21-7311 ORIGINAL

NO. 21-A71

IN THE
SUPREME COURT OF UNITES STATES

Linda Baldwin,

Petitioner,

V.

Office of Injured Employee Counsel

Respondent,

APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFITH CIRCUIT

APPLICATION OF WRIT OF CERTIORARI JUSTICE SAMUEL ALITO

Linda Baldwin, *Pro se*
7029 Villada Street
Las Vegas, NV 89084
(702) 779-0483
Itistime3@yahoo.com

QUESTION PRESENTED

1. Under 42 U.S.C. § 1983, is a public official, whose reckless conduct proximately injured another violate a plaintiff 's federally protected right's, liable for the plaintiff 's injuries, even though the State official is entitled to qualified immunity?

2. When a public official violates clearly established law through his conduct, and the conduct caused pain, suffering and mental anguish, is the official protected by qualified immunity? *Albright v Oliver*, 510 US 266, 271 (1994). *Id* at 273. *Texas Dept. of Transp. v. Jones*, 8 S.W.3d 636 (Tex. 1999)

3. Under 42 U.S.C. 1983, which do provides relief to those deprived of civil rights?

4. 14th Amendment . All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PARTIES TO THE PROCEEDING

1. Petitioner, Linda Baldwin, *pro se* , individually, on review, were the plaintiffs-appellant.

2. Respondent, Office of Injured Employee Counsel, through their Counsel, Attorney General, on review for the defendants-respondent.

3. Counsel, Blair C. Dancy is the Attorney for the Carrier, Zurich American Insurance Company is not a party to this Appeal. were the Appellee.

4. Kent Sullivan, Commissioner, Texas Department of Insurance is not a party to this claim were the defendant.

TABLE OF CONTENTS

TABL OF AUTHORITIES

STATUTES

Page(s)

NO. 21-A71

IN THE
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Linda Baldwin,
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v.
Office of Injured Employee, Counsel ,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To Justice Samuel Alito and the Associate Justices of the Supreme Court: Petitioner, Linda Baldwin *pro se,* respectfully petitions for a writ of certiorari to review the final order of the United States Court of Appeals for the united State Court of 5th Circuit, denying Jurisdiction.

OPINIONS BELOW

The opinion of the court of appeals reproduce at (Appendix App.1-12) not published in the *Federal Reporter* but is reprinted at. 843 Fed. 656 * The opinion of the District court is not published in the *Federal Supplement* but is available at 2021 WL 1440015.

JURISDICTION

The Fifth Circuit enters Judgment on April 15, 2021, (Appendix App. 1a-3a) and denied a petition en banc rehearing on September 3, 2021 (Appendix App. 4) October 14, 2021, Justice Samuel Alito, extended the time 45 days which to file a petition for a writ certiorari December 31, 2021. See No. 21A71.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

FOURTEEN AMENDMENT

The Fourteenth Amendment, however, guaranteed that everyone born or naturalized in the United States and under its jurisdiction would be a United States citizen shall not deprived of their due process.

On August 15, 2016, Petitioner Baldwin received an acceptance package from the Appellee Defendant Zurich American Insurance, Company to incorporate into one claim number 1148351 and DWC number 08103562, as Baldwin 's workers compensation payment claims were filed with the Division of workers compensation without her knowledge. Baldwin has a legal claim in order to do this, and investigation is necessary but denied discovery of her due process. Trammel v. United States (1980) 445 U.S. 40, S0.) (App. 23 a.- 26 a.)

INTRODUCTION

The Fifth circuit dismissed Petitioner Linda Baldwin workers' compensation claims payments as she were very seriously injured which falls under Section 42 U.S.C 1983 and refused to assist her, Deprivation Act of the American Disability of Title II and the Privacy Act of missing records.

Petitioner Baldwin suffered injuries in March 1, 2006, August 18, 2006 and August 20, 2007 while employed by her former employer Extended Stay America/ HVM LLC as a Customer Services Attendant. Petitioner Baldwin applied for workers' compensation benefits and sought assistance in March 2008 from the Office of Injured Employee Counsel (OIEC) Ombudsman Program, a state program that provides assistance to unrepresented injured employees seeking workers' compensation in 2012 and 2016.

Petitioner Baldwin participated in contested case hearings before the Texas Department of Insurance Division of Workers' Compensation (DWC) as the ombudsman was an no-show at the hearing and been denied two appeals without assistant in the program. The hearing Officer denied Baldwin request for workers' compensation benefits, concluding that she did not sustain a

compensable injuries. It further determined that the Carrier, Zurich American Insurance Company, was not liable for any workers' compensation benefits after Petitioner Baldwin proper notify her former employer Extended Stay America HVLL dated March 1, 2006, August 18, 2006 and August 20, 2007 and presented the evident of records at the Contested Case Hearing that she did in fact notified the Employer of her injuries. Baldwin did ask for appeal by the ombudsman but her appeals was founded untimely filed by the division of Worker's Compensation. (App. 44 a.)

On April 25, 2019, Petitioner Baldwin sued the entity of Office of Injured Employee in her 2nd Amended Petition failure to assist her- in her Disability at the contested case hearing and concerning her two appeals and a no-show at the contestant case hearing under the Personal Injury 101.021 Tort Claims Act. TEX. CIV. PRAC. & REM. CODE Ann. §101.001, *et. seq.* (Vernon 2005 & Supp. 2006), which are liable for personal injuries for damages, in the same manner that a private entity would be treated and subjected them to the same risks as private entities.
(App. 43 a.)

