

COURT OF APPEAL
FIRST CIRCUIT
STATE OF LOUISIANA

NUMBER:

YEN J. NGUYEN, Applicant/Respondent

VERSUS

STEWART HALL, Defendant/Applicant

**AMICUS CURIAE BRIEF IN SUPPORT OF APPLICATION FOR
EMERGENCY SUPERVISORY AND REMEDIAL WRITS FILED ON
BEHALF OF STEWART HALL**

William P. Quigley #00769
Loyola University New Orleans
7214 St. Charles Avenue, Campus Box 902
New Orleans, LA 70118
Quigley77@gmail.com
504.710.3074

David Finger
Loyola University New Orleans
7214 St. Charles Avenue, Campus Box 902
New Orleans, LA 70118
dfinger@loyno.edu
504.292.6715

Counsel for Proposed Amici Curiae

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INTEREST OF AMICI CURIAE

This Amicus is being filed on behalf of the American Civil Liberties Union of Louisiana, CrescentCare, Disability Rights Louisiana (Formerly known as Advocacy Center), Louisiana Fair Housing Action Center, and attorneys from Loyola University New Orleans College of Law.

The American Civil Liberties Union of Louisiana has been advocating for the rights of people in Louisiana since 1956. The Louisiana ACLU and the National ACLU have been advocating for people with disabilities for years in courts and legislatures across the country.

CrescentCare has been advocating for and with people with disabilities for more than 30 years. They offer a broad range of health, wellness and legal services to people who need those services in Southeastern Louisiana.

Disability Rights Louisiana, formerly called the Advocacy Center, has been advocating for people with disabilities for over 40 years. It has offices in Baton Rouge, Lafayette, New Orleans and assists people across Louisiana in protecting the rights of and advocating for and with people with disabilities.

The Louisiana Fair Housing Action Center has been advocating for housing justice for people in Louisiana over 25 years. They are particularly active in protecting the rights of people with disabilities from discrimination in litigation, education, and policy advocacy.

David Finger and Bill Quigley are Professors at Loyola University New Orleans College of Law. Together they have been involved in housing advocacy for over fifty years.

Amici have written numerous letters and emails to the Louisiana Supreme Court, the Attorney General of Louisiana, Judges, Clerks, Constables and Justices of the Peace over the past few weeks explaining the law and asking them to accommodate people with disabilities. Though some progress has been made, this case makes clear that violations of the law remain.

SUMMARY OF ARGUMENT

The Americans with Disabilities Act, 42 USC Section 12101 is being violated in the eviction process in this matter because the Court below is not making itself accessible to people whose health and safety could be compromised by having to appear in person to defend against their eviction.

The United States Supreme Court ruled long ago that State and municipal courthouses and courtrooms are not exempt from the ADA. *Tennessee v. Lane*. 541 U.S. 509, 124 S. Ct. 1978 (2004).

Thousands of people in this community cannot and should not go physically to court due to health and safety issues with COVID 19.

State and Federal courts all across Louisiana and across the rest of the country have all made substantial provisions for lawyers and judges and parties to litigate cases remotely by video and other technologies in order to protect the health and safety of all involved.

Yet Courts like the one below do not provide those same options to individual people with disabilities who do not have lawyers and who must therefore appear in person in the courthouse.

The refusal to grant accommodations by the Court below violates the Americans with Disabilities Act.

Therefore, Amici ask this Court to grant the emergency writs filed by Southeast Louisiana Legal Services attorneys in this matter.

ARGUMENT ONE: COURTS WHICH REFUSE TO ACCOMMODATE PEOPLE WITH DISABILITIES ARE IN VIOLATION OF LAW

State and municipal courthouses and courtrooms are subject to the ADA.

Tennessee v. Lane. 541 U.S. 509, 124 S. Ct. 1978 (2004).

Title II of the ADA 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.” 42 U.S.C. § 12132.

Title II of the ADA imposes on public entities, including courts, an affirmative obligation to make reasonable accommodations and modifications for individuals with disabilities who seek access to a public service or benefit.

Tennessee v. Lane, 541 U.S. 509, 531–32 (2004) (“[F]ailure to accommodate persons with disabilities will often have the same practical effect as outright exclusion.”); *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005). Public entities must make reasonable modifications to policies when necessary to avoid discrimination on the basis of a disability. 28 C.F.R. § 35.130(b)(7) (“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability . . .”). The modifications must be sufficient to provide a person with a disability “meaningful access” to the service

program or activity. See *Alexander v. Choate*, 469 U.S. 287, 301, (1985). A public entity is required to make necessary modifications unless the modifications requested are unreasonable – in other words, “unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity,” 28 C.F.R. § 35.130(b)(7), or impose an undue financial or administrative burden, *Choi v. Univ. of Tex. Health Sci. Ctr. at San Antonio*, 633 F. App’x 214, 215-16 (5th Cir. 2015).

