

LEGAL UPDATES

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## Service

Public Law

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## Fifth Circuit Holds Texas Counties Can be Sued for Failing to Provide Interpreters to Criminal Defendants

On August 19, 2022, the U.S. Court of Appeals for the Fifth Circuit held that a lawsuit over alleged violations of Title II of the Americans with Disabilities Act (ADA) could proceed against Lee County, Texas. The plaintiff is a deaf individual who was arrested for marijuana possession during a traffic stop and subsequently booked and detained at Lee County Jail. Plaintiff was arraigned and released on bond, pleaded guilty, and was sentenced to one year of probation, which he successfully completed.

In a published, precedential opinion by Judge Gregg Costa, a unanimous Fifth Circuit panel held that plaintiff's allegation that the county denied him an American Sign Language (ASL) interpreter at every stage of his contact with the criminal justice system—including his arrest, arraignment and sentencing—stated a claim for disability discrimination under Title II of the ADA. The panel reversed the district court's dismissal of the suit and remanded with instructions to allow plaintiff's claim against Lee County to proceed.

### **Failure to Provide a Deaf Individual with a Qualified ASL Interpreter During Criminal Proceedings is an ADA Violation, Regardless of the Outcome of Such Proceedings**

To state a claim for disability discrimination under Title II of the ADA, plaintiff was required to show: (1) that he is a qualified individual with a disability; (2) that he was excluded from participation in—or denied the benefits of—services, programs or activities for which the county is responsible, or that he was otherwise being discriminated against by the county; and (3) that such discrimination is because of his disability. Plaintiff's allegation that he is deaf, and that the county knew that he was deaf and yet declined to accommodate

his request for an ASL interpreter, satisfy the first and third elements of the claim.

The Fifth Circuit held that plaintiff also properly alleged that he was denied the benefit of meaningful access to public services because he maintained that, lacking an interpreter, he was not able to understand his legal rights or to communicate effectively throughout his criminal proceedings. That plaintiff went on to complete the terms of his probation successfully did not cure his earlier injury of not being able to understand the law enforcement officers and judges involved in his proceedings as a non-deaf defendant would.

The Fifth Circuit further held that the involvement of plaintiff's mother at various stages of the case did not cure the ADA violation because plaintiff alleged that his mother knew only basic sign language and was not qualified to serve as an ASL interpreter. In any event, the Court clarified that, under the ADA, the county could not require a disabled person's family member to provide interpretation services for which the county itself is responsible.

### **Texas Counties Are Not Entitled to Eleventh Amendment Sovereign Immunity—But They Continue to Enjoy Common Law Sovereign Immunity under Texas Law**

The Fifth Circuit also reversed the district court's determination that the suit against Lee County was barred by sovereign immunity. The Fifth Circuit clarified that Eleventh Amendment immunity from suit in federal court extends only to states and their agencies. Because Texas counties are political subdivisions of the State of Texas, they are not entitled to such immunity.

The Fifth Circuit's holding does not impact Texas common law, however. The Supreme Court of Texas has repeatedly held that Texas counties are entitled to sovereign immunity and may not be sued except in instances where immunity has been explicitly waived by the legislature, as in the Texas Tort Claims Act. Accordingly, Texas counties may continue to invoke sovereign immunity in appropriate cases in Texas state courts.

### **The Community Supervision and Corrections (Probation) Departments That Serve County Criminal Courts Are State Agencies Entitled to Eleventh Amendment Sovereign Immunity—But Such Agencies May Nevertheless Remain Subject to Suit Under the ADA**

The Fifth Circuit further held that the Community Supervision and Corrections Departments involved in carrying out plaintiff's one year term of probation, both in Lee County and in San Jacinto County, are entitled to Eleventh Amendment sovereign immunity because both entities are state agencies. Nevertheless, the panel instructed the district court to consider whether Congress validly abrogated the agencies' sovereign immunity by enacting Title II of the ADA. If the district court concludes that

there has been a valid abrogation of sovereign immunity, plaintiff's claims against the agencies for denying him an ASL interpreter during his probation proceedings may be allowed to proceed.

### **What this means to you**

Texas counties should be prepared to provide interpretation services to criminal defendants. Failure to provide such individuals with qualified interpreters may lead to an ADA lawsuit, or even a class action.

Moreover, Texas counties should retain counsel with experience in briefing and arguing issues of sovereign immunity.

### **Contact us**

If you have questions about this update or how it might affect your business, contact Kate David, Sebastian Waisman, Ben Stephens or your Husch Blackwell attorney.