Citations:

Bluebook 20th ed.

ALWD 6th ed.

APA 6th ed.

Chicago 7th ed.
Ian Meyer, "Health & Employment Law - Seventh Circuit Declares No Relief from Public Employment Discrimination under Title II of the Americans with Disabilities Act - Brumfield v. City of Chicago, 735 F.3d 619 (7th Cir. 2013)," Journal of Health & Biomedical Law 10, no. 3 (2015): 519-530


MLA 8th ed.

OSCOLA 4th ed.
Ian Meyer, 'Health & Employment Law - Seventh Circuit Declares No Relief from Public Employment Discrimination under Title II of the Americans with Disabilities Act - Brumfield v. City of Chicago, 735 F.3d 619 (7th Cir. 2013)' (2015) 10 J Health & Biomedical L 519

Provided by:
The Moakley Law Library at Suffolk University Law School

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at
https://heinonline.org/HOL/License

Ian Meyer*

All qualified individuals from state and local government entities are protected from disability-based discrimination in public services, programs, and activities by Title II of the Americans with Disabilities Act ("ADA" or "the Act").¹ In *Brumfield v. City of Chicago*,² the United States Court of Appeals for the Seventh Circuit considered whether

*J.D. Candidate, Suffolk University Law School, 2015; B.A., Saint Anselm College, 2012. Mr. Meyer may be contacted at iancmeyer@gmail.com.

¹ See Americans with Disabilities Act of 1990, § 202, 42 U.S.C. § 12132 (2000); *State and Local Governments (Title II), United States Department of Justice Civil Rights Division, Information and Technical Assistance on the Americans with Disabilities Act*, http://www.ada.gov/ada_title_II.htm (last visited Oct. 10, 2014); *Americans with Disabilities Act (ADA), United States Department of Education*, http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html (last visited Oct. 10, 2014) [hereinafter "DOE/ADA"]. The Americans with Disabilities Act gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. *Id.* Title I deals with employment issues. See § 202, 42 U.S.C. § 12112 (2000). Employers with more than fifteen employees may not discriminate against qualified individuals on the basis of their disability. *DOE/ADA*, http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html (last visited Oct. 10, 2014). Employers are expected to reasonably accommodate disabled employees unless doing so is an undue hardship. *Id.* "Title II of the ADA covers programs, activities, and services of public entities." *Title II Technical Assistance Manual, The Americans with Disabilities Act*, http://www.ada.gov/raman2.html#II-1.1000 (last visited Oct. 10, 2014). "[I]t is intended to protect qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments." *Id.* The ADA also extends discrimination prohibitions from Section 504 of the Rehabilitation Act of 1973 to all activities of state and local governments regardless of whether these governments receive federal financial assistance. *Id.*

² 735 F.3d 619 (7th Cir. 2013).
Title II of the ADA applied to those who claim discrimination in public employment. This question has resulted in a circuit split across federal courts. The Brumfeld court held that Title II does not apply to disability-based discrimination by employers and that these claims must be brought under Title I of the Act.

Linda Brumfield ("Brumfield"), a Chicago police officer, lost her job after several incidents of inappropriate conduct. She claimed to have been experiencing psychological problems requiring her to submit to periodic evaluations to determine if she was fit for duty. She was evaluated four times and although she was found fit for duty each time, the examiners warned that she could be "vulnerable to workplace stress." Despite being cleared for duty, she accumulated three suspensions before her termination.

In August 2010, Brumfield filed a lawsuit in the Northern District of Illinois, alleging that her discharge and suspensions violated Title II and Section 504 of the Rehabilitation Act. The city argued Title II did not cover employment discrimination and that Brumfield precluded herself from filing under Title I, which was the appropriate section of the law, and therefore she failed to state a claim. The judge held...

