

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 02–1667

TENNESSEE, PETITIONER *v.* GEORGE LANE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[May 17, 2004]

JUSTICE STEVENS delivered the opinion of the Court.

Title II of the Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 337, 42 U. S. C. §§12131–12165, 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.” §12132. The question presented in this case is whether Title II exceeds Congress’ power under §5 of the Fourteenth Amendment.

I

In August 1998, respondents George Lane and Beverly Jones filed this action against the State of Tennessee and a number of Tennessee counties, alleging past and ongoing violations of Title II. Respondents, both of whom are paraplegics who use wheelchairs for mobility, claimed that they were denied access to, and the services of, the state court system by reason of their disabilities. Lane alleged that he was compelled to appear to answer a set of criminal charges on the second floor of a county courthouse that had no elevator. At his first appearance, Lane crawled up two flights of stairs to get to the courtroom. When Lane

Opinion of the Court

returned to the courthouse for a hearing, he refused to crawl again or to be carried by officers to the courtroom; he consequently was arrested and jailed for failure to appear. Jones, a certified court reporter, alleged that she has not been able to gain access to a number of county courthouses, and, as a result, has lost both work and an opportunity to participate in the judicial process. Respondents sought damages and equitable relief.

The State moved to dismiss the suit on the ground that it was barred by the Eleventh Amendment. The District Court denied the motion without opinion, and the State appealed.¹ The United States intervened to defend Title II's abrogation of the States' Eleventh Amendment immunity. On April 28, 2000, after the appeal had been briefed and argued, the Court of Appeals for the Sixth Circuit entered an order holding the case in abeyance pending our decision in *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U. S. 356 (2001).

In *Garrett*, 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. *Id.*, at 360, n. 1. Following the *Garrett* decision, the Court of Appeals, sitting en banc, heard argument in a Title II suit brought by a hearing-impaired litigant who sought money damages for the State's failure to accommodate his disability in a child custody proceeding. *Popovich v. Cuyahoga County Court*, 276 F. 3d 808 (CA6 2002). A divided court permitted the suit to proceed despite the State's assertion of Eleventh

¹In *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U. S. 139 (1993), we held that "States and state entities that claim to be 'arms of the State' may take advantage of the collateral order doctrine to appeal a district court order denying a claim of Eleventh Amendment immunity." *Id.*, at 147.

Opinion of the Court

Amendment immunity. The majority interpreted *Garrett* to bar private ADA suits against States based on equal protection principles, but not those that rely on due process principles. 276 F. 3d, at 811–816. The minority concluded that Congress had not validly abrogated the States’ Eleventh Amendment immunity for any Title II claims, *id.*, at 821, while the concurring opinion concluded that Title II validly abrogated state sovereign immunity with respect to both equal protection and due process claims, *id.*, at 818.

Following the en banc decision in *Popovich*, a panel of the Court of Appeals entered an order affirming the District Court’s denial of the State’s motion to dismiss in this case. Judgt. order reported at 40 Fed. Appx. 911 (CA6 2002). The order explained that respondents’ claims were not barred because they were based on due process principles. In response to a petition for rehearing arguing that *Popovich* was not controlling because the complaint did not allege due process violations, the panel filed an amended opinion. It explained that the Due Process Clause protects the right of access to the courts, and that the evidence before Congress when it enacted Title II “established that physical barriers in government buildings, including courthouses and in the courtrooms themselves, have had the effect of denying disabled people the opportunity to access vital services and to exercise fundamental rights guaranteed by the Due Process Clause.” 315 F. 3d 680, 682 (CA6 2003). Moreover, that “record demonstrated that public entities’ failure to accommodate the needs of qualified persons with disabilities may result directly from unconstitutional animus and impermissible stereotypes.” *Id.*, at 683. The panel did not, however, categorically reject the State’s submission. It instead noted that the case presented difficult questions that “cannot be clarified absent a factual record,” and remanded for further proceedings. *Ibid.* We granted certio-

Opinion of the Court

rari, 539 U. S. 941 (2003), and now affirm.