The federal government did this when it passed the Federal Tort Claims Act, which waived federal immunity for numerous types of torts claims. Petitioner Baldwin suit against the Respondent Office of Injured Employee Counsel was based upon 42 U.S.C. A. § 1983 People of Color under Deprivation of Rights Americans with Disabilities (ADA), and the Privacy Acts of her medical records where sent to her but never received after she was denied services, accommodation by the agency. The United States law requires that those who deprive any person of rights and privileges protected by the Constitution of the United States provided by state law be liable in action at law, suit in equity, or other appropriate measure. (App. 15 a.)

A private party should be liable under 42 U.S.C.A. § 1983 for conspiring with state actors to deprive a citizen of their civil rights. [1] In the instant matter, Baldwin is a United States citizen and was a resident at the time of Williamson County, Texas.

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[1] ® *Keko V. Mingle,* 318 F.3d 39 C.A.5 (La.) 2003; *Dennis v. Sparks,* 449 U.S. 24 (U.S., 1980).

Petitioner Linda Baldwin is entitled to relief sustained as a result of the conspiracy of Respondent Office of Injured Employee Counsel (OIEC) including court fees, costs, expenses and psychological and emotional distress experienced as a result of the long endured by the hands of the Respondent Office of Injured Employee Counsel invoked Section 42 U.S.C. § 1983 People of Color, Americans with Disabilities ACT (ADA).

Accordingly, the Fifth circuit denied Petition Baldwin's- that the Federal courts are without jurisdiction over this suits against... a state agency unless that state has waived its sovereign immunity or Congress has clearly abrogated it."* the Fifth Circuit determined after careful review of the Petitioner Baldwin briefs and the record, they agreed with the district court finding that Baldwin fails to plead facts indicating that Texas's sovereign immunity from suit has been either waived or abrogated. So therefore, bars her claims, and she cannot establish federal jurisdiction over them. (Appendix A, App. 1-3, Filed April 15, 2021).

OMISSION BY THE COURT

Sovereign Immunity

The District Court waved its sovereign immunity to hear Baldwin's case when the Courts called into records the Respondent Office of Injured Employee Counsel ("OIEC") the only remaining defendant had not yet been served or otherwise appeared in this action under cause number denying Kent Sullivan of Summary, Judgement causing not have a fair trial. *See Texas Dept. of Transp. v. Jones*, 8 S.W.3d 636 (Tex. 1999) *(Appendix C, App. 5-6, Filed April 25, 2018).*

The Court issued Petitioner Baldwin's an order to show cause for failure to timely effectuate service pursuant to Federal Rule of Civil Procedure . On October 5, 2018, Baldwin responded to the Court to show the Court clerical error was committed causing omission and Prejudice to her claims against the State of Texas causing her not have a fair trial. See Lawson v. Guild, 215 Cal. 378 [10 PaCal.2d 459].

Then Baldwin filed a motion under Rule 60. (a) (2)., that she never added Texas Department of Insurance as a Defendant as

a party to this and that she only intended to sue Kent Sullivan in his official capacity; that it was a "clerical docketed error that was committed by the court." (Id. at 1-2, 3). But yet the Court filed an Order and dismissed the case against Texas Department of Insurance causing Baldwin not to have fair trial. *Reeves* v. *State*, 226 So. 3d 711, 750–751 (2016). And as to January 17, 2018, under case number 1:17-CV-00036. Petitioner Baldwin filed a Case against the Defendant, Kent Sullivan, Commissioner, for Misrepresentation of its policies against the Commissioner of Texas Department of Insurance, after Baldwin was denied service under the Office of Injured Employee Council ombudsman program under ACT 1983, ADA and Title II., which is a state agency.

On April 2, 2018, Baldwin then filed a motion under Rule 60. (a) (2) because of a clerical docketing error that was wrong-that were committed by the clerk, she asked the Judge to vacate its' Order. (App. 19 a). The Clerk added four people instead of a party of two to the docked case, which was defective after one person was cited and served in this. The Defendant refused to answer the Summary Judgement motion and Discovery which was filed before this court, which was defective.
(App. 25 a.)

On October 25, 2018, the Court granted Defendant Sullivan's motions to dismiss Baldwin's case filed by Defendants Kent Sullivan, Commissioner of Texas Department of Insurance Division of Workers' Compensation. (Appendix D, App. 7-10, Filed 24, 2020). Petitioner, Baldwin responded she never added Texas Department of Insurance as a Defendant as a party to this and that she only intended to sue Kent Sullivan in his official capacity; that it was a "clerical error that was committed by the court." (Id. at 1-2, 3). But yet the Court filed an Order and dismissed the case against Texas Department of Insurance. *Reeves* v. *State*, 226 So. 3d 711, 750–751 (2016).

Petitioner Baldwin explained that including the Office of Injured Employee Counsel was only a reference to Sullivan's job description. (Id at 1-2). Thus, she asks the Court to correct the clerical mistake pursuant to Federal Rule of Civil Procedure 60(a). See *Puckett* v. *United States*, 556 U. S. 129, 135. To establish

eligibility for plain-error relief, must show (i) that there was an error, (ii) that the error was plain, and (iii) that the error affects "substantial rights," *i.e.*, that there is "a reason- able probability that, but for the error, the outcome of the proceeding would have been different." *Rosales-Mireles* v. *United States*, 585 U. S. But the court filed an Order that OIEC has not been served, nor has it served an answer or a motion for summary judgment.

On or about May 9, 2019, Petitioner Baldwin pro se which brought suit against Office of Injured Employee Counsel under this Section 1983 applies to the "deprivation of any rights." Privileges of Title 11 of the ADA provider's that "an individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." § 12132 (2000 ed.).

