money damages. Cf. Atkins, 130 F.R.D. at 625-26 (discussing grounds for denial of Rule 59(e) motion).

[5] Under § 707,

> [w]henever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States.

42 U.S.C. § 2000e-6(a). A § 707 enforcement action, then, is not premised upon the filing of a charge with the EEOC.

appears to assume that the United State is a representative of an individual when it brings a § 706 action. The Court, in effect, holds that states may assert sovereign immunity against the United States whenever the United States seeks to vindicate the rights of an individual by a suit against state government employers for money damages pursuant to its § 706 authority.

This holding conflicts directly with the Supreme Court's "dispositive" directive that "States have no sovereign immunity as against the Federal Government." United States v. West Virginia, 479 U.S. 305, 312 & n.4 (1987) (citing United States v. Texas, 143 U.S. 621, 646 (1892)); see also Mississippi Dep't of Econ. & Cmty. Dev. v. United States Dep't of Labor, 90 F.3d 110, 113 (5th Cir. 1996). The Supreme Court has long recognized that, "[i]n ratifying the Constitution, the States consented to suits brought . . . by the Federal Government." Alden v. Maine, 527 U.S. 706, 755 (1999) (citing Principality of Monaco v. Mississippi, 292 U.S. 313, 328-29 (1934)), cited in Garrett, 121 S. Ct. at 969 (Kennedy, J., concurring).[6] The rule against subsequent assertions of immunity by the states against the United States retains its vitality because "[s]uits brought by the United States . . . require the exercise of political responsibility for each [such] suit." Alden, 527 U.S. at 755. Nothing in Garrett or in the Supreme Court's other cases deciding state sovereign immunity questions supports the creation of an exception to this categorical rule, to be applied when the United States seeks money damages against a state government employer pursuant to its § 706 authority.

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[6] As the Supreme Court stated in Principality of Monaco, "[t]he jurisdiction of this Court of a suit by the United States against a state . . . . [w]hile not conferred by the Constitution in express words . . . is inherent in the constitutional plan. Without such a provision . . . 'the permanence of the Union might be endangered.'" Principality of Monaco, 292 U.S. at 329 (quoting United States v. Texas, 143 U.S. at 645, and citing United States v. North Carolina, 136 U.S. 211 (1890); United States v. Texas, 162 U.S. 1, 90 (1896); United States v. Michigan, 190 U.S. 379, 396 (1903); Oklahoma v. Texas, 258 U.S. 574, 581 (1922); and United States v. Minnesota, 270 U.S. 181, 195 (1926)).

Furthermore, the Court's characterization of this § 706 enforcement action as one in which "the United States seeks only to vindicate the rights of an individual allegedly discriminated against by an agency of the State of Mississippi," conflicts with the Supreme Court's holding in General Tel. Co. of the N.W. v. EEOC, 446 U.S. 318 (1980), that federal agencies enforcing federal employment discrimination laws pursuant to § 706 act, not only for the benefit of specific individuals, but "to vindicate the public interest in preventing employment discrimination." General Tel. Co., 446 U.S. at 326. In General Telephone, the defendant argued that the EEOC's § 706 lawsuit, premised upon complaints of sex discrimination by several employees, should be considered a "class action," and thus subject to the requirements of Federal Rule of Civil Procedure 23. Id. at 322-23 & n.5. When bringing a § 706 action, the defendants argued, the EEOC is merely standing in for the private interests of the individual employees who benefit from the suit. Id. at 326. The Supreme Court rejected this argument, explaining that the EEOC "sue[s] in its own name to enforce federal law" and "is not merely a proxy for the victims of discrimination." Id. at 324, 326. In holding that an EEOC enforcement suit under § 706 should not be subject to the regulation of class actions contained in Rule 23, the Supreme Court stated that, even when the EEOC seeks "specific relief, such as hiring or reinstatement, constructive seniority, or damages for backpay or benefits denied, on behalf of discrimination victims, the agency is guided by 'the overriding public interest in equal employment opportunity . . . asserted through direct Federal enforcement.'"[7] Id. (quoting 118 Cong. Rec. 4941 (1972));

[7] As the Supreme Court noted in General Telephone, the regulatory mechanism described in § 706 makes clear that federal agencies enforcing employment discrimination laws represent interests distinct from those of individual parties filing administrative complaints alleging discrimination. Under § 706, an aggrieved individual may bring her own action if, for example, "the agency has failed to move the case along to the party's satisfaction, has reached a determination not to sue, or has reached a conciliation or settlement agreement with the respondent that the party finds unsatisfactory." General Tel. Co., 446 U.S. at 326 (citing 42

see also Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 368 (1977) (explaining, in holding that EEOC § 706 enforcement actions are not subject to state statutes of limitations, that "the EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties; it is a federal administrative agency charged with the responsibility of investigating claims of employment discrimination and settling disputes").

