

No. 20-1288

In The
Supreme Court of the United States

CRAIG GENESS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
ADMINISTRATIVE OFFICE OF
PENNSYLVANIA COURTS,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

**RESPONSE IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI**

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Petitioner, Craig Geness, seeks review of the intermediate court's directive for the dismissal of his claims against Respondent Administrative Office of Pennsylvania Courts, under Title II of the Americans with Disabilities Act, for failing to satisfy an alleged obligation to intervene in his pretrial detention.

Should the Supreme Court deny discretionary review when: the certiorari petition rests on extra-record factual assertions; the Administrative Office of Pennsylvania Courts does not bear the responsibility to provide individualized, case-related programs or services directly to criminal defendants; and the petition fails to satisfy any of the criteria for discretionary review?

**CORPORATE DISCLOSURE STATEMENT
UNDER RULE 29.6**

This disclosure is submitted in accordance with Rule 29.6 of the Rules of the Supreme Court of the United States:

The Constitution of Pennsylvania establishes the Unified Judicial System of Pennsylvania (hereinafter “UJS”). Pa. Const. art. V, § 1. The Commonwealth’s highest court, the Supreme Court, *see id.* § 2(a), appoints the Court Administrator of Pennsylvania (hereinafter “Court Administrator”) to assist in carrying out the Supreme Court’s administrative authority. *See id.* § 10(a), (b); 42 Pa.C.S. §§ 1701, 1901. The Court Administrator serves at the pleasure of the Supreme Court. Pa. R.J.A. No. 501(a). Respondent Administrative Office of Pennsylvania Courts (hereinafter “AOPC”) is the office of the Court Administrator. Pa. R.J.A. No. 502. The Court Administrator is responsible for the exercise of the powers and duties that by law are vested in and imposed upon AOPC. *Id.*

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SUMMARY OF ARGUMENT

This brief will present three (3) matters in response and in opposition to the Petition for Certiorari. They are:

1. A factual rebuttal in accord of Rule 15.2 of the Rules of the Supreme Court of the United States.
2. Defense of the decision of the U.S. Court of Appeals for the Third Circuit (hereinafter “Third Circuit”) requiring dismissal of Respondent AOPC.
3. The failure of Petitioner to present sufficient reason for this Court to grant a Writ of Certiorari.

Though all would agree that society must do much to support and protect individuals with intellectual disabilities, the claim made in this case against AOPC is not an appropriate vehicle to legislate social change.

Petitioner Craig Geness is a person with a disability who was charged with criminal homicide. However, this Petition does not involve the full scope of legal duties that the Commonwealth of Pennsylvania might plausibly have owed to Mr. Geness under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (hereinafter “ADA”).¹

¹ To the contrary, during the pendency of AOPC’s appeal to the Third Circuit and following its disposition, Mr. Geness has continued in the District Court to pursue claims against *the Commonwealth of Pennsylvania* for its alleged independent failure to

Rather, the sole issue presented to this Court is the duty (if any) that AOPC – an agency of the Commonwealth established to provide administrative support to Pennsylvania’s judiciary – plausibly owed to Mr. Geness in the criminal homicide case brought against him by a county prosecutor in a Pennsylvania trial court.

AOPC’s assigned role under Pennsylvania law, as relevant to this matter, is to assist the Supreme Court of Pennsylvania in supporting and promoting the operational efficiency of the UJS and its component parts. *See Pa. R.J.A. No. 505(1).* In furtherance of this mission, the Supreme Court has directed AOPC “[t]o examine the state of the dockets and practices and procedures of the courts” and to “make recommendations for the expedition of litigation.” *Pa. R.J.A. No. 505(6).* The responsibilities assigned to AOPC under applicable Pennsylvania rules involve the support of the court system *as a whole.* As the Third Circuit correctly concluded, AOPC is not responsible to provide case-related programs or services directly to litigants, including criminal defendants.

Examining the allegations Mr. Geness made against AOPC and the responsibilities assigned to the agency under Pennsylvania law and policy, the Third

meet its obligations to him under the ADA. Having survived the Commonwealth’s motion for summary judgment, *see Geness v. Pennsylvania*, No. 2:16-cv-00876, 2020 U.S. Dist. LEXIS 222667, 2020 WL 7027495 (W.D. Pa. Nov. 30, 2020), a jury trial to consider the Commonwealth’s liability to Mr. Geness is currently scheduled to begin on July 6, 2021.