Federal regulations make it clear that the failure to ensure that people with disabilities are not excluded from participation in court constitutes discrimination. 28 C.F.R. § 35.130(a). It is also be discriminatory for a court to utilize methods of administration that have the effect of subjecting people with disabilities to discrimination on the basis of their disability. 28 C.F.R. § 35.130(b)(3).

Furthermore, failing to make reasonable modifications in policies, practices, or procedures when the modifications were necessary to avoid discrimination on the basis of disability is also unlawful. 28 C.F.R. § 35.130(b)(7).

Until the Court below modifies its practices, policies and procedures, to allow individuals with disabilities to access the courts, its operation violates Title II of the Americans with Disabilities Act and the Due Process Clause of the Fourteenth Amendment.

Ensuring compliance with the law and providing an accessible courtroom may well present a challenge to the Court below but it is an absolute necessity to ensure equal access to the courts.

The Court below must permit disabled individuals the ability to successfully fend off an eviction without having to put their lives, and the lives of others, at risk.

ARGUMENT TWO: LOUISIANA REMAINS IN A STATE PUBLIC HEALTH EMERGENCY AND THOUSANDS OF PEOPLE ARE CLASSIFIED BY LAW AS VULNERABLE TO COVID 19

The latest proclamation by Governor John Bel Edwards, dated June 4, 2020, (74-JBE-2020)¹ states:

“Section 1 (A). “Pursuant to the Louisiana Health Emergency Powers Act, La. R.S. 29:760, et seq., **a statewide public health emergency is declared to continue to exist** in the State of Louisiana as a result of the continued threat posed to Louisiana citizens by COVID-19, the effects of which continue to threaten the lives and health of the citizens of the state.”

Section 2 (A) states who should stay at home: “Those individuals who are at higher risk of severe illness, as designated by the Centers for Disease Control (CDC), are those with conditions such as asthma, chronic lung disease, compromised immune systems (including from smoking, cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, or use of corticosteroids or other immune weakening medications), diabetes,

¹ <http://www.stpgov.org/files/COVID/74-JBE-2020-State-of-Emergency-COVID-19-Resilient-Louisiana-Phase-2.pdf>

serious heart disease (including heart failure, coronary artery disease, congenital heart disease, cardiomyopathies, and hypertension), chronic kidney disease undergoing dialysis, liver disease, or severe obesity or those who are 65 or older or living in a nursing home or long-term care facility.”

Those in this high-risk group are ordered to stay at home unless they have to travel outside of home for an essential activity. The list of examples of essential activities does not include going to court. Section 2 (A).

Epidemiologists and physicians warn of the mortal dangers to individuals who are immunocompromised or have comorbid conditions, should they be required to physically attend court.

Data from the Centers for Disease Control and Prevention (“CDC”) supports our concerns. Data from the Louisiana Department of Health show that 36.65% of individuals who have died from COVID-19 had diabetes.² LDH data shows that hypertension is the number one predictor of death among COVID-19 patients; 59.39% of individuals who have died from COVID-19 have a hypertension diagnosis. Unsurprisingly, these health outcomes are impacted by racial disparities. For example, Black Louisianians are 38% more likely to suffer from diabetes, with its dire implications for COVID-19 infection, than white Louisianians.³

² Louisiana Department of Health, *Louisiana Coronavirus COVID-19*, <http://ldh.la.gov/Coronavirus/> (last visited May 20, 2020).

³ United Health Foundation, *America’s Health Rankings*, https://www.americashealthrankings.org/explore/annual/measure/Diabetes/population/Diabetes_Black/state/LA (last visited May 20, 2020) (17.7% of Black Louisianians have diabetes compared with 12.8% of white Louisianians).

Requiring the physical presence of medically vulnerable individuals to challenge their evictions is out of step with the current National and State governmental and medical consensus.

Tenants should not be forced to risk serious illness or death in order to avoid ending up homeless due to a default judgment.

ARGUMENT THREE: UNDER THE AMERICANS WITH DISABILITIES ACT THE DEFINITION OF WHO IS DISABLED IS BROAD AND IS TO BE LIBERALLY CONSTRUED IN FAVOR OF PROTECTION

Even before the COVID 19 pandemic hit, nearly 33% of all residents in Louisiana were reported to have one or more disabilities,⁴ with a significant percentage of those individuals being immunocompromised or having underlying comorbidities that could increase the risk of sickness if infected.

