

Summary of Case Before U.S. Supreme Court in Tennessee v. Lane

(Prepared by the Legal Division, LCB)

I. Question Presented in Lane:

Did Congress have the constitutional authority under Section 5 of the Fourteenth Amendment to enact Title II of the Americans with Disabilities Act of 1990 ("ADA") and to abrogate states' sovereign immunity from private damage claims?

II. Facts:

Generally: The six plaintiffs in this case allege that they were denied the opportunity to participate effectively in Tennessee court proceedings because the state's courthouses were not physically accessible to persons with disabilities.

George Lane: Specifically, respondent George Lane was compelled to appear at the courthouse to answer a set of criminal charges filed against him by the state. Mr. Lane used a wheelchair for mobility and was not able to walk or to climb stairs. Because all of the proceedings in the courthouse occurred on the second floor and there was no elevator, he was required to abandon his wheelchair and crawl up the steps in order to appear in court. Subsequent to his arraignment, Mr. Lane was summoned to appear at a hearing in the same courtroom. He arrived at the courthouse and sent word to the trial judge that he refused to crawl up the steps of the courthouse, and that he would not put his safety at risk by allowing court employees to carry him. On the order of the trial judge, Mr. Lane was arrested and jailed for failure to appear. Future proceedings in the case were held at the same courthouse. At those proceedings Mr. Lane typically waited at the bottom of the stairs while his attorney shuttled back and forth to the courtroom, which resulted in the court conducting proceedings out of Mr. Lane's presence. The court conducted Mr. Lane's preliminary hearing in the courthouse library which was accessible to persons with disabilities, over his objection that the library was a location that was not regularly frequented by the public. When Mr. Lane's attorney requested that the court dismiss or stay proceedings until accessible facilities could be found, the trial court denied the motion and suggested that while Mr. Lane might have a right to bring an independent civil suit to make the courthouse accessible, inaccessibility was no basis for delaying or dismissing the pending criminal case. The trial court eventually stayed the criminal case while an elevator was constructed.

Beverly Jones: Ms. Jones has paraplegia and uses a wheelchair for mobility. She works as a certified court reporter for parties to judicial proceedings. Because courthouses in many Tennessee counties are inaccessible, her opportunity to perform her work has been significantly impeded. She has specifically requested modifications to the courthouses in four counties in Tennessee, but none has been made accessible to her.

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| EXHIBIT <u>E</u> | Disabilities | Document consists of <u>10</u> pages |
| <input checked="" type="checkbox"/> | Entire document provided. | |
| <input type="checkbox"/> | Due to size limitations, pages ____ through ____ provided. | |
| A copy of the complete document is available through the Research Library (775-684-6827 or e-mail library@lcb.state.nv.us). | | |
| Meeting Date | | <u>2-4-04</u> |

Ann Marie Zappola, Ralph E. Ramsey, Sr., Dennis Cantrel, and A. Russell Larson: Ms. Zappola has a spinal cord injury that makes it painful if not impossible for her to climb stairs. She was forced to climb the steps to the third floor of the courthouse to attend proceedings in two cases. Mr. Ramsey has a venous condition that makes him unable to climb stairs. When he arrived at the courthouse for a hearing in a civil case in which he was a defendant and he sent word that he was in the courthouse but could not get to the courtroom on the second floor, the trial court entered judgment against him for failure to appear. Mr. Cantrel has paraplegia and was forced to crawl up the stairs of the courthouse to attend a County Commission meeting. Mr. Larson, an attorney with a condition that makes it difficult to impossible to climb stairs, was required to provide pretrial representation to his clients in first-floor courthouse hallways and was unable to provide effective representation to clients whose cases went to trial.

III. Proceedings Below:

The respondents filed this suit against the State of Tennessee and a number of counties alleging that the defendants had violated Title II of the ADA by maintaining inaccessible courthouses and seeking injunctive relief and damages. Tennessee moved to dismiss the case on Eleventh Amendment immunity grounds and the district court denied the motion. On appeal, the Sixth Circuit Court of Appeals affirmed on the basis of a prior case which held that Title II validly abrogates state sovereign immunity in cases in which the statute enforces due process principles. The Sixth Circuit explained that the respondents were seeking to vindicate their due process right of access to the courts in Tennessee.

IV. Relevant Constitutional Provisions, Statutes and Regulations:

A. The Constitution of the United States

The Eleventh Amendment provides that:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Fourteenth Amendment provides in part that:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

B. Part A of Title II of the Americans with Disabilities Act

42 U.S.C. § 12132 provides that:

“[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

C. Regulations Adopted by the U.S. Attorney General to Effectuate Part A of Title II of the Americans with Disabilities Act

1. 28 C.F.R. § 35.130(b)(1) provides that:

“A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability –

- (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
- (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity’s program;
- (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
- (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.”

