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No. \_\_\_\_\_

ORIGINAL

**In the Supreme Court of the United States**

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SUPREME COURT, U.S.

Nicholas Conlan v. Costco Wholesale

On Petition for Writ of Certiorari to

The United States Court of Appeals for the 9<sup>th</sup> Circuit

**Petition for Writ of Certiorari**

Nicholas Conlan

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## Questions Presented

Did Costco violate the Americans with Disabilities Amendment Act by terminating the interactive process with ambiguities they had and not *directly* engaging in the interactive process with Conlan?

Was Costco's proffered reason for firing him—that Conlan violated Costco's leave of absence policy—was pretextual, and that the true reason was Conlan's disability and request for an accommodation of a service dog?

Does Title I of the ADA allow the accommodation of an emotional support animal or does the animal have to be a service animal?

Was Conlan denied a Jury Trial, when he requested one in his Second Amended Complaint?

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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 the Federal Courts:

The opinion of the United States Court of Appeals is unpublished.  
The opinion of the United States District Court is unpublished.

## Jurisdiction

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 26, 2022.

An extension of time to file the petition for a writ of certiorari was granted to and including December 24, 2022 on December 6, 2022 in Application No. 22A495.

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

## STATUTORY PROVISIONS INVOLVED

Americans With Disabilities Act (ADA) 42 U.S.C. §§12101 and on the Montana Human Rights Act (MHRA), Mont. Code Ann. §§49-2-101.

## STATEMENT OF THE CASE

### Introduction

This is a case between Nicholas Conlan (Conlan) and his employer Costco Wholesale Corporation (Costco). Conlan's job title was an Outside Marketer. This position required Conlan to travel the State of Montana, sometimes for days at a time.<sup>1</sup> This caused Conlan to experience severe anxiety and panic attacks that stemmed from a car wreck that he continued to suffer from, in 2006.<sup>2</sup>

Conlan requested and was approved for an alternative position in the Optical Department as an accommodation to alleviate the medical episodes that Conlan experienced, in March of 2017.<sup>3</sup> Conlan did not get the chance to work in this department, not one shift.

Conlan requested other accommodations such as extra office time to complete paperwork and respond to emails, use of cell phones to demonstrate Costco products as well as to report to management while

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<sup>1</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 2 ¶ 5

<sup>2</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 3 ¶ 8

<sup>3</sup> Document 121 Trial Transcript, Volume I Page 180 Lines 20-25

traveling the State of Montana, and extra time on breaks to help deal with the pain Conlan suffered from his workman's compensation injury (October 1, 2016). These were only some of the accommodations that Conlan requested and were all denied prior to applying to the Optical Department. The last accommodation request Conlan requested, was to have his service animal while traveling.

Conlan brought his service dog "Teddy" to the warehouse on March 11, 2017. This is the "Tire Shop Incident." Conlan was a customer getting tires to prepare to get on the road for work, the following day. Conlan established to his direct Manager "Miller" that "Teddy" was a service animal. Miller allowed Conlan into the warehouse to purchase tires. After Conlan had purchased tires and they were being installed, an emotional tyranny ensued with the tire shop manager and Conlan was ultimately requested to remove the dog from the warehouse.<sup>4</sup>

Conlan brought this incident up to the Warehouse General Manager "Arnold", on March 24, 2017, (a day after he communicated elevated anxiety and the benefits of "Teddy" to assistant warehouse manager Dave Preston,

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<sup>4</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 4 ¶ 11- Page 5 ¶ 12 & Document 29 Plaintiff Conlan's Preliminary Pretrial Statement Page 5-7

“Preston”).<sup>5</sup> Arnold brushed off the issue and in fact didn’t follow-up with Conlan with any investigation regarding the tire shop incident nor the accommodation request of a service animal.<sup>6</sup>

On April 4, 2017 Conlan followed up with his request to Arnold regarding having “Teddy” as an accommodation while Conlan was traveling (since he wasn’t allowed to work in the Optical department). Arnold told Conlan that he would get back to him after the corporate human resource walk, they had the next day. He then proceeded to inform Conlan that the request wasn’t going to be approved, but that he get a doctor’s note. Conlan went directly to Zimmerman to get the requested document.<sup>7</sup> This was the second request of an accommodation of a service animal to Arnold and Costco directly.<sup>8</sup>