---

3 Id. at 622.
4 Id. Two circuits, the Ninth and Tenth, had previously decided Title II did not apply while one circuit, the Eleventh, came to the opposite conclusion. Id.
5 Id.
6 Brumfield, 735 F.3d at 623. Brumfield herself admitted that the first two disciplinary measures were a result of unspecified incidents that occurred in June 2006. Id. Her third discipline resulted after she told her captain she was going to fake an injury and proceeded to collapse on the ground showing off her false injury. Id.
7 Id. Brumfield claimed that her ability to eat, sleep, and concentrate had been affected. Id. at 622.
8 Id. at 623. There was no further explanation given for why she was vulnerable to this stress. See Brumfield, 735 F.3d at 623 (describing only what was found by psychological examiner).
9 Id. The record was also unclear regarding each of the incidents leading to her numerous suspensions. Id.
10 Id. Brumfield previously filed a claim asserting that her psychological evaluations had been discriminatory based on her status as an African American lesbian. Id. She then voluntarily dismissed the first case. Id. Her second and third suits remained standing. Brumfield, 735 F.3d at 623. The second suit alleged claims under Section 504 of the Rehabilitation Act, a law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance. See also Protecting Students With Disabilities, U.S. DEPARTMENT OF EDUCATION, http://www2.ed.gov/about/offices/list/ocr/504faq.html (last modified Dec. 19, 2013) (answering frequently asked questions about Section 504).
11 See Brumfield, 735 F.3d at 623 (explaining Brumfield's failure to raise issue on appeal acted as waiver). The city asserted three reasons why Brumfield failed to state a claim: (1) Title II of the ADA does not cover employment discrimination; (2) Brumfield failed to exhaust all the administrative preconditions to filing a Title I suit; and (3) she failed to state that she had been
that although Title II applies to employment discrimination, Brumfield failed to state a claim because she did not prove a correlation between her disability and her termination.\textsuperscript{12} Although Brumfield filed a third lawsuit correctly pleading violations under Title I, the case was barred by res judicata.\textsuperscript{13} The Seventh Circuit consolidated her appeals and upheld the judgments, while overruling the lower court's holding that Title II applies to public employment discrimination.\textsuperscript{14}

Federal protections against discrimination based on disability stem from the Americans with Disabilities Act of 1990.\textsuperscript{15} Congress intended that this Act would "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."\textsuperscript{16} Title I of the ADA protects employees who could perform their duties with reasonable accommodation from disability-based discrimination.\textsuperscript{17} Title II of the ADA prohibits discrimination against

\textsuperscript{12} Id.

\textsuperscript{13} Id. at 624. The judge stated clearly that Brumfield took no steps to avoid claim preclusion during her previous suit. \textit{Brumfield v. City of Chicago}, No. 11-C5371, 2011 U.S. Dist. LEXIS 133904, at *1, *7 (N.D. Ill. Nov. 21, 2011). Since Brumfield's appellate briefing did not challenge the previous res judicata ruling she waived that issue. \textit{Brumfield}, 735 F.3d at 625.

\textsuperscript{14} \textit{Brumfield}, 735 F.3d at 622. The court could not avoid the issue of setting a circuit precedent on the Title II issue due to Brumfield's failure to plead a Title I claim and the ensuing claim preclusion issue. \textit{Id.} at 625. The dismissal of her Section 504 claim was also affirmed because she essentially admitted that she was fired because of her conduct and not as a result of her disability. \textit{Id.} at 630. Her faked injury and other incidents of misconduct were stated in her pleadings. \textit{See supra} note 6 (discussing Brumfield's misconduct).


The Americans with Disabilities Act ("ADA") can be described as the All Star team of civil rights legislation. The framers of the ADA sought to create sweeping change in nearly every facet of the lives of people with disabilities. To achieve these ambitious goals, the framers assembled the best and brightest parts of other civil rights legislation: pieces of Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Civil Rights Act of 1964, and the Fair Housing Act. The end result was a comprehensive statute with three major parts: Title I, dealing with employment, Title II, dealing with public services . . . .

\textsuperscript{16} Id.

