

Constitutional Litigation

October 9, 2008

ADA, Rehabilitation Act and Section 1983

| | Americans with Disabilities Act (42 U.S.C. § 12131) | Rehabilitation Act (29 U.S.C. § 794) | Section 1983 (42 U.S.C. § 1983) |
|--------------------|--|--|--|
| Who is liable? | Entity is liable | Entity is liable | Individuals are liable |
| Standard | “reasonable accommodation” | “reasonable accommodation” | “deliberate indifference” |
| Sovereign immunity | no immunity when constitutional right is implicated (<i>United States v. Georgia</i> , 546 U.S. 151, 155 (2006)) | no immunity when entity accepts federal funds | State is immune from suits for damages |
| Municipal immunity | No immunity | no immunity when entity accepts federal funds | Exists unless plaintiff can prove “custom, policy or practice” violated civil rights (<i>Monell v. Department of Social Servs of City of New York</i> , 436 U.S. 658, 690-91 (1978)) |
| Qualified immunity | No immunity | No immunity | Exists unless plaintiff can prove 1) constitutional right was clearly established at time of violation, 2) defendant’s action was objectively unreasonable (<i>See, e.g., Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982)) |
| Other | Have to prove plaintiff is disabled. Requires showing “major life activity” is substantially impaired by physical or mental condition. | Have to prove plaintiff is disabled (same test as ADA) and entity accepts federal funding. | |