OPINION: A chance to reduce police killings of the disabled

The Supreme Court has a chance to protect people with disabilities from law enforcement violence

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Twenty-five years after the passage of the Americans with Disabilities Act (ADA), people with disabilities are regularly dying at the hands of police officers across the country. In just the last few weeks, four such deaths have made national news: Kristiana Coignard in Texas, Antonio Zambrano-Montes in Washington, Lavall Hall in Florida and Charley Robinet in California. According to the American Psychological Association, some officers spend more time “responding to calls involving mental illnesses than they do investigating burglaries or felony assaults.” Too often, these encounters turn violent. Our best guess is that about 50 percent of killings by police involve psychiatric disability of some sort.

On March 23, the Supreme Court will have a chance to address this national crisis. The case of Sheehan v. San Francisco offers the justices the chance to clarify how the ADA applies to law enforcement — an important step that could strengthen the broader movement for police reform. This case will determine to what extent police can be held accountable to the best practices of their profession.

The case

In August 2008, Teresa Sheehan, a resident of a group home for people with psychiatric disabilities, threatened a social worker with a kitchen knife. The social worker called the police. Two officers arrived and entered Sheehan’s room but retreated when she threatened them as well. They called for backup. Instead of waiting, they re-entered the room. Sheehan came at them with the knife, and they shot her repeatedly. Luckily, she survived. A hung jury resulted in a partial acquittal of assault charges against her.

The lawsuit focuses on the legality of the second entry into Sheehan’s room. She sued the officers under Title II of the ADA, arguing that by not waiting for backup, the officers did not reasonably accommodate her disability. Furthermore, her attorneys argue that the violation of the ADA exempts the officers from qualified immunity, a doctrine intended to protect police from lawsuits unless it’s clearly established that the officers violated the Fourth Amendment’s prohibition on unreasonable search and seizure. At issue is not whether the police were wrong to enter the room the second time but whether it’s allowable for Sheehan’s lawyers to argue that they were wrong before a civil jury.

A federal judge initially dismissed Sheehan’s claim, but the 9th Circuit Court of Appeals reversed the
decision, allowing the civil lawsuit to go forward. Now the Supreme Court will hear the case.

The arguments
Deputy City Attorney Christine Van Aken argues that the case is very narrow. She agrees that law enforcement must consider the ADA but that there’s a direct threat exemption that makes the officers’ second entry to the room lawful. Police had to enter because Sheehan could have had weapons or hostages or could have escaped via a window or fire escape. None of these things were true, but one legal position is that if an officer might reasonably have been concerned about these possibilities, Sheehan would have no claim.

People like Teresa Sheehan keep being shot, and far too many are dying. We know how to reduce the rate of such killings, but we need legal reform to convince law enforcement of that on a national level. This chain of hypothetical possibilities, though, is not the only way of looking at this case. Here’s something we know for sure: The officers were fully aware that Sheehan had psychiatric disabilities, was in crisis and needed help. Their decision to charge back in without support made the ensuing violence inevitable.

Furthermore, Ben Nisenbaum, an attorney for Sheehan, denies that she posed any kind of threat after the officers left the room the first time. He raises questions about the decision-making process that led the officers to re-enter the room. Why didn’t they wait for that backup? Shouldn’t the officers have tried to access some of the city’s mental health crisis resources? Shouldn’t the officers have followed the city’s policy on barricaded suspects and waited Sheehan out? These are questions Nisenbaum wants to take to a jury.

Susan Mizner, a disability counsel for the American Civil Liberties Union, which has filed an amicus brief in the case, worries about the precedent that a decision against Sheehan could set. As it is, she said, the deck is so stacked for police that most lawyers won’t even take this kind of case. That’s a problem, because civil lawsuits offer a crucial check on the power of the state. She points out that the court isn’t deciding whether Sheehan should win her lawsuit but whether she gets to sue at all. A precedent denying her that right would further swing the balance of power.

Seth Stoughton, an expert on policing and the law at the University of South Carolina, raises another question. Circuit courts differ on what time frame to consider in qualified immunity cases. Should courts consider the tactics that lead up to a violent incident or just the moment when the trigger is pulled? If the Supreme Court takes the broad view, Sheehan will likely get her day in court, and police departments will have an incentive to emphasize de-escalation and tactical restraint. Conversely, a ruling for the city might make it impossible to promote tactical restraint through the Fourth Amendment. The Supreme Court has the unique power to take a case like this and use it however they see fit. The justices could wholly exempt arrest from ADA Title II protections, or they could reinforce the power of the Fourth Amendment and change the face of modern policing. They are likely to do something more modest, though even a more restrained ruling against Sheehan could gut key protections of this landmark piece
of legislation and undermine the movement against police violence.

Meanwhile, people like Teresa Sheehan keep being shot, and far too many are dying. We know how to reduce the rate of such killings, but we need legal reform to convince law enforcement of that on a national level.

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