II

The ADA was passed by large majorities in both Houses of Congress after decades of deliberation and investigation into the need for comprehensive legislation to address discrimination against persons with disabilities. In the years immediately preceding the ADA’s enactment, Congress held 13 hearings and created a special task force that gathered evidence from every State in the Union. The conclusions Congress drew from this evidence are set forth in the task force and Committee Reports, described in lengthy legislative hearings, and summarized in the preamble to the statute.² Central among these conclusions was Congress’ finding that

“individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.”
42 U. S. C. §12101(a)(7).

Invoking “the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce,” the ADA is designed “to provide a

²See 42 U. S. C. §12101; Task Force on the Rights and Empowerment of Americans with Disabilities, *From ADA to Empowerment* 16 (Oct. 12, 1990); S. Rep. No. 101–116 (1989); H. R. Rep. No. 101–485 (1990); H. R. Conf. Rep. No. 101–558 (1990); H. R. Conf. Rep. No. 101–596 (1990); cf. *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U. S. 356, 389–390 (2001) (App. A to opinion of BREYER, J., dissenting) (listing congressional hearings).

Opinion of the Court

clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” §§12101(b)(1), (b)(4). It forbids discrimination against persons with disabilities in three major areas of public life: employment, which is covered by Title I of the statute; public services, programs, and activities, which are the subject of Title II; and public accommodations, which are covered by Title III.

Title II, §§12131–12134, prohibits any public entity from discriminating against “qualified” persons with disabilities in the provision or operation of public services, programs, or activities. The Act defines the term “public entity” to include state and local governments, as well as their agencies and instrumentalities. §12131(1). Persons with disabilities are “qualified” if they, “with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, mee[t] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” §12131(2). Title II’s enforcement provision incorporates by reference §505 of the Rehabilitation Act of 1973, 92 Stat. 2982, as added, 29 U. S. C. §794a, which authorizes private citizens to bring suits for money damages. 42 U. S. C. §12133.

III

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. *Garrett*, 531 U. S., at 363; *Kimel v. Florida Bd. of Regents*, 528 U. S. 62, 72–73 (2000). Our

Opinion of the Court

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." *Id.*, at 73.

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." 42 U. S. C. §12202. As in *Garrett*, see 531 U. S., at 363–364, 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*, 427 U. S. 445 (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. *Id.*, at 456. This enforcement power, as we have often acknowledged, is a "broad power indeed." *Mississippi Univ. for Women v. Hogan*, 458 U. S. 718, 732 (1982), citing *Ex parte Virginia*, 100 U. S. 339, 346 (1880).³ It includes "the authority both to remedy and to deter violation of rights guaranteed [by

³In *Ex parte Virginia*, we described the breadth of Congress' §5 power as follows:

"Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power." 100 U. S., at 345–346. See also *City of Boerne v. Flores*, 521 U. S. 507, 517–518 (1997).

Opinion of the Court

the Fourteenth Amendment] by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Kimel*, 528 U. S., at 81. 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." *Nevada Dept. of Human Resources v. Hibbs*, 538 U. S. 721, 727–728 (2003). See also *City of Boerne v. Flores*, 521 U. S. 507, 518 (1997).⁴ The most recent affirmation of the breadth of Congress' §5 power

⁴In *Boerne*, we observed:

"Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into 'legislative spheres of autonomy previously reserved to the States.' *Fitzpatrick v. Bitzer*, 427 U. S. 445, 455 (1976). For example, the Court upheld a suspension of literacy tests and similar voting requirements under Congress' parallel power to enforce the provisions of the Fifteenth Amendment, see U. S. Const., Amdt. 15, §2, as a measure to combat racial discrimination in voting, *South Carolina v. Katzenbach*, 383 U. S. 301, 308 (1966), despite the facial constitutionality of the tests under *Lassiter v. Northampton County Bd. of Elections*, 360 U. S. 45 (1959). We have also concluded that other measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States. *South Carolina v. Katzenbach*, *supra* (upholding several provisions of the Voting Rights Act of 1965); *Katzenbach v. Morgan*, [384 U. S. 641 (1966)] (upholding ban on literacy tests that prohibited certain people schooled in Puerto Rico from voting); *Oregon v. Mitchell*, 400 U. S. 112 (1970) (upholding 5-year nationwide ban on literacy tests and similar voting requirements for registering to vote); *City of Rome v. United States*, 446 U. S. 156, 161 (1980) (upholding 7-year extension of the Voting Rights Act's requirement that certain jurisdictions preclear any change to a "standard, practice, or procedure with respect to voting"); see also *James Everard's Breweries v. Day*, 265 U. S. 545 (1924) (upholding ban on medical prescription of intoxicating malt liquors as appropriate to enforce Eighteenth Amendment ban on manufacture, sale, or transportation of intoxicating liquors for beverage purposes)." *Id.*, at 518.

