

1 **REQUESTED ADA ACCOMMODATION
WOULD VIOLATE
STATE HUNTING LAW**

2 **THOMPSON**

v.

VIRGINIA DEPARTMENT OF GAME AND INLAND FISHERIES

UNITED STATES DISTRICT COURT WESTERN DISTRICT VIRGINIA, ABINGDON DIV.

March 30, 2007

3 **Title II of the Americans with Disabilities Act claiming that a state agency
discriminated against the plaintiff**

by denying his request for an exemption from certain state hunting laws

4

**Thompson suffers from degenerative joint disease of the right shoulder
and neck that inhibits his mobility.**

5 **claims that VDGIF failed to accommodate his disability**

**by refusing to allow him to use a .223-caliber gun to hunt deer on state
property**

6 **not allowing him to take either-sex deer**

on days other than those officially designated as either-sex hunting days.

7 **letter that Thompson sent to VDGIF on or about April 6, 2006,**

requesting that disabled persons be allowed to use a .223-caliber gun to dispatch deer.

8 states that he needs to use a .223-caliber gun,

since the recoil of a higher caliber gun would aggravate his degenerative joint disease.

9 VDGIF denied Thompson's request

10 29.1-519(C) of the Virginia Code requires that

"pistols and rifles used to hunt game birds and animals shall use no cartridge with a bullet of less than .23 caliber.

11 Department of Game and Inland Fisheries can not make any exceptions to the law as provided."

12 second letter to VDGIF on or about April 7, 2006,

13 regarding regulations that allow hunters fifteen years of age or younger

to take one either-sex deer per license year on days other than those designated as either-sex deer hunting days.

14 requested that VDGIF extend this youth privilege

to physically challenged hunters with disabled licenses

or permits to hunt from a vehicle.

15 Thompson argued that an expansion of the youth privilege to disabled hunters,

"might get more hunters involved,"

and benefit VDGIF since it could help with "problems of overpopulation" of deer.

16 VDGIF denied Thompson's request

17 since the passage of the youth hunters either-sex deer regulation,

numerous other groups had also asked to be included,

but that all such requests had been denied

18 concern that allowing numerous hunters to take either-sex deer on additional days,

"could result in over-harvest in substantial areas of the state

19 compromise the effective enforcement of [the Commonwealth's] wildlife protection laws."

20 disability is not a suspect classification [i.e., race, creed, color, religion, national origin] for the purposes of the Fourteenth Amendment,

21 state statutes or regulations that allegedly discriminate on the basis of disability are subject only to rational basis scrutiny.

22 **classification based on disability will be upheld**

as long as the classification is rationally related to a legitimate state interest.

23 **when conducting rational basis review we will not overturn such [government action]**

24 **unless the varying treatment of different groups or persons**

is so unrelated to the achievement of any combination of legitimate purposes

that we can only conclude that the [government's] actions were irrational."

25 **Title II of the ADA "imposes a greater burden on the States than does the Fourteenth Amendment"**

26 **because it prevents states from excluding the disabled from public programs or discriminating against them**

"by reason of such disability."

27 **Title II does NOT require states to employ any and all means**

to make services accessible to persons with disabilities

28 **does NOT require States to compromise**

their essential eligibility criteria for public programs.

29 **requires only reasonable modifications**

that would not fundamentally alter the nature of the service provided

30 state action that excludes the disabled from public programs does not necessarily violate Title II

31 because States remain free to limit participation in their programs or activities

for other, lawful reasons.

32 Fourth Circuit has held that to establish a claim under Title II,

plaintiffs must show that their disabilities played a "motivating role"

in their exclusion from public services, programs or activities.

33 requirement is derived directly from the language of Title II which states,

"no qualified person with a disability shall, *by reason of such disability*,

34 be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity." 42 U.S.C.A. § 12132

35 State statutes or regulations that are facially neutral

but that disproportionately burden the disabled

are also actionable under the Fourteenth Amendment and Title II.

36 disparate-treatment and disparate-impact claims

are cognizable under the ADA.

- 37 **Congress intended to prohibit outright discrimination,**
- as well as those forms of discrimination which deny disabled persons public services disproportionately**
- due to their disability**
- 38 **Title II prohibits not only intentional discrimination against disabled individuals,**
- 39 **also any policies or practices that have a disparate impact on disabled individuals.**
- 40 **plaintiff bringing a disparate impact claim**
- must first show that the policy or practice that is facially neutral**
- has a more harsh effect on the protected class.**
- 41 **burden shifts to the defendant who must show**
- the discriminatory rules or practices are justified by legitimate state interests.**
- 42 **Thompson has failed to allege any facts that could show that his disability was a motivating factor in VDGIF's decisions.**
- 43 **Thompson's disability was not considered at all by VDGIF in denying his requests.**

44 denials were based on the law of the Commonwealth and the rules and regulations promulgated by the Board of Game and Inland Fisheries.

45 VDGIF would have rejected Thompson's requests regardless of his disability,

because the actions that he wishes to engage in are illegal in Virginia.

46 VDGIF applied section 29.1-519(C) of the Code of Virginia in denying Thompson's request to use a .223-caliber gun.

47 statute explicitly outlaws the use of guns of less than .23-caliber in dispatching deer.

48 VDGIF's denial of Thompson's request to take either-sex deer at any time was based on an agency regulation

49 forbids hunters older than fifteen years of age from taking either-sex deer on days other than those designated as either-sex hunting days.

50 section 29.1-519(C) and the agency regulations "serve to effectively manage the deer population in Virginia, reasonably promote the humane harvesting of wild game and ensure hunter safety.

51 use of rifles of a caliber less than .23 to dispatch deer

would result in an unacceptable number of crippled wounded and/or lost deer."

52 considered extending the youth hunter either-sex anytime privilege to other groups,

53 but concluded that an expansion of this privilege would "adversely affect the Department's management of the deer population in Virginia."

54 VDGIF has shown that its actions were in furtherance of a legitimate state interest,

the protection of Virginia's deer population.

55 rational basis test, VDGIF would prevail,

because the burden is on Thompson to show that there is no rational basis for the disparate treatment.

56 plaintiff's burden is less onerous under the ADA than the Fourteenth Amendment,

57 Thompson must still show that his disability played a motivating role in VDGIF's denial of his requests.

58 Thompson has presented no evidence that suggests that his disability was considered by VDGIF,

59 VDGIF has shown that it rejected Thompson's requests for lawful reasons,

VDGIF is entitled to judgment as a matter of law.

60 Thompson's allegations suggest that section 29.1-519(C) and the agency regulations disproportionately burden persons with disabilities.

61 VDGIF would also be entitled to summary judgment on a disparate impact

claim,

**since Thompson has not met his burden of showing that the
discriminatory rules or practices are not justified by legitimate state
interests**

62 **final judgment will be entered in favor of VDGIF.**

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