A "qualified individual with a disability" is defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, 154* 154 meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." § 12131(2). See [2] (Pet. App. 58 a.) Accordingly, the Carrier agreed to pay Baldwin's Workers' Compensation Claims AU—I I-1-48351-01-CC-HD46 & AU-08lO3562~03-CC—I-ID46 for March 1, 2006 and August 20, 2007. The records was filed without her knowledge of her worker compensation payments. (App. 22 a.).

On October 19, 2016 the ombudsman knew of the Judges payments to Petitioner Baldwin but never revealed those payments into records at the hearing under 12185641-03-Al under the Carrier No: 2230263023, as Baldwin was not aware of such payment until a representative of Texas Department of Workers Compensation mention in a phone conversation several years later in the Spring

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[2] Zurich American Insurance Company, Carrier incorporated in the 5th circuit consolidated no. 20-50293 orders in a parallel suit brought by Linda Baldwin.

of 2018 and Petitioner Baldwin believed her.. when both parties in Linda Baldwin vs. Zurich American Insurance Company signed the Judge's order on or about July 13, 2013 , that her worker's compensation will not affect the Res Judicata claims. (Appendix E, App. 11-12, Filed July 13, 2013).

On October 16, 2016 at the Contested Case Hearing under the provisions of §410.169 or §410.204(c) of the Texas Labor Code the Hearing Officer's Decision and Order became final under §410.169, a notice of untimely appeal is enclosed after Baldwin requested help. (App. 21 a)

On August 19, 2016, Carrier Zurich American Insurance Company accepted all three of Ms. Baldwin's Worker's Compensation Claims. Zurich American Insurance Company and Petitioner Linda Baldwin signed an agreement that her Workers' Compensation will not be affected by the decision of this court Re judicata claims as both parties signed the Judges' Order. (App. 22 a).

On or about June 12, 2013, the state court failed to disclose her Workers' Compensation payments related to her Petition, in her Motion." (App. 51 a) when Petitioner Baldwin tried to collect her Workers' Compensation from the Defendant Carrier, Zurich American Insurance Company, the Defendant Zurich filed a false (Omission) claim against Ms. Baldwin being Vexatious, then Baldwin filed a Subpoena of those records and the case was Mooted by District Court on January 19, 2020. [3]

Accordingly on this appeal Baldwin argues against the validity of the vexatious litigant provisions which have been considered and disposed of in the opinion and filed against her on or about April 15, 2020. But when Baldwin tried to collect her Workers' Compensation payment from Zurich American Insurance Company, the Appellee, Defendant filed a claim against Baldwin as being Vexatious under D-l- GN-13-002454. As Baldwin filed a Subpoena of those records but was denied her due process. Trammel v. United States (1980) 445 U.S. 40, S0.) "

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[3]Baldwin v. Zurich Am. Ins. Co., D-1--GN-13---001281 (261 " Civ. Dist. Ct., Travis County, Tex. 2013).

On August 19, 2016, Petitioner Baldwin was deprived of her rights by an order of an Appeal that was issue by Texas Department of Insurance which affected her case and dismissal under her amended petitioner action under Section 11. [4] Petitioner Baldwin suffered a dismissal to be entered against her on appeal as vexatious litigant in an action as untimely appeal filed by the Respondent , Office of Injured Employee Council, in this manner after she was given permission by the Texas Department of Insurance to handle this matter in District Court on January 17 , 2020. (App. 29 a.)

[5] The Fifth circuit further dismissal of her claims as to Texas Tort Claims Act provides a limited waiver of sovereign immunity and allows suits against governmental units only in certain narrow circumstances. Texas Dep't Crim. Justice v. Miller, 51 S.W.3d 583, 587 (Tex.2001) (Pet. App. 57 a.) Thus the court failed to look to the terms of the Tort Claims Act to determine the scope of waiver and then consider the particular facts of the case before determine whether the case comes within that scope.

The Tort Claims Act includes a limited waiver of the state's immunity from suits alleging (1) personal injury proximately caused by the wrongful act or omission or the negligence of an employee acting within her scope of employment if the personal injury arises from the operation and the employee would be personally liable to the claimant under Texas law; or (2) personal injury so caused by a condition or use of would be liable to the claimant under Texas law. (App. 57 a)

[6] On June 14, 2012, a Contested Case Hearing was held to resolve a dispute between both parties Petitioner Linda Baldwin, vs. Zurich American Insurance Company, Carrier but accordingly, at the hearing under claims number 11148351 and 08103562 after the former Deputy Public Counsel Chef of Staff that your

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[4] Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393, 110 S. Ct. 2447, 2454, 110 L. Ed. 2d 359 (1990).

[5] The District Court's orders in this case incorporate its orders in a parallel suit brought by Linda Baldwin vs. Kent Sullivan 1:18-CV-36-RP (W.D. Tex. Oct. 15, 2018).

[6] Id.; Kerrville State Hosp. v. Clark, 923 S.W.2d 582, 584 (Tex. 1996).

Ombudsman would continue to assist you with worker's compensation claims but that did not happen. [7] *Delano-Pyle*, 302 F.3d at 574 (App. 45 a.) See Townsend v. Quasim 328 F3d 511 (9th Cir. 2003). [8]Section 202 of Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132 (emphasis added).