Opinion of the Court

came in *Hibbs*, in which we considered whether a male state employee could recover money damages against the State for its failure to comply with the family-care leave provision of the Family and Medical Leave Act of 1993 (FMLA), 107 Stat. 6, 29 U. S. C. §2601 *et seq.* We upheld the FMLA as a valid exercise of Congress’ §5 power to combat unconstitutional sex discrimination, even though there was no suggestion that the State’s leave policy was adopted or applied with a discriminatory purpose that would render it unconstitutional under the rule of *Personnel Administrator of Mass. v. Feeney*, 442 U. S. 256 (1979). When Congress seeks to remedy or prevent unconstitutional discrimination, §5 authorizes it to enact prophylactic legislation proscribing practices that are discriminatory in effect, if not in intent, to carry out the basic objectives of the Equal Protection Clause.

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.” *Boerne*, 521 U. S., at 519. In *Boerne*, 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.” *Id.*, at 519–520. 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.” *Id.*, at 520.

In *Boerne*, we held that Congress had exceeded its §5 authority when it enacted the Religious Freedom Restoration Act of 1993 (RFRA). We began by noting that Congress enacted RFRA “in direct response” to our decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872 (1990), for the stated purpose of “restor[ing]” a constitutional rule that *Smith* had rejected.

Opinion of the Court

521 U. S., at 512, 515 (internal quotation marks omitted). Though the respondent attempted to defend the statute as a reasonable means of enforcing the Free Exercise Clause as interpreted in *Smith*, we concluded that RFRA was “so out of proportion” to that objective that it could be understood only as an attempt to work a “substantive change in constitutional protections.” *Id.*, at 529, 532. Indeed, that was the very purpose of the law.

This Court further defined the contours of *Boerne*’s “congruence and proportionality” test in *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U. S. 627 (1999). At issue in that case was the validity of the Patent and Plant Variety Protection Remedy Clarification Act (hereinafter Patent Remedy Act), a statutory amendment Congress enacted in the wake of our decision in *Atascadero State Hospital v. Scanlon*, 473 U. S. 234 (1985), to clarify its intent to abrogate state sovereign immunity from patent infringement suits. *Florida Prepaid*, 527 U. S., at 631–632. Noting the virtually complete absence of a history of unconstitutional patent infringement on the part of the States, as well as the Act’s expansive coverage, the Court concluded that the Patent Remedy Act’s apparent aim was to serve the Article I concerns of “provid[ing] a uniform remedy for patent infringement and . . . plac[ing] States on the same footing as private parties under that regime,” and not to enforce the guarantees of the Fourteenth Amendment. *Id.*, at 647–648. See also *Kimel*, 528 U. S. 62 (finding that the Age Discrimination in Employment Act exceeded Congress’ §5 powers under *Boerne*); *United States v. Morrison*, 529 U. S. 598 (2000) (Violence Against Women Act).

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. As in *Florida Prepaid*, we concluded Con-

