

## **RECENT U.S. SUPREME COURT DECISION ADA HAS LITTLE IMPACT ON MUNICIPALITIES**

Despite the stir it has caused, the recently decided Americans with Disabilities Act (ADA) case likely has no effect on municipalities. On May 17, 2004, the U.S. Supreme Court rendered an opinion in the case of two Tennessee citizens who were denied access to several county courthouses. *Tennessee v. Lane*, 541 U.S. \_\_\_\_ (2004). Both were paraplegics. One could not answer criminal charges on the second floor of a county courthouse without elevators. The other could not access some county courthouses to perform her job as a certified court reporter. They brought suit against the state of Tennessee for violating Title II of the ADA, which requires, among other things, reasonable modifications to architectural barriers to physical access for qualifying disabled individuals. 42 U.S.C. § 12131(2).

In a 5-4 decision, the U.S. Supreme Court upheld Title II of the ADA as a valid abrogation of the states' right to sovereign immunity under the Eleventh Amendment to the U.S. Constitution. The narrow holding, despite vehement dissent from Chief Justice Rehnquist and three others, states that Title II validly abrogates state sovereign immunity "as it applies to the class of cases implicating the fundamental right of access to the courts." What this means is that the sovereign immunity conferred on the states by the Eleventh Amendment no longer protects them from suit by private individuals when that state violates Title II of the ADA by failing to provide access to the courts.

Note, however, that the states are not subject to suit every time a disabled individual cannot physically access a courthouse. Title II requires only architectural modifications that are "reasonable." 42 U.S.C. § 12131(2). In addition, regulations enacted pursuant to the Act provide states with alternative means by which they can achieve ADA compliance. In particular, a state may "relocat[e] services to alternative, accessible sites and assign aides to assist persons with disabilities in accessing services" in buildings that were built prior to 1992. 28 CFR § 35.150(b)(1). Moreover, states are not 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." §§ 35.150(a)(2), (a)(3).

Practically speaking, this decision has no bearing on Vermont municipalities because while they are "state actors for purposes of the Fourteenth Amendment...the Eleventh Amendment does not extend its protection to units of local government." *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 368-9 (2001). *Lane* merely stands for the proposition that Eleventh Amendment sovereign immunity does not protect the states from private suit for violating Title II of the ADA when a state denies a qualifying individual physical access to the courts. Municipalities never benefited from the protection of Eleventh Amendment sovereign immunity and, therefore, were always subject to private suit in federal court for violating Title II of the ADA.

As noted in the opinion, a state does not violate the ADA whenever a building is inaccessible to a disabled individual. The same is true of municipalities. Department of Justice regulations enacted pursuant to the Act contain the requirements for compliance with Title II of the ADA. Municipalities are not required to "make each of its existing facilities accessible to and usable by individuals with disabilities." 28 CFR § 5.150(a)(1). In particular, municipalities do not have to take any action that would "threaten or

destroy the historic significance of an historic property” or that would “result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.” 28 CFR §§ 35.150(a)(2), (a)(3).

In general, municipalities can comply with Title II’s program accessibility requirements “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.” 28 CFR § 35.150(b)(1). New buildings and alterations to existing buildings, however, must conform to either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). 28 CFR § 35.151(c). The relevant date for these regulations is January 26, 1992. Any building constructed prior to that date can use the alternate means to provide accessibility. Buildings constructed or altered after that date must conform to the UFAS or ADAAG. 28 CFR §§ 35.151(a), (b).

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