On April 13, 2017, Conlan was inside of Arnold’s office for two hours discussing Conlan’s request of a service animal. Costco sent Conlan home, without a reason as to why Conlan’s request was denied. Conlan was packed

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<sup>5</sup> Document 23 Defendant Costco Wholesale corporation’s Preliminary Pretrial Statement Page 4- Page 5 & Document 145 Findings of Fact, Conclusions of Law and Order Page 18 ¶ 57

<sup>6</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 5 ¶ 14- Page 6 ¶ 14

<sup>7</sup> Document 54-3 Exhibits; Plaintiff Brief in Opposition to Summary Judgment Page 15 & Document 145 Findings of Fact, Conclusions of Law and Order Page 6 ¶ 16

<sup>8</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 6 ¶ 15

up ready to leave on a two-day trip, he just had to clock-in and pick-up the business itinerary for the days he would have been gone. After that, "Teddy" wouldn't have been in the warehouse.<sup>9</sup> Costco to this day has not provided an explanation as to why Conlan's request was denied, nor have they offered an alternative accommodation to alleviate the anxiety the driving caused Conlan.

Conlan traveled over sixty miles (each roundtrip) to go to the doctor's office numerous times to get a total of 6 diverse doctor's notes that articulated the need of a service animal. The notes invited Costco to contact Conlan's medical provider, Melissa Zimmerman (formerly Bentley) ("Zimmerman"), if they had any questions or concerns. Conlan again, invited Costco to contact him; as an alternative option. Costco did not reach out, in any fashion, with ambiguities they admittedly had.<sup>10</sup> Costco denied each of these requests without explanation or alternative options.

Costco granted and placed Conlan an unwanted leave of absence, "to support his request for a service animal."<sup>11</sup> Arnold demanded that

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<sup>9</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 8 ¶ 21- Page 9 ¶ 24

<sup>10</sup> Document 44 Affidavit of Allen Arnold

<sup>11</sup> Document 23 Defendant Costco Wholesale Corporation's Preliminary Pretrial Statement Page 4

Zimmerman sign off on this unwanted leave of absence that Conlan didn't want nor ask for. Zimmerman could not sign off on this document as she was not the one to place Conlan on the leave of absence, Costco was the party to place Conlan on this leave of absence. (This caused significant ambiguity that Conlan received a voicemail from Costco's Disability department that stated, "They (Costco) aren't doctor's they can't put you on disability..." Conlan was not allowed to submit this voicemail at trial for an unknown reason, as it clearly was sent to Conlan in an attempt to clarify ambiguity that Costco created in placing Conlan on a leave of absence.)

Costco then fired Conlan for the alleged unauthorized leave of absence.

Did Costco violate the Americans with Disabilities Amendment Act, by terminating the interactive process (and Conlan) with ambiguities they had regarding Conlan's medical information?

After Conlan requested an accommodation of a service animal to Arnold, Conlan met with assistant warehouse manager Daniel Manibusan (Manibusan). It was during the conversation on April 12, 2017 that Conlan described the panic attacks that were triggered by driving. This conversation from what Manibusan thought, caused ambiguity, assuming Conlan suffered

from a seizure on February 14, 2017.<sup>12</sup> Conlan articulated that his panic attacks *look like* seizures, and he had a panic attack while driving home on Valentine's Day.<sup>13</sup> Costco consequently denied the accommodation request using the "direct-threat" defense. This defense was abandoned after the administrative proceedings with the Montana Human Rights Bureau. Though the direct-threat was never there, Conlan continued to engage in the interactive process by providing a note from Zimmerman dated April 26, 2017, even though the process had already been abandoned by Costco.<sup>14</sup> It reads:

*Work restrictions for Nicholas' mental health are not limited, however, he benefits from a companion/psychiatric animal. This animal helps decrease anxiety and helps manage panic attacks when they arise, and should be available for full contact at all times as a service animal. Nicholas has not had a seizure for four years, and this animal is not for that purpose. The service animal is a benefit to Nicholas' mental health disorder, anxiety, management, and for coping with panic attacks. Please call if you have any questions. -See Zimmerman (Bentley) Affidavit, ¶ 5; Conlan Affidavit, ¶ 28*

Costco formulated multiple approaches why they admittedly terminated the interactive process. Each approach fails to demonstrate how

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<sup>12</sup> Document 23 Defendant Costco Wholesale Corporation's Preliminary Pretrial Statement Page 2

<sup>13</sup> Document 29 Plaintiff Conlan Preliminary Pretrial Statement Page 9-10 & Document 121 Trial Transcript, Volume I Page 105 Line 22- Page 106 Line 12 & Document 54-2 Affidavit of Nicholas Conlan Page 7 ¶ 26

<sup>14</sup> Document 54-3 Exhibits; Plaintiff Brief in Opposition to Summary Judgment Page 12

approving the accommodation would have caused undue hardship.