The Fifth Circuit has similarly recognized that federal agencies taking enforcement actions based on individual charges of employment discrimination do so to advance the public interest in enforcement of federal antidiscrimination laws. See, e.g., EEOC v. Cosmair, Inc., 821 F.2d 1085, 1090 (5th Cir. 1987) (holding that employee, in filing EEOC charge, did not breach benefits contract provision releasing employer from employment-related legal claims, because "[a] charge not only informs the EEOC of discrimination against the employee who files the

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U.S.C. § 2000e-5(f)(1)). The individual party may also intervene in the agency enforcement action. Id. In deciding whether an EEOC § 706 action should be circumscribed by Rule 23, the Supreme Court explained the rationale for these statutory provisions:

> In employment discrimination litigation, conflicts might arise, for example, between employees and applicants who were denied employment and who will, if granted relief, compete with employees for fringe benefits or seniority. Under Rule 23, the same plaintiff could not represent these classes. But unlike the Rule 23 class representative, the EEOC is authorized to proceed in a unified action and to obtain the most satisfactory overall relief even though competing interests are involved and particular groups may appear to be disadvantaged. 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. We are reluctant, absent clear congressional guidance, to subject § 706(f)(1) actions to requirements that might disable the enforcement agency from advancing the public interest in the manner and to the extent contemplated by the statute.

Id. Although the context here differs somewhat from that in General Telephone, this Court's failure to similarly read the provisions of § 706 is clearly erroneous, and its Judgment should therefore be altered or amended. Cf. Alvestad v. Monsanto Co., 671 F.2d 908, 912 (5th Cir. 1982) (stating, in discussing generally grounds for granting motions for reconsideration, that "district courts . . . should honor requests to reform a judgment in obvious conflict with a clear statutory mandate").

charge . . . but also may identify other unlawful company actions. . . . [A]n employer and an employee cannot agree to deny to the EEOC the information it needs to advance this public interest. A waiver of the right to file a charge is void as against public policy"); Harris v. Amoco Prod. Co., 768 F.2d 669, 683 (5th Cir. 1986) (holding that, because "the EEOC exists to represent the public interest in equal employment opportunity," EEOC § 706 actions are not subject to Rule 23 class action requirements whether EEOC is original party plaintiff or intervenes by permission). Cf. Donovan v. Cunningham, 716 F.2d 1455, 1462 (5th Cir. 1983) (recognizing, in deciding appeal of Secretary of Labor's ERISA lawsuit, that "the United States has an interest in enforcing federal law that is independent of any claims of private citizens").

Nothing in Garrett, or in any other Supreme Court or Fifth Circuit case, suggests that the Attorney General, when acting under his § 706 authority to enforce Title I of the ADA by filing a civil lawsuit for money damages against a government agency employer, is somehow only stepping into the shoes of a private individual–or, perhaps more precisely, serving as counsel to such individuals.[8] Public enforcement actions pursuant to § 706 against such government employers serve to help *all* employers "develop a better understanding, a more decent perspective, for accepting persons with impairments or disabilities into the larger society."

[8] Indeed, the Department of Justice itself has recognized, in other civil rights law enforcement contexts, that in litigation the Attorney General does *not* represent persons filing administrative complaints with appropriate federal agencies. See, e.g., Relationship Between Department of Justice Attorneys and Persons on Whose Behalf the United States Brings Suits Under the Fair Housing Act, Op. Off. Legal Counsel (Jan. 20, 1995), 1995 WL 944020, attached to the United States' Motion to Alter or Amend Judgment as Appendix A. The language of § 706 offers even less support for any argument that the Attorney General represents such individuals when enforcing the ADA than does that of the Fair Housing Act (FHA): Under the FHA, if the Secretary of Housing and Urban Development (HUD) authorizes a civil action after receiving a complaint from an aggrieved individual, the Attorney General "*shall* commence and maintain . . . a civil action *on behalf of* the aggrieved person." 42 U.S.C. § 3612(o) (emphases added). Under § 706, however, the Attorney General *may* take a civil action after a complaint is

Garrett, 121 S. Ct. at 968 (Kennedy, J., concurring).[9] Because the Court's Order and Opinion dismissing the Complaint's monetary damages claims contravenes the holdings of these federal appellate courts as to the United States' role in federal civil rights law enforcement, it is based upon a clear error of law.