On January 17, 2017, Petitioner found her Appeal untimely as she requested help from the Ombudsman program because Petitioner Baldwin was not represented by Attorney under record number 162383 and worker's compensation number 12-185641-03-Al. In Olmstead v. L.C., the Supreme Court applied the integration and anti-isolation principles, interpreting discrimination forbidden under Title II of the ADA to include "[u]unjustified isolation of the disabled." Olmstead, 527 U.S. at 597, 119 S.Ct. 2176. Olmstead held that Georgia's practice of institutionalizing mentally disabled persons rather than providing them with community-based treatment would violate the ADA unless and could demonstrate that modifying state programs to provide community-based care would fundamentally alter the nature of the services it offered people disabled. The Court reasoned: In so holding, the improperly construed Petitioner Baldwin Amended Petition. Petitioner, Appellant Baldwin telephoned the members of the Texas Legislature expressing her concerns about Misrepresentation in the Workers' Compensation Division. Additionally, Petitioner Baldwin reported that her Medical records were sent to her but were never received which is a violation of Privacy ACT. (App. 46 a.)

On February 21, 2012 a letter to the Texas Attorney General and to Director of the Agency a letter from Baldwin about confidentiality of medical records, which violated the privacy Act of rights under American Disability Act (ADA) Disability Act of

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[7] The ADA creates a private right of action against public entities for both monetary and equitable relief. *See* 42 U.S.C. § 12133.

[8] See, Townsend v. Quasim, 328 F3d. 511 (9" ' Cir. 2003).

HIPPA as the director was unwilling to provide Petitioner Baldwin with any tracing information concerning her medical records.

Petitioner Baldwin Denied a discovery of her workers compensation payment claims.

The Court refused to provide a conference which is a part of her Due process under "Fourteen Amendment. (C) Time for Initial Disclosures———In General. A. party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference.

On or about July 29, 2019, The Respondent failed and refused without good cause to properly examine all the evidence in this case. The foregoing answers to stay the discovery are inadequate as follows: the Carrier, Zurich American Insurance Company did receive the Judge's Order of Workers' Compensation benefits to Baldwin from the Employer, Extended Stay American / HVM, who provided Workers' Compensation insurance to Ms. Baldwin.

Petitioner Baldwin's Workers' Compensation claim was filed under DWC number 11148351 and 08103562. This was not an oversight by Office of Injured Employee Counsel . The Carrier admitted receiving the documents. Office of Injured Employee Counsel filed a Motion to Stay and Quash the Subpoena merely to harass Appellant Baldwin and delay response. (App. 24 a)

The agreed Workers' Compensation claim with Carrier Zurich American Insurance Company and Petitioner Linda Baldwin are stated in the Judge's Order dated August 17, 2013. (App. 24 a.). On August 15, 2016, Baldwin has a legal claim in order to do this, and investigation was necessary. Therefore the motion to office of Injured Employee Counsel, filed a Motion to Stay the Discovery and did not answer to the such Subpoena, for the Discovery- Admissions, Production, Documents pursuant to Texas Civil Procedure Baldwin in the statute of 30 days to file a Discovery and subpoena of those records after the Petitioner has answered. *See Trammel v. United States (1980) 445 U.S. 40, S0.)*

The evidence was incomplete and the Defendant's Motion to Stay Appellant Baldwin's and to Quash Subpoena under FRCP 3.4 fairness to opposing party: it is a federal crime to withhold. A lawyer shall not: (a) unlawfully obstruct another palty's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value.

A lawyer shall not counsel or assist another person to do any such act; (b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; and to Stay the Admissions, Production, Documents, and Interrogatory is unfounded because the information sought is reasonably calculated to lead to the discovery of material evidence. See, Texas Penal Code, §37.09(a) (1), 37.10(a) (3). See also, 18 U.S.C. §1501-1515 to withheld her worker's compensation payment and for not be compensate under Section 202 of Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

SOCIAL SECURITY ADMINISTRATION

On November 15, 2009 the Social Security, Administration declared Baldwin's reported experiencing pain at her neck. hands, wrists, fingers and knees. Petitioner Baldwin alleged that her pain persists despite medications and she also alleged significant physical limitations.

A review of the medical evidence of record reveals that the claimant has a history of persistent complaints of extremity swelling and pain with her bilateral foot pain related to plantar fasciitis, confirmed by MRIs. Progress notes show that the claimant's pain has remained refractive to medical therapy, physical therapy and prescribed medications. Ms. Baldwin has also been diagnosed with bilateral heel spurs and left ankle injury.. She was limited to sedentary work by a Dr. Gary Prant because of her wrists.

The treatment notes show continued wrist pain with positive Tinel's and Phalen's as well as having had a positive EMO study). It was opinioned by her physician in February 2008 that she should engage in a different occupation. This opinion is

consistent with the results from a functional capacity evaluation . Ms. Baldwin continued to be treated for bilateral hand pain and joint pain , as well as palpitations and chest pain. A consultative evaluation was completed on July 8, 2009. On examination Ms. Baldwin exhibited pain at her joints and hands and edema at her extremities. She was diagnosed with bilateral carpal tunnel syndrome, obesity at 228 pounds, and degenerative disc disease of the cervical spine. It was opined that she could sit, stand and walk for an eight hour work day while limited to lifting and carrying ten pounds on an occasional basis.

The consultative physician noted what he described as intractable pain and bilateral plantar fasciitis, in addition to chronic pain and fatigue. The documentary record establishes an underlying medical condition capable of producing significant and persistent pain and limitations in overall functioning. The substantial evidence corroborates to a significant degree the restrictions and limitations as alleged by the claimant. Pertinent to this determination are Ms. Baldwin's progress notes which show that she has a history of consistently seeking medical treatment for what she has described as chronic pain about her body, her medication usage with a less than full response, and objective medical evidence that has produced numerous clinical findings consistent with and supportive of the claimant's subjective complaints and allegations. Moreover, her treating physician and the consultative physician determined that she had significant exertional and non-exertional limitations from chronic pain and fatigue. This assessment of the claimant's residual functional capacity is well supported by the clinical record to include diagnostic tests, laboratory techniques, medication usage, treatment modalities, the findings and opinions from treating and examining physicians, the findings of the consultative physician with respect to his opinion limiting the claimant to no more than a reduced range of sedentary work, the claimant's limited activities of daily living, the claimants prior statements and administrative testimony, and her history of sustained employment since 2006.