Regardless of the approach, Costco failed to engage in the interactive process, in good faith.

When Costco received the Work Restrictions paperwork, dated April 18, 2017, that stated Conlan had no work restrictions, they omitted the accommodation request in another scheme. In that same work restrictions document, under additional comments Zimmerman stated<sup>15</sup>:

*No restrictions. Work accommodations of service animal requested.*

The provider included her contact information for Costco to contact her with any concerns. Costco refused to reach out to clarify this ambiguity they perceived.

An “accommodation” is not synonymous with a “restriction”.

*“A ‘reasonable accommodation’ is a change in the work environment that allows an individual with a disability to have an equal opportunity to apply for a job, perform a job’s essential functions, or enjoy equal benefits and privileges of employment.”*-- 29 C.F.R. pt. 1630 app. § 1630.2(o); see also *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 416 (2002) (citing the Appendix).

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<sup>15</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 12 ¶ 34

A “restriction” is a word counsel usually sees in personal injury physicians reports denoting some limitation in physical or mental performance. The ADA is concerned with needs for reasonable accommodations, not restrictions. One can have a need for an accommodation, under the definition of that word, without having a “restriction”. More to the point, this provider simply stated that Conlan needed the service dog at work and that the service dog remedied Conlan’s mental health problems so that he would have no restrictions when he returned to work.

In the Montana Supreme Court Case, *Reeves v. Dairy Queen, Inc.*, 1998 MT 13, ¶ 13, 287 Mont. 196, 953 P.2d 703, the decision illuminates on the effect of a termination of an employee with a disability without the employer personally investigating the employee’s circumstances. In *Reeves* the district court had granted summary judgment for the employer on the basis that, although the employer had failed to provide an accommodation, an accommodation “isn’t merely an undue hardship upon employer, it is a physical impossibility.” 1998 MT 13 at ¶ 41. The Montana Supreme Court reversed the district court’s grant of summary judgment by holding:

*However, Reeves argues that Dairy Queen never seriously contemplated any accommodation and that Dairy Queen could, in fact, have accommodated her. Reeves argues further that if Dairy Queen believed that accommodation could not be made without undue hardship or danger, it had a duty to investigate.*

*We agree. Montana regulations provide:*

*[I]ndependent assessment of the risk of substantial harm is evaluation by the employer of the probability and severity of potential injury in the circumstances, taking into account all relevant information regarding the work and the medical history of the person with the disability before taking the adverse employment action in question.*

*Rule 24.9.606(8), ARM. Dairy Queen never spoke with Reeves or her physician about her condition or what could be done to ensure her safety. In fact, Reeves doctor testified that when controlled with proper medication, Reeves condition posed no threat at all. Further, in his deposition Barber [Dairy Queen's General Manager] testified to the following:*

*Q: So it [Reeve's high blood pressure] wouldn't have been any problem if she would have taken her medication?*

*A: No, it would not have been a problem.*

*Q: Did you offer that opportunity? Did you sit down with her and say Donna, I need you to take your medication or else you're going to get terminated?*

*A: No....*

*Clearly this testimony presents an issue of fact as to whether a reasonable accommodation was available. 1998 MT 13 at ¶ 42.*

Conlan has previously stated in his Post-Trial Facts and Conclusions of Law (Doc 132 page 39) that Costco has never shown that allowance of an accommodation in the form of a service dog would cause undue hardship. This is required under the ADA. See, 42 U.S.C. § 12112 (b)(5)(A).

Conlan was engaged in protected activities when he requested a work accommodation and when he refused to allow the “third-party accommodation consultant” to receive information relating to his request from his health care provider.<sup>16</sup> He stimulated direct communication with his employers, as the law suggests and requires.