\textsuperscript{17} See 42 U.S.C. § 12112(a). An employer cannot discriminate against a qualified individual on the
qualified disabled individuals relating to participation in or benefits from public services, programs, or activities.18

While Title I clearly deals with employment discrimination, a circuit split exists among federal courts regarding whether Title II could also apply to employment discrimination claims as well.19 Two circuits have held that Title I is the only remedy for


See Staats v. Cnty. of Sawyer, 220 F.3d 511, 519 (7th Cir. 2000) (noting circuits split and stating issue is open question in 7th Circuit). The Supreme Court has noted the issue, but has not directly addressed it. See Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356, 360 (2001) (holding that Eleventh Amendment bars Alabama state employees from recovery under Title II). Circuits are either split or purposefully decline to rule on the issue. See Heather S. Dixon, Remediing State “Double Discrimination”: The Argument For Abrogation of Eleventh Amendment Immunity For Gender-Related, Disability-Based Employment Discrimination Claims Brought Against State Employers Under Part II of the ADA, 32 WOMEN’S RTS L. REP. 143, 144 (Winter/Spring 2011). See also Olson v. New York, 315 F. App’x 361, 364 (2d Cir. 2009) (declining to reach Title II employment argument); Currie v. Grp. Ins. Comm’n, 290 F.3d 1, 6-7, 13 (1st Cir. 2002) (failing to determine whether Title II of ADA covers employment discrimination claims); McKibben v. Hamilton Cnty., No. 99-3360, 2000 U.S. App. LEXIS 12123, at *11-13 (6th Cir. May 30, 2000) (stating “we decline to tackle this issue here and will consider this claim on the merits”).
employment discrimination, while another has held that Title II is applicable.20 A regulation promulgated by the United States Attorney General has added to the confusion by declaring that Title II does apply to disability discrimination.21 The temptation to sue for employment claims under Title II often arises because the Supreme Court held that the Eleventh Amendment prevents employees from claims against states under Title I.22 Since the language of Title I comprehensively discusses employment issues while Title II does not, an argument in favor of Title II employment relief seems counterintuitive.23 Some courts have noted the lack of reference to

20 See Elwell v. Okla. Ex rel. Bd. of Regents of the Univ. of Okla., 693 F.3d 1303 (10th Cir. 2012) (holding Title II does not apply to employment claims); Zimmerman v. Oregon Dep't of Justice, 170 F.3d 1169 (9th Cir. 1999) (holding Title II does not apply to employment claims); Bledsoe v. Palm Beach Cnty. Soil & Water Conservation Dist., 133 F.3d 816 (11th Cir. 1998) (ruling in favor of Title II relief).

21 See 28 C.F.R. § 35.140 (a)(2012). “No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.” Id. (emphasis added). See also Heather R. McDonald, Garrett Under Title II of the Americans with Disabilities Act: Its Broad Implications to Civil Rights Laws, 52 DEPAUL L. REV. 993, 1003 (2003) (parsing language of regulation). Furthermore, the Senate unanimously consented to have this interpretation printed in the Congressional Record of the Board of Directors as a compliance regulation. Id. See also 143 Cong. Rec. S30-31 (January 7, 1997); Bledsoe v. Palm Beach Cnty. Soil & Water Conservation Dist., 133 F.3d 816, 822 (11th Cir. Fla. 1998) (describing history of Department of Justice regulation and approval in Congressional Record); Florida Nat'l Guard v. Fed. Labor Relations Auth., 699 F.2d 1082, 1087 (11th Cir. 1983). “Congress is deemed to know the executive and judicial gloss given to certain language and thus adopts the existing interpretation unless it affirmatively acts to change the meaning.” Id.


employment in any other part of the ADA and argue that employment simply cannot relate to Title II without stretching the boundary of the law beyond its clear intent.24

Opponents of Title II relief state that the administrative remedies found exclusively in Title I were meant to create a screening mechanism for frivolous employment discrimination claims.25 Supporters of Title II relief counter with the claim that since Title II was an extension of the Rehabilitation Act, which allowed for employment discrimination claims, then Title II allows for employment claims as well.26

(declaring when Congress creates comprehensive schemes, scheme will prevail over other general interpretations); Russello v. United States, 464 U.S. 16, 23 (1983) (declaring omission of language in one act but not another is intentional). "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 666 (2007). Furthermore, the qualified individual standard differs between Titles. David Ricksecker, New Obstacles in the Ability of State Employees to Sue Their State Employers Under the Americans with Disabilities Act, 85 IOWA L. REV. 1835, 1840-842 (2000). Title I refers to a qualified individual's ability to perform the essential functions of their job. Id. Title II's qualified individual is determined based on eligibility for services. Id. This further highlights the obvious difference in intent between Title I's construction and Title II's construction. Id.

