

One year ago, in *Lane v. Tennessee*, the Supreme Court determined that states were not immune from suit under Title II of the Americans with Disabilities Act (ADA) in cases involving the right of access to the courts for people with disabilities. Two recent cases from the Federal Courts of Appeals interpreting Title II, however, indicate that courts have a long way to go before the limits of states' immunity from Title II suits are clearly defined.

Because *Lane*'s conclusion applied only to cases involving court access, the outcome of cases stemming from the multitude of the potential applications of Title II remained unclear. It was certainly apparent, however, that the abrogation of sovereign immunity could be found valid in some cases and not in others. Thus, the recent decisions from the Third and Eleventh Circuits are not surprising. In *Ass'n for Disabled Americans, Inc. v. Florida Int'l Univ.*,

the Eleventh Circuit determined that states could be sued for disability discrimination in the provision of educational services. In

Cochran v. Pinchak

, however, in a case alleging disability discrimination against a prison inmate, the Third Circuit held that Congress did not have the power to abrogate states' immunity from the suit.

In *Ass'n for Disabled Americans*, the plaintiffs alleged that the defendant state university had failed to provide qualified sign language interpreters, effective note-takers and appropriate aids for people with physical disabilities. The court acknowledged that no "fundamental right" was at issue in this case, but reasoned that the right to education was important enough to justify holding the state accountable for violations of Title II. In *Choch*

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, the blind prisoner plaintiff asserted that prison officials had taken away his books on tape and his cane for months. The court held that no fundamental right was implicated and, thus, the abrogation of immunity was not valid. It also cited a policy of "judicial restraint" in prison rights cases to further bolster its conclusion.

Because the facts of these cases differ significantly, they can be harmonized with one another fairly easily. But, more decisions in Title II - perhaps in the area of prisoner's rights or educational rights - almost certain to arise and the possibility exists that conflicts between the Courts of Appeals may develop. Thus, advocates should be alert for another possible Supreme Court case on the validity of Title II.

For more detailed information, see the Spring 2005 issue of NHeLP's *Health Advocate* newsletter (subscription-only).