

Rule 34

(3)

23-5765

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

AUG 13 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Lewis Eugene Day — PETITIONER
(Your Name)

vs.

Anne L. Precythe Dir. BDO, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. EIGHTH CIRCUIT COURT of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lewis Eugene Day #52875
(Your Name)

1010 W. Columbia St.
(Address)

Farmington, Missouri 63640
(City, State, Zip Code)

(573) 218-6792-Ask For Hoc (6)
(Phone Number)

QUESTION(S) PRESENTED (5)

1.) 'Violations' of "Americans with Disabilities Act- ADA".

2.) 'Violations' of "First Amendment Rights To Freedom of Speech".

When One Uses First Amendment Right To File An Complaint, Govern-
ment Entity 'Can Not' Take Unlawful Actions Against Complainant
For Exercising Those Rights.

3.) 'Violations' of "U.S. Code Title II-3, 11000 Retaliation, Coercion".

For Exercising My Rights Pursuant To Prison Grievance Procedure Seeking Redress.

4.) 'Violations' of "Civil Rights", 'Civil Liberties'.

'Unlawful Commitment' Attempting To 'Cover-Up' Those Violations of Rights.

5.) In 'Violations' of My "Constitutional Rights" To 'Life', 'Liberty',

And 'Pursuit of Happiness'.

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(5) LIST OF PARTIES

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

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

Anne L. Precythe, Dir, MO DOC; Julie Kempker, Dir., MO Div.
of Probation & Parole.

(5) RELATED CASES

Day v. Precythe, et al., No: 23-04009-CV.-C-BCW-P,
U.S. District Court For The Western District of Missouri
Central Division - Jefferson City.

Judgment Entered February 8, 2023

Day v. Precythe, et al., No: 23-1833,

U.S. Court of Appeals For The Eighth Circuit

Judgment Entered May 26, 2023

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CASES

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(Muller v Costello, 187 F.3d 298 7Accom. Disabilities Dec. (CCH) §7-030,-

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STATUTES AND RULES

Civil Rights § Civil liabilities-- Governmental Immunity-- Official Capacity Suit 44 USC § 192410

Title II Prohibits "Public Entities" From Excluding Disabled Individuals From Or Denying Them The Benefits -

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The Eleventh Circuit "Erred" In Dismissing The Imates Title II of The ADA Claims That Were Based On -

- Such Unconstitutional Conduct, This Term Includes Prisons

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(P.S.1)

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

(Pg 1) → (6) OPINIONS BELOW ← (6) (Pg 1)

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix AP₂ to the petition and is

☒ reported at 1A Day v. Precythe, 2023 US App Lexis 18096; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix AP₃₋₅ to the petition and is

☒ reported at Day v. Precythe, 2023 US Dist. Lexis 72425; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

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

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

'After Cover is 5'

(10) JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 26, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 14, 2023, and a copy of the order denying rehearing appears at Appendix App. 6.

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

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

☐ For cases from **state courts**:

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

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

'Appendix B pg. 7'

(11) CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title II Prohibits "Public Entities" From Excluding Disabled Individuals From Or Denying Them The Benefits of Programs, Activities, Or Services, And From Otherwise Discriminating Against Them See (42 USC § 12132). Rights § 12.5 Liability - Local Gov. Officials - HN Led HN (4) HN Led HN (4B). Local Government Officials Sued In Their Official Capacities Are "Persons" Under 42 USC § 1983. Thus Insofar As Title II of The ADA Created A Private Cause of Action For Damages Against States For Conduct That Actually Violated The Fourteenth Amendment, Title II of The ADA Validly Abrogated State Sovereign Immunity. USCS Amend. 11 Part 1 of 2 - State 'Was Not' Protected By Eleventh Amendment Immunity From Claims Under Americans With Disabilities Act Since Congress Validly Abrogated State's Immunity In Enacting ADA. See (HN5) & (HN6). (Disability Discrimination, ADA Enforcement) The Provisions of The ADA 1990, 42 USC § 12131-12165, Are Enforceable Against A State Because The Enforcement of The Legislation Was A Valid Exercise of Congress' U.S. Const. Amend. XIV § 5 Enforcement Power, And For That Reason 'Does Not' Infringe Upon Louisiana's Right Under U.S. Const. Amend. XI.