Circuit correctly found it implausible that AOPC could have had a duty to provide programs or services to Mr. Geness that it then failed to properly deliver in violation of the ADA. The Third Circuit thus rightfully dismissed Mr. Geness's case against AOPC for failure to plead facts sufficient to abrogate AOPC's sovereign immunity as an agency of state government. More specifically, the court correctly concluded that Mr. Geness failed to plead that AOPC plausibly denied him any "service, program, or activity" in violation of Title II of the ADA. 42 U.S.C. § 12132.

Because the Third Circuit properly applied the law and its decision does not conflict with any Supreme Court or Court of Appeals decision, this Court should deny Mr. Geness's Petition for a Writ of Certiorari.

COUNTER-STATEMENT OF THE CASE

- A. AOPC does not provide individual legal assistance, individual case monitoring, or appellate review as part of its services, programs, and activities; therefore, it could not and did not deny the same to Mr. Geness based on his disability.**

Mr. Geness's interaction with Pennsylvania's criminal justice system began with a homicide charge lodged in 2006 by the District Attorney of Fayette County (a county officer). That prosecution was prolonged and plagued for nine years by serial acts and

omissions of Mr. Geness's various criminal defense counsel.

Defense counsel repeatedly stalled Mr. Geness's case by seeking postponements of the trial and by filing and either continuing or not pursuing four motions for habeas corpus. Mr. Geness's defense counsel failed to avail their client of the rights and protections of the Pennsylvania Mental Health Procedures Act, 50 Pa. Stat. Ann. §§ 7101-7503. Defense counsel failed to file the very motions that Mr. Geness now claims should have been filed by AOPC in an effort to enlist the aid of the Pennsylvania Supreme Court.

Mr. Geness had access to everything he needed to unlock the prison door. The keys were readily available to him through his defense counsel.² The Pennsylvania Rules of Criminal Procedure, the Pennsylvania Mental Health Procedures Act, and Pennsylvania's statutes and case law were available to guide defense counsel to pursue the relief that Mr. Geness now contends should have been afforded to him by AOPC.

AOPC is an administrative body established by the Commonwealth of Pennsylvania to provide administrative assistance to Pennsylvania's court system. As applied to AOPC, the ADA requires only that a qualified individual with a disability not be excluded from participation in or be denied the benefits of "services, programs, or activities" that **AOPC** provides **to**

² It may have been a matter of strategy of Mr. Geness's criminal defense counsel to avoid trial and the possibility of conviction of a murder charge.

individuals. 42 U.S.C. § 12132. The Second Amended Complaint makes no allegations to support a plausible claim that Mr. Geness was denied access to or the benefit of any service, program or activity that **AOPC** was responsible to provide to him as a criminal defendant.

AOPC is not an appellate court. AOPC is not stand-by defense counsel. AOPC is not the Commonwealth of Pennsylvania's Department of Human Services (hereinafter "DHS") tasked with providing care and services to Pennsylvania's most vulnerable citizens.³ AOPC is not responsible for any decisions made by the judges of the Court of Common Pleas of Fayette County.⁴

There is no nexus between any duty that AOPC might plausibly have had under the ADA and the allegations made in Mr. Geness's Second Amended Complaint. That defense counsel chose a strategy with which Mr. Geness and his current counsel disagree in hindsight does not constitute a violation of the ADA by

³ DHS is responsible for appropriate housing and medical care for individuals with disabilities. It should be noted that the DHS was a defendant in this litigation and reached a court-approved settlement with Mr. Geness.

⁴ The courts of common pleas are established under the Pennsylvania Constitution and laws as part of the UJS. See Pa. Const. art. V, §§ 1, 5; 42 Pa.C.S. §§ 301(4), 901, 911. The Court of Common Pleas of Fayette County is part of the Commonwealth's Fourteenth Judicial District. 42 Pa.C.S. § 901(a). AOPC under Pennsylvania law is a separate legal entity established within the UJS. See 42 Pa.C.S. §§ 1901-02. AOPC is not a court, nor does it have power of its own to superintend Pennsylvania's courts in the exercise of their judicial responsibility as part of the criminal justice system.

AOPC. Therefore, the Third Circuit rightfully found that AOPC did not fail to offer any of its “services, programs, or activities” to Mr. Geness based on his disability and properly ordered that AOPC’s motion to dismiss be granted.

