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In response to remarks by John Kerry, the economist Jagdish Bhagwati, wrote on the New York Times op-ed page: "In a world economy, firms that forgo cheaper suppliers of services are doomed to lose markets, and hence production. And companies that die out, of course, do not employ people."

According to David Kirkpatrick of Fortune Magazine, offshoring is inevitable, frequently makes business sense, and might even be beneficial. He cites a recent study by the McKinsey Global Institute, an economics think tank, which calculated that for every dollar spent on a business process that is outsourced to India, the U.S. economy gains at least $1.12. The largest chunk -- 58 cents -- goes back to the original employer. Job turnover, he says, is a sign of a healthy economy.

"The U.S. is helping the rest of the world work its way into wealth," Kirkpatrick writes. "That is in all of our interests. And it isn't a zero-sum game. American productivity, again fostered largely by intelligent use of technology, remains the highest in the world. That's likely to ensure we stay wealthy."

1. Public Citizen, at http://www.citizen.org.
2. David Kirkpatrick, In online age, company location hardly matters (May, 2003), at http://www.fortune.com/fortune/fastforward/0,15704,588382,00.html
3. Jeff Roehl, Outsourcing Offshore Good Business Sense, Chi. Trib., March 7, 2004.
4 Bush takes aim at Kerry (March 4, 2004), at http://www.cnn.com/2004/ALLPOLITICS/03/04/elec04.prez.bush/index.html
5. David Kirkpatrick, Rage against off-shoring is very real (February 23, 2004), at http://www.fortune.com/fortune/fastforward/0,15704,592118,00.html.

The ADA and Tennessee's Sovereign Immunity Crawl Into the Supreme Court

Mary E. O'Malley

A conflict between the due process rights of the disabled and a state's sovereign immunity looms large in the United States Supreme Court this term. After hearing oral arguments in January 2004, the Court will decide in *Tennessee v. Lane* whether Congress has the power under Title II of the Americans With Disabilities Act of 1990 ("ADA") to require states to prohibit discrimination against the disabled regarding accessibility to state courthouses.[1] The state of Tennessee claims the key issue implicates the ADA's intrusion upon the state's Eleventh Amendment sovereign immunity, which bars claims by citizens seeking money damages.[2] Conversely, those advocating for disability rights believe the overriding issue involves a violation of Due Process under Section 5 of the Fourteenth Amendment.[3]

Summoned to court in 1996, George Lane crawled upstairs to a Polk County, Tennessee courtroom to defend himself against misdemeanor charges.[4] He had no choice. The second floor of the courthouse was inaccessible to wheelchair-bound persons like Lane. On his second visit, Lane was arrested for failing to make a court appearance after he arrived at the courthouse and refused to crawl or allow officers to carry him into the courtroom. The court proceedings continued without Lane.

After a related misdemeanor indictment was returned in 1997, Lane's attorney requested that the court dismiss the case or least stay the proceedings until accessible facilities could be provided. The trial court denied the attorney's request. However, the judge suggested that Lane might have a right to bring an independent civil suit to make the courtroom accessible, but that inaccessibility was no basis for delaying the criminal case. Lane eventually pled guilty to driving on a revoked license after the Tennessee appellate courts declined to provide Lane emergency relief. Meanwhile, Circuit Court Judge Carroll Ross stayed all criminal proceedings in the Polk County Courthouse until the courthouse could be made accessible.[5] An elevator was installed in 1998.

Despite the construction of the elevator, Lane acted upon the original trial judge's suggestion. Seeking money damages and injunctive relief, Lane and a similarly situated plaintiff, Beverly Jones, filed suit claiming that the state of Tennessee humiliated them and violated the ADA by maintaining inaccessible courthouses.[6] The state of Tennessee moved to dismiss the case by claiming that the Eleventh Amendment protects Tennessee from private suits for money damages, but the district court denied the motion.[7]

The state appealed, but the Sixth Circuit affirmed. In an unpublished per curiam order in this case, the Sixth Circuit applied its ruling of a similar case, *Popovich v. Cuyhoga County Court of Common Pleas*.[8] In *Popovich*, the

Sixth Circuit held that Congress validly abrogated the States' Eleventh Amendment immunity for claims under Title II that are based on due process principles. Yet, those claims could not be abrogated for claims solely based on equal protection principles.[9] Accordingly, the Sixth Circuit held that because Lane and Jones seek to vindicate their right of access to the courts, Title II is an appropriate means of enforcing the due process rights of individuals.[10]

The state of Tennessee relies on principles of federalism, rather than due process. In its Supreme Court brief in *Tennessee v. Lane*, the state did not deny its duty to comply with the ADA requirements regarding state services and programs.[11] Rather, the state takes issue with Congress abrogating state immunity from private lawsuits involving money damages. Moreover, the state points to the legislative history of the ADA in asserting that Congress said nothing about protecting the fundamental rights of citizens to access the courts.[12] Thus, according to the state, no basis exists for canceling state immunity under Title II.