Additionally, because, as the Supreme Court recognized in General Telephone, the United States does not step into the shoes of a private individual when it files a § 706 lawsuit seeking injunctive relief, reinstatement, back pay, or "any other equitable relief as the court deems appropriate," 42 U.S.C. § 2000e-5, it need not comply with the pleading requirements set forth in Ex Parte Young, 209 U.S. 123 (1908). The Court's holding dismissing the United States' claim for injunctive relief because the Complaint does not name a state official is also clearly erroneous.

Because the Court's opinion conflicts with Supreme Court and Fifth Circuit precedent, the Judgment is clearly erroneous and warrants reconsideration. Unless the Judgment is altered or amended, this clear error will work a manifest injustice in its effect upon the United States' efforts to enforce federal employment discrimination laws. As the Supreme Court has recognized, remedies for individuals victimized by illegal employment discrimination are vital to the public–not merely private–goals of the antidiscrimination statutes. Back pay, for example, serves both "deterrence and . . . compensation objectives," McKennon v. Nashville Banner Publ'g Co., 513 U.S. 352, 358 (1995), because it provides the "spur or catalyst which causes employers . . . to endeavor to eliminate, so far as possible, [their discriminatory practices]."

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referred from the EEOC. 42 U.S.C. § 2000e-5(f)(1). Nowhere does § 706 state that such action is taken *on behalf of* the individual complainant.

[9] To the extent that the dicta in United States v. City and County of Denver, 927 F. Supp. 1396, 1399 n.3 (D. Colo. 1996) may suggest that the public interest in these and other ADA enforcement objectives is not implicated in this § 706 action, such dicta is incorrect.

Albemarle Paper Co. v. Moody, 422 U.S. 405, 417-18 (1975) (quoting United States v. N.L. Indus., Inc., 479 F.2d 354, 379 (8th Cir. 1973)). Similarly, the reinstatement of a terminated employee may send a powerful message to an entire industry that discrimination will not be tolerated and that disfavored individuals cannot be removed from the workplace. See, e.g., Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 195 (1941) (noting, in labor relations case, that "[r]einstatement may be the effective assurance of the right of self-organization"). Finally, compensatory damages awards, while perhaps intended less to sanction wrongdoers than to make victims whole, have a deterrent effect upon all employers, because they "compensate" by requiring employers to pay for the harms they cause from their own coffers. Landgraf v. USI Film Prods., 511 U.S. 244, 283 & n.35 (1993) (stating that compensatory damages provisions in Civil Rights Act of 1991 "can be expected to give managers an added incentive to take preventive measures to ward off discriminatory conduct by subordinates *before* it occurs"). The Court's Judgment, prohibiting the United States from seeking such victim-specific remedies in cases brought pursuant to § 706, seriously compromises the federal government's ability to advance the public interest in ending disability discrimination in all employment settings. Cf. EEOC v. Lockheed Martin Corp., 116 F.3d 110, 112 (4th Cir. 1997) (upholding district court's grant of Rule 59(e) motion because manifest injustice would have resulted from court's misapprehension of controlling authority "'[i]n the context of a public agency trying to fulfill its statutorily mandated purpose'").

CONCLUSION

For the reasons stated above, the United States respectfully moves the Court to alter or amend the Judgment entered September 14, 2001, and instead deny Defendant's Motion to Dismiss.

DATED this the _____ day of September, 2001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, CYNTHIA L. ELDRIDGE, Assistant United States Attorney, hereby certify that I have this day mailed, postage prepaid, a true copy of the foregoing United States' Motion to Alter or Amend Judgment to the following:

Rickey T. Moore, Esq.
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Dated, this the _____ day of September, 2001.

_____
Cynthia L. Eldridge
Assistant United States Attorney