24 See Zimmerman v. Oregon Dep't of Justice, 170 F.3d 1169, 1174 (9th Cir. Or. 1999) (concluding that Title I's wording precludes Title II from being applicable to employment); Christopher G. Murrer, A Call for Uniform Application of the Americans with Disabilities Act: Does Title II Support a Claim for Employment Discrimination?, 47 DUQ. L. REV. 115, 125 (2009) (stating that considering public services to include employment would be a stretch). See also N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 530 (1982). "Although two statutes may be similar in language and objective, we must not fail to give effect to the differences between them." Id.


26 Ethridge v. Alabama, 847 F. Supp. 903, 905-07 (M.D. Ala. 1993); Bledsoe, 133 F.3d at 823, citing Ethridge, 847 F. Supp. at 906. "The court noted that the primary purpose of Title II was to extend the reach of Section 504 of the Rehabilitation Act and that Section 504 'clearly applies to employment discrimination.'" Id. See also Holbrook v. City of Alpharetta, Ga., 112 F.3d 1522, 1529 (11th Cir. 1997). One court went so far as to claim Title II was a "new replacement" for the Rehabilitation Act. Id. Deborah Leuchovius, ADA Q & A: The Rehabilitation Act And ADA Connection, PACER CENTER, (2014), http://www.pacer.org/publications/adaqa/adaqa.asp (last visited Oct. 25, 2014).

The Rehabilitation Act as amended prohibits discrimination in employment in three areas: 1) Section 501 prohibits federal executive branch agencies such as the U.S. Postal Service from
If Title II employment claims are permitted, then more individuals are eligible to bring claims and the congressionally mandated screening mechanism for baseless claims could be rendered effectively useless. The Attorney General’s support of Title II employment discrimination has resulted in the need for courts to perform a *Chevron* analysis when deciding these Title II claims. A *Chevron* analysis for a Title II employment claim requires first determining whether Title II’s wording is ambiguous regarding employment discrimination and if it is, then determining whether the Attorney General’s interpretation was arbitrary or contrary to the purpose of the ADA. Most courts, having reviewed the issue under this standard, have ruled that Congress unambiguously intended for public employment claims to be adjudicated under Title I not Title II.

discriminating against qualified individuals with disabilities. It also requires these agencies to take affirmative action in the hiring, placing and advancing of individuals with disabilities. 2) Section 503 requires contractors who have contracts with the federal government for $10,000 or more annually to take affirmative action to employ and to advance in employment qualified individuals with disabilities. 3) Section 504 prohibits recipients of federal financial assistance from discriminating against qualified individuals with disabilities in employment as well as in their other programs and activities.

Id. 27 *Abel*, supra note 25, at 982 (discussing consequences of allowing Title II claims); EEOC v. Harris-Chernin, Inc., 10 F.3d 1286, 1288 n.3 (7th Cir. 1993) (citing 42 U.S.C. §§ 2000e-(5)(b), (e) & (f) (1964)). *See also* Innovative Health Sys. v. City of White Plains, 117 F.3d 37 (2d Cir. N.Y. 1997). “By suing under Title II, public employees, unlike all other employees, are not required to obtain a right to sue letter from the EEOC.” *Abel*, supra note 25, at 972. An employment disability claim could also apply to governmental entities with less than 15 employees (although Title I specifically restricts this) if Title II is allowed to apply to employment claims. Ricksecker, *supra* note 23, at 1840.

