



NATIONAL CAMPAIGN TO **RESTORE CIVIL RIGHTS**

ARE STATES ABOVE FEDERAL LAW? SHOULD STATES HAVE MORE RIGHTS THAN PEOPLE?

In recent years, the Supreme Court has significantly curtailed the power of the federal government to enforce laws that protect us and make states accountable to their citizens. The decisions of the Court mean that people often can't sue their state governments even when those governments violate the law and someone's rights -- unless that state *agrees* to be sued. Sounds wacky? It gets worse. Now, even if a state government violates a law Congress created to protect people's rights -- such as the Americans with Disabilities Act or the federal Family and Medical Leave Act -- an individual can't go to court to get lost wages, back pay, or any other type of monetary compensation. This leaves workers unfairly fired from their jobs, with almost nothing they can do even when they can prove their state government discriminated against them.

The Supreme Court has opened the doors to the idea that states are above the law. There are three states, though, that have said they shouldn't discriminate and have agreed to allow the people to enforce federal laws if they do: Minnesota, Illinois, and North Carolina have all agreed to be accountable to their people and waived their rights to be excluded from the requirements of the Federal Age Discrimination in Employment Act, the Federal Family and Medical Leave Act, Federal Americans with Disabilities Act, Title VII of the Civil Rights Act, and the Fair Labor Standards Act.

Most states have taken full advantage of the Supreme Courts' recent decisions, and have chosen to remain unaccountable to their own citizens for violations of federal law. Many states have passed or have pending legislation, which even serves to strengthen, expand, or reinforce their ability to avoid lawsuits. In Georgia, for instance, a doctor who contracts with the state to provide free medical services to low-income residents is considered a part of the state -- and therefore can't be sued. Even if that doctor is negligent and someone is injured because of it, the victim isn't entitled to any type of compensation for the injuries. Some states have passed laws that allow them to be sued in some instances, but not if they violate civil rights.

The question about whether a state is somehow above federal law has a huge impact on real people's lives. After being treated for breast cancer, Patricia Garrett was transferred and demoted from her job as supervising nurse at the University of Alabama Medical Center -- even though she could still perform her job well. Ms. Garrett took her employer to court. The Supreme Court ruled that state employers should be shielded from paying any lost wages or damages in employment discrimination suits brought under the Americans with Disabilities Act, even when it is clear that they have discriminated. Ms. Garrett like so many other Americans was left without anything she could do about her employer's illegal actions.

Milton Ash was a security guard in a state corrections facility who asked his employer for reasonable accommodations that he thought were secured by the Americans with Disabilities Act -- a broad-based civil rights statute prohibiting discrimination against people with disabilities. As a person with severe asthma and other pulmonary problems, it was particularly important to him that the state enforce its "no smoking" requirements in the guard stations. And he also asked that they provide routine maintenance on cars. More than once he was rushed to the hospital as a result of acute breathing problems connected to air quality. He was qualified and able to do his job, but the state failed to accommodate his disability or enforce *its own* no-smoking rule.

In court, both Patricia Garrett and Milton Ash faced the same problem: though they could prove discrimination, their state of Alabama argued that they had *no right to be in court*, and no right to such relief as back pay to compensate them for lost wages due to the discrimination they experienced.

Fortunately, there are still some ways to work around this restriction and hold states accountable for violations of some federal laws even when they do not agree to a lawsuit. Cases can still be brought to force a future change in state policy or practice. And the Court hasn't ruled that states are above all federal laws.

During this country's struggles over slavery, when the federal government helped people survive the Great Depression, and, more recently, with civil rights, this issue of "states rights" (vs. federal power) was raised as a banner by those who opposed abolition, the New Deal, and civil rights laws. Yet real federalism, a balance between national and local power, allows the federal government authority to do what it needs to do to protect the environment, ensure food is safe and clean, and protect people from discrimination in employment or housing.