2. 28 C.F.R. § 35.130(b)(7) provides that:

“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”

3. 28 C.F.R. § 35.149 provides that:

“Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”

4. 28 C.F.R. § 35.150 provides in part that:

“(a) General. A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not

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(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) Methods —

(1) General. A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility

requirements of § 35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

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(c) Time period for compliance. Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.”

5. 28 C.F.R. § 35.151 provides in part that:

“(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(b) Alteration. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.”

V. Relevant Case Law:

Congress has the power under Section 5 of the Fourteenth Amendment to enact “reasonably prophylactic legislation” that responds to actual or threatened constitutional violations, Kimel v. Florida Bd. of Regents, 528 U.S. 62, 88 (2000), so long as there is “a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.” City of Boerne v. Flores, 521 U.S. 507 (1997).

Section 5 of the Fourteenth Amendment is an affirmative grant of legislative power that gives Congress the “authority both to remedy and to deter violation of [Fourteenth Amendment] rights . . . by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment’s text.” Nevada Dep’t of Human Res. v. Hibbs, 123 S.Ct. 1972, 1977 (2003). Section 5 gives Congress the power to remedy past violations of constitutional rights, to enact “prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct,” and to abrogate the States’ Eleventh Amendment immunity.” Hibbs, 123 S.Ct. at 1977.

Board of Trs. of the Univ. of Ala. v. Garrett: The Supreme Court held that Congress lacked Section 5 power to apply to states the statutory rule in Title I of the ADA which prohibits discrimination in employment. This decision is based on: (1) the court’s determination that the record did not reflect a pattern of disability discrimination in state

employment sufficient to justify application of Title I to the states; and (2) the failure of Congress to create a statutory remedy that was congruent and proportional to the targeted violation. 531 U.S. 356 (2001).

Nevada Dep't of Human Res. v. Hibbs: The Supreme Court held that a state government employee could sue his governmental employer under the Family and Medical Leave Act's ("FMLA") family-care provision despite the state's Eleventh Amendment sovereign immunity from suits. The Supreme Court found that, in enacting the FMLA, Congress sought to protect the right to be free from gender-based discrimination in the workplace. The Court cataloged the long history of laws, including state laws governing public employees, that reinforced the stereotype that women are family caregivers and therefore should be given family leave, while perpetuating the stereotype that men are not caregivers and therefore do not need such leave. The Supreme Court thus held that "the States' record of unconstitutional participation in, and fostering of, gender-based discrimination in the administration of leave benefits is weighty enough to justify the enactment of prophylactic § 5 legislation" like the family-care provisions of the FMLA. The Supreme Court also concluded that "the family-care leave provision of the FMLA, is 'congruent and proportional to the targeted violation.'" The Supreme Court noted that unlike other statutes which apply broadly to the states, the FMLA is "narrowly targeted at the fault line between work and family—precisely where sex-based overgeneralization has been and remains strongest—and affects only one aspect of the employment relationship." 123 S.Ct. 1972, 1977 (2003).

VI. Summaries of Briefs Filed with Supreme Court in Lane:

A. Briefs in Support of the Constitutionality of Title II of the ADA

1. Brief for the Private Respondents: Title II of the ADA directly implicates the core rights of citizenship. In the courthouse access context of this case, the constitutional concerns are particularly powerful, for courts that are inaccessible to people with disabilities threaten to violate an array of constitutional rights. Title II is a congruent and proportional response to actual and threatened violations of the Fourteenth Amendment. Congress clearly had power under Section 5 of the Fourteenth Amendment to require the State of Tennessee to assure that its court system is readily accessible to and usable by individuals with disabilities.

2. Brief for the United States: Application of Title II of the ADA to states and their subdivisions falls squarely within Congress' comprehensive legislative power under Section 5 of the Fourteenth Amendment to prohibit, remedy and prevent violations of the rights secured by that Amendment. In enacting Title II, Congress focused its legislative attention on the specific problem of discriminatory access to state and local government services. Congress determined that persons with disabilities had suffered from a virulent history of official governmental discrimination, isolation and segregation, and found that such discrimination and segregation, like race and gender discrimination, have repercussions that have persisted over the years and that continue to be manifested in decision-making by state and local officials across the span of governmental operations.