The ADA definition of disability is a very broad one. 42 USC Section 12101. It covers any person who has a mental or physical impairment which substantially limits one or more major life activities of such individual, or has a record of such an impairment, or is regarded as having an impairment. 42 USC Section 12102(1). Major life activities are defined broadly. “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 42 USC Section 12102(2)(A). Likewise, “a major life activity also includes the operation

⁴ Centers for Disease Control and Prevention, *Disability & Health U.S. State Profile Data: Louisiana*, <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/louisiana.html> (last visited May 20, 2020).

of a major bodily function, including but not limited to, functions of the *immune system*, normal cell growth, digestive, bowel, bladder, neurological, brain, *respiratory, circulatory*, endocrine, and reproductive functions.” 42 USC Section 12102(2)(B)(emphasis added).

Congress specifically stated in the statute that “[t]he definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.” 42 USC Section 12102 (4).

ARGUMENT FOUR: PEOPLE WITH DISABILITIES MUST BE ABLE TO DEFEND AGAINST EVICTIONS

Since the onset of COVID-19 in Louisiana, housing advocates like Amici have received numerous requests for legal assistance from many tenants with disabilities expecting to be evicted upon the reopening of courts.

Many of these people have clear legal defenses to eviction. For example, many renters are covered by the CARES Act, a new and complicated federal law that presents an absolute defense to their eviction.⁵

Despite having this strong legal defense, many renters have expressed reluctance to go to court, fearing that they will become infected with COVID-19.

Amici research combined with conversations with epidemiologists and other public health experts lead amici to believe these fears are justified.

⁵ It is difficult to project the exact number of properties covered by the CARES Act, however, estimates suggest that, for example, the majority of New Orleanians who rent are covered. Federal databases for Fannie Mae, Freddie Mac, Low Income Housing Tax Credits, HUD Multifamily Loans, HUD Public Housing, and USDA loans suggest that roughly 25,000 units in multifamily buildings in New Orleans alone are covered by CARES Act protections.

ARGUMENT FIVE: REFUSAL TO PROVIDE ACCOMMODATIONS TO ACCESS TO COURTS ALSO VIOLATES DUE PROCESS RIGHTS

The inability of people with disabilities to access the courts to defend themselves against eviction also raises grave due process concerns. These concerns are exacerbated by the fact that some individuals may be physically barred from the court building due to illness or lack of access to resources and/or technology.

By effectively dispossessing Plaintiff without adequate safeguards, the procedures enacted by the Court “foreclose a . . . party’s opportunity to be heard,” *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971), and so violate the procedural component of the Due Process Clause.

The policies challenged here will exclude from court those at a high risk of contracting COVID-19, those denied entrance to the courthouse for having indicia of COVID-19, and those unable to access the technology required under the plan. Tenants who cannot comply with the procedures of the Court will be evicted from their home by order of that court.

Procedural due process applies when state law recognizes a property interest. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982). A tenant’s right to continued occupancy is a property interest under Louisiana law. The Louisiana Civil Code unequivocally demonstrates this fact by requiring landlords to warrant tenants’ “peaceful possession of the leased thing against any disturbance caused by a person who asserts ownership of, or right to possession of, or any other right in the thing.” La. Civ. Code art. 2700. Even in the case of nonpayment of rent, a

landlord may only reclaim possession of a unit “in the manner provided by law.”

La. Civ. Code art. 2704. Unless a tenant abandons a property, only a court order can authorize an eviction. *Bunel of New Orleans, Inc. v. Cigali*, 348 So.2d 993, 995-96 (La. App. 4 Cir. 1977). Hence, Louisiana has recognized that a tenant has a property interest in her home.

The actions and inactions of the Court below violate the right to due process of the tenant.

CONCLUSION

As courts are reopen during the COVID-19 pandemic, that must be done in a way that ensures access to individuals with disabilities.

The operation of the Court below violates the Americans with Disabilities Act. It is insufficient to protect the safety of persons with disabilities and will result in those persons being excluded from participation in their legal defense.

It is also just not fair to require people with serious health disabilities to have to choose between: risking their own health and the health of everyone they come into contact with to go to court; or not going to court and becoming homeless.

Amici have written numerous letters and emails to the Louisiana Supreme Court, the Attorney General of Louisiana, Judges, Clerks, Constables and Justices of the Peace over the past few weeks explaining the law and asking them to accommodate people with disabilities. Though some progress has been made, this case makes clear that violations of the law remain.

For these reasons, we ask that this Court grant the Writs requested.

Respectfully submitted,

William P. Quigley #00769
Loyola University New Orleans
7214 St. Charles Avenue, Campus Box 902
New Orleans, LA 70118
Quigley77@gmail.com
504.710.3074

David Finger
Loyola University New Orleans
7214 St. Charles Avenue, Campus Box 902
New Orleans, LA 70118
dfinger@loyno.edu
504.292.6715

Counsel for Amici