Opinion of the Court

gress’ exercise of its prophylactic §5 power was unsupported by a relevant history and pattern of constitutional violations. 531 U. S., at 368, 374. Although the dissent pointed out that Congress had before it a great deal of evidence of discrimination by the States against persons with disabilities, *id.*, at 379 (BREYER, J., dissenting), the Court’s opinion noted that the “overwhelming majority” of that evidence related to “the provision of public services and public accommodations, which areas are addressed in Titles II and III,” rather than Title I, *id.*, at 371, n. 7. We also noted that neither the ADA’s legislative findings nor its legislative history reflected a concern that the States had been engaging in a pattern of unconstitutional employment discrimination. We emphasized that the House and Senate Committee Reports on the ADA focused on “discrimination [in] . . . *employment in the private sector*,” and made no mention of discrimination in public employment. *Id.*, at 371–372 (quoting S. Rep. No. 101–116, p. 6 (1989), and H. R. Rep. No. 101–485, pt. 2, p. 28 (1990)) (emphasis in *Garrett*). Finally, we concluded that Title I’s broad remedial scheme was insufficiently targeted to remedy or prevent unconstitutional discrimination in public employment. Taken together, the historical record and the broad sweep of the statute suggested that Title I’s true aim was not so much to enforce the Fourteenth Amendment’s prohibitions against disability discrimination in public employment as it was to “rewrite” this Court’s Fourteenth Amendment jurisprudence. 531 U. S., at 372–374.

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.

IV

The first step of the *Boerne* inquiry requires us to iden-

Opinion of the Court

tify the constitutional right or rights that Congress sought to enforce when it enacted Title II. *Garrett*, 531 U. S., at 365. In *Garrett* we identified Title I's purpose as enforcement of the Fourteenth Amendment's command that "all persons similarly situated should be treated alike." *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 439 (1985). As we observed, classifications based on disability violate that constitutional command if they lack a rational relationship to a legitimate governmental purpose. *Garrett*, 531 U. S., at 366 (citing *Cleburne*, 473 U. S., at 446).

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. See, e.g., *Dunn v. Blumstein*, 405 U. S. 330, 336–337 (1972); *Shapiro v. Thompson*, 394 U. S. 618, 634 (1969); *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942). 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. The Due Process Clause and the Confrontation Clause of the Sixth Amendment, as applied to the States via the Fourteenth Amendment, both guarantee to a criminal defendant such as respondent Lane the "right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings." *Faretta v. California*, 422 U. S. 806, 819, n. 15 (1975). The Due Process Clause also requires the States to afford certain civil litigants a "meaningful opportunity to be heard" by removing obstacles to their full participation in judicial proceedings. *Boddie v. Connecticut*, 401 U. S. 371, 379 (1971); *M. L. B. v. S. L. J.*, 519 U. S. 102 (1996). We have held that the Sixth Amendment guarantees to criminal defendants the right to trial by a jury composed of a fair cross section of the community, noting that the exclusion of "identifiable segments playing

Opinion of the Court

major roles in the community cannot be squared with the constitutional concept of jury trial.” *Taylor v. Louisiana*, 419 U. S. 522, 530 (1975). And, finally, we have recognized that members of the public have a right of access to criminal proceedings secured by the First Amendment. *Press-Enterprise Co. v. Superior Court of Cal., County of Riverside*, 478 U. S. 1, 8–15 (1986).

Whether Title II validly enforces these constitutional rights is a question that “must be judged with reference to the historical experience which it reflects.” *South Carolina v. Katzenbach*, 383 U. S. 301, 308 (1966). See also *Florida Prepaid*, 527 U. S., at 639–640; *Boerne*, 521 U. S., at 530. While §5 authorizes Congress to enact reasonably prophylactic remedial legislation, the appropriateness of the remedy depends on the gravity of the harm it seeks to prevent. “Difficult and intractable problems often require powerful remedies,” *Kimel*, 528 U. S., at 88, but it is also true that “[s]trong measures appropriate to address one harm may be an unwarranted response to another, lesser one,” *Boerne*, 521 U. S., at 530.

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. For example, “[a]s of 1979, most States . . . categorically disqualified ‘idiots’ from voting, without regard to individual capacity.”⁵ The majority of these laws remain on the books,⁶

⁵ *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 464, and n. 14 (1985) (Marshall, J., concurring in judgment in part and dissenting in part) (citing Note, Mental Disability and the Right to Vote, 88 Yale L. J. 1644 (1979)).

