***Tennessee v. Lane* (2004)**

541 U.S. 509

George Lane and Beverly Jones, paraplegics who used wheelchairs for mobility, filed an action for damages and equitable relief in federal district court against Tennessee, alleging that a number of its counties had denied them physical access to the state's courts in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), which prohibits state discrimination against those with disabilities in the delivery of governmental services, programs, or activities. The state moved to dismiss the suit on the ground that it was barred by the Eleventh Amendment. After the district court denied the state's motion to dismiss on state-sovereign immunity grounds, the U.S. Supreme Court ruled in Board of Trustees of Univ. of Alabama v. Garrett (2001) that the Eleventh Amendment bars private-money-damages actions for state violations of ADA Title I, which prohibits employment discrimination against the disabled. After several hearings and rehearings, the U.S. Court of Appeals for the Sixth Circuit finally affirmed the dismissal denial and permitted the Title II damages action to proceed, explaining that the Due Process Clause of the Fourteenth Amendment comes after and thereby trumps the Eleventh Amendment, that the Due Process Clause protects the right of access to the courts, that Congress has power under Section 5 of the Fourteenth Amendment to enforce the Due Process Clause, and that the evidence before Congress when it enacted Title II established, inter alia, *that physical barriers in courthouses and courtrooms have had the effect of denying disabled people the opportunity for such access.*

Opinion of the Court: Stevens, O'Connor, Souter, Ginsburg, Breyer.

Concurring opinions: Souter, Ginsburg; Ginsburg, Souter, Breyer.

Dissenting opinions: Rehnquist, Kennedy, Thomas; Scalia; Thomas.

JUSTICE STEVENS delivered the opinion of the Court.

Title II of the Americans with Disabilities Act of 1990 (ADA or Act) provides that "no 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." The question presented in this case is whether Title II exceeds Congress' power under §5 of the Fourteenth Amendment. . . . In [*Board of Trustees of Univ. of Alabama v.*] *Garrett* (2001), we concluded that the Eleventh Amendment bars private suits seeking money damages for state violations of Title I of the ADA. We left open, however, the question whether the Eleventh Amendment permits suits for money damages under Title II. . . .

The Eleventh Amendment renders the States immune from "any suit in law or equity, commenced or prosecuted . . . by Citizens of another State, or by Citizens or Subjects of any Foreign State." Even though the Amendment "by its terms . . . applies only to suits against a State by citizens of -another State," our cases have repeatedly held that this immunity also applies to unconsented suits brought by a State's own citizens. Our cases have also held that Congress may abrogate the State's Eleventh Amendment immunity. To determine whether it has done so in any given case, we "must resolve two predicate questions: first, whether Congress unequivocally expressed its intent to abrogate that immunity; and second, if it did, whether Congress acted pursuant to a valid grant of constitutional authority."

The first question is easily answered in this case. The Act specifically provides: "A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter." As in *Garrett*, no party disputes the adequacy of that expression of Congress' intent to abrogate the States' Eleventh Amendment immunity.
The question, then, is whether Congress had the power to give effect to its intent.

In *Fitzpatrick v. Bitzer* (1976), we held that Congress can abrogate a State's sovereign immunity when it does so pursuant to a valid exercise of its power under §5 of the Fourteenth Amendment to enforce the substantive guarantees of that Amendment. This enforcement power, as we have often acknowledged, is a "broad power indeed." It includes "the authority both to remedy and to deter violation of rights guaranteed [by the Fourteenth Amendment] by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." We have thus repeatedly affirmed that "Congress may enact so-called prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct."

. . . Congress' §5 power is not, however, unlimited. While Congress must have a wide berth in devising appropriate remedial and preventative measures for unconstitutional actions, those measures may not work a "substantive change in the governing law." In [*City of*] *Boerne* [*v. Flores* (1997)], we recognized that the line between remedial legislation and substantive redefinition is "not easy to discern," and that "Congress must have wide latitude in determining where it lies." But we also confirmed that "the distinction exists and must be observed," and set forth a test for so observing it: Section 5 legislation is valid if it exhibits "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end."

. . . Applying the *Boerne* test in *Garrett*, we concluded that Title I of the ADA was not a valid exercise of Congress' §5 power to enforce the Fourteenth Amendment's prohibition on unconstitutional disability discrimination in public employment. . . . [W]e concluded Congress' exercise of its prophylactic §5 power was unsupported by a relevant history and pattern of constitutional violations. . . .

In view of the significant differences between Titles I and II, however, *Garrett* left open the question whether Title II is a valid exercise of Congress' §5 enforcement power. It is to that question that we now turn. . . .

