Equal Protection for All

Supreme Court backs application of ADA to prisons

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Last June, the U.S. Supreme Court addressed for the first time basic questions about the reach of the 1990 Americans With Disabilities Act (ADA). The ruling in *Pennsylvania Department of Corrections v. Yeskey* upheld the application of the 10-year-old act to state prisons, and the decision in *Bragdon v. Abbott* concluded that the ADA may prevent health care workers from refusing treatment to a person with HIV on the basis of their own fears of infection. These cases are big victories for prisoners with HIV. They also raise questions about how other cases brought by prisoners and others with HIV will fare in the future at all levels of the justice system.

At issue in *Yeskey* was whether a state prison falls within the ADA's definition of a "public entity." Ronald Yeskey, sentenced to 18 to 36 months in a Pennsylvania state prison, was eligible for placement in a boot camp for first-time offenders (this would have allowed him to be paroled in six months), but he was refused admission due to his history of hypertension. Yeskey sued Pennsylvania corrections officials, claiming that his exclusion violated Title II of the ADA, which prohibits a public entity from discriminating on the basis of disability against someone qualified for a program.

In a unanimous decision, the Supreme Court ruled that the ADA clearly extends to prisoners, while leaving open the possibility that its ruling might be successfully challenged on the grounds that Congress lacks the constitutional power to regulate state prisons. (In the wake of *Yeskey*, a bill specifically exempting prisoners from ADA protections was introduced in Congress, and was pending at presstime.)

There is nothing in the statute, the Supreme Court ruled, suggesting that prisons are not public entities whose programs or services are covered by the ADA. The court was also thoroughly unimpressed with the Pennsylvania corrections officials' argument that because inmates are not voluntary residents of a prison, the ADA's prohibition of discrimination against individuals with disabilities otherwise "eligible" to "participate" in a particular program was not intended to cover prisoners. Drug-treatment programs, prison law libraries, the boot-camp program Yeskey wished to enter—all of these, in the court's eyes, are programs and services that disabled prisoners deserve a shot at if they qualify. Until Congress says otherwise, the ruling necessarily covers inmates who, as often happens, are denied work-release placements or admission to drug-treatment or job-training programs solely on the basis of their HIV diagnosis.

One peculiar aspect of the court's *Yeskey* ruling was its tacit acceptance of hypertension as a "disability" under the ADA. The ADA definition of disability was a central issue in *Bragdon*, the highest court's first case tackling HIV. The court stopped short of concluding that HIV is *automatically* a covered disability under the ADA, while broadly hinting that a number of arguments might lead precisely to this conclusion in a future case. Neither *Bragdon* nor *Yeskey* addresses the fact that people with HIV usually experience discrimination precisely because they are *regarded as* having a condition that is "dangerous" to be around. Yet ADA provisions promise protection when individuals are limited in their ability to do things *only because of the attitudes of others*. Some courts have made it difficult for plaintiffs to prove that they are stigmatized, but future litigation should develop this theory further.

Finally, both rulings leave unresolved whether a "very small" risk of transmission can add up to a "direct threat" sufficient to justify excluding someone with HIV from such necessities as health care—or a prison visitation program. While logic might suggest that prisoners pose no measurable transmission risk in activities like serving food or doing pushups in boot camp, cooler minds by no means always prevail in the judicial resolution of prisoner lawsuits. Until a court grapples with the question of how big a "very small" risk of HIV transmission has to be before it is considered a direct threat, prisoners with HIV still run the risk that their bids to equal access could be defeated by corrections officials willing to stoke fears of HIV infection.

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