However, federalism is not to be weighed in isolation. The instant case also puts the spotlight on the fundamental rights of the disabled to participate in the judicial system. "This is a compelling Supreme Court case because it illustrates a flagrant violation of civil rights," said Barry Taylor, Legal Advocacy Director of Equip for Equality, a private not-for-profit advocacy organization.[13] Equip for Equality's mission is to extend the greatest benefit to Illinois' disabled.

Moreover, unequal access to the judicial system is not an issue limited to criminal defendants. The fundamental rights of disabled jurors, clerks, and attorneys are all implicated by this case.[14] The respondents noted that even Tennessee's judicial commission warned in 1996 "for persons with physical or mental impairment, the system can be quite literally inaccessible."[15] Furthermore, respondents report that 120 instances in 41 states exist in which state courts and court proceedings were inaccessible, and the court systems only agreed to retrofit its facilities after the federal government intervened.[16]

"This case deals with the heart and soul of the Fourteenth Amendment," said William Brown, lawyer for Lane and Jones. "People have the right not to have their life, liberty, and property taken from them except with due process of law, and here my client couldn't even get into the courtroom without pain and suffering."[17] Brown is not alone in his thinking. More than ten amicus briefs, which include many states, were filed on behalf of Lane and Jones.[18]

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For instance, in its amicus brief, the American Bar Association ("ABA") declared that the Constitution guarantees to all persons the right of access to the judicial system.[19] Despite the enactment of the ADA in 1990, disabled individuals continue to face the effects of discrimination thirteen years later, yet the disabled population continues to be significant in number. More than 49,700,000 Americans, which is roughly one in five of the 257,200,000 people in the United States age five and older, have mental or physical disabilities or long-lasting impairments. Of that number, more than 1,500 ABA members have a direct interest in the continued viability of the ADA as a measure that guarantees them equal and effective access to the judicial system.

According to Taylor, not only is Title II of the ADA necessary to secure access to the courts, but it also sustains access to fundamental rights, such as voting. "Ideally, the Supreme Court will uphold Title II in its entirety," he said.[20] Taylor stated that strong due process language and fundamental rights, both of which are clearly involved in Title II, implicate constitutional rights. "The Supreme Court has a variety of options, but the Court has also indicated that it would allow damages for certain violations of fundamental rights." He stressed the gravity of upholding Title II to secure maximum rights for the disabled. "Without Title II's full protection, the rights of the disabled would be limited against the state and states could essentially carve out a license to discriminate, which doesn't make sense and is unfair," predicted Taylor.

How the Supreme Court will rule is unclear. The Court emphasized state's rights and principles of federalism in several recent cases by striking down congressional efforts to regulate the states.[21] "The Court has embarked on a series of cases that make it hard to provide money damages against the states," said Teresa Wynn Roseborough, who assisted in writing an amicus brief for several civil rights organizations in support of Lane and Jones.[22] However, the Court also recently departed from its federalist stance when it held that it is constitutional for Congress to apply the Family Medical Leave Act to state governments.[23] Whether the Court will accord Title II of the ADA a similar status is anyone's guess.

Ironically, the ADA does not bind the federal court system. However, many federal courts voluntarily retrofitted their courthouses to accommodate the disabled.[24] In fact, no one has to crawl into the Supreme Court building. A recent renovation included installing a marble wheelchair ramp to make the

1935 building accessible to the disabled.[25]