As part of its support of the Pennsylvania judicial system, AOPC advises *courts* in meeting *their* obligation to provide safe and accessible courts, including the accessibility of physical buildings and the availability of the equipment and technology that enable individuals with disabilities to participate fully in court proceedings. The ADA does not mandate that AOPC provide legal counseling or appellate review, nor does it mandate that AOPC provide some sort of special inside path for individuals to petition the Pennsylvania Supreme Court for relief.

AOPC could not have provided Mr. Geness the services available in a mental health facility as provided for in the Pennsylvania Mental Health Procedures Act, 50 Pa. Stat. Ann. § 7101 *et seq.* AOPC could not have contemplated legal strategies or decided on a course of action for his criminal defense. AOPC could not have decided as a matter of strategy whether Mr. Geness should proceed to trial or continue to assert his incompetence. In short, AOPC was not Mr. Geness’s criminal defense counsel.

The Court of Common Pleas of Fayette County, at all times and in every way within the confines of the rules of court, was accessible to Mr. Geness and his defense counsel. The court’s records demonstrate that not

once did the court ignore a motion filed by Mr. Geness's counsel, nor was the court unavailable or unresponsive to Mr. Geness and his defense counsel. That defense counsel successfully sought multiple continuances demonstrates that Mr. Geness had access to the Court of Common Pleas as required by the ADA. Mr. Geness has never alleged that the Court of Common Pleas of Fayette County prevented his defense counsel from filing motions or making requests for reconsideration, and he does not allege that the court did not hold regular motions court, refused to hear requests for hearings, or denied any such request.

In his Petition, Mr. Geness constructs an impossible set of duties that he would have the federal courts impose upon AOPC through the ADA. This wish list has no basis in reality, including in the Pennsylvania Constitution, statutes, or Rules of Judicial Administration. For example, Mr. Geness believes that AOPC should have compelled the trial judge to respond to *ex parte* entreaties from members of the community regarding Mr. Geness's case. He also suggests that AOPC should have forced the trial court (or the Pennsylvania Supreme Court) *sua sponte* to conduct a hearing and rule on one of Mr. Geness's habeas corpus motions, despite the fact they were continued at the request of defense counsel. Indeed, Mr. Geness suggests that AOPC should monitor every single criminal case in Pennsylvania involving a defendant with a disability and report on each case to the Chief Justice of Pennsylvania.

In sum, Mr. Geness suggests, without any legal basis, that the Court Administrator of Pennsylvania

somehow should have learned about Mr. Geness's case (and his particular condition) from the local authorities, evaluated the legal and factual issues, determined that it was appropriate for review by the Supreme Court, and then "walked down the hall to the office of the Chief Justice," knocked on the door, and engaged him on the matter. (Petition for Writ of Certiorari (hereinafter "Pet.") at 9).

In other words, Mr. Geness would have the federal courts, through the ADA, transfer responsibility for the direction, planning, strategy, and implementation of his legal defense to AOPC. He seeks to misdirect responsibility for the progress and outcome of his case from his defense counsel to an entity that was authorized, at most, to provide administrative support to the court system. Mr. Geness suggests that AOPC should have imposed its judgment in lieu of his defense counsel to determine which strategy Mr. Geness should have adopted regarding going to trial, filing motions, or seeking postponements.

Everything that Mr. Geness believes AOPC should have done conflicts with the reality of AOPC's mandate under Pennsylvania law. Moreover, it conflicts with two foundational principles of the American legal system: (1) the right to counsel; and (2) judicial discretion and decision-making. Mr. Geness seeks to replace defense counsel with AOPC and to replace judicial discretion and decision-making with the superintending interventionist judgment of an administrative office.

Ultimately, the Third Circuit’s decision was correct and learned, as that court held that AOPC was not armed with the authority, much less the legal obligation, to demand that the Pennsylvania Supreme Court become involved in a specific case pending in one of the Commonwealth’s trial courts.

B. Misstatements of fact or law in Petition.

Given the admonishment contained in Supreme Court Rule 15.2, the following is a listing of perceived misstatements in the Petition.

In his “Statement of the Case,” Mr. Geness proffers “facts” and unsupported conclusions derived from documents that were not exhibits to his Second Amended Complaint; some “facts” and conclusions were produced in discovery or after the commencement of this appeal. Rather than focusing on allegations contained in the Second Amended Complaint, as would be appropriate for a review of a motion to dismiss, Mr. Geness cites extensively to facts outside of the record.