Costco was aware that Conlan wasn’t required to sign the document allowing multiple third-parties access to his medical information. Costco still used this motive as another reason to deny Conlan an accommodation. The authorization form was rather worded, “If you would like to use this service, please sign the enclosed authorization form.”<sup>17</sup> This wording implied that there were other options available, but not provided to Conlan to complete the interactive process.

Costco stresses the word *option* numerous times throughout this case, of using WorkCare to review employees medical files, during the interactive process.<sup>18</sup> The term *option* implies that there was an alternative to utilizing the undesirable third-party consultant. However, Costco failed to offer an

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<sup>16</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 13 ¶ 37

<sup>17</sup> Document 54-3 Exhibits; Plaintiff Brief in Opposition to Summary Judgment Page 17

<sup>18</sup> Document 119 Trial Transcript, Volume II Page 93 Lines 14-20

alternative because they prematurely terminated the interactive process.

That choice should be inferred as being direct communication between employer and employee<sup>19</sup>, as suggested below:

*“The interactive process requires communication and good-faith exploration of possible accommodations between employers and individual employees.” Barnett v. U.S. Air, Inc., 228 F.3d 1105, 1114 - 1115 (9th Cir. 2000).*

In *Barnett* it was also held:

*The interactive process required by the ADA to be conducted between employer and employee is well defined. the interactive process is a mandatory rather than a permissive obligation on the part of employers under the ADA and that this obligation is triggered by an employee or an employee's representative giving notice of the employee's disability and the desire for accommodation. -Barnett v. U.S. Air, Inc., 228 F.3d 1105, 1114 (9th Cir. 2000).*

Costco failed to make meaningful inquiries of either Conlan or his medical provider to establish that it had engaged in the interactive process. Conlan has previously discussed the proof presented to establish that it was Costco, and not Conlan, who failed to engage in good faith with the interactive process. Conlan's Proposed Findings of Fact and Conclusions of Law (Doc 132), page 32 and pages 39 - 41, 43 - 44, 49. Conlan's Post Trial

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<sup>19</sup> Document 121 Trial Transcript, Volume I Page 172 Lines 12-25 & Page 177 Line 15-25

Brief (Doc. 134), Pages 2 – 4. Those arguments and authorities will not be dwelled upon herein, but rather cited to establish roots.

Conlan suffered adverse employment actions as a result of his exercise of these protected activities. As to the refusal to authorize the release of information to a third party<sup>20</sup>, Costco admitted that after the refusal the interactive process to reach consensus on the need for accommodation “stopped”. It was “stopped” by Costco as Conlan continued to offer to allow Costco to directly receive information, but Costco never made a direct request. As to the request for an accommodation, Costco refused to directly investigate the need for the accommodation, knowing ambiguities existed, refused Conlan the ability to come to work with his service dog absent undue hardship, forced him on a leave of absence and then terminated him for the leave of absence that they placed him on.

Additionally, the manager of the Costco warehouse in Helena, Allen Arnold, filed an Affidavit, Doc. 44, at page 4, paragraph 12, states as follows:

Because Conlan would not allow WorkCare to speak with Conlan’s medical provider, Costco was not able to obtain any information from a medical provider on the nature and extent of Conlan’s work restrictions, if any. Without information on

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<sup>20</sup> Document 54-3 Exhibits; Plaintiff Brief in Opposition to Summary Judgment Page 27-28

Conlan's work restrictions, Costco could not further consider Conlan's request for an accommodation.

Conlan had every right to refuse third parties' access to his medical provider and records. That did not prevent Costco itself from requesting the information needed or even having Conlan contact his provider for Costco to clarify the perceived ambiguity. Costco was required by law to articulate any perceived ambiguities to fulfill the good-faith aspect of the interactive process. Communicating "directly" would preclude the unwanted intervention of a "third-party accommodation consultant." Costco cannot excuse its failure to follow through the process by a "policy" not to contact medical providers where appropriate. Costco, again, shifts explanation why they abandoned the process.

