

UNITED STATES SUPREME COURT DECISIONS LIMIT FEDERAL WETLANDS JURISDICTION, STATE (NOT MUNICIPAL) ADA LIABILITY

In two recent decisions the United States Supreme Court continued its trend toward recognizing state's rights and limiting federal jurisdiction. Both of these decisions are complex. Because the decisions are noteworthy for municipalities, the Law Center has provided brief summaries of the decisions below. If you are interested in more information regarding these decisions, contact Jon Groveman in the VLCT Law Center at 800/649-7915.

Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers Et Al.

This case involves a challenge by a consortium of municipalities in Illinois to the jurisdiction of the Army Corps of Engineers to regulate activity in certain wetland areas. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers Et Al.*, 531 U.S. ____ (2001). Section 404(a) of the Clean Water Act (CWA) provides the Army Corps of Engineers with jurisdiction over the discharge of dredged or fill material into navigable waters. In a previous decision the United States Supreme Court held that the term navigable waters includes wetlands that abut a navigable waterway. *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985). In *Riverside Bayview Homes*, the Court also ruled that the term navigable in the CWA was of limited effect in light of the broad purpose of the CWA, which is to protect water quality and aquatic ecosystems. *Id.* The municipalities in *Solid Waste Agency of Northern Cook County* proposed to fill a wetland that was neither navigable nor directly adjacent to a navigable water. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers ET AL.*, 531 U.S. ____ (2001). The federal government argued that it had jurisdiction over the wetland under the so-called migratory bird regulation adopted in 1986. This regulation extends federal jurisdiction over wetlands that are or would be used as habitat by certain migratory birds, even if such wetlands are not adjacent to navigable waters. The municipalities argued that because the wetland was neither navigable nor adjacent to a navigable water they were not required to obtain a permit to fill the wetland from the federal government under the CWA. *Id.* The United States Supreme Court ruled in favor of the municipalities, holding that its previous decision in *Riverside Bayview Homes* did not address the question of whether wetlands that are not adjacent to navigable waters are subject to federal regulation. *Id.* The Court stated that to extend federal jurisdiction over such wetlands would lend no effect to the term navigable in the CWA, and such a result would be inconsistent with the language of the statute. *Id.*

This decision is noteworthy for municipalities for two main reasons. First, it limits the jurisdiction of the federal government with regard to wetland regulation. Municipalities proposing to fill wetlands that are not adjacent to navigable waters will no longer be subject to regulation by the Army Corps of Engineers under the so-called migratory bird rule. Notwithstanding this ruling, to avoid legal difficulties, VLCT advises municipalities to consult with the Army Corps of Engineers to determine if a wetland that may be affected by a proposed municipal project is considered adjacent to a navigable water and, therefore, subject to federal regulation. Similarly, municipalities should consult with the Vermont Agency of Natural Resources to determine if state jurisdiction over a wetland exists prior to conducting work in the wetland. (See related article on Page). The decision is also noteworthy for municipalities because one rationale for the Court's decision not to extend federal jurisdiction over these wetlands was that regulation of land use is a function traditionally performed by "local governments." *Id.* Recognizing the importance of local control over land use regulation the Court stated, "[p]ermitting respondents to claim federal jurisdiction over ponds and mudflats falling within the "Migratory Bird Rule" would result in a significant impingement of the State's traditional and primary power over land and water use." *Id.* ***Board of Trustees of the University of Alabama Et Al. v. Garrett Et Al.*** This case involves a challenge to the constitutionality of the provision of the Americans with Disabilities Act of 1990

(ADA) that authorizes state employees to sue states for violating the ADA. *Board of Trustees of the University of Alabama Et Al. v. Garrett Et Al.*, 531 U.S. ____ (2001). The United States Supreme Court ruled that lawsuits brought in federal court by state employees to recover money damages by reason of a State's failure to comply with the ADA are barred by the Eleventh Amendment. The Eleventh Amendment generally prohibits suits by citizens against their own state or another state in federal court.

This decision is noteworthy for municipalities because the United States Supreme Court specifically ruled that while states were immune from citizen suits under the ADA in federal court, this immunity does *not* extend to municipalities. Specifically, the Court stated, "the Eleventh Amendment does not extend its

immunity to units of local government.” *Id.* The Court further stated, “only the States are the beneficiaries of the Eleventh Amendment.” *Id.* Accordingly, municipalities may still be sued and held liable in federal court for failing to comply with the ADA.

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