That discrimination results in the deprivation of fundamental rights, such as the rights of access to the courts, to vote, to substantive and procedural due process, to petition government officials, and to other protections of the First, Fourth, Fifth, Sixth and Eighth Amendments. The ADA is carefully designed to root out present unconstitutional discrimination, to undo the effects of past discrimination and to prevent future unconstitutional treatment by prohibiting discrimination and promoting integration. At the same time, the ADA preserves the latitude and flexibility the states require by confining the protection to qualified individuals and only requiring reasonable modifications that do not impose an undue burden and do not fundamentally alter the nature or character of the governmental program.

3. Amici Curiae Brief for Various States (Minnesota, Connecticut, Illinois, Missouri, New Mexico, New York, Washington and Wisconsin): Although states more typically advocate the application of Eleventh Amendment immunity, these states filed this brief because of the vital public policy underlying the landmark ADA legislation and because of the central role of the states in providing the public services, programs and activities subject to Title II. They noted that the filing of this brief is consistent with the obligation of the attorneys general of these states to protect the public interest. Where a legislative enactment constitutes a valid exercise of Congress' Section 5 power under the 14th amendment, the states have a compelling interest in the full implementation of the law. In considering Title II, Congress had before it substantial and uncontroverted evidence of state-sponsored invidious discrimination against individuals with disabilities in the provision of public services, programs and activities. Title II implicates fundamental rights protected by the Equal Protection and Due Process Clauses, which are subject to heightened scrutiny, including voting and access to the courts. In Title II, Congress provided for a congruent and proportional remedy for widespread constitutional violations by the states as evidenced by the limitations on Title II's remedial scheme.

4. Amici Curiae Brief for Kansas and Delaware: Congress abrogated Eleventh Amendment immunity protection relative to Title II of the ADA only to the extent said immunity obstructs the pursuit or enforcement of fundamental due process rights. In addition, Congress did not validly abrogate the states' Eleventh Amendment immunity protection as to equal protection-based claims under Title II. Fundamental due process-based rights represent crucial and historically significant rights, and in order to encourage full pursuit and protection of fundamental rights, the states should not be immune from damage claims brought by individuals under Title II of the ADA for violations that implicate a citizen's fundamental due process rights. While Congress does not have the authority to create new suspect or quasi-suspect classes in order to address equal protection-based concerns, Congress does have the authority to address barriers or discrimination affecting fundamental rights due to the heightened scrutiny attributed to fundamental rights. Finally, Congress provided for a congruent and proportional remedy for widespread constitutional violations by the states in terms of fundamental rights.

5. Amici Curiae Brief for Various Organizations (Paralyzed Veterans of America, American Psychiatric Association, AARP, American Association on Mental Retardation, American Council of the Blind, American Diabetes Association, American Occupational

Therapy Association, American Psychiatric Association, The Arc of the United States, Association on Higher Education and Disability, Bazelon Center for Mental Health Law, Alexander Graham Bell Association for the Deaf and Hard of Hearing, Depression and Bipolar Support Alliance, Easter Seals, The Epilepsy Foundation®, Lambda Legal Defense and Education Fund, Inc., National Alliance for the Mentally Ill, National Association for Rights Protection and Advocacy, National Association of Councils on Developmental Disabilities, National Council on Independent Living, National Health Law Program, National Mental Health Association, National Mental Health Consumers' Self-Help Clearinghouse, National Multiple Sclerosis Society, Paralyzed Veterans of America, Tennessee Disability Coalition, United Cerebral Palsy Associations, Inc.): These organizations wish to ensure that the Court is fully apprised of the extensive evidence of the States' patterns of unconstitutional treatment of people with disabilities supporting Congress' abrogation of Eleventh Amendment immunity for violations of Title II of the ADA. Congress enacted Title II of the ADA against a backdrop that included ample evidence that States were unconstitutionally excluding people with disabilities from voting and from accessing the judicial system, prohibiting them from marrying and raising families, warehousing them in institutions in deplorable conditions, and otherwise systematically, irrationally, and intentionally depriving them of the rights guaranteed by the Fourteenth Amendment. This brief describes the compelling history of State unconstitutional conduct found in judicial decisions and the public record. These examples confirm that Congress properly exercised its power under Section 5 of the Fourteenth Amendment when it abrogated the States' Eleventh Amendment immunity for violations of Title II of the ADA, and Title II represents a congruent and proportional response to the longstanding pattern of State Constitutional violations.

6. Amici Curiae Brief for Various Organizations (The Honorable Dick Thornburgh, National Organization on Disability, American Association of People with Disabilities, and ADA Watch): These organizations argue that the Respondents and their *amici* have demonstrated a long history and pattern of unconstitutional conduct in the administration of the activities regulated by Title II of the ADA - the "services, programs, [and] activities" of the state. State conduct excluded and continues to exclude disabled persons from the judicial system, public education, public transportation, voting and other basic government services. Congress documented the discrimination and drafted the congruent and proportional response set forth in Title II of the ADA.

