



KENTUCKY PROTECTION &  
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# Press Release

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## **SUPREME COURT UPHOLDS AUTHORITY OF PROTECTION AND ADVOCACY SYSTEM**

FRANKFORT KY, MAY 6, 2011: The United States Supreme Court ruled in favor of *Virginia Office for Protection and Advocacy (VOPA)* in a case that cements the authority of the protection and advocacy system to protect the rights of people with disabilities. The court said that VOPA, an independent state agency, could sue another Virginia state agency in federal court to carry out its mission to investigate abuse and neglect. The United States Congress created the nationwide protection and advocacy system in 1975 to protect the rights of people with disabilities. The P&A systems' authority includes investigating abuse and neglect allegations. There are P&As in all 50 states, the District of Columbia, Puerto Rico and the territories. Most are private non-profit entities and eight, including Kentucky, are like Virginia—an independent state agency. The case began in 2006 when VOPA was denied access to various records during its investigation into the deaths of two patients and injuries to a third at two state-run mental hospitals. VOPA sued in federal district court to get access and won. Virginia successfully appealed the ruling to the Fourth Circuit because it believed that the

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Eleventh Amendment to the U.S. Constitution prevented a state agency from enforcing federal law against another state agency.

The Supreme Court reversed the lower court and held in a 6-2 decision that VOPA could sue Virginia and carry out its mission to protect the rights of people with disabilities. VOPA need only allege an ongoing violation of federal law and then seek prospective relief. The majority also found that “VOPA’s power to sue state officials is a consequence of Virginia’s own decision to establish a public, rather than a private, P&A system.” In so holding, the Supreme Court affirmed that there is no difference between a privately run P&A’s or a state agency P&A’s authority to sue the state in which it operates to protect the rights of persons with disabilities.

Kentucky Protection and Advocacy is the federally designated protection and advocacy system in Kentucky. It is placed for administrative purposes in the Department of Public Advocacy within the Justice and Public Safety Cabinet of state government.

Marsha Hockensmith, the executive director of Kentucky P&A stated, “We have not to date had any issues with our access to persons in state institutions or their records. We hope that this decision clarifies that access authority.”

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