Ms. Baldwin's subjective complaints and allegations are found credible only to the extent that they are consistent with this finding. The undersigned affords great weight to the opinion of the claimant's treating physician, his opinion is found to be well

supported and consistent with the record as a whole, to include diagnostic tests. The undersigned has considered the opinion of the non-treating consultative physician of. While the undersigned believes that his opinion is too restrictive based on a review of the objective medical evidence of record, his opinion is some evidence that she could perform no more than sedentary work. After Social Security considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment could reasonably be expected to produce some symptoms. and that the Petitioner Baldwin, claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible to the extent that they are compatible with this decision.

The State agency medical consultants' physical assessments are given little weight because evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints. The claimant is unable to perform any past relevant work [he demands of the claimant's past relevant work exceed her residual functional capacity. (App. 49-51 a)

Petitioner Baldwin claimant has been under a disability as defined in the Social Security Act since November 15, 2007, the alleged onset date of disability, continuing without interruption through at least the date of this decision.

STATEMENT OF THE CASE

Petitioner Linda Baldwin was injured and became disable which she filed this action for damages and equitable relief, alleging the case against Office of Injured Employee Counsel in this action for damages and equitable relief, alleging that Respondent Office of Injured Employee Counsel had denied her physical access to that State's Division of Workers' Compensation Austin, Texas in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), which provides: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation or denied the benefits of the services, programs or activities of a public entity," 42 U. S. C. §12132. Baldwin was denied worker compensation by Zurich American

Insurance Company, Carrier for date of Injuries March 1, 2006, August 18, 2006 and August 20. 2007.

On August 3, 2021 the Fifth Circuit Granted the State's motion to dismiss on Eleventh Amendment immunity grounds, the Sixth Circuit held the appeal in abeyance pending *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356. (Pet. App.38 a)

[9]This Court later ruled in *Garrett* that the Eleventh Amendment bars private money damages actions for state violations of ADA Title I, which prohibits employment discrimination against the disabled. (App. 59 a)

The en banc Sixth Circuit then issued enjoyment ts *Popovich* decision, in which it interpreted *Garrett* to bar private ADA suits against States based on equal protection principles, but not those relying on due process, and therefore permitted a Title II damages action to proceed despite the State's immunity claim.

Thereafter, a Sixth Circuit panel affirmed the dismissal denial in this case, explaining that respondents' claims were not barred because they were based on due process principles. In response to a rehearing petition arguing that *Popovich* did not control because respondents' complaint did not allege due process violations, the panel filed an amended opinion, explaining that due process protects the right of access to the courts, and that the evidence before Congress when it enacted Title II established, *inter alia*, that physical barriers in courthouses and courtrooms have had the effect of denying disabled people the opportunity for such access. *Held:* As it applies to the class of cases implicating the fundamental right of access to the courts, Title II constitutes a valid exercise of Congress' authority under §5 of the Fourteenth Amendment to enforce that Amendment's substantive guarantees. (App. 59 a) (a) Determining whether Congress has constitutionally abrogated a State's Eleventh Amendment immunity requires resolution of two predicate questions: [10] (1) whether Congress unequivocally expressed its intent to abrogate; and (2), if so, whether it acted pursuant to a valid grant of constitutional authority. *Kimel* v. *Florida Bd. of Regents*, 528 U. S. 62, 73.

The first question is easily answered here, since the ADA specifically provides for abrogation. See §12202. With regard to

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[9] § 12202

[10] See, Board of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, 363364 (2001)

the second question, Congress can abrogate state sovereign immunity pursuant to a valid exercise of its power under §5 of the Fourteenth Amendment. *E.g.*, *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 456. That power is not, however, unlimited. While Congress must have a wide berth in devising appropriate remedial and preventative measures for unconstitutional actions, those measures may not work a "substantive change in the governing law." *City of Boerne* v. *Flores*, 521 U. S. 507, 519. In *Boerne*, the Court set forth the test for distinguishing between permissible remedial legislation and unconstitutional substantive redefinition: Section 5 legislation is valid if it exhibits "a congruence and proportionality" between an injury and the means adopted to prevent or remedy it. *Id.*, at 520. (1) The *Boerne* inquiry's first step requires identification of the constitutional rights Congress sought to enforce when it enacted Title II. *Garrett*, 531 U. S., at 365. Like Title I, Title II seeks to enforce the Fourteenth Amendment's prohibition on irrational disability discrimination, *Garrett*, 531 U. S., at 366. But it also seeks to enforce a variety of other basic constitutional guarantees, including some, like the right of access to the courts here at issue, infringements of which are subject to heightened judicial scrutiny. See, *e.g.*, *Dunn* v. *Blumstein*, 405 U. S. 330, 336–337. Whether Title II validly enforces such constitutional rights is a question that "must be judged with reference to the historical experience which it reflects." *E.g.*, *South Carolina* v. *Katzenbach*, 383 U. S. 301, 308.

As Congress enacted Title II against a backdrop of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, including systematic deprivations of fundamental rights. The historical experience that Title II reflects is also documented in the decisions of this and other courts, which have identified unconstitutional treatment of disabled persons by state agencies in a variety of public programs and services.

