

20-6355  
No.

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IN THE SUPREME COURT OF THE UNITED STATES

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RANDALL MCARTY

PETITIONER

Vs.

*Case #*

ASA HUTCHINSON, GOVERNOR

RESPONDENT(S)

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ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF ARKANSAS

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PETITION FOR WRIT OF CERTIORARI

Presented by

Randall McArt

Pro Se

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## **QUESTION(S) PRESENTED**

1. Does the opinion of the Supreme Court of Arkansas in a State Court Civil Action for violations of A.D.A. make an exception in opposition to this Court's Precedent in the "Ex Parte Young Doctrine" as well as other State and Federal Court Opinions upon it granting the Defendant Sovereign Immunity?
2. Does the Supreme Court of Arkansas in a State Court Civil Action for violations of A.D.A. violate 42 U.S.C.A. 12202 and precedence of the United States Supreme Court upon granting sovereign immunity to the Defendant in a State Court Civil Action seeking Declaratory and Injunctive Relief?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## **TABLE OF AUTHORITIES CITED**

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IN THE SUPREME COURT OF THE UNITED STATES

**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix to the petition and is

[ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

The opinion of the United States district court appears at Appendix to the petition and is

[ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[✓] reported at 2020 ARK 190; or,  
[✓] has been designated for publication but is not yet

reported; or,  
[ ] is unpublished.

The opinion of the PULASKI COUNTY CIRCUIT court appears at Appendix C to the petition and is  
[✓] reported at NO. 60CV-19-3622 PULASKI COUNTY CIRCUIT COURT WEBSITE ; or,  
[ ] has been designated for publication but is not yet reported;  
or,  
[ ] is unpublished.

## **JURISDICTION**

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was .

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: , and a copy of the order denying rehearing appears at Appendix .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was May 14, 2020 . A copy of that decision appears at Appendix A .

[ ] A timely petition for rehearing was thereafter denied on the following date: July 23<sup>rd</sup>, 2020 , and a copy of the order denying rehearing appears at Appendix B .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

42 U.S.C.A. § 12101 .....	6, 7, 8, 11
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## STATEMENT OF THE CASE

The Petitioner on June 04, 2019 filed a 42 U.S.C.A. § 1983 Civil Rights action in State Court seeking declaratory Judgment and injunctive relief for the discrimination against and denial of benefits to the developmentally / intellectually disabled person in violation of the Americans with disabilities act 42 U.S.C.A. § 12101, et. seq. An Amended Complaint was filed on June 25<sup>th</sup>, 2019.

The Attorney for the Defendant(s) contended the Defendants were entitled to sovereign immunity. The Circuit Court of Pulaski County granted Sovereign Immunity to all Defendants except to Defendant Asa Hutchinson, Governor of Arkansas in his Official capacity. Appendix C. The Circuit Court also denied the Attorney's for the Defendant Asa Hutchinson's motion for findings of fact and conclusions of law. Appendix C.

The Attorney for the Defendant Appealed. The Petitioner filed his response. The Supreme Court of Arkansas delivered its opinion on may 14<sup>th</sup>, 2020. Appendix A. The Petitioner filed a Motion for Rehearing on May 22<sup>nd</sup>, 2020, arguing the Court had made an exception to the EX PARTE YOUNG Doctrine when granting sovereign immunity to the Defendant in the 42 U.S.C.A. § 1983 Civil Rights Action for violations of the Americans with Disabilities Act that sought only declaratory judgment and injunctive relief. The Supreme Court of Arkansas Denied Rehearing on July 23<sup>rd</sup>, 2020. Appendix B.

## **REASONS FOR GRANTING THE PETITION**

### **I. The Supreme Court of Arkansas In a State Court Civil Action for violation of the A.D.A. Made an Exception to the Ex Parte Young Doctrine**

Defendant Asa Hutchinson, Governor of Arkansas claims to be entitled to Sovereign immunity are erroneous. A State's Eleventh Amendment Immunity does not bar a suit against a state official to enjoin the enforcement of an allegedly unconstitutional statute provided that such officer has some connection with the enforcement of the act. MPAAS INC. v. CARNAHAN, 499 F.3D 803 (8TH CIR. 2007) quoting REPRODUCTIVE . HEALTH SERVICES OF PLANNED PARENTHOOD OF THE ST. LOUIS REGION v. NIXON. 428 F.3D 1139 (8TH CIR. 2005). Defendant Asa Hutchinson as Governor of Arkansas is the Chief Executive Officer who enforces Act. 539 of 2017 with his signature and with the appointment of the Parole Board Members. See Ark. Code Ann. § 16-93-201 (a) (1), FED EXP CORP & N. AMERICAN CAR CORP. V. SKELTON, 265 ARK 187 and Ark. Const. Art. 6 § 15.

The Petitioner's Sole argument is rather simple. The Governor of Arkansas Discriminated against him and failed to afford him the same benefits as afforded to juveniles with a life sentence due to a diminished moral capacity/ culpability in violation of 42 U.S.C.A. 12101, et. seq. Upon the enactment of Act 539 of 2017, Codified as Ark. Code Ann. § 16-93-121, and amended Ark. Code Ann. § 5-10-102 (c) (1) to add (c) (2) to provide for Parole Eligibility for a juvenile convicted

of first degree murder which also violated the United State Constitution – The Fourteenth Amendment and the Ark. Const. Art. 2 § 18.

The American with Disabilities Act Title 42 U.S.C.A. § 12132 mandatorily requires that the Defendant perform a ministerial duty to ensure a disabled person is not discriminated against on account of the disability or denied the benefits of such programs, services or activities on account of such disabilities.