Title II, like Title I, seeks to enforce this prohibition on irrational disability discrimination. But it also seeks to enforce a variety of other basic constitutional guarantees, infringements of which are subject to more searching judicial review. These rights include some, like the right of access to the courts at issue in this case, that are protected by the Due Process Clause of the Fourteenth Amendment. . . . It is not difficult to perceive the harm that Title II is designed to address. Congress enacted Title II against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights.

With respect to the particular services at issue in this case, Congress learned that many individuals, in many States across the country, were being excluded from courthouses and court proceedings by reason of their disabilities. A report before Congress showed that some 76% of public services and programs housed in state-owned buildings were inaccessible to and unusable

by persons with disabilities, even taking into account the possibility that the services and programs might be restructured or relocated to other parts of the buildings. Congress itself heard testimony from persons with disabilities who described the physical inaccessibility of local courthouses. And its appointed task force heard numerous examples of the exclusion of persons with disabilities from state judicial services and programs, including exclusion of persons with visual impairments and hearing impairments from jury service, failure of state and local governments to provide interpretive services for the hearing impaired, failure to permit the testimony of adults with developmental disabilities in abuse cases, and failure to make courtrooms accessible to witnesses with physical disabilities. . . . 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.

The conclusion that Congress drew from this body of evidence is set forth in the text of the ADA itself: "Discrimination against individuals with disabilities persists in such critical areas as . . . education, transportation, communication, recreation, institutionalization, health services, voting, and *access to public services.*" This finding, together with the extensive record of disability discrimination that underlies it, makes clear beyond peradventure that inadequate provision of public services and access to public facilities was an appropriate subject for prophylactic legislation.

The only question that remains is whether Title II is an appropriate response to this history and pattern of unequal treatment. At the outset, we must determine the scope of that inquiry. Title II . . . reaches a wide array of official conduct in an effort to enforce an equally wide array of constitutional guarantees. Petitioner urges us both to examine the broad range of Title II's applications all at once, and to treat that breadth as a mark of the law's invalidity. According to petitioner, the fact that Title II applies not only to public education and voting-booth access but also to seating at state-owned hockey rinks indicates that Title II is not appropriately -tailored to serve its objectives. But nothing in our case law requires us to consider Title II, with its wide variety of applications, as an undifferentiated whole. Whatever might be said about Title II's other applications, the question presented in this case is not whether Congress can validly subject the States to private suits for money damages for failing to provide reasonable access to hockey rinks, or even to voting booths, but whether Congress had the power under §5 to enforce the constitutional right of access to the courts. Because we find that Title II unquestionably is valid §5 legislation as it applies to the class of cases implicating the accessibility of judicial services, we need go no further.

Congress' chosen remedy for the pattern of exclusion and discrimination described above, Title II's requirement of program accessibility, is congruent and proportional to its object of enforcing the right of access to the courts. The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination. Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this "difficult and intractable problem" warranted "added prophylactic measures in response."

The remedy Congress chose is nevertheless a limited one. Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility. But Title II does not require States to employ any and all means to

make judicial services accessible to persons with disabilities, and it does not require States to compromise their essential eligibility criteria for public programs. It requires only "reasonable modifications" that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service. As Title II's implementing regulations make clear, the reasonable modification requirement can be satisfied in a number of ways. In the case of facilities built or altered after 1992, the regulations require compliance with specific architectural accessibility standards. But in the case of older facilities, for which structural change is likely to be more difficult, a public entity may comply with Title II by adopting a variety of less costly measures, including relocating services to alternative, accessible sites and assigning aides to assist persons with disabilities in accessing services. Only if these measures are ineffective in achieving accessibility is the public entity required to make reasonable structural changes. And in no event is the entity required to undertake measures that would impose an undue financial or administrative burden, threaten historic preservation interests, or effect a fundamental alteration in the nature of the service. . . . Judged against this backdrop, Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice cannot be said to be "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." It is, rather, a reasonable prophylactic measure, reasonably targeted to a legitimate end. . . . For these reasons, we conclude that Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' §5 authority to enforce the guarantees of the Fourteenth Amendment.

JUSTICE GINSBURG, with whom JUSTICE SOUTER and JUSTICE BREYER join, concurring.

. . . Legislation calling upon all government actors to respect the dignity of individuals with disabilities is entirely compatible with our Constitution's commitment to federalism, properly conceived. It seems to me not conducive to a harmonious federal system to require Congress, before it exercises authority under §5 of the Fourteenth Amendment, essentially to indict each State for disregarding the equal-citizenship stature of persons with disabilities. Members of Congress are understandably reluctant to condemn their own States as constitutional violators, complicit in maintaining the isolated and unequal status of persons with disabilities. I would not disarm a National Legislature for resisting an adversarial approach to lawmaking better suited to the courtroom.

THE CHIEF JUSTICE, with whom JUSTICE SCALIA, JUSTICE KENNEDY and JUSTICE THOMAS join, dissenting.