28 *Abel*, *supra* note 25, at 980-83. A *Chevron* analysis is used to review an agency’s interpretation of a statute. *Id.* *See also* Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984). In *Chevron*, an EPA regulation was challenged which required certain states to follow a stringent permit program for certain sources of pollution. *Id.* at 839. The Supreme Court upheld the EPA regulation because the enabling statute did not specifically address the particular type of pollution source; additionally, the EPA had made a reasonable policy choice based on their statutory authority. *Id.* at 862-65. *See also* *Chevron Doctrine*, CENTER FOR EFFECTIVE GOVERNMENT (2014), http://www.foreffectivegov.org/node/2624 (last visited Oct. 25, 2014). *Chevron* established the rules for judicial review of administrative interpretations of statutes. *Id.* Since an administrative agency’s authority is derived through a statute, the analysis of their statutory authority is needed to determining if an agency’s regulation is lawful. *Id.* The first question to be asked is whether Congress’s intent is clear. *Chevron*, 467 U.S. at 843. If it is not then the second step is to determine whether the administration’s interpretation is arbitrary, capricious, or contrary to the purpose of the statute. *Id.* at 844.

29 *See* Bledsoe, 133 F.3d at 822-23; Zimmerman, 170 F.3d at 1172-73; *Abel*, supra note 25, at 981 (describing how first step of *Chevron* analysis should be performed); supra note 28 (describing *Chevron* analysis generally).

30 *Abel*, *supra* note 25, at 981 (stating that few cases that rule in favor of Title II relief perform *Chevron* analysis). *See* Patterson v. Illinois Dept. of Corr. 35 F. Supp. 2d 1103, 1109-10 (C.D. Ill.
In Brumfield v. City of Chicago, the court contemplated whether Title II applies to employment discrimination claims. The Court of Appeals affirmed the district court's judgment that Brumfield was not entitled to relief, but rejected the district court's reasoning that Title II grants employment relief. The court's analysis focused heavily on the issue of whether the Attorney General's stance on Title II eligibility was subject to Chevron deference. The court split Title II's wording into two separate clauses for analysis in order to determine if the Attorney General's interpretation should be ignored. Under this method of analysis the first clause was quickly ruled out from being employment-related because the right to benefit from public programs has never been linked to the concept of employment by any circuit. The second clause was also held to be unambiguous when the court compared the definitions of eligible individuals between the two sections and determined that Title II's standard that an individual be qualified to receive a certain public service was not applicable within the context of determining whether a person was discriminated against in regards to public employment.

1999) (giving many reasons why Congress did not intend Title II to encompass employment). See also Decker v. Univ. of Houston, 970 F. Supp. 575, 579 (S.D. Tex. 1997). "It is unambiguous that Congress intended that public employees be required to file a charge of discrimination before bringing an ADA suit." Id. However, the court in Bledsoe ruled that the Attorney General's interpretation was valid. Bledsoe, 133 F.3d at 822-23. Bledsoe incorrectly performed this analysis by skipping the first step and immediately applying the second step. Abel, supra note 25, at 981.

31 Brumfield, 735 F.3d at 624.
32 Id. at 630.
33 See id. at 625-30.
34 Id. at 626. This method of Title II analysis has been used previously. See Elwell, 693 F.3d at 1306; Zimmerman, 170 F.3d at 1174. See also Abel, supra note 25, at 974-75 (describing how courts have split Title II's language into two separate clauses).
35 Brumfield, 735 F.3d at 626. See Elwell, 693 F.3d at 1306. "[C]an 'employment' be described fairly as a 'service, program, or activity'... We think not." Id. Even Bledsoe, which was pro-Title II, conceded this fact. Bledsoe, 133 F.3d at 821. Bledsoe's awkward analysis involved splitting the clause into two parts, which ignored the crucial first clause, and purposefully reading the rest of the statute out of context in order to fit its conclusion. See id. at 821-22.
36 Brumfield, 735 F.3d at 627-28. The clause states "be subjected to discrimination by any such entity." Id. at 625. The second clause, when separated from the rest of the statute, seems to be broader when it mentions those who are "subjected to discrimination by a public entity." See id. at 626. However, the court reasoned that this clause is not broad when an analysis of Title II's qualified individuals standard is performed. Id.at 627. A qualified individual with a disability under Title II "meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2) (2006). Zimmerman, 170 F.3d at 1176. Employment does not consist of receiving services or participation in the "outputs" of public programs. Id. See Brumfield, 735 F.3d at 628. The court reasoned that since the only people eligible for Title II are mere receivers of services, then employment claims are clearly not applicable. Id.
The court examined the language of Title I and critiqued the Eleventh Circuit's pro-Title II holding in *Bledsoe*. The court reasoned that Title I's language specifically mentioned employment and decided that Title I's construction "covers the waterfront of employment-related claims."\(^{38}\)