42 U.S.C.A. § 12131 defines Public Entity to wit: (A) Any State or Local Government; (B) Any Department, agency, special purpose district or other instrumentality of a state... Art. 4 § 1 of the Arkansas Constitution provides that the powers of the Government “Shall” be divided into three “Distinct Departments” ... The Governor’s Office is the Executive Branch of government that qualifies as a distinct Department of the State Pursuant to 42 U.S.C.A. § 12131.

I am a qualified individual under the American’s with Disabilities Act 42 U.S.C.A. § 12101, et. seq. in ATKINS itself, the Supreme Court noted an I.Q. between 70 and 75 or lower is typically considered the cutoff I.Q. score for the Intellectual functioning prong of mental retardation. See SOSSOR V. HOBBS, 735 F.3D 833 (8TH CIR 2013); Quoting AKINS, 122 S.CT 2242. Petitioner’s full scale is 76 with an adaptive behavior of poor intellectually and poor attention. Appendix D. When a Defendant’s I.Q. test falls within the test’s acknowledged and inherent margin of error, the Defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. HALL V. FLORIDA, 572 US 701, 134 S.CT 1986 (2014). And individuals I.Q. test score on any given exam may fluctuate for a variety of reasons. Id. An I.Q. score is generally thought to involve an error of measurement of approximately five points;

hence an I.Q. of 70 is considered to represent a band of 65-75. Treating the I.Q. test with some flexibility permits inclusion in the mental retardation category of people with I.Q.'s somewhat higher than 70 who exhibit significant defects in adaptive behavior. HALL v. FLORIDA, 572 US 701, 134 S.Ct. 1986 (2014). The Petitioner has an I.Q. of 76 which places him within the range of mild mental retardation once the error of measurement is taken into account. It places him in the upper end of mild retardation between 71-81.

Trial counsel during my Rule 37 hearing testified I am borderline mentally retarded. Both the attorney's during my rule 37 hearing acknowledge I am slow, had no knowledge of the counts or the functions of the Courts, or how they operated... and neither would want me representing them. Trial Counsel even made a point in a letter to Dr. David Massey that I had not been able to assist him in preparation of my defense on this charge. Appendix E. And, Dr. David Massey acknowledges that I am immature and impulsive at the age of twenty five (25) years old. Appendix F. My Social Skills was not up to par at that time. I continued acting out with violence after entering prison because I had no social skills and disliked any kind of authority figures due to my lower I.Q. of 76. Being a slow learner, and diagnosed to be borderline mentally retarded.

This Court has prohibited execution of a juvenile ROPER v. SIMMONS, 543 US 551, 125 S.Ct 1183 (2005) and for the mentally retarded ATKINS v. VIRGINIA, 536 US 304, 122 S.Ct. 2242 (2002). It has also prohibited a life without parole sentence for juveniles who commit non-violent crimes GRAHAM v. FLORIDA, 560 US 48, 130 S.Ct. 2011 (2010); and for a juvenile who commits a violent crime due to youth, immaturity and impulsiveness. MILLER v. ALABAMA, 567 US 460, 132 S.Ct. 2455 (2012).

The bottom line is the Supreme Court of Arkansas made an exception to the Ex Parte Young Doctrine with its opinion to grant sovereign immunity to the Defendant in order to dismiss a 42 U.S.C.A. § 1983 Civil Rights Action to challenge the constitutionality and enactment of Act 539 of 2017, codified as Ark. Code Ann. § 16-93-121 as to have discriminated against me and denied me the benefits of Parole Eligibility via the Parole Services (Ark. Code Ann. § 12-27-125) which violates the Americans with Disabilities Act 42 U.S.C.A § 12132 and conflicts with its own precedent MARTIN v. HAAS, 2018 ARK 283, 556 S.W.3D 509 (ARK 2018) as well as LORS v. DEAN, 726 F3D 1036 (8TH CIR. 2013); and EX PARTE YOUNG, 209 US 123, 28 S.Ct. 441 (1908). In a State Court suit for Declaratory and Injunctive Relief.

**II. The Supreme Court of Arkansas In a State Court Civil Action**  
**for violations of the A.D.A. Violated 42 U.S.C.A. 12202**  
**and Precedence of the United States Supreme Court Upon**  
**Granting Sovereign Immunity to the Defendant in a State**  
**Court Civil Action seeking Declaratory and Injunctive Relief.**

Title II validly abrogates State Sovereign Immunity. UNITED STATES v. GEORGIA, 546 US 151, 126 S.Ct 877 (2006). Title II also validly abrogates State Sovereign Immunity on the basis it authorizes prospective injunctive relief against the State. Id.

I simply seek declaratory judgment in order to declare the rights of the parties as well as injunctive relief to have Act 539 of 2017 codified as Ark. Code Ann. § 16-93-121 modified to include parole eligibility for the mentally disabled adult who has a life sentence. This means I would not necessarily be released but

given a meaningful opportunity to appear before the parole board to be considered for release and permitted to present mitigating evidence of maturity, diminished moral culpability, rehabilitative efforts, etc...

The Opinion of the Supreme Court of Arkansas conflicts with this Court's precedence in U.S. v. GEORGIA, 546 US 151, 126 S.Ct. 877 (2006) as well as in opposition to 42 U.S.C.A. § 12202 upon granting sovereign immunity to the Defendant in a 42 U.S.C.A. § 1983 Civil Rights Action for violations of the Americans with Disabilities Act 42 U.S.C.A. § 12101 et. seq.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,  
*Randall McArty*  
Randall McArty # 101565

Date: *10-12-2020*