As with respect to the particular services at issue, Congress learned that many individuals, in many States, were being excluded from courthouses and court proceedings by reason of their disabilities. A Civil Rights Commission report before Congress showed that some 76% of public services and programs housed in state-owned buildings were inaccessible to and unusable by such persons. Congress also heard testimony from those persons describing the physical inaccessibility of local courthouses. And its

appointed task force heard numerous examples of their exclusion from state judicial services and programs, including failure to make courtrooms accessible to witnesses with physical disabilities.

*The sheer volume of such evidence far exceeds the record in last Term's *Nevada Dept. of Human Resources* v. *Hibbs*, 538 U. S. 721, 728–733, in which the Court approved the family-care leave provision of the Family and Medical Leave Act of 1993 as valid §5 legislation. Congress' finding in the ADA that "discrimination against individuals with disabilities persists in such critical areas as ... access to public services," §12101(a)(3), together with the extensive record of disability discrimination that underlies it, makes clear that inadequate provision of public services and access to public facilities was an appropriate subject for prophylactic legislation. Pp. 11–18. *(2) Title II is an appropriate response to this history and pattern of unequal treatment. Unquestionably, it is valid §5 legislation as it applies to the class of cases implicating the accessibility of judicial services. Congress' chosen remedy for the pattern of exclusion and discrimination at issue, Title II's requirement of program accessibility, is congruent and proportional to its object of enforcing the right of access to the courts.

The long history of unequal treatment of disabled persons in the administration of judicial services has persisted despite several state and federal legislative efforts to remedy the problem. Faced with considerable evidence of the shortcomings of these previous efforts, Congress was justified in concluding that the difficult and intractable problem of disability discrimination warranted added Disabilities measures. *Hibbs*, 538 U. S., at 737.

The remedy Congress chose is nevertheless a limited one. Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility*§12132. But Title II does not require States to employ any and all means to make judicial services accessible or to compromise essential eligibility criteria for public programs. It requires only "reasonable modifications" that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service. *Ibid.*

Title II's implementing regulations make clear that the reasonable modification requirement can be satisfied in various

ways, including less costly measures than structural changes. *This duty to accommodate is perfectly consistent with the well-established due process principle that, within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard in its courts. *Boddie*, 401 U. S., at 379. A number of affirmative obligations flow from this principle. Cases such as *Boddie*, *Griffin* v. *Illinois*, 351 U. S. 12, and Gideon v. Wainwright, 372 U. S. 335, make clear that ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts.

The Judged against this backdrop, Title II's affirmative obligation to accommodate is a reasonable prophylactic measure, reasonably targeted to a legitimate end. Pp. 18–23. 315 F.3d 680, affirmed. Stevens, J., delivered the opinion of the Court, in which O'Connor, Souter, Ginsburg, and Breyer, JJ., joined. Souter, J., filed a concurring opinion, in which Ginsburg, J., joined. Ginsburg, J., filed a concurring opinion, in which Souter and Breyer, JJ., joined. Rehnquist, C. J., filed a dissenting opinion, in which Kennedy and Thomas, JJ., joined. Scalia, J., and Thomas, J., filed dissenting opinions. ADA has been the subject of numerous lower court decisions and the Supreme Court has decided 20 ADA cases. In the most recent Supreme Court decision, *United States v. Georgia.*

Accordingly, *The* Court held that title II of the ADA created a private cause of action for Petitioner Baldwin as employed by her former employer Extended Stay America LLC, and diagnose by Social Security Administration and by her medical Physicians with several impairments consistent with overuse of her upper and lower extremities which her previous employer carried workers compensation for her.

As a result, Petitioner Linda Baldwin suffered injuries and the overuse of her upper and lower extremities with standing on a hard concrete floor as a result of her injuries consisting of plantar fasciitis of the left foot, a sprain of the left ankle and left anterior tab fibular ligament, osteoarthritis of the left knee and left lower extremity, left knee crepitus, left shoulder impingement syndrome, osteoarthritis of the left forearm and radiocapitellar joint of the right elbow. Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination based on disability in services, programs, and

activities provided by State and local government entities. (App. 38-1).

Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance. In addition, a Private suit under Title II authorizes suits by private citizens for money damages a "qualified individual with a disability" is defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, 154*154 meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. (App. 38)" § 1213 1 (2). This case present an ideal vehicle for deciding the question presented because it demonstrates in two ways the question in important and recurring.

First, although the State of Texas, Office of Injured Employee Council in this had existing policies they do not discriminate in those services. However, in the Fifth Circuit, a precluded from considering the facts that Baldwin filed a private suit against Office of Injured Employee Counsel the Respondent under Section 42 U.S.C1983 the ADA ACT Deprivation of Rights. The Federal courts are within jurisdiction over a state agency, which waived its sovereignty. Secondly, this case illustrates the particularly devastating consequences of the fifth Circuit's erroneous legal rule for the millions of working Americans (like petitioner) who diagnosed with a permanent disability form on the job as debilitation of arthritis injuries. Arthritis does not discriminate; it touches every sector of society and every part of the American workforce.

