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Rights of Access to the Courts by Individuals with Disabilities

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RIGHTS OF ACCESS TO THE COURTS BY INDIVIDUALS WITH DISABILITIES

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The latest ADA case to be decided by the United States Supreme Court is not really an ADA case at all.

While the Americans with Disabilities Act (ADA) emerged from the decision with increased power and impact, the case itself turned upon complex Constitutional dynamics involving the 11th Amendment[ii], the 14th Amendment,[iii] principles of federalism and even the separation of powers doctrine. Perhaps most importantly, however, the Court's decision affirmed the rights of individuals with disabilities to enjoy unencumbered access to courts of law.

On May 17, 2004, the Supreme Court issued its decision in Tennessee v. Lane.[iv] At issue was the constitutionality of those aspects of Title II of the ADA[v] which require reasonable accommodations to ensure access by disabled people to courthouses and courtrooms. By a narrow 5-4 margin, the Justices upheld the constitutionality of the Act's provisions.

The case arose when George Lane, a paraplegic from Tennessee, traveled to a county courthouse to answer a set of criminal charges. The courtroom was situated on the second floor; there was no elevator. On his first appearance, Lane crawled up two flights of stairs to reach the courtroom. At his second appearance, however, Lane refused either to crawl or to suffer the indignity of being carried into the courtroom by officers. He was consequently jailed for failing to appear at his hearing.

Lane sued the State of Tennessee and the county.

Before Lane could present his facts to a jury, Tennessee filed a motion to dismiss the lawsuit, arguing that the Eleventh Amendment -- which gives States immunity in federal courts -- barred Lane's suit. The courts below denied the State's motion and allowed Lane's case to proceed.

By a slim majority, the Supreme Court affirmed.

The issue presented was whether Congress had a sufficient basis to override the Eleventh Amendment immunity of States when it mandated access by individuals with disabilities to public facilities such as courts, libraries, and city parks. Three years previously, the Court had determined that Congress could not authorize lawsuits against States for discriminating against individuals with disabilities in employment.

Board of Trustees of University of Alabama v. Garrett[vi] had held that the ADA's Title I (employment discrimination) could not be used to sue States in federal court.

This time, however, the Court held that Title II (public accommodation access) was constitutional. Accordingly, plaintiffs like Lane can sue States which fail to provide reasonable access to courtrooms.

The Court's decision turned upon a careful review of the 1990 Congressional hearings on the ADA which included findings that individuals with disabilities faced numerous obstacles to the equal

enjoyment of public facilities. On this basis, the Court distinguished the Garrett decision where a salient fact was the absence of Congressional findings of widespread public employment discrimination.

The majority of the Court also relied upon the fundamental right of access to the courts as justifying Congress' power to override States' Eleventh Amendment immunity. In that sense, Lane is a narrow decision as it only upholds those provisions of Title II mandating access to courts of law. The Court left for another day any decision regarding the constitutionality of the remainder of Title II.

Four Justices, including Chief Justice Rehnquist, dissented. The dissenters called the majority's decision "irreconcilable with Garrett."[vii] Furthermore, they complained, "We have never held that a person has a constitutional right to make his way into a courtroom without any external assistance."

Commenting on the dissent's reasoning to the American Bar Association, Lane's attorney said that Rehnquist "made a carte blanche statement that individuals with disabilities do not have a constitutional right to access to the courts" but that "the U.S. Supreme Court has held that they do." The majority also criticized Justice Rehnquist, saying:

> Given the sheer volume of evidence demonstrating the nature and extent of unconstitutional discrimination against persons with disabilities in the provision of public services, the dissent's contention that the record is insufficient to justify Congress' exercise of its prophylactic power is puzzling to say the least.[viii]

While Lane is more about the bigger picture of federalism and the limits of Congressional power than the ADA specifically, the decision is nevertheless being hailed as a victory for advocates of the rights of individuals with disabilities.

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[ii] U.S. Const. Amend. 11. "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." Id.

[iii] U.S. Const. Amend. 14. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State 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." Id. at section 1.

[iv] Tennessee v. Lane, 541 U.S. 509 (2004).

[v] 42 U. S. C. §§12131-12165.

[vi] University of Alabama v. Garrett, 531 U.S. 356 (2001).

[vii] Lane, supra (Rehnquist, J., dissenting). Justice Rehnquist wrote:

> The bulk of the Court's evidence concerns discrimination by nonstate governments, rather than the States themselves. We have repeatedly held that such evidence is irrelevant to the inquiry whether Congress has validly abrogated Eleventh Amendment immunity, a privilege enjoyed only by the sovereign States. . . . Most of the brief anecdotes do not involve States at all, and those that do are not sufficiently detailed to determine whether the instances of "unequal treatment" were irrational, and thus unconstitutional under our decision in Cleburne. Garrett, supra..Therefore, even outside

> the "access to the courts" context, the Court identifies few, if any, constitutional violations perpetrated by the States against disabled persons.
>
> With respect to the due process "access to the courts" rights on which the Court ultimately relies, Congress' failure to identify a pattern of actual constitutional violations by the States is even more striking. Indeed, there is *nothing* (emphasis in original) in the legislative record or statutory findings to indicate that disabled persons were systematically denied the right to be present at criminal trials, denied the meaningful opportunity to be heard in civil cases, unconstitutionally excluded from jury service, or denied the right to attend criminal trials.

Id. (footnotes omitted)

[viii] Lane, supra. The majority went on:

> Title II is aimed at the enforcement of a variety of basic rights, including the right of access to the courts at issue in this case, that call for a standard of judicial review at least as searching, and in some cases more searching, than the standard that applies to sex-based classifications. And in any event, the record of constitutional violations in this case--including judicial findings of unconstitutional state action, and statistical, legislative, and anecdotal evidence of the widespread exclusion of persons with disabilities from the enjoyment of public services--far exceeds the record in Hibbs.

Id. (citing Hibbs, a 2003 FLMA United States Supreme Court decision which approved the family-care leave provision of the FMLA as valid legislation based primarily on evidence of disparate provision of parenting leave, little of which concerned unconstitutional state conduct). See Nevada Dept. of Human Resources v. Hibbs, 538 U.S. 721 (2003).