The apparent necessity of such citations is problematic for Mr. Geness’s argument that he adequately pleaded claims against AOPC in his Second Amended Complaint. Most of his “facts” were not before the district court when it denied AOPC’s motion to dismiss; therefore, they are irrelevant, improper, and should be disregarded. Indeed, so prevalent are the references to documents and information outside of the record, this Court would be warranted to disregard Petitioner’s Statement of the Case in its entirety.

The “facts” as presented by Mr. Geness also fail to tell the whole story. For example, Mr. Geness states that he has a functional Intelligence Quotient of 54. (Pet. at 3). Mr. Geness fails to inform this Court that, at the time of his arrest, he was a 40-year-old divorcee who had completed high school special education classes, had a history of mental health-based hospital admissions, and was diagnosed on September 25, 2007, with Schizoaffective Disorder – Bi-polar Type, Intermittent Explosive Disorder, and Mild Mental Retardation.

Mr. Geness also states that he was subject to “shackled detention.” (Pet. at 4). This is pure hyperbole. Mr. Geness was not subjected to shackled detention; rather, while involuntarily committed to a Long-Term Structured Residence (hereinafter “LTSR”), he was fitted with an electronic monitoring device on his ankle. *Geness v. Cox*, 902 F.3d 344, 351 (3d Cir. 2018) (hereinafter “*Geness I*”).

Similarly, Mr. Geness states that there were “repeated outcries from local officials demanding that Mr. Geness’ case be resolved.” (Pet. at 4). No repeated public outcries are found in the record. The record only mentions that the Fayette County Prison Warden made *ex parte* communications to the President Judge, asking that he “do something” to remove Mr. Geness from his prison. (See Appendix B to Pet. at 38a).

Mr. Geness contends that he was immediately and always incapable of standing trial because he was incompetent. (Pet. at 3, n.2). In truth, Mr. Geness’s initial

psychiatric evaluation determined that he was then incompetent to stand trial, but the report did not provide an opinion as to whether Mr. Geness would regain competency. See Appendix A to Pet. at 3a-4a, *Geness v. Admin. Office of Pa. Courts*, 974 F.3d 263 (3d Cir. 2020) (hereinafter “*Geness II*”). Further, the duty to act on the result of the evaluation, regardless of its verbiage, belonged to defense counsel.

To be clear, it was not until 2011, approximately five (5) years after Mr. Geness’s arrest, that a second competency evaluation was requested, at which time it was determined that Mr. Geness was “incompetent to stand trial and unlikely to improve.” (Appendix A to Pet. at 5a). Specifically, the Third Circuit noted that between 2007 and 2011 “neither the Public Defender, nor the DA’s Office, nor the court paid particular heed to the case.” *Geness I*, 902 F.3d at 351 (emphasis added). In 2011 it was determined that Mr. Geness likely would never be competent to stand trial, so he was released to be involuntarily committed to a LTSR. (Appendix A to Pet. at 5a). Mr. Geness fails to inform the Court that the five-year delay was the result of multiple motions and requests made by Mr. Geness’s defense counsel to postpone and continue the matter. (Second Amended Complaint at ¶ 31, A 0040).

Mr. Geness states that he was never brought to trial and that none of his habeas corpus motions were ever heard or ruled upon. (Pet. at 3). Regarding the multiple continuances of Mr. Geness’s trial, the Third Circuit correctly stated:

In Geness's case, the district attorneys acquiesced to the repeated continuance of his trial – and his public defender made no attempt to have [Geness's] case removed from the trial list, despite [his] known incompetency to stand trial and despite the public defender's authority and [] opportunity to make an appropriate request.

(*See* Appendix A to Pet. at 4a (internal quotations omitted)).

As to the habeas corpus motions, Mr. Geness failed to inform this Court that his defense counsel repeatedly postponed presentation of those motions. For example, the record states that Mr. Geness's counsel “agreed to continue any hearing on the petition until [d]efendant is competent.” *Geness I*, 902 F.3d at 351 (“This second examination was inexplicably delayed for nearly a year and, in the interim, counsel took no action. [. . .] Geness’s counsel did not request a hearing on his long-pending habeas petition, nor did the prosecutor or the court raise the matter. Instead, in September 2011 – five years after Geness’s arrest and with his criminal charges still pending – Judge Leskinen ordered him transferred to involuntary commitment in a long-term structured residence (‘LTSR’) where he would be fitted with an ankle monitor and would ‘remain without contact with the general public.’”).