Costco attempted to validate its abandonment of the interactive process in another method claiming it had a policy not to directly contact medical providers on ADA claims.<sup>21</sup>

It was admitted that Conlan offered to allow Costco to directly speak with his provider, but they refused to further engage in the interactive

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<sup>21</sup> Document 121 Trial Transcript, Volume I Page 173 Lines 4-11 & Document 119 Trial Transcript, Volume II Page 354 Line 1- Page 355 Line 4

process, after Conlan refused to waive his privacy rights. The trial testimony was as follows<sup>22</sup>:

*Q. And you'll agree that you never attempted to contact either Conlan or his healthcare provider, Ms. Bentley Zimmerman, to clarify any information? You would agree to that? Costco did not directly seek clarification from Nicholas or the healthcare provider?*

*A. We asked for clarification in the letter that we provided.*

*Q. To Ms. Bentley?*

*A. No, because we don't -- we don't speak directly to -- we don't speak directly to providers.*

*Q. Okay. Nicholas offered to allow you to talk to Ms. Bentley, did he not?*

*A. Yes.*

First, direct involvement by the parties to the employment relation, and not third-party surrogates, is required. See *Keith v. County of Oakland*, 2013 U.S. App, LEXIS 59; *Reeves v. Dairy Queen, Inc.* 1998 MT 13, 282 Mont 196, 955 P.2d 708.

A key point to consider is that that Costco admits that it failed to engage in the process any further after Conlan rightfully refused to authorize the “third-party accommodation consultant” to enter the interactive process.

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<sup>22</sup> Document 119 Trial Transcript, Volume II Page 358 Line 19- Page 359 Line 5

Costco hoists itself on its own petard when it makes the admission as to why the interactive process broke down: on page 10 of its Brief in Support of Partial Summary Judgment:

*When Costco asked to have a third-party accommodation consultant directly contact Bentley to clarify the contradictory statements, Conlan refused to sign the authorization form. That stopped the process. (Emphasis added).*

In *Barnett*:

*The interactive process requires communication and good-faith exploration of possible accommodations between employers and individual employees. The shared goal is to identify an accommodation that allows the employee to perform the job effectively. Both sides must communicate directly, exchange essential information and neither side can delay or obstruct the process.*

Communicating “directly” would preclude the unwanted intervention of a “third-party accommodation consultant.”

Costco’s “no restrictions, no disabilities” analysis follows that of the pre-ADAAA authorities. The ADAAA substantially overturns these authorities, depriving Costco’s argument of any veracity.

The ADAAA overrode the prior rules concerning disabilities that were episodic or subject to periods of remission. To that end, the ADAAA contains the provision that:

*“an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” 42 USC §12102(4)(D).*

Since the enactment of the ADAAA, courts have used the changes in the law in a manner that treats returns to work without restrictions as not meaning that the disability ceases to exist. Thus, in *Mercer v. Arbor E & T, LLC*, 2013 WL 164107 (S.D. Tex. Jan. 15, 2013) it was stated:

*“Mercer’s ability to return to work does not establish that she no longer suffered from a disability. The very existence of the ADA recognizes that a disability and gainful employment are not mutually exclusive.”*

At trial Conlan’s attorney asked Ms. Fincher, Costco’s (former) Integrated Leave and Accommodation Specialist 3, about the circumstances of an amputee needing the accommodation of a prosthetic leg. Ms. Fincher agreed that if he had a prosthesis and could do the job, he would have no restriction. He, of course, would still be disabled and needing this

accommodation.<sup>23</sup> The same holds true for Conlan. Conlan should be able to enjoy “equal” aids to assist him in having a positive employment.

Conlan proffered a detailed reply to Costco’s no work restrictions ambiguity that Arnold admittedly found ambiguous.

Conlan provided the last note titled **ORDERS** in May of 2017.<sup>24</sup> In this note, Zimmerman elaborated that the service dog “Teddy” aided as an anxiolysis and ameliorative measure to control Conlan’s anxiety and panic disorders. Further, Conlan’s panic attacks were “episodic” or “in remission”. Thus, although he could return to work “without restriction”, in the sense he could, with the ameliorative assistance of a service dog, perform the functions of his position, he might have episodic panic attacks or his panic attacks could emerge from remission and the dog was needed to help Conlan through the attacks. Thus, Zimmerman’s statements that Conlan needed Teddy as an accommodation and that he could return to work cannot be considered as meaning that Conlan was not disabled under the new ADAAA

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<sup>23</sup> Document 121 Trial Transcript, Volume I Page 170 Lines 13- Page 172 Line 11

<sup>24</sup> Document 54-3 Exhibits; Plaintiff Brief in Opposition to Summary Judgment Page 32 & Document 145 Findings of Fact, Conclusions of Law and Order Page 14 ¶ 41

rules. Costco failed to consider these new rules before denying the requested accommodation.<sup>25</sup>

Was Costco's proffered reason for firing him—that Conlan violated Costco's leave of absence policy—was pretextual, and that the true reason was Conlan's disability and request for an accommodation of a service dog?

