

SEP 05 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREG A. HORTON,

Plaintiff - Appellant,

v.

STATE OF ALASKA WILDWOOD  
CORRECTIONAL CENTER,

Defendant - Appellee.

No. 11-35683

D.C. No. 3:10-cv-00264-HRH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Alaska  
H. Russel Holland, Senior District Judge, Presiding

Submitted August 30, 2012\*\*  
Anchorage, Alaska

Before: HAWKINS, McKEOWN, and BEA, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiff Greg Horton appeals from the district court's dismissal of his suit against Defendant State of Alaska Wildwood Correctional Center. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The Supreme Court has already decided the question before us, and has held that Congress did not validly abrogate the states' Eleventh Amendment immunity under Title I of the ADA. *Bd. of Trustees of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001).

*United States v. Georgia*, in which the Supreme Court held that Congress had validly abrogated the states' Eleventh Amendment immunity through Title II of the ADA, does not apply to this case. 546 U.S. 151, 159 (2006). The Supreme Court has explained the "significant differences" between Title I and Title II of the ADA, and noted that Title II, unlike Title I, looks to enforce a multitude of very basic constitutional rights, like the right of access to the courts. *Tennessee v. Lane*, 541 U.S. 509, 522–23 (2004). Thus, *Georgia* does not apply to this case.

**AFFIRMED.**