7. Amicus Curiae Brief for the Training and Advocacy Support Center of the National Association of Protection and Advocacy Systems: This organization argues that Title II was enacted to respond to the inadequate protection provided by an incomplete and porous patchwork of state laws. Title II ensures that persons with disabilities have consistent protection against discrimination in access to state facilities and services, regardless of the state in which they reside.

8. Amici Curiae Brief for The Lawyers' Committee for Civil Rights Under Law, the National Asian Pacific, American Legal Consortium, the National Association for the Advancement of Colored People, the Puerto Rican Legal Defense and Education Fund, People For the American Way Foundation, and the Anti-Defamation League: These

organizations argue that pursuant to its power to enforce Section 5 of the Fourteenth Amendment, Congress purposefully abrogated the state's Eleventh Amendment immunity when it enacted Title II of the ADA. Because important constitutional rights were at stake, Congress had wide latitude to construct legislation to remedy existing state discrimination against individuals with disabilities and to prevent further discrimination. State classifications and conduct affecting the exercise of the rights underlying Title II invoke heightened scrutiny and therefore the Court should apply the deferential rational means test.

9. Amicus Curiae Brief for the American Bar Association: The ABA argues that this case raises issues central to its mission of promoting meaningful access to the American system of justice for all persons. The courts must ensure that accommodations are provided and barriers are removed that have the effect of excluding people with disabilities from the judicial system. Individuals with disabilities continue to face the effects of discrimination in state courts and state judicial services and activities. In light of the barriers that still exist, Title II of the ADA remains essential to ensuring continued improvement in equal and effective access to the courts for individuals with disabilities because it requires the States to act affirmatively to ensure the accomplishment of that goal.

10. Amicus Curiae Brief for the Blanch Fischer Foundation: The foundation argues that there is a long and sordid history of discrimination against persons with disabilities, and that action by governmental entities to discriminate against the disabled is apparent from decades of case law and continues. The brief highlights the record of discrimination existing at the time that Congress passed the ADA.

B. Briefs in Support of State of Tennessee

1. Brief for the State of Tennessee: Title II is first and foremost equal protection legislation designed to eliminate discrimination against disabled persons by state and local governments. State action taken on the basis of disability is presumptively constitutional under the Equal Protection Clause and is subjected to minimum rational-basis scrutiny. The legislative record developed in connection with the enactment of the ADA wholly fails to demonstrate any persisting pattern of unconstitutional discrimination against disabled persons by the States. Title II cannot be sustained on the theory that it was needed to enforce the due process rights of persons with disabilities against state infringement as there is nothing in the record to suggest that Congress was acting to protect due process rights and no substantial evidence was presented to Congress that the States were engaged in a pattern of violations of the fundamental rights of persons with disabilities. The vast majority of Title II's provisions are so out of proportion to a supposed remedial or preventive object that Title II cannot be understood as responsive to or designed to prevent unconstitutional behavior. Title II is also not sustainable as prophylactic legislation needed to deter future constitutional violations. Title II lacks the congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end which Section 5 demands. Finally, Tennessee does not question its duty to comply with the requirements of Title II in all of its services,

programs and activities. It also recognizes that its officials may be held to account for any breach of that obligation in actions by private individuals for injunctive relief, as well as in enforcement actions by the United States.

2. Amici Curiae Brief for Various States (Alabama, Nebraska, Nevada, North Dakota, Oklahoma, Utah and Wyoming): These states state their strong interest in preserving the principles of dual sovereignty that are a defining feature of our Nation's constitutional blueprint. They have a powerful interest in ensuring that Congress's power to abrogate their sovereign immunity remains within the bounds set by the Constitution. They also have a strong interest in avoiding the litigation of private damage claims based on Title II of the ADA - particularly claims seeking damages for a State's alleged failure to make a public building sufficiently accessible to satisfy the legitimate desires of all disabled citizens to get themselves into and out of public spaces. Virtually all of the States have undertaken significant efforts in the past several years to make their public buildings more accessible. However, as a matter of policy, private federal damage actions against the States, with their attendant costs and risks to state taxpayers, are not warranted. When states violate Title II or the Constitution, federal courts may issue declaratory and injunctive relief. In addition, sovereign immunity does not apply to suits brought by the United States and that a state may waive its sovereign immunity to private suits for damages under the ADA. Because Congress did not act within its authority in abrogating the States' sovereign immunity with respect to accessibility claims under Title II, that immunity precludes private suits for damages under that statute. Finally, virtually every State already guarantees disabled persons access to public buildings. To the extent State guarantees of access are thought insufficient, the other remedies afforded by Title II provide more than adequate reinforcement.