Throughout the entire "interactive process" Conlan complied with Costco's requests to provide more and more notes. Going as far as returning to Zimmerman's office for six different notes that provided documentation that Conlan was suffering from disabilities and needed an accommodation to assist Conlan. There was no question that Conlan truly wanted to return to work, as testified in Trial.<sup>26</sup>

It was testified at Trial that Costco was the party that placed Conlan on a leave of absence, the leave of absence that Conlan was ultimately terminated for.<sup>27</sup>

Costco continued to bury itself by testifying that they refused to inquire about ambiguities they had with Conlan, couldn't provide a reason to

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<sup>25</sup> Document 119 Trial Transcript, Volume II Page 99 Lines 6- Page 102 Line 3

<sup>26</sup> Document 121 Trial Transcript, Volume I Page 215 Lines 13-25 & Document 121 Trial Transcript, Volume I Page 111 Lines 8-17 & Document 119 Trial Transcript, Volume II Page 107 Lines 12-25

<sup>27</sup> Document 119 Trial Transcript, Volume II Page 61 Lines 5- Page 63 Line 17 & Document 119 Trial Transcript, Volume II Page 75 Lines 22- Page 78 Line 16

denying Conlan's accommodation request, admitted that they received medical information that Conlan should have his service animal at all times but denying the request, admitted that once an employee does not sign the authorization form for third-party consultants they are supposed to ask the employee to get the information for Costco from their healthcare provider (Costco denies attempting to ask Conlan), admits to Conlan offering to allow Costco to talk to his provider, and instead placed him on a leave of absence and then terminated him for the leave of absence that they placed him on.<sup>28</sup>

Does Title I of the ADA allow the accommodation of an emotional support animal or does the animal have to be a service animal?

The District Court failed to determine whether Teddy was a service dog protected by Montana and Federal Law, or merely a comfort dog.<sup>29</sup> Although the court erred in the date at which "Teddy" began training, the court was demonstrated what task "Teddy" performed firsthand in the courtroom.<sup>30</sup>

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<sup>28</sup> Document 119 Trial Transcript, Volume II Page 103 Lines 13- Page 118 Line 6

<sup>29</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 39 ¶ 59

<sup>30</sup> Document 145 Findings of Fact, Conclusions of Law and Order Page 3 ¶ 10

Title I of the ADA, which concerns itself with employment, does not mention animals at all. This opens the universe of possible accommodations in employment discrimination cases to include service dogs as well as emotional support animals. See, Sharan E. Brown, Legal Brief: Service Animals and Individuals With Disabilities Under the Americans With Disabilities Act (ADA), ADA Knowledge Translation Center (2019) p. 2.

In Doc. 124 p. 23, footnote 3, Costco admits that “if barking and alerting people around Conlan when he is having a panic attack qualifies Teddy as a service dog, then he is protected by Montana Law.” Conlan asserts that Teddy has proven to the Court that he is a true service dog. Conlan feigned a panic attack while testifying at trial and Teddy barked at a very high pitch.<sup>31</sup>

There was no need for Teddy to even be considered a service dog for Conlan’s Title I employment claim to succeed. The fact that he did serve a function and provide a valuable service in managing Conlan’s disabilities satisfies the requirements under Title III of the ADA pertaining to discrimination in public accommodations.

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<sup>31</sup> Document 119 Trial Transcript, Volume II Page 417 Lines 3-16

The question remains, what does the court rule regarding Title I of the ADA when referring to a reasonable accommodation, since the Title omits the discussion of service animals.

Was Conlan denied a Jury Trial, when he requested one in his Second Amended Complaint?

In Conlan's Second Amended Complaint and Demand for Jury Trial Doc. 31, it was stated:

*The Plaintiff Nicholas Conlan hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.*

Costco makes no response in their answer to plaintiff's second amended complaint (Doc. 33).