The Arthritis are a disease it's permanent and today, provided patients are able to receive the appropriate medication treatments. However, osteoarthritis of the left forearm, mental depression and radiocapitellar of the joints. Petitioner's Baldwin's right elbow can be harsh and debilitating, causing a patient no longer to enjoy the enjoyment of life activities; it is life-saving care. Moreover, most Americans rely on workers compensation health insurance, to pay rental and mortgage payment on their homes. Baldwin lost home her and property due to Courts

dismissal of claims. In the fifth Circuit, as Baldwin who is diagnosed with osteoarthritis of the left forearm and radiocapitellar joint and asked for workers compensation payment to help pay for expenses which her employment has and deprived of her job workers compensation health insurance. [11] Insurance even when granting her request would not impose any hardship on the Carrier. That is wrong, and it is not what Congress intended. After being deprived her hearing and claims and two appeals Petitioner Baldwin suffered mental anguish under Section 101.021 provides that: A governmental unit in the state is liable for: (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if: (A) the personal injury; and (B) the employee would be personally liable to the claimant according to Texas law; and (2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C § 1983, makes it unlawful for a covered State Employee to "discriminate against a qualified individual on the basis of disability in regard to . . [the] injured employee, and, other terms, conditions, and privileges of the Agency." 42 U.S.C. § 12112(a). The Act provides that "the term 'discriminate against a qualified individual on the basis of disability* includes" the failure to provide a reasonable accommodation to a known limitation of an "otherwise qualified individual with a disability," unless the employer "can demonstrate that the accommodation would impose an undue hardship on" the employer. *Id.* § 12112 (b) (5) (A).

The ADA includes statutory definitions for the critical terms in its antidiscrimination mandate. Three such definitions are relevant here. First, the Act defines "qualified individual" to mean "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

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[11]The Supreme Court noted that there was disagreement among the circuit courts about the legal effect upon an ADA suit of the application for and receipt of disability benefits. 526 U.S. at 800. The Court explained that it had granted certiorari in the Cleveland case in an effort to settle this disagreement among the circuit courts. In a unanimous decision delivered by Justice Breyer, the Court vacated the Fifth Circuit's decision and remanded the case for further proceedings.

Second, the Act defines "reasonable accommodation" to "include" altering existing facilities, as well as "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities." *Id.* § 12111(9).

Finally, the Act defines "undue hardship" as "an action requiring significant difficulty or expense, when considered in light of the factors set forth" in the statute. *Id.* § 12111(10)(A). Those factors "include" "the nature and cost of the accommodation needed"; the overall size and financial circumstances of the State Agency and of the particular workplace; and "the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity," and the relationship between the workplace and the employer. *Id.* § 12111(10) (B). Section 504 of the Rehabilitation Act of 1973, 29U.S.C. § 701 *et seq.*, similarly provides that "[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794 (a).

In the Claimant context, Section 504 expressly incorporates the ADA's substantive liability standards. *Id.* § 794(d) ("The standards used to determine whether this section has been violated in a complaint alleging discrimination under this section shall be the standards applied under title II of the [ADA]."). In *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002), this Court set out a framework for determining at the summary-judgment stage whether an claimant's requested accommodation is reasonable under the ADA. Initially, a plaintiff bears the burden of establishing that her requested accommodation is "reasonable on its face, *i.e.*, ordinarily or in the run of cases." *Id.* at 401. When a claimant *cannot* make that showing that is not the end of the inquiry.

The claimant at that point can defeat an Carrier's motion for summary judgment by "show[ing] that special circumstances warrant a finding that," although the requested accommodation is not "reasonable on its face," it *is* "'reasonable' on the particular

facts" in light of "special circumstances." *Id.* As Petitioner Baldwin was denied her due process, subpoena, summary judgment and a full discovery of the facts against the Respondent to answer question according to her denial of services.

Petitioner Linda Baldwin asked the Court to produce all records under State court records Trial Court D-1GN-13001281 in the 261st District Court of Travis County of the Judge's order of Workers' Compensation payment to Ms. Baldwin. Respondent But according to record, the Defendant, Office of Injured Employee Counsel, did receive the Subpoena of documents that were signed by the Clerk of said Court dated July 26, 2019.

Accordingly, Respondent Office of Injured Employee Counsel failed to produce the document which has been requested. A Claimant establishes that her requested accommodation is reasonable on its face or in her particular case, the burden then shifts to the Respondent Office of Injured Employee Counsel to "show special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances" in order to avoid liability. [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation or denied the benefits of the services, programs or activities of a public entity," 42 U. S. C. §12132. As the Fifth circuit in Dismissing (App. 59 a) Baldwin's complaint on Defendant's motion to dismiss on Eleventh Amendment immunity grounds, the Sixth Circuit held the appeal in abeyance pending *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356. (Pet. App. 59 a.)

The Court later ruled in *Garrett* that the Eleventh Amendment bars private money damages actions for state violations of ADA Title I, which prohibits employment discrimination against the disabled. (App. 45 a) Section 202 of Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected The Sixth Circuit then issued its *Popovich* decision, in which it interpreted *Garrett* to bar private ADA suits against States based on equal protection principles, but not those relying on due process, and therefore permitted a Title II damages action to proceed despite the State's immunity claim. (App. 59 a)

Thereafter, a Sixth Circuit panel affirmed the dismissal denial in that case, explaining that respondents' claims were not barred because they were based on due process principles. In response to a rehearing petition arguing that *Popovich* did not control because respondents' complaint *did not allege due process violations*, the panel filed an amended opinion, explaining that due process protects the right of access to the courts, and that the evidence before Congress when it enacted Title II established, *inter alia*, that physical barriers in courthouses and courtrooms have had the effect of denying disabled people the opportunity for such access. *Held:* As it applies to the class of cases implicating the fundamental right of access to the courts, Title II constitutes a valid exercise of Congress' authority under §5 of the Fourteenth Amendment to enforce that Amendment's substantive guarantees. . (a) Determining whether Congress has constitutionally abrogated a State's Eleventh Amendment immunity requires resolution of two predicate questions: (1) whether Congress unequivocally expressed its intent to abrogate; and (2), if so, whether it acted pursuant to a valid grant of constitutional authority. (App. 58 a)