⁶ See Schriner, Ochs, & Shields, Democratic Dilemmas: Notes on the ADA and Voting Rights of People with Cognitive and Emotional Impairments, 21 Berkeley J. Emp. & Lab. L. 437, 456–472 tbl. II (2000)

Opinion of the Court

and have been the subject of legal challenge as recently as 2001.⁷ Similarly, a number of States have prohibited and continue to prohibit persons with disabilities from engaging in activities such as marrying⁸ and serving as jurors.⁹ The historical experience that Title II reflects is also documented in this Court's cases, which have identified unconstitutional treatment of disabled persons by state agencies in a variety of settings, including unjustified commitment, *e.g.*, *Jackson v. Indiana*, 406 U. S. 715 (1972); the abuse and neglect of persons committed to state mental health hospitals, *Youngberg v. Romeo*, 457 U. S. 307 (1982);¹⁰ and irrational discrimination in zoning decisions, *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432 (1985). The decisions of other courts, too, document a pattern of unequal treatment in the administration of a wide range of public services, programs, and activities, including the penal system,¹¹ public

(listing state laws concerning the voting rights of persons with mental disabilities).

⁷ See *Doe v. Rowe*, 156 F. Supp. 2d 35 (Me. 2001).

⁸ *E.g.*, D. C. Code §46–403 (West 2001) (declaring illegal and void the marriage of “an idiot or of a person adjudged to be a lunatic”); Ky. Rev. Stat. Ann. §402.990(2) (West 1992 Cumulative Service) (criminalizing the marriage of persons with mental disabilities); Tenn. Code Ann. §36–3–109 (1996) (forbidding the issuance of a marriage license to “imbecile[s]”).

⁹ *E.g.*, Mich. Comp. Laws Ann. §729.204 (West 2002) (persons selected for inclusion on jury list may not be “infirm or decrepit”); Tenn. Code Ann. §22–2–304(c) (1994) (authorizing judges to excuse “mentally and physically disabled” persons from jury service).

¹⁰ The undisputed findings of fact in *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1 (1981), provide another example of such mistreatment. See *id.*, at 7 (“Conditions at Pennhurst are not only dangerous, with the residents often physically abused or drugged by staff members, but also inadequate for the ‘habilitation’ of the retarded”).

¹¹ *E.g.*, *LaFaut v. Smith*, 834 F. 2d 389, 394 (CA4 1987) (paraplegic inmate unable to access toilet facilities); *Schmidt v. Odell*, 64 F. Supp. 2d 1014 (Kan. 1999) (double amputee forced to crawl around the floor of

Opinion of the Court

education,¹² and voting.¹³ Notably, these decisions also demonstrate a pattern of unconstitutional treatment in the administration of justice.¹⁴

jail). See also, *e.g.*, *Key v. Grayson*, 179 F.3d 996 (CA6 1999) (deaf inmate denied access to sex offender therapy program allegedly required as precondition for parole).

¹²*E.g.*, *New York State Assn. for Retarded Children, Inc. v. Carey*, 466 F. Supp. 487, 504 (EDNY 1979) (segregation of mentally retarded students with hepatitis B); *Mills v. Board of Ed. of District of Columbia*, 348 F. Supp. 866 (DC 1972) (exclusion of mentally retarded students from public school system). See also, *e.g.*, *Robertson v. Granite City Community Unit School District No. 9*, 684 F. Supp. 1002 (SD Ill. 1988) (elementary-school student with AIDS excluded from attending regular education classes or participating in extracurricular activities); *Thomas v. Atascadero Unified School District*, 662 F. Supp. 376 (CD Cal. 1986) (kindergarten student with AIDS excluded from class).

¹³*E.g.*, *Doe v. Rowe*, 156 F. Supp. 2d 35 (Me. 2001) (disenfranchisement of persons under guardianship by reason of mental illness). See also, *e.g.*, *New York ex rel. Spitzer v. County of Delaware*, 82 F. Supp. 2d 12 (NDNY 2000) (mobility-impaired voters unable to access county polling places).

