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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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TENNESSEE *v.* LANE ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 02–1667. Argued January 13, 2004—Decided May 17, 2004

Respondent paraplegics filed this action for damages and equitable relief, alleging that Tennessee and a number of its counties had denied them physical access to that State’s courts in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), which provides: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation or denied the benefits of the services, programs or activities of a public entity,” 42 U. S. C. §12132. After the District Court denied the State’s motion to dismiss on Eleventh Amendment immunity grounds, the Sixth Circuit held the appeal in abeyance pending *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356. This Court later ruled in *Garrett* that the Eleventh Amendment bars private money damages actions for state violations of ADA Title I, which prohibits employment discrimination against the disabled. The en banc Sixth Circuit then issued its *Popovich* decision, in which it interpreted *Garrett* to bar private ADA suits against States based on equal protection principles, but not those relying on due process, and therefore permitted a Title II damages action to proceed despite the State’s immunity claim. Thereafter, a Sixth Circuit panel affirmed the dismissal denial in this case, explaining that respondents’ claims were not barred because they were based on due process principles. In response to a rehearing petition arguing that *Popovich* did not control because respondents’ complaint did not allege due process violations, the panel filed an amended opinion, explaining that due process protects the right of access to the courts, and that the evidence before Congress when it enacted Title II established, *inter alia*, that physical barriers in courthouses and courtrooms have had the effect of denying disabled people the opportunity for such access.

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Held: As it applies to the class of cases implicating the fundamental right of access to the courts, Title II constitutes a valid exercise of Congress' authority under §5 of the Fourteenth Amendment to enforce that Amendment's substantive guarantees. Pp. 4–23.

(a) Determining whether Congress has constitutionally abrogated a State's Eleventh Amendment immunity requires resolution of two predicate questions: (1) whether Congress unequivocally expressed its intent to abrogate; and (2), if so, whether it acted pursuant to a valid grant of constitutional authority. *Kimel v. Florida Bd. of Regents*, 528 U. S. 62, 73. The first question is easily answered here, since the ADA specifically provides for abrogation. See §12202. With regard to the second question, Congress can abrogate state sovereign immunity pursuant to a valid exercise of its power under §5 of the Fourteenth Amendment. *E.g.*, *Fitzpatrick v. Bitzer*, 427 U. S. 445, 456. That 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." *City of Boerne v. Flores*, 521 U. S. 507, 519. In *Boerne*, the Court set forth the test for distinguishing between permissible remedial legislation and unconstitutional substantive redefinition: Section 5 legislation is valid if it exhibits "a congruence and proportionality" between an injury and the means adopted to prevent or remedy it. *Id.*, at 520. Applying the *Boerne* test in *Garrett*, the Court concluded that ADA Title I was not a valid exercise of Congress' §5 power because the historical record and the statute's broad sweep suggested that Title I's true aim was not so much enforcement, but an attempt to "rewrite" this Court's Fourteenth Amendment jurisprudence. 531 U. S., at 372–374. In view of significant differences between Titles I and II, however, *Garrett* left open the question whether Title II is a valid exercise of Congress' §5 power, *id.*, at 360, n. 1. Pp. 5–10.

(b) Title II is a valid exercise of Congress' §5 enforcement power. Pp. 11–23.

(1) The *Boerne* inquiry's first step requires identification of the constitutional rights Congress sought to enforce when it enacted Title II. *Garrett*, 531 U. S., at 365. Like Title I, Title II seeks to enforce the Fourteenth Amendment's prohibition on irrational disability discrimination, *Garrett*, 531 U. S., at 366. But it also seeks to enforce a variety of other basic constitutional guarantees, including some, like the right of access to the courts here at issue, infringements of which are subject to heightened judicial scrutiny. See, *e.g.*, *Dunn v. Blumstein*, 405 U. S. 330, 336–337. Whether Title II validly enforces such constitutional rights is a question that "must be judged with reference to the historical experience which it reflects." *E.g.*, *South Caro-*

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lina v. Katzenbach, 383 U.S. 301, 308. Congress enacted Title II against a backdrop of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, including systematic deprivations of fundamental rights. The historical experience that Title II reflects is also documented in the decisions of this and other courts, which have identified unconstitutional treatment of disabled persons by state agencies in a variety of public programs and services. With respect to the particular services at issue, Congress learned that many individuals, in many States, were being excluded from courthouses and court proceedings by reason of their disabilities. A Civil Rights Commission report before Congress showed that some 76% of public services and programs housed in state-owned buildings were inaccessible to and unusable by such persons. Congress also heard testimony from those persons describing the physical inaccessibility of local courthouses. And its appointed task force heard numerous examples of their exclusion from state judicial services and programs, including failure to make courtrooms accessible to witnesses with physical disabilities. The sheer volume of such evidence far exceeds the record in last Term's *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721, 728–733, in which the Court approved the family-care leave provision of the Family and Medical Leave Act of 1993 as valid §5 legislation. Congress' finding in the ADA that "discrimination against individuals with disabilities persists in such critical areas as . . . access to public services," §12101(a)(3), together with the extensive record of disability discrimination that underlies it, makes clear that inadequate provision of public services and access to public facilities was an appropriate subject for prophylactic legislation. Pp. 11–18.

(2) Title II is an appropriate response to this history and pattern of unequal treatment. Unquestionably, it is valid §5 legislation as it applies to the class of cases implicating the accessibility of judicial services. Congress' chosen remedy for the pattern of exclusion and discrimination at issue, Title II's requirement of program accessibility, is congruent and proportional to its object of enforcing the right of access to the courts. The long history of unequal treatment of disabled persons in the administration of judicial services has persisted despite several state and federal legislative efforts to remedy the problem. Faced with considerable evidence of the shortcomings of these previous efforts, Congress was justified in concluding that the difficult and intractable problem of disability discrimination warranted added prophylactic measures. *Hibbs*, 538 U.S., at 737. 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

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States to take reasonable measures to remove architectural and other barriers to accessibility. §12132. But Title II does not require States to employ any and all means to make judicial services accessible or to compromise essential eligibility criteria for public programs. It requires only “reasonable modifications” that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service. *Ibid.* Title II’s implementing regulations make clear that the reasonable modification requirement can be satisfied in various ways, including less costly measures than structural changes. 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. A number of affirmative obligations flow from this principle. Cases such as *Boddie*, *Griffin v. Illinois*, 351 U. S. 12, and *Gideon v. Wainwright*, 372 U. S. 335, make 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 is a reasonable prophylactic measure, reasonably targeted to a legitimate end. Pp. 18–23.

315 F. 3d 680, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O’CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SOUTER, J., filed a concurring opinion, in which GINSBURG, J., joined. GINSBURG, J., filed a concurring opinion, in which SOUTER and BREYER, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which KENNEDY and THOMAS, JJ., joined. SCALIA, J., and THOMAS, J., filed dissenting opinions.