With respect to these motions, the Third Circuit stated:

To the extent Geness additionally alleges that AOPC had a duty to ensure his motions for habeas corpus relief and motions to dismiss the charge against him were heard and ruled upon in a timely manner, we conclude that these allegations are both dependent on judicial conduct and too speculative to sustain his claim because they are not linked to any alleged service, program, or activity of AOPC under Pennsylvania Rule of Judicial Administration 505 or otherwise. *See supra* note 12; *Twombly*, 550 U.S. at 555.

(Appendix A to Pet. at 23a, n.13).

Mr. Geness also takes liberties with respect to his characterization of the Third Circuit's opinion. He claims:

In *Geness II*, which decided a collateral appeal by the AOPC to the Third Circuit claiming sovereign immunity, the majority departed from *Geness I* and the applicable pleading standard, and required that Mr. Geness plead with a high degree of specificity the actions that the AOPC should have taken to assist Mr. Geness, rather than focusing on what it did not do.

(Pet. at 5-6).

The Third Circuit did not require a higher pleading standard. Rather, that court insisted only that the allegations be more than "speculative" or "conclusory," as required by this Court's precedents. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (To survive

a motion to dismiss, factual allegations “must be enough to raise a right to relief above the speculative level,” which “requires more than labels and conclusions.”). As stated by the Third Circuit:

[Mr. Geness] neither identifies in his Complaint nor argues before us what further action AOPC should have or could have taken. And it is difficult to imagine what action it could have taken in light of Geness’s concession that AOPC is not liable for judges’ decision-making in individual cases. *See supra* note 12. Thus, Geness’s allegation of AOPC’s failure to directly intervene with the county court in some unspecified manner, beyond its repeated inquiries to the court administrator, cannot sustain his claim under Title II of the ADA. *See Twombly*, 550 U.S. at 555 (stating that allegations must be more than “speculative” or “conclusory”).

(Appendix A to Pet. at 24a).

Similarly, Mr. Geness posits that the Third Circuit: granted sovereign immunity to AOPC because it ruled that Mr. Geness could not establish causation at the pleading stage between the AOPC’s failure to do its duty, and the outcome that would have occurred had the Pennsylvania Supreme Court been notified of this horrendous failure of the criminal justice system.

(Pet. at 6).

The Third Circuit did not hold that Mr. Geness failed to establish causation at the pleading stage but

rather that Mr. Geness did not plead that AOPC failed to seek intervention from the Pennsylvania Supreme Court.

Regarding Mr. Geness's argument that AOPC failed to seek intervention from the Pennsylvania Supreme Court, the Third Circuit noted that “[h]e does not make this allegation anywhere in his Second Amended Complaint.” (Appendix A to Pet. at 24a). Moreover, despite the failure to plead, the Third Circuit nonetheless evaluated and dismissed this theory:

By Geness's argument, in order for AOPC to comply with Title II, it had to suggest to the Pennsylvania Supreme Court that his case be dismissed because he was not competent to stand trial. AOPC would “in effect . . . be required to closely monitor, deeply evaluate, and consider intervening in every criminal case pending in the Commonwealth.” In a case such as this, AOPC argues, “even if aware of the procedural status,” it “would not have known whether the extended delay was part of a strategic course by defense counsel, the thoughtful deliberative process of the judge, or some other factor peculiar to that specific case.” We find AOPC’s arguments persuasive.

Further, AOPC’s powers do not allow it to actually hold a criminal trial, which Geness alleges it denied him. Even had AOPC reported to the Pennsylvania Supreme Court or the Fayette County Court of Common Pleas about the delay in Geness’s case, it remained the

exclusive power of the courts to actually do something about it.

...

This brings us full circle to Geness's acknowledgement that AOPC does not have a duty to meddle with judicial decision-making. Because judicial decision-making is not a service AOPC provides to either disabled or nondisabled individuals, Geness was not excluded from this service based on his disability.

...