¹⁴*E.g.*, *Ferrell v. Estelle*, 568 F.2d 1128, 1132–1133 (CA5) (deaf criminal defendant denied interpretive services), opinion withdrawn as moot, 573 F.2d 867 (1978); *State v. Schaim*, 65 Ohio St. 3d 51, 64, 600 N. E. 2d 661, 672 (1992) (same); *People v. Rivera*, 125 Misc. 2d 516, 528, 480 N. Y. S. 2d 426, 434 (Sup. Ct. 1984) (same). See also, *e.g.*, *Layton v. Elder*, 143 F.3d 469, 470–472 (CA8 1998) (mobility-impaired litigant excluded from a county quorum court session held on the second floor of an inaccessible courthouse); *Matthews v. Jefferson*, 29 F. Supp. 2d 525, 533–534 (WD Ark. 1998) (wheelchair-bound litigant had to be carried to the second floor of an inaccessible courthouse, from which he was unable to leave to use restroom facilities or obtain a meal, and no arrangements were made to carry him downstairs at the end of the day); *Pomerantz v. County of Los Angeles*, 674 F.2d 1288, 1289 (CA9 1982) (blind persons categorically excluded from jury service); *Galloway v. Superior Court of District of Columbia*, 816 F. Supp. 12 (DC 1993) (same); *DeLong v. Brumbaugh*, 703 F. Supp. 399, 405 (WD Pa. 1989) (deaf individual excluded from jury service); *People v. Green*, 561 N. Y. S. 2d 130, 133 (Cty. Ct. 1990) (prosecutor exercised peremptory strike against prospective juror solely because she was hearing impaired).

Opinion of the Court

This pattern of disability discrimination persisted despite several federal and state legislative efforts to address it. In the deliberations that led up to the enactment of the ADA, Congress identified important shortcomings in existing laws that rendered them “inadequate to address the pervasive problems of discrimination that people with disabilities are facing.” S. Rep. No. 101–116, at 18. See also H. R. Rep. No. 101–485, pt. 2, at 47.¹⁵ It also uncovered further evidence of those shortcomings, in the form of hundreds of examples of unequal treatment of persons with disabilities by States and their political subdivisions. See *Garrett*, 531 U. S., at 379 (BREYER, J., dissenting). See also *id.*, at 391 (App. C to opinion of BREYER, J., dissenting). As the Court’s opinion in *Garrett* observed, the “overwhelming majority” of these examples concerned discrimination in the administration of public programs and services. *Id.*, at 371, n. 7; Government’s Lodging in *Garrett*, O. T. 2000, No. 99–1240 (available in Clerk of Court’s case file).

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. U. S. Civil Rights Commission, *Accommodating the Spectrum of Individual Abilities* 39 (1983). Congress itself

¹⁵For a comprehensive discussion of the shortcomings of state disability discrimination statutes, see Colker & Milani, *The Post-Garrett World: Insufficient State Protection against Disability Discrimination*, 53 Ala. L. Rev. 1075 (2002).

Opinion of the Court

heard testimony from persons with disabilities who described the physical inaccessibility of local courthouses. Oversight Hearing on H. R. 4468 before the House Subcommittee on Select Education of the Committee on Education and Labor, 100th Cong., 2d Sess., 40–41, 48 (1988). 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. Government’s Lodging in *Garrett*, O. T. 2000, No. 99–1240. See also Task Force on the Rights and Empowerment of Americans with Disabilities, *From ADA to Empowerment* (Oct. 12, 1990).¹⁶

¹⁶THE CHIEF JUSTICE dismisses as “irrelevant” the portions of this evidence that concern the conduct of nonstate governments. *Post*, at 5–6 (dissenting opinion). This argument rests on the mistaken premise that a valid exercise of Congress’ §5 power must always be predicated solely on evidence of constitutional violations by the States themselves. To operate on that premise in this case would be particularly inappropriate because this case concerns the provision of judicial services, an area in which local governments are typically treated as “arm[s] of the State” for Eleventh Amendment purposes, *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S. 274, 280 (1977), and thus enjoy precisely the same immunity from unconsented suit as the States. See, e.g., *Callahan v. Philadelphia*, 207 F. 3d 668, 670–674 (CA3 2000) (municipal court is an “arm of the State” entitled to Eleventh Amendment immunity); *Kelly v. Municipal Courts*, 97 F. 3d 902, 907–908 (CA7 1996) (same); *Franceschi v. Schwartz*, 57 F. 3d 828, 831 (CA9 1995) (same). Cf. *Garrett*, 531 U. S., at 368–369.

