crimination. This was a particularly difficult test to meet, as the Court has generally rejected constitutional challenges to age discrimination by states, finding that there is a rational basis for states to use age as a proxy for other qualities, abilities and characteristics.[2151] Noting the lack of a sufficient legislative record establishing broad and unconstitutional state discrimination based on age, the Court found that the ADEA, as applied to the states, was "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to or designed to prevent unconstitutional behavior."[2152]

Despite what was considered by many to be a better developed legislative record, the Court in *Board of Trustees of Univ. of Ala. v. Garrett*[2153] also rejected the recovery of money damages against states, this time under of the Americans with Disabilities Act of 1990 (ADA).[2154] Title I of the ADA prohibits employers, including states, from "discriminating against a qualified individual with a disability"[2155] and requires employers to "make reasonable accommodations [for] . . . physical or mental limitations . . . . unless [to do so] . . . would impose an undue hardship on the . . . business."[2156] Although the Court had previously overturned discriminatory legislative classifications based on disability in *City of Cleburne v. Cleburne Living Center*,[2157] the Court had held that determinations of when states had violated the Equal Protection Clause in such cases were to be made under the relatively deferential standard of rational basis review. Thus, failure of an employer to provide the kind "reasonable accommodations" required under the ADA would not generally rise to the level of a violation of the Fourteenth Amendment, and instances of such failures did not qualify as a "history and pattern of unconstitutional employment discrimination."[2158] According the Court, not only did the legislative history developed by the Congress not establish a pattern of unconstitutional discrimination against the disabled by states,[2159] but the requirements of the ADA would be out of proportion to the alleged offenses.

[2151] *See, e.g.*, Gregory v. Ashcroft, 501 U.S. 452 (1991) (applying rational basis test to uphold mandatory retirement age of 70 for state judges).

[2152] 528 U.S. at 86, quoting *City of Boerne*, 521 U.S. at 532.

[2153] 531 U.S. 356 (2001).

[2154] 42 U.S.C. §§ 12111–12117.

[2155] 42 U.S.C. § 12112(a).

[2156] 42 U.S.C. § 12112(b)(5)(A).

[2157] 473 U.S. 432 (1985).

[2158] 531 U.S. at 368.

[2159] As Justice Breyer pointed out in the dissent, however, the Court seemed determined to accord Congress a degree of deference more commensurate with review of an agency action, discounting portions of the legislative history as based on secondary source materials, unsupported by evidence and not relevant to the inquiry at hand.