

## Statement by Jennifer Mathis, Esq. on Tennessee v. Lane

*At a January 12, 2004 press conference by the Bazelon Center and the National Disability Rights Network*

Good morning. My name is Jennifer Mathis and I am a staff attorney at the Bazelon Center for Mental Health Law, a national legal advocacy group for people with mental disabilities. The Bazelon Center coordinated the filing of amicus briefs in the Supreme Court to support George Lane, Beverly Jones and the other plaintiffs, because their case is important not just to people with mental disabilities but to all Americans.

The stakes in this case are high. The wrong ruling could strip millions of Americans of a critical means of enforcing their rights. Beyond that, it would set the stage for further erosion of civil rights in this country.

Tennessee v. Lane is the latest assault by states on Congress's power to pass laws protecting people's rights. In recent years, the Supreme Court has struck down parts of key civil rights laws, among them the Violence Against Women Act and the Age Discrimination in Employment Act.

The Americans with Disabilities Act itself has faced many challenges. The Supreme Court has already exempted states from having to compensate people with disabilities for discrimination under the employment provisions of the ADA, ruling that Congress did not have the Constitutional authority to subject states to damage claims for employment discrimination.

In Lane, the Court will consider Title II of the ADA, which protects people with disabilities from discrimination by public entities in courtrooms, schools, health care programs and other areas of public life. The Court will decide whether people with disabilities have the right to seek damages for civil rights violations by state entities. Damages are a critical means to prevent discrimination and ensure compliance with the law.

But what is at stake in the Lane case is not simply money damages. Lane is about whether Congress had the power to enact the ADA in the first place.

Congress passed Title II under the 14th Amendment and the Commerce Clause of the U.S. Constitution. Tennessee argues that Congress acted unconstitutionally when it invoked the 14th Amendment. States are also challenging the constitutionality of Congress's power under the Commerce Clause in other courts.

This amounts to a double-barreled assault on the ADA—and on the millions of Americans with disabilities whose rights the ADA now protects.

The Supreme Court's previous rulings limiting Congress's power to regulate commerce are cause for serious concern that Title II's most important provisions—those relating to access to the court system, voting,

marriage and family rights, education and institutionalization—might not be upheld under the Commerce Clause.

If the Supreme Court rules that Congress had no power to enact the law's public service provisions, the ADA will no longer offer people with disabilities any means to seek remedy for many kinds of discrimination, including:

- Exclusion from court proceedings as litigants, as jurors, as witnesses, as judges and as spectators.
- The warehousing of people with disabilities in institutions simply because states have not developed enough services to serve them in their own homes or other community settings.
- Restrictions, based on their disabilities, on the right to marry or have children;
- The inaccessibility of public libraries, social services offices, and polling places; and
- The exclusion from, or unequal treatment in, every aspect of public life.

That would be an unacceptable loss. When Congress passed the ADA, it acted to correct a long history of discrimination against people with disabilities by states and others. People with disabilities, the civil rights community and Congress worked too hard to pass the ADA to see it swept away because states feel they are above the law.

It would be tragic if the Supreme Court negated those efforts by continuing to strip the ADA of its protections for people with disabilities. If you keep swinging an axe at a tree, it's bound to fall. We fervently hope this Court won't go down in history as the one that struck down the ADA.