In any event, our cases have recognized that evidence of constitutional violations on the part of nonstate governmental actors is relevant to the §5 inquiry. To be sure, evidence of constitutional violations by the States themselves is particularly important when, as in *Florida*

Opinion of the Court

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. Just last Term in *Hibbs*, we approved the family-care leave provision of the FMLA as valid §5 legislation based primarily on evidence of disparate provision of parenting leave, little of which concerned unconstitutional state conduct. 538 U. S., at 728–733.¹⁷ We explained that because the FMLA was targeted at sex-

Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank, 527 U. S. 627 (1999), *Kimel v. Florida Bd. of Regents*, 528 U. S. 62 (2000), and *Garrett*, the sole purpose of reliance on §5 is to place the States on equal footing with private actors with respect to their amenability to suit. But much of the evidence in *South Carolina v. Katzenbach*, 383 U. S., at 312–315, to which THE CHIEF JUSTICE favorably refers, *post*, at 11, involved the conduct of county and city officials, rather than the States. Moreover, what THE CHIEF JUSTICE calls an “extensive legislative record documenting States’ gender discrimination in employment leave policies” in *Nevada Dept. of Human Resources v. Hibbs*, 538 U. S. 721 (2003), *post*, at 11, in fact contained little specific evidence of a pattern of unconstitutional discrimination on the part of the States. Indeed, the evidence before the Congress that enacted the FMLA related primarily to the practices of private-sector employers and the Federal Government. See *Hibbs*, 538 U. S., at 730–735. See also *id.*, at 745–750 (KENNEDY, J., dissenting).

¹⁷Specifically, we relied on (1) a Senate Report citation to a Bureau of Labor Statistics survey revealing disparities in private-sector provision of parenting leave to men and women; (2) submissions from two sources at a hearing on the Parental and Medical Leave Act of 1986, a predecessor bill to the FMLA, that public-sector parental leave policies “‘diffe[r] little’” from private-sector policies; (3) evidence that 15 States provided women up to one year of extended maternity leave, while only 4 States provided for similarly extended paternity leave; and (4) a House Report’s quotation of a study that found that failure to implement uniform standards for parenting leave would “‘leav[e] Federal employees open to discretionary and possibly unequal treatment,’” H. R. Rep. No. 103–8, pt. 2, p. 11 (1993). *Hibbs*, 538 U. S., at 728–733.

Opinion of the Court

based classifications, which are subject to a heightened standard of judicial scrutiny, “it was easier for Congress to show a pattern of state constitutional violations” than in *Garrett* or *Kimel*, both of which concerned legislation that targeted classifications subject to rational-basis review. 538 U. S., at 735–737. Title II is aimed at the enforcement of a variety of basic rights, including the right of access to the courts at issue in this case, that call for a standard of judicial review at least as searching, and in some cases more searching, than the standard that applies to sex-based classifications. And in any event, the record of constitutional violations in this case—including judicial findings of unconstitutional state action, and statistical, legislative, and anecdotal evidence of the widespread exclusion of persons with disabilities from the enjoyment of public services—far exceeds the record in *Hibbs*.

The conclusion that Congress drew from this body of evidence is set forth in the text of the ADA itself: “[D]iscrimination against individuals with disabilities persists in such critical areas as . . . education, transportation, communication, recreation, institutionalization, health services, voting, and *access to public services*.” 42 U. S. C. §12101(a)(3) (emphasis added). 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.

V

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—unlike RFRA, the Patent Remedy Act, and the other statutes we have reviewed for validity under §5—reaches a wide array of official conduct

Opinion of the Court

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.¹⁸ 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

¹⁸ Contrary to THE CHIEF JUSTICE, *post*, at 15, neither *Garrett* nor *Florida Prepaid* lends support to the proposition that the *Boerne* test requires courts in all cases to “measur[e] the full breadth of the statute or relevant provision that Congress enacted against the scope of the constitutional right it purported to enforce.” In fact, the decision in *Garrett*, which severed Title I of the ADA from Title II for purposes of the §5 inquiry, demonstrates that courts need not examine “the full breadth of the statute” all at once. Moreover, *Garrett* and *Florida Prepaid*, like all of our other recent §5 cases, concerned legislation that narrowly targeted the enforcement of a single constitutional right; for that reason, neither speaks to the issue presented in this case.