. . . To ensure that Congress does not usurp this Court's responsibility to define the meaning of the Fourteenth Amendment, valid §5 legislation must exhibit "'congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'" While the Court today pays lipservice to the "congruence and proportionality" test, it applies it in a manner inconsistent with our recent precedents.

. . . 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* 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.

. . . Lacking any real evidence that Congress was responding to actual due process violations, the majority relies primarily a 1983 U.S. Civil Rights Commission Report showing that 76% of "public services and programs housed in state-owned buildings were inaccessible" to persons with disabilities . . . [and] testimony before a House subcommittee regarding the "physical inaccessibility" of local courthouses. . . .

On closer examination, however, the Civil Rights Commission's finding consists of a single conclusory sentence in its report, and it is far from clear that its finding even includes courthouses. The House subcommittee report, for its part, contains the testimony of *two* witnesses, neither of whom reported being denied the right to be present at constitutionally protected court proceedings. Indeed, the witnesses' testimony, like the U.S. Civil Rights Commission Report, concerns only physical barriers to access, and does not address whether States either provided means to overcome those barriers or alternative locations for proceedings involving disabled persons. . . .

The majority . . . claims that Title II also vindicates fundamental rights protected by the Due Process Clause—in addition to access to the courts—that are subject to heightened Fourteenth Amendment scrutiny. But Title II is not tailored to provide prophylactic protection of these rights; instead, it applies to any service, program, or activity provided by any entity. Its provisions affect transportation, health, education, and recreation programs, among many others. . . . A requirement of accommodation for the disabled at a state-owned amusement park or sports stadium, for example, bears no permissible prophylactic relationship to enabling disabled persons to exercise their fundamental constitutional rights. Thus, as with Title I in *Garrett*, it is unlikely "that many of the [state actions] affected by [Title II] have any likelihood of being unconstitutional." Viewed as a whole, then, there is little doubt that Title II of the ADA does not validly abrogate state sovereign immunity.

. . . Even in the limited courthouse-access context, Title II does not properly abrogate state sovereign immunity. As demonstrated in depth above, Congress utterly failed to identify any evidence that disabled persons were denied constitutionally protected access to judicial proceedings. Without this predicate showing, Title II, even if we were to hypothesize that it applies only to courthouses, cannot be viewed as a congruent and proportional response to state constitutional violations. . . .

For the foregoing reasons, I respectfully dissent.

JUSTICE SCALIA, dissenting.

. . . In *City of Boerne v. Flores*, we confronted Congress's inevitable expansion of the Fourteenth Amendment, as interpreted in [*Katzenbach v.*] *Morgan* [1966], beyond the field of racial discrimination. . . . To avoid placing in congressional hands effective power to rewrite the Bill of Rights through the medium of §5, we formulated the "congruence and proportionality" test for determining what legislation is "appropriate." When Congress enacts prophylactic legislation, we said, there must be "proportionality or congruence between the means adopted and the legitimate end to be achieved."

I joined the Court's opinion in *Boerne* with some misgiving. I have generally rejected tests based on such malleable standards as "proportionality," because they have a way of turning into

vehicles for the implementation of individual judges' policy preferences. Even so, I signed on to the "congruence and proportionality" test in *Boerne,* and adhered to it in [a number of] later cases. . . . I yield to the lessons of experience. The "congruence and proportionality" standard, like all such flabby tests, is a standing invitation to judicial arbitrariness and policy-driven decisionmaking. Worse still, it casts this Court in the role of Congress's taskmaster. Under it, the courts (and ultimately this Court) must regularly check Congress's homework to make sure that it has identified sufficient constitutional violations to make its remedy congruent and proportional. As a general matter, we are ill advised to adopt or adhere to constitutional rules that bring us into constant conflict with a coequal branch of Government. And when conflict is unavoidable, we should not come to do battle with the United States Congress armed only with a test ("congruence and proportionality") that has no demonstrable basis in the text of the Constitution and cannot objectively be shown to have been met or failed. . . .

I would replace "congruence and proportionality" with another test—one that -provides a clear, enforceable limitation supported by the text of §5. Section 5 grants Congress the power "to *enforce,* by appropriate legislation," the other provisions of the Fourteenth Amendment. . . . [O]ne does not "enforce" the right of access to the courts at issue in this case by requiring that disabled persons be provided access to *all* of the "services, programs, or activities" furnished or conducted by the State. That is simply not what the power to enforce means. . . . Nothing in §5 allows Congress to go *beyond* the provisions of the Fourteenth Amendment to proscribe, prevent, or "remedy" conduct that does not *itself* violate any provision of the Fourteenth Amendment. . . . When congressional regulation . . . goes beyond enforcement to prophylaxis, I shall consider it ultra vires. The present legislation is plainly of the latter sort.