The court reasoned that there is ample evidence to suggest Title I is the sole avenue to pursue employment-related discrimination claims since Title I has a complex employment regulatory scheme created within it.\(^{39}\) The court deemed the Eleventh Circuit's analysis of *Bledsoe* insufficient.\(^{40}\) The court justified this criticism by showing how *Bledsoe* had failed to analyze the differing standards for eligible individuals under both Titles.\(^{41}\) The court reasoned that Title II cannot grant employment relief due to the unambiguous wording of the ADA and the failure of the Attorney General's contrary interpretation to withstand proper *Chevron* analysis.\(^{42}\)

The Seventh Circuit's decision to deny relief for employment-based claims under Title II properly interpreted the ADA.\(^{43}\) The language throughout the ADA combined with previous decisions regarding services and programs supports the Seventh Circuit.\(^{44}\) No court has ever held that the benefits of programs, services, or public activities relate to public employment.\(^{45}\) This seems obvious after one considers that employment is not generally deemed to relate to the outputs of public services, programs, or activities.\(^{46}\) As the Ninth Circuit itself noted, "[o]btaining or retaining a

---

\(^{37}\) *Brumfield*, 735 F.3d at 629-30.

\(^{38}\) *Id.* at 628.

\(^{39}\) *Id.* at 629. The court cited RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 132 S. Ct. 2065, 2070-71 (declaring when Congress creates comprehensive schemes, scheme will rule over other general interpretations).

\(^{40}\) *Brumfield*, 735 F.3d at 629. The court further explained this opinion noting that the Eleventh Circuit's decision had been swayed by its own binding precedent while one of the concurring justices only agreed "with reluctance." *Id.* at 629-30.

\(^{41}\) See supra note 36 (describing how proper *Chevron* analysis is performed under these circumstances).

\(^{42}\) See *Brumfield*, 735 F.3d at 627-30 (summarizing reasoning for holding).

\(^{43}\) See supra note 1 (stating nature of law).

\(^{44}\) See *Brumfield*, 735 F.3d at 628; FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132-133 (2000) (quoting Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 809 (1989). "It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Id.*

\(^{45}\) See supra note 35 and accompanying text (stating that employment is not considered public service by legal precedent).

job is not ‘the receipt of services,’ nor is employment a ‘program or activity provided by a public entity.’”

The arguments in favor of Title II employment relief are not persuasive enough to cast doubt on the Seventh Circuit’s decision. The Eleventh Circuit came to a favorable Title II conclusion in Bledsoe based on a faulty Chevron analysis and misguided dicta from earlier decisions within its own circuit. Other circuits are not bound by this faulty precedent which helps explain why the Eleventh Circuit is the only circuit favoring Title II employment relief. Supporters of Title II relief also unconvincingly argue that since the Rehabilitation Act helped inspire the construction of Title II, the ADA must also be employment-claim-friendly. However, this argument falters because Congress expressly linked the employment provisions of the Rehabilitation Act to Title I and not Title II. While some proponents of expanding ADA relief accuse unsympathetic courts of judicial activism against the disabled, the true judicial activism would be to ignore the plain language of the law, create a redundant mechanism for employment relief, and allow unintended individuals to seek damages.

