

No. 03-50538

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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CHRISTIAN M. RANDOLPH,

Plaintiff-Appellant,

v.

TEXAS REHABILITATION COMMISSION, (MARY) ESTER DIAZ, LARRY  
ANDERSON, ELIZABETH GREGOWICZ, DAVE WARD, RAY GONZALES,  
JENNY HALL, MARRY (SCONCI) WOLFE, CHARLES SCHIESSER, ROGER  
DARLEY, LEON HOLLAND, SYLVIA HARDMAN, and VERNON (MAX)  
ARRELL,

Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

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**BRIEF FOR THE UNITED STATES AS INTERVENOR**

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**JURISDICTION**

The district court had jurisdiction under 28 U.S.C. 1331 and this Court has  
jurisdiction over this timely-filed appeal under 28 U.S.C. 1291.

**QUESTION PRESENTED**

The United States will address the following question:

Whether conditioning the receipt of federal financial assistance on a waiver of States' Eleventh Amendment immunity for suits under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, is a valid exercise of Congress's authority under the Spending Clause.

### **STATEMENT OF FACTS AND STATEMENT OF THE CASE**

1. Plaintiff Christian Randolph brought this action in 2002 against the Texas Rehabilitation Commission and various state officials alleging violations of, among other statutes, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. Section 2000d-7 of Title 42 permits such suits, conditioning receipt of federal funds on a State's knowing and voluntary waiver of its Eleventh Amendment immunity to claims under Section 504. On December 17, 2002, the district court held that such suits are barred by the Eleventh Amendment and dismissed those claims as well as plaintiff's other claims under the Family and Medical Leave Act and state laws. Plaintiff has appealed from the dismissal of his complaint.

2. In August 2003, the United States intervened on appeal pursuant to 28 U.S.C. 2403(a), which provides that "[i]n any action, suit or proceeding in a court of the United States to which the United States \* \* \* is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court \* \* \* *shall permit the United States to intervene \* \* \* for*

*argument on the question of constitutionality*” (emphasis added). The United States intervened for the sole purpose of defending the constitutionality of the statutory provisions that condition a state agency’s receipt of federal financial assistance on a waiver of its Eleventh Amendment immunity to claims under Section 504 of the Rehabilitation Act of 1973.

### **STANDARD OF REVIEW**

This Court reviews the issue of Eleventh Amendment immunity *de novo*. *United States ex rel. Barron v. Deloitte & Touche, L.L.P.*, 381 F.3d 438, 439 (5th Cir. 2004).

### **ARGUMENT**

#### **THIS EN BANC COURT HAS HELD THAT A STATE AGENCY WAIVES ITS ELEVENTH AMENDMENT IMMUNITY TO CLAIMS UNDER SECTION 504 OF THE REHABILITATION ACT WHEN IT ACCEPTS FEDERAL FINANCIAL ASSISTANCE**

Since this appeal was filed, this Court, sitting en banc, has issued two decisions addressing the question whether a state agency validly waives its Eleventh Amendment immunity to claims under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (Section 504), when it applies for and accepts federal financial assistance. See *Pace v. Bogalusa City School Board*, 403 F.3d 272 (5th Cir. 2005), and *Miller v. Texas Tech. Univ. Health Scis. Ctr.*, 421 F.3d 342 (5th

Cir. 2005). In those opinions, this Court has conclusively determined that (1) Section 504 and 42 U.S.C. 2000d-7 are valid exercises of Congress's authority under the Spending Clause, and (2) a state agency knowingly and voluntarily waives its Eleventh Amendment immunity to Section 504 claims when it accepts federal funds. Accordingly, this Court should summarily reverse the district court's decision that the state agency defendant is immune to suit on plaintiff's Section 504 claims.

Between *Pace* and *Miller*, this Court has held that Section 504 and 42 U.S.C. 2000d-7 fully satisfy the standard articulated by the Supreme Court in *South Dakota v. Dole*, 483 U.S. 203 (1987), for judging the validity of Spending Clause legislation. In *Pace*, the court reviewed the limits on the exercise of Congress's spending power set forth in *Dole*:

(1) Federal expenditures must benefit the general welfare; (2) The conditions imposed on the recipients must be unambiguous; (3) The conditions must be reasonably related to the purpose of the expenditure; and (4) No condition may violate any independent constitutional prohibition. In addition, the *Dole* Court recognized a fifth requirement that the condition not be coercive: “[I]n some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which ‘pressure turns into compulsion.’”

403 F.3d at 278-279 (quoting *Dole*, 483 U.S. at 211) (footnote omitted).

In *Pace*, the Court held that the statutes satisfy *Dole*'s second prong<sup>1</sup> – the “clear statement rule” – by putting state fund recipients on notice that acceptance of the funds constitutes an agreement to waive their immunity to suit under Section 504. See *Pace*, 403 F.3d at 281-282. In *Miller*, the Court held that the statutes satisfy *Dole*'s third requirement that conditions placed on funding statutes be “reasonably related” to the purpose of the expenditures to which the funds are attached. *Miller*, 421 F.3d at 349 (“We agree with the four circuit courts that have addressed this issue and concluded that, if the involved state agency or department accepts federal financial assistance, it waives its Eleventh Amendment immunity even though the federal funds are not earmarked for programs that further the anti-discrimination and rehabilitation goals of § 504.”). The Court in *Pace* further concluded that the statutes do not violate *Dole*'s fourth requirement that conditions attached to Spending Clause legislation not violate any other constitutional limit, by affirming that Congress has the power to condition the receipt of federal funds on a state agency's waiver of immunity without running afoul of the “unconstitutional conditions” doctrine. *Pace*, 403 F.3d at 286-287. Finally, the Court in *Pace* found that conditioning the receipt of funds on an agency's waiver

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<sup>1</sup> No party in either case disputed whether Sections 504 and 2000d-7 satisfy the first prong of the *Dole* test – namely, “whether the Spending Clause statute at issue was enacted in pursuit of the general welfare.” *Pace*, 403 F.3d at 280.

of its immunity to Section 504 claims is not unconstitutionally “coercive.” *Pace*, 403 F.3d at 287.

Moreover, the *Miller* Court concluded that, as a matter of federal law, the state agencies involved had authority to waive their Eleventh Amendment immunity by applying for and accepting clearly conditioned federal funds regardless of whether state law explicitly authorized the agencies to waive their immunity. *Miller*, 421 F.3d at 347-348. Finally, the Court in *Pace* rejected the state defendant’s contention that its waiver was not knowing, and therefore not valid, because the agency did not subjectively know that it had any immunity to waive. 403 F.3d at 282-285; see also *Miller*, 421 F.3d at 350-351.

**CONCLUSION**

This Court should summarily reverse the district court's dismissal of plaintiff's Section 504 claims on the ground that the state agency defendant is immune under the Eleventh Amendment, and should remand this case for further proceedings.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I certify that two copies of the foregoing BRIEF FOR THE UNITED STATES AS INTERVENOR and an electronic version of the brief on a diskette were sent by first class mail this 11th day of October, 2005, to the following counsel of record:

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