1. Title II of the ADA of 1990, 42 USC §§ 12131-12165 regulates all services, programs, and activities conducted by a "public entity," defined to include the States and their departments, agencies, and instrumentalities. 42 USC § 12131(1). "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 subject to any discrimination by any such entity." 42 USC § 12132.
2. The abrogation part of the ADA provides: "A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in a Federal or State court of competent jurisdiction for a violation of the requirements of this chapter, remedies, are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State." 42 USC § 12202.
3. "No state shall...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." U.S. CONST. amend. XIV § 1.
"The congress shall have the power to enforce, by appropriate legislation, the provisions of this article." U.S. CONST. amend. XIV § 5.
4. 2003 WL 22733904 4-5 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003)
5. 2003 WL 22137324 1, 8 (Appellate Brief) Brief of Petitioner (Sep. 8, 2003).
6. Lane filed suit with Beverly Jones, respondent in the instant case. Jones has paraplegia and is a Tennessee courthouse reporter who could not access many Tennessee courtrooms to perform her job. Four other similarly situated plaintiffs later joined in the original suit. See
2003 WL 22733904 5-7 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003).
7. 2003 WL 22733904 7 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003).
8. 2003 WL 22428028 5 (Appellate Filing) Brief for the United States (May 30, 2003).
9. 276 F.3d 808 (6th Cir.), cert. denied, 123 S. Ct. 72 (2002).
10. Pet. App. 1-5, 10-11.
11. 2003 WL 22137324 16 (Appellate Brief) Brief of Petitioner (Sep. 8, 2003).
12. Id. at 19-24.
13. Telephone interview with Barry Taylor, Legal Advocacy Director, Equip for Equality (Mar. 24, 2003).
14. 2003 WL 22733905 6-11 (Appellate Brief) Brief for the American Bar Association as Amicus Curiae Supporting Respondents (Nov. 12, 2003).
15. 2003 WL 22733904 22-23 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003) (citing Comm'n on the Future of the Tenn. Judicial Sys., Final Report (1996) available at:
http://www.fiu.edu/<<degrees>>coa/research/jury.htm.)
16. 2003 WL 22733904 25 (Appellate Brief) Brief of the Private Respondents (Nov. 12, 2003) (citing the Department of Justice's Enforcement Records available at:
http://www.usdoj.gov/crt/ada/enforce.htm).
17. Jonathan Groner, ADA Case Promises Fight Over Federalism - Courthouse Access for Disable Underlies High Court Arguments, 27 Legal Times 2 (1/12/2004 LEGALTIMES 1).
18. 2004 WL 136390 41 (Oral Argument) Transcript (Jan. 13, 2004).
19. 2003 WL 22733905 3 (Appellate Brief) Brief for the American Bar Association as Amicus Curiae Supporting Respondents (Nov. 12, 2003).
20. Taylor, supra note 13.
21. Groner, supra note 16.
22. Groner, supra note 16.
23. Nevada Dep't of Human Res. v. Hibbs, 123 S. Ct. 1972 (2003).
24. Groner, supra note 16.
25. Groner, supra note 16.

Are Limitations Necessary on Paternity?

Karine Polis

When two married persons have a child, paternity is assumed and there is no limitation on that child's ability to establish paternity. On the contrary, statutes of limitations exist in most states that limit the time frame within which a child born out of wedlock may legally establish paternity. The use of a statute of limitation to paternity actions serves to create classifications of children who are treated differently in terms of their parental rights.[1]

Statutes of limitations establish the time period within which a cause of action must be commenced.[2] These statutes attempt to halt the litigation of stale and fraudulent claims by ensuring that suits are commenced within a reasonable period of time, before memories have faded and evidence has been lost.[3] It is difficult to understand why, then, statutes of limitation are applied in a paternity context. A child's right to support is continuing and since a determination of paternity is necessary before child born out of wedlock may enforce the right to support, an action to determine paternity should never be viewed as stale.[4]

The United States Supreme Court presided over numerous cases in the early 1980s that challenged statutory provisions that placed time restrictions on an individual's right to establish paternity. These cases mostly dated before the enactment of the Child Support Enforcement Amendments of 1984, 42 U.S.C. § 666, that required all states participating in the federal child support program to have procedures to establish the paternity of any child who is under the age of eighteen.[5] The leading case on this issue is *Mills v. Habluetzel*, where the Court held that a one-year time limit for establishing paternity denied children born to unwed parents in Texas equal protection of the laws.[6] The Court emphasized in its holding that "once a state posits a judicially enforceable right of children to support from their natural fathers, the Equal Protection Clause of the Fourteenth Amendment prohibits the state from denying that same right to illegitimate children."[7]

Statutes of limitations are a matter of legislative discretion and, by definition, incorporate an arbitrary time period.[8] Public policy dictates that legislatures may alter or abolish a limitations period that no longer serves the public interest.[9] Paternity statutes were enacted to protect fathers by ensuring an accurate determination of paternity.[10] "Whatever merit this contention may have had in the past, the ever-increasing effectiveness of both blood and genetic tests significantly reduces the chance that a defendant will be compelled to support a child he did not sire."[11] In 2002, the accuracy of paternity tests was measured at around 98-99 percent.[12]

The Uniform Parentage Act