#### REASONS FOR GRANTING THE PETITION

The Supreme Court of the United States of America should grant this petition because it will set precedent in future service animal cases relating to Title I of the ADA.

Clarification in Title I of the ADA on what a reasonable accommodation is and whether a service animal or emotional support animal qualify as a reasonable accommodation (or both) qualify as

reasonable. The court can also settle disputes in what the employers' obligations are in the interactive process. This would most definitely include engaging in the interactive process directly with the employee, or if an employer can force an employee to use a third-party. The Court can decide when the employer crosses the line in violating the Americans with Disabilities Act when an employee requests an accommodation.

The Supreme Court can lay down the law on what medical documentation is sufficient in granting or denying a reasonable accommodation. In denying an accommodation request should the employer disclose the reason the request was denied and offer an alternative accommodation. Can the employer cause undue burden on the employee by requesting excessive documentation from an employee, the Supreme Court can make that distinction.

When navigating the interactive process, the Supreme Court can clarify if restrictions should be considered in episodic and/or ameliorative conditions, or whether restrictions should be considered at all in the interactive process. When Conlan suggested the prosthetic leg example where the employee had no restrictions as long as he had his prosthetic leg,

would that be sufficient in allowing an accommodation (in this case Conlan's service animal)?

When exploring the accommodation requests in the interactive process, the Supreme Court can make clear—does an employer have to grant an accommodation absent undue hardship. Other than financial, what would undue hardship look like to an employer.

Lastly, can an employer force an employee to take a leave of absence that (1) the employee didn't want nor request (2) the employee's medical provider didn't request and felt the employee was released to work with the accommodation request of a service animal.

#### CONCLUSION AND PRAYER FOR RELIEF

Lower Courts from around the nation need guidance as to what Title I of the ADA says for the interactive process and the growing service animal requests in both employment and public accommodation requests.

Conlan would like to mention that he has been fighting for justice in his case for five years now. In these five years, Conlan continues to extensively research key topics presented in this Writ of Certiorari. Conlan just finished this last semester with a 4.0 GPA. Conlan enrolled and has

continued to excel in Human Resource college courses that deliberated subjects argued in this very case. Semester after semester Conlan has searched for a case that argues a case submitted to the Supreme Court that deals with service animal requests regarding Title I of the ADA that were at least similar to Conlan's case. Conlan has yet to find a case that elaborates the subject matter.

Interestingly in Conlan's studies, he discovered and excelled in Business Ethics. Prior to enrolling in this course, Conlan had no idea what ethics were as they were never taught or discussed around Conlan. This is an interesting topic because ethically speaking Costco without a doubt should have reached out to Conlan and Conlan's medical provider directly and worked out the ambiguities they had to resolve the accommodation request Conlan presented. Costco is a multi-billion dollar corporation that employs people with college degrees that taught them about these dilemmas and how to not only legally handle accommodation requests, but how to handle them ethically speaking.

Conlan has no college degree and has been in special education dating back to the first grade. With Conlan applying for an accommodation, it

should have been not only perceived but also apparent that Conlan had some sort of disabilities and Costco should have investigated. Why would an employer attempt ruin an employee's life by denying an accommodation without good-faith exploration?

Conlan has suffered severe consequences due to Costco's negligence. As Costco continues to change its defenses, Conlan has maintained the same storyline the past five years. Not once has Conlan paved an alternative course for the lower courts to be misguided on. Costco has varying facts that conflict each other from the Human Rights Bureau investigation, through testimony in trial, even through the 9<sup>th</sup> Circuit.

In engaging in the interactive process in college and previous employment, Conlan has only been engaged with good-faith exploration in exploring equal enjoyment opportunities in school and in previous employment. Only while employed at Costco has Conlan encountered rigorous policies and practices that hindered Conlan from equal employment opportunities.

Not once did Costco suggest that they were even considering approving Conlan's accommodation request, as they admittedly have denied

all employees accommodation requests that requested to have a service animal in the workplace. Conlan only wanted the service animal when he traveled, hence why he applied for a lateral position change as a last resort to finally requesting the accommodation of a service animal.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Nicholas Conlan  
Plaintiff Pro Se

DATED this 24<sup>th</sup> day of December 2022.