Neither Geness nor the dissent sets forth a plausible allegation or argument regarding how AOPC neglected to report the delay in his case to the Pennsylvania Supreme Court "by reason of his disability." While his case appears to have languished due to his disability (*i.e.*, while he was incompetent to stand trial), AOPC had no power over the disposition of his case, and there is simply no allegation or argument before us regarding how AOPC's alleged failure to contact the Supreme Court connects to Geness's disability.

For the reasons set forth above, Geness's allegations against AOPC fail to satisfy the first requirement of Georgia – setting forth a plausible Title II claim. [. . .]

(Appendix A to Pet. at 27a-29a (internal citations omitted)).

Finally, Mr. Geness suggests that, through a chain of command, the Court Administrator of Pennsylvania

should have walked down the hall, knocked on the door of the Chief Justice, and implored him to act on behalf of Mr. Geness. Such conduct is not a service, program, or activity provided by AOPC to individual criminal defendants, nor should it be. This allegation is unpled, unavailable, and unbelievable.

ARGUMENT

A. AOPC's Role in Pennsylvania's Criminal Justice System.

AOPC is entitled to sovereign immunity. The Court Administrator of Pennsylvania, through AOPC, performs duties for the UJS as defined by statute or as authorized by the Pennsylvania Supreme Court. *See* 42 Pa.C.S. § 1902; Pa. R.J.A. No. 505. The Pennsylvania Supreme Court has the power to appoint the Court Administrator. Pa. Const. art. V, § 10(b); 42 Pa.C.S. § 1901. Thus, AOPC is an entity of the UJS and, as such, is an arm of the Commonwealth of Pennsylvania protected by the Eleventh Amendment. U.S. Const. Amend. XI. *See also Benn v. First Judicial Dist.*, 426 F.3d 233, 240-41 (3d Cir. 2005) (Pennsylvania court entities are state entities entitled to full Eleventh Amendment immunity). Given this protection, no UJS entity can be sued in federal court unless the Commonwealth or the UJS entity itself has waived its immunity. *Haybarger v. Lawrence County Adult Prob. & Parole*, 551 F.3d 193, 198 (3d Cir. 2008). Neither AOPC nor the Commonwealth of Pennsylvania has given such consent to suit

in this case. *See* 42 Pa.C.S. § 8521(b) (“[N]othing contained in this subchapter [relating to actions against Commonwealth parties] shall be construed to waive the immunity of the Commonwealth from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States”); *Laskaris v. Thornburgh*, 661 F.2d 23, 25 (3d Cir. 1981) (“By statute, Pennsylvania has specifically withheld consent” to suit in federal court) (*citing* 42 Pa.C.S. § 8521(b)); *see also* 1 Pa.C.S. § 2310 (Commonwealth shall enjoy sovereign immunity and be immune from suit except as the General Assembly shall specifically waive the immunity).

B. Mr. Geness Does Not Satisfy Any of the Criteria Under Which a Writ of Certiorari May Be Granted Pursuant to Supreme Court Rule 10.

Mr. Geness fails to demonstrate that the Third Circuit did not correctly apply the precedent of this Court or that the Third Circuit’s decision conflicts with the decision of another federal court of appeals on the same important matter. To the contrary, the Third Circuit correctly applied *United States v. Georgia*, 546 U.S. 151 (2006), and *Tennessee v. Lane*, 541 U.S. 509 (2004). In particular, the Third Circuit correctly applied the three-part *Georgia* test and determined that AOPC is protected by sovereign immunity.

To make such a determination under *Georgia*, the first requirement is that the court must subject the plaintiff’s allegations of a Title II violation to the

standard applicable to Federal Rule of Civil Procedure 12(b)(6). *See Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 553 n.31 (3d Cir. 2007) ("[W]e are required to determine in the first instance if any aspect of the [defendant's] conduct forms the basis for a Title II claim."). Pursuant to the second requirement, the court must determine if any of the alleged conduct violates the Fourteenth Amendment using the same Rule 12(b)(6) standard. In the third *Georgia* requirement, if the allegations state a claim under Title II but not under the Fourteenth Amendment, the court must consider whether Congress's abrogation of sovereign immunity in a particular case exhibits "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne v. Flores*, 521 U.S. 507 (1997). The court does not reach the constitutional issue unless and until it decides that the plaintiff has made a valid Title II claim. *Baxter v. Pa. Dep't of Corr.*, 661 Fed. Appx. 754, 756 (3d Cir. 2016).