Dictionary defines an employee as one who “… in the service of another under any contract of hire, express or implied, written or oral, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.”

47 Zimmerman, 170 F.3d at 1176.

48 See infra notes 49-53 and accompanying text (refuting arguments in favor of Title II relief).

49 See Brumfield, 735 F.3d at 627-29. See also Abel, supra note 25, at 981 (stating that Bledsoe Court skipped crucial first step in Chevron analysis); Bledsoe v. Palm Beach Cnty. Soil & Water Conservation Dist. 133 F.3d 816, 825 (11th Cir. 1998) (Hill, J., concurring). The concurring justice stated “with a tip of the hat” to the district court judge whose contrary opinion was overruled that the Ninth Circuit’s precedent was too strong to overcome on this issue.

50 See Brumfield, 735 F.3d at 630. The Eleventh Circuit is the only circuit to have ruled this way. Id. at 622.

51 See supra note 26 (stating arguments of similarities to Rehabilitation Act prove Title II applies to employment); Zimmerman, 170 F.3d at 1180-83. The Ninth Circuit in Zimmerman cited four reasons why the Rehabilitation Act was not fully incorporated into Title II. Id. See also McDonald, supra note 21, at 1008. First, “the wording under the Rehabilitation Act, ‘under any program or activity receiving Federal financial assistance,’ is more broad than Title II’s phrase ‘services, programs, or activities of a public entity.’” Id. at 1008 & n.127. Second, the rest of the rehabilitation act addresses employment explicitly while Title II does not. Id. Third, unlike the Rehabilitation Act, Congress explicitly addressed employment elsewhere in the ADA—through Title I—thus incorporating employment into Title II would be redundant.” Id. Finally, Congress expressly linked the employment provisions of the Rehabilitation Act to Title I and not Title II.

52 See 29 U.S.C. § 794(d) (1994). “The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under [Title I ... and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990....” Id. See also McDonald, supra note 21, at 1008 (explaining that Rehabilitation Act is not incorporated into Title II).

53 See Bledsoe, 133 F.3d at 825 (Hill, J., concurring) (fearing court is legislating law instead of
Though all may not agree with the Seventh Circuit's decision, it does join the majority of districts who have ruled on the issue. Even ardent supporters of the ADA must concede the obvious difference in wording between Titles I and II. Nevertheless, many still refuse to accept the majority opinion and believe that the ADA has been read too restrictively. Opponents of a strict interpretation of Title II often point out the difficulties employees have in successfully suing under Title I. Allowing Title II to supplement Title I would allow small government entities to sue for discrimination, circumvent Title I restrictions, and give a plaintiff a statistically proven higher success rate. While attempting to achieve more justice for disabled individuals is a noble pursuit, there is no excuse for blatantly disregarding the carefully constructed screening mechanisms presented in Title I and bending the law beyond recognition.

In Brumfield v. City of Chicago, the court considered whether Title II relief may be granted for employment-related disability claims. The court ruled that these claims can

---

54 See supra note 20 (stating how other circuits have ruled).  
56 See supra note 22 and accompanying text (describing attitudes towards supporting Title II relief).  
57 See supra note 25 and accompanying text (describing legal and practical difficulties seeking Title I relief).  
58 Waterstone, supra note 15, at 1810 (describing desirability of Title II relief option).  
59 See supra note 25 (describing reasoning behind statute's intentional limitations for relief).  
60 Brumfield, 735 F.3d at 662.
only be brought under Title I. The court properly analyzed the wording and legislative history of the law and refused to expand the mandate of Title II beyond its intended scope. The Seventh Circuit's decision to join the Ninth and Tenth Circuits will ideally set a precedent against wrongful use of the law and encourage aggrieved persons to file correctly under Title I.

---

61 Id.
62 See supra notes 44-53 (arguing in support of Brumfield decision).
63 See Brumfield, 735 F.3d at 630. If Brumfield had filed correctly under Title I, she could have potentially survived summary judgment and had her case heard. See id. at 623-24.