Nor is THE CHIEF JUSTICE's approach compelled by the nature of the *Boerne* inquiry. The answer to the question *Boerne* asks—whether a piece of legislation attempts substantively to redefine a constitutional guarantee—logically focuses on the manner in which the legislation operates to enforce that particular guarantee. It is unclear what, if anything, examining Title II's application to hockey rinks or voting booths can tell us about whether Title II substantively redefines the right of access to the courts.

Opinion of the Court

legislation as it applies to the class of cases implicating the accessibility of judicial services, we need go no further. See *United States v. Raines*, 362 U. S. 17, 26 (1960).¹⁹

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 proble[m]" warranted "added prophylactic measures in response." *Hibbs*, 538 U. S., at 737 (internal quotation marks omitted).

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. 42 U. S. C. §12131(2). 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

¹⁹In *Raines*, a State subject to suit under the Civil Rights Act of 1957 contended that the law exceeded Congress' power to enforce the Fifteenth Amendment because it prohibited "any person," and not just state actors, from interfering with voting rights. We rejected that argument, concluding that "if the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality." 362 U. S., at 24–25.

Opinion of the Court

fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service. *Ibid.* 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. 28 CFR §35.151 (2003). 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. §35.150(b)(1). Only if these measures are ineffective in achieving accessibility is the public entity required to make reasonable structural changes. *Ibid.* 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. §§35.150(a)(2), (a)(3).

This duty to accommodate is perfectly consistent with the well-established due process principle that, “within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard” in its courts. *Boddie*, 401 U. S., at 379 (internal quotation marks and citation omitted).²⁰ Our cases have recognized a number of affirmative obligations that flow from this principle: the duty to waive filing fees in certain family-law and criminal

²⁰ Because this case implicates the right of access to the courts, we need not consider whether Title II's duty to accommodate exceeds what the Constitution requires in the class of cases that implicate only *Cleburne's* prohibition on irrational discrimination. See *Garrett*, 531 U. S., at 372.

Opinion of the Court

cases,²¹ the duty to provide transcripts to criminal defendants seeking review of their convictions,²² and the duty to provide counsel to certain criminal defendants.²³ Each of these cases makes clear that ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts. 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." *Boerne*, 521 U. S., at 532; *Kimel*, 528 U. S., at 86.²⁴ It is, rather, a reasonable prophylactic measure, reasonably targeted to a legitimate end.

For these reasons, we conclude that Title II, as it applies

²¹ *Boddie v. Connecticut*, 401 U. S. 371 (1971) (divorce filing fee); *M. L. B. v. S. L. J.*, 519 U. S. 102 (1996) (record fee in parental rights termination action); *Smith v. Bennett*, 365 U. S. 708 (1961) (filing fee for habeas petitions); *Burns v. Ohio*, 360 U. S. 252 (1959) (filing fee for direct appeal in criminal case).

²² *Griffin v. Illinois*, 351 U. S. 12 (1956).

²³ *Gideon v. Wainwright*, 372 U. S. 335 (1963) (trial counsel for persons charged with felony offenses); *Douglas v. California*, 372 U. S. 353 (1963) (counsel for direct appeals as of right).

²⁴ THE CHIEF JUSTICE contends that Title II cannot be understood as remedial legislation because it "subjects a State to liability for failing to make a vast array of special accommodations, *without regard for whether the failure to accommodate results in a constitutional wrong*." *Post*, at 17 (emphasis in original). But as we have often acknowledged, Congress "is not confined to the enactment of legislation that merely parrots the precise wording of the Fourteenth Amendment," and may prohibit "a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Kimel*, 528 U. S., at 81. Cf. *Hibbs*, 538 U. S. 721 (upholding the FMLA as valid remedial legislation without regard to whether failure to provide the statutorily mandated 12 weeks' leave results in a violation of the Fourteenth Amendment).

Opinion of the Court

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. The judgment of the Court of Appeals is therefore affirmed.

It is so ordered.