To state a claim under Title II of the ADA in satisfaction of the first *Georgia* requirement, a party must sufficiently plead that:

- (1) he is a qualified individual;
- (2) with a disability;
- (3) who was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity;
- (4) by reason of his disability.

Geness I, 902 F.3d at 361 (quoting *Haberle v. Troxell*, 885 F.3d 171, 178-79 (3d Cir. 2018)); 42 U.S.C. § 12132.

The Third Circuit correctly found that the Second Amended Complaint failed to articulate sufficient “allegations against AOPC . . . to satisfy the first requirement of *Georgia* – setting forth a plausible Title II claim.” (Appendix A to Pet. 17a-18a). At bottom, while Mr. Geness may be a qualified individual with a disability, he was not denied the benefits of the services, programs, or activities of AOPC because of that disability.

The Court of Appeals further noted that “Title II requires not only that a public entity excluded a disabled individual from a service it provides but also that such an exclusion was by reason of his disability.” *Geness I*, 902 F.3d at 361 (internal quotations and citations omitted). Neither Mr. Geness nor the dissent in *Geness II* set forth a plausible argument as to how AOPC allegedly failed to advance or resolve Mr. Geness’s case “by reason of his disability.” *Id.* While his case did not proceed to trial because of his disability (he was incompetent to stand trial), AOPC had no power to dispose of his case, nor did it refuse to do so because of his disability. *See id.* The Third Circuit correctly applied the *Georgia* test and determined that Mr. Geness failed to state a claim against AOPC under Title II of the ADA.

In addition, Mr. Geness does not demonstrate a conflict between the Third Circuit’s decision in *Geness II* and any decision of any other circuit court, nor does

he demonstrate a conflict between the Third Circuit opinions in *Geness I* and *Geness II*. No such conflicts exist. On the contrary, as stated by the Third Circuit in *Geness II*:

In our prior precedential opinion, we concluded that the first and second requirements [of the first prong of the *Georgia* test] were satisfied, as well as the third and fourth requirements as they relate to the Commonwealth. We must now determine whether AOPC denied Geness “the benefits of [its] services, programs, or activities . . . by reason of his disability.”

(Appendix A to Pet. 18a-19a (*quoting Geness I*, 902 F.3d at 361-62)).

There is no conflict, inconsistency, or disagreement between the two Third Circuit opinions.⁵ Mr. Geness failed to follow the instructions of *Geness I*. As the Court in *Geness II* stated: “When we published [*Geness I*] . . . , AOPC was neither a party nor a contemplated party. Thus, it is our task to square our prior holding that Geness stated a Title II and Fourteenth Amendment claim against the *Commonwealth* with Geness’s pleadings against *AOPC*.⁶” (Appendix A to Pet. 14a (emphasis in original)).

⁵ In denying Mr. Geness’s petition for rehearing *en banc* without noted dissent, *see Appendix C to Pet. 53a-54a*, the full Third Circuit presumably agreed that *Geness I* and *Geness II* are not in conflict.

The Third Circuit considered Mr. Geness's Second Amended Complaint and his concession that AOPC's liability cannot be premised on judicial decision-making and determined that:

the only "services, programs, or activities" at issue are AOPC's administrative duties to (1) "intervene directly with the Fayette County Court to ensure that the Plaintiff's case moved forward," and (2) "seek intervention for such result by the Pennsylvania Supreme Court."

(Appendix A to Pet. 23a).

The Court of Appeals rightfully was unpersuaded that Mr. Geness could sustain a Title II claim on either of these "administrative duties" conveniently invented by Mr. Geness, especially when contrasted to AOPC's actual role in Pennsylvania's judicial system. Regarding AOPC's alleged failure to directly insert itself into the Fayette County Court of Common Pleas, Mr. Geness acknowledged in his Second Amended Complaint that AOPC "repeatedly" made inquiries about the length of his detention to the local court administrator. (Appendix A to Pet. 23a-24a). Further, the Third Circuit noted:

[Mr. Geness] neither identifies in his Complaint nor argues before us what further action AOPC should have or could have taken. And it is difficult to imagine what action it could have taken in light of Geness's concession that AOPC is not liable for judges' decision-making in individual cases. [. . .] Thus,

Geness's allegation of AOPC's failure to directly intervene with the county court in some unspecified manner, beyond its repeated inquiries to the court administrator, cannot sustain his claim under Title II of the ADA.

Id.