Applying the *Boerne* test in *Garrett*, the Court concluded that ADA Title I was not a valid exercise of Congress' §5 power because the historical record and the statute's broad sweep suggested that Title I's true aim was not so much enforcement, but an attempt to "rewrite" this Court's Fourteenth Amendment jurisprudence. 531 U. S., at 372–374. In view of significant differences between Titles I and II, however, *Garrett* left open the question whether Title II is a valid exercise of Congress' §5 power, *id.*, at 360, (b) Title II is a valid exercise of Congress' §5 enforcement power. (App. 59 a)

The *Boerne* inquiry's first step requires identification of the constitutional rights Congress sought to enforce when it enacted Title II. *Garrett*, 531 U. S., at 365. Like Title I, Title II seeks to enforce the Fourteenth Amendment's prohibition on irrational disability discrimination, *Garrett*, 531 U. S., at 366. But it also seeks to enforce a variety of other basic constitutional guarantees, including some, like the right of access to the courts here at issue, infringements of which are subject to heightened judicial scrutiny. See, *e.g.*, *Dunn* v. *Blumstein*, 405 U. S. 330, 336–337. Whether Title II validly enforces such constitutional rights is a question that "must be judged with reference to the historical experience which it reflects." *E.g.*, *South*

Carolina v. *Katzenbach*, 383 U. S. 301, 308. Congress enacted Title II against a backdrop of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, including systematic deprivations of fundamental rights. historical experience that Titles II reflects is also documented in the decisions of this and other courts, which have identified unconstitutional treatment of disabled persons by state agencies in a variety of public programs and services.

*The sheer volume of such evidence far exceeds the record in last Term's *Nevada Dept. of Human Resources* v. *Hibbs*, 538 U. S. 721, 728–733, in which the Court approved the family-care leave provision of the Family and Medical Leave Act of 1993 as valid §5 legislation. Congress' finding in the ADA that "discrimination against individuals with disabilities persists in such critical areas as ... access to public services," §12101(a)(3), together with the extensive record of disability discrimination that underlies it, makes clear that inadequate provision of public services and access to public facilities was an appropriate subject for prophylactic legislation.

Title II is an appropriate response to this history and pattern of unequal treatment. Unquestionably, it is valid §5 legislation as it applies to the class of cases implicating the accessibility of judicial services. Congress' chosen remedy for the pattern of exclusion and discrimination at issue, Title II's requirement of program accessibility, is congruent and proportional to its object of enforcing the right of access to the courts. The long history of unequal treatment of disabled persons in the administration of judicial services has persisted despite several state and federal legislative efforts to remedy the problem. Faced with considerable evidence of the shortcomings of these previous efforts, Congress was justified in concluding that the difficult and intractable problem of disability discrimination warranted added prophylactic measures. *Hibbs*, 538 U. S., at 737. The remedy Congress chose is nevertheless a limited one. Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility. *§12132.

But Title II does not require States to employ all means to make judicial services accessible or to compromise essential

eligibility criteria for public programs. It requires only "reasonable modifications" that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service. *Ibid.* Title II's implementing regulations make clear that the reasonable modification requirement can be satisfied in various ways, including less costly measures than structural changes. *This duty to accommodate is perfectly consistent with the well-established due process principle that, within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard in its courts.

GRANTING THE PETITION WRIT CERTIORARI

The reason for certiorari this Court should grant review to the whole point of 42 U.S.C. § 1983 deprivation people under color, American Disability (ADA) , Act and respectfully the privacy Act was to provide Federal Court for the Protection of all people.

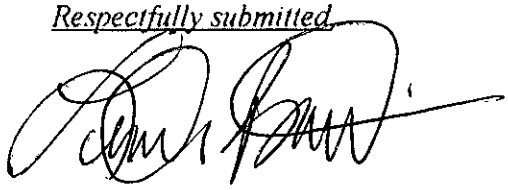
The Supreme Court, in an unanimous opinion written by Justice Scalia, held that title II of the ADA created a private cause of action for damages against the states for conduct that actually violates the Fourteenth Amendment. In arriving at this holding, the Court noted that the plaintiff's claims for money damages under the ADA were based in large part on violations of section 1 of the Fourteenth Amendment and observed that this differed from other cases regarding the Eleventh Amendment such as *Tennessee v. Lane*. Justice Scalia recognized that the Supreme Court has been split "regarding the scope of Congress's 'prophylactic' enforcement powers under §5 of the Fourteenth Amendment," but found common ground in the recognition of section 5 powers to enforce the provisions of the Fourteenth Amendment by creating private remedies against actual violations of these provisions.

Thus, Justice Scalia concluded for the Court, "insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violated the Fourteenth Amendment, Title II validly abrogates state sovereign immunity." *United States v. Georgia* is a limited decision which does not address the split in the Supreme Court regarding when there is abrogation of the Eleventh Amendment under the ADA.

Conclusion

For all of the reasons set forth Petitioner, Linda Baldwin and other submissions to this Court, this Court should grant the writ of certiorari, vacate and remand for further proceedings and fully compensate Petitioner Baldwin.

Respectfully submitted,



NO. 21-A21

IN THE
SUPREME COURT OF UNITES STATES

Linda Baldwin,

Petitioner,

V.

Office of Injured Employee Counsel

Respondent,

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33. l (h), I certify that the Petition for Writ of Certiorari contains 8,615 words, excluding the parts of the Petition that are exempted by Supreme Court Rule 33. l(d).
I declare under penalty of perjury that the foregoing true and correct. Executed on January 20, 2021.

Linda Baldwin, *Pro se*
7029 Villada Street
Las Vegas, NV 89084
(702) 779-0483
Itistime3@yahoo.com