As to the second alleged duty (that AOPC should have sought intervention from the Pennsylvania Supreme Court), Mr. Geness never set forth such a claim in his Second Amended Complaint. Rather, “[the idea] stems from AOPC’s powers and duties enumerated in the Pennsylvania Rules of Judicial Administration.” *Id.* (internal quotations omitted). Examining these enumerated duties, both the majority and dissent in *Geness II* concluded that only two arguably applied, neither of which demand that AOPC force a court to take any particular action:

- (1) To review the operation and efficiency of the system and of all offices related to and serving the system and, when necessary, to report to the Supreme Court or the Judicial Council with respect thereto. . . .
- (6) To examine the state of the dockets and practices and procedures of the courts and of the district justices of the peace and make recommendations for the expeditious litigation.

(Appendix A to Pet. 24a-25a (*quoting* Pa. R.J.A. No. 505(1), (6))).

The majority and dissent disagreed as to whether Mr. Geness stated a viable Title II claim against AOPC pursuant to these duties. The majority correctly held that they did not:

These rules unambiguously require AOPC to facilitate an “efficien[t]” and “expeditio[us]” system, in line with its role as an administrative body. They do not task AOPC with policing potential civil rights violations in particular cases – to do so would task the AOPC with making legal determinations and recommendations. The AOPC is not, and should not be, a judicial back-seat driver.

(Appendix A to Pet. 26a).

The majority was similarly unpersuaded by Mr. Geness’s argument that, despite these clearly enumerated duties, AOPC nonetheless had a duty to “seek intervention by the Pennsylvania Supreme Court” so that he would be “timely tried on the charges that he faced.” The majority correctly concluded, in part, that Mr. Geness was never competent to stand trial, so subjecting him to a trial would have violated his constitutional right to due process. *Id.*

Similarly, the majority rejected the contention that AOPC has a duty to force a judge to hold a trial. (Appendix A to Pet. 28a) (“AOPC’s powers do not allow it to actually hold a criminal trial, which Geness alleges it denied him.”). The Third Circuit correctly concluded that because Mr. Geness was not competent to stand trial, the trial court had to decide whether the

case should be dismissed. Such a decision “depends on the evidence and law underlying the charge and the basis for dismissal. Weighing such matters is indisputably a judicial function.” *Id.*

The Court of Appeals noted that Mr. Geness had already conceded that AOPC “does not have a duty to meddle with judicial decision-making.” *Id.* Judicial decision-making is not within the purview of AOPC, so this was not an AOPC service from which Mr. Geness could have been excluded because of his disability. *Id.* (*citing Disability Rights N.J., Inc. v. Comm'r, N.J. Dep't of Human Servs.*, 796 F.3d 293 (3d Cir. 2015)).

The standard to which Mr. Geness seeks to hold AOPC is that of an all-knowing and impossibly vigilant oversight board that would “in effect . . . be required to closely monitor, deeply evaluate, and consider intervening in every criminal case pending in the Commonwealth.” (Appendix A to Pet. 27a). The majority rejected this contention and rightly dismissed Mr. Geness’s case for failure to state a claim against AOPC under Title II of the ADA:

We therefore hold that Congress has not validly abrogated AOPC’s sovereign immunity regarding this particular claim. In conclusion, we will reverse the District Court’s judgment and remand this case for dismissal of the claim against AOPC. Though we exclude AOPC as a potentially responsible party, the human suffering endured by Geness due to the mishandling of his case cannot be overstated. This opinion does not impact Geness’s

claims against the Commonwealth and DHS, which are not currently before us.⁶

(Appendix A to Pet. at 29a (footnoted added)).

CONCLUSION

First, the Third Circuit correctly ruled that Petitioner failed to satisfy the first requirement of *United States v. Georgia* – setting for a plausible claim under Title II of the Americans with Disabilities Act sufficient to abrogate the sovereign immunity of the Administrative Office of Pennsylvania Courts.

Second, the Petition fails to satisfy the threshold criteria for the granting of a Writ of Certiorari.

⁶ As noted previously, *see* p.1, n.1, and p.5, n.3, the district court has approved a settlement between Mr. Geness and DHS, and a jury trial to consider Mr. Geness's separate claim against the Commonwealth is scheduled to commence on July 6, 2021.

Accordingly, this Honorable Court should deny Craig Geness's Petition for a Writ of Certiorari.

Respectfully submitted,

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