STATEMENT OF THE CASE

The State of Missouri 'Unlawfully Reincarcerated' Me (Feb. 15, 2012)
Thru Their (Unconstitutional Handling of Parole Revocation Proceedings) As
Determined By U.S. District Judge (Stephen R. Bough) 'Nov. 12, 2020'.
The State "Never Released" Me 'Violated' My "Civil Rights-ADA" By 'Not Honoring' My
"Deferments" By 'Mental Health' To Take MoSOP On The 'Streets' One On One. Committed
Parole Board "Misconduct" By Not 'Advising Me' of 'Nor' Giving Me An 'Copy' of 'Nor'
"Released Me" On My Requested And 'Granted' 'Advance Release' Date of (Aug. 2, 2013)
With Special Condition of MoSOP 'Taken Away'. Not 'Advising Me' of 'Nor' Giving
Me An 'Copy' of 'Nor' Giving Me "My Hearing" For My 'Reconsideration Hearing Date' of
'(1/15/15)' For My Last 'Conditional Release Date', (R Date of (1/29/15)) "Never -
Released" Me For My "Mandatory Release Date" of (1/29/15) 'With Deferment By
Mental Health To Take MoSOP On The 'Streets' One On One. And By "Cancelling" My
Parole Dates of '(9/12/14)'; And '(1/29/17)' While I Was 'Deferred' By Mental
Health To Take MoSOP On The Streets One On One.

It Is Very 'Clear And Evident' The State of Missouri 'Knowingly'
And 'Willingly' "Violated" My 'Constitutional Rights', 'Civil Rights-ADA',
'Civil Liberties', 'Violated' U.S. Code Title II-3.11000-Retaliatioⁿ, Coercioⁿ.
In An 'Attempted' Cover-Up With An "Illegal" SVP Commitment For
Financial Gain With An Lifetime Commitment.

Illegally Committed Pursuant To Retaliation For Exercising My
Rights Pursuant To 'ADA' And Parole Board 'Misconduct' When
Plaintiff Sought 'Redress' By Prison Grievance Procedure.

My Last Deferment Was Til '(Feb. Or March 2018)', My Max. Date
Was '(1/29/18)'. I Can "Never" Be An SVP, 'Nor' Considered
As Being An SVP And Be 'Deferred' To Take Mo SOP On The 'Streets'
One On One At The "Same Time" Per 'State Statute', 'State Law', And 'State-
Mental Health Policies And Procedures'.

That's The Smoking Gun "I'm Not" An SVP, Along With The 'Court Ordered'-

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- Determinations of Evaluation By "Mo. Dept. of Mental Health" Stating,

"I'm Not An SVP, I 'Don't Have' An Mental Abnormality, And Mental Health

'Did Not' Even Want Me". The State 'Violated' State Statute (632,483.1)

- Which 'Clearly Mandates' That SVP Notices Be Given (360) Days Prior To

- Your 'Presumptive/Anticipated' Release Date 'Not' Mandatory Or Actual

- Release Date 12/12, Or At Earliest Time Convenient If Back On Parole Viol-

- ation. The State Filed For Commitment (84) Days Prior To My Max. =

- Date of (1/29/18), On (6 Nov. 2017) Three (3) Days After I 'Filed'

- 'IRR/Grievance' For Violations of My Civil Rights ADA And Parole Board

- Misconduct As Advised By "MO. ACLU".

- 'Clearly' And 'Evidently' In 'Violations' of U.S. Code Title II-3, 11000-

- Retaliation Or Coercion. I 'Had Been' Back On My Unconstitutional

- Parole Revocation Proceeding For Six (6) Years, I Was Given One (1)

- "Parole Hearing" In Six (6) Years, In 'Violation' of The "Law".

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- I 'Did Not' Even Have To Wear An "Ankle Bracelet" While I Was Out
- On 'Parole' For Over Two (2) Years, Cause I "Was Not" An 'Special Risk'
 - Nor 'Threat' To The "Public"! 'Grave Injustice', The Same
 - Constitution I 'Swore' To "God" To Uphold And Protect Even Until
 - Death, I 'Never' Received In An Court of Law. I Was 'Unlawfully'
 - Convicted (32) Years Ago, I Did That Railroaded Unlawful Conviction
 - Time. 'Denied' My 'Due Process of Law', My Attorney 'Failed' To
 - 'Investigate', 'Talk To', 'Nor' Call Any of My Witnesses To Trial On My
 - Behalf. My Attorney 'Committed' "Affirmative Misrepresentation Defense,"
 - Also During The 'Offer of Proof', The 'Pretrial/Preliminary Hearing' My Atto-
 - rney 'Failed' To Strike The Court For An "Dismissal" When There Was 'No Case' To Be Tried.

- What 'Truely', 'Truely' Hurts 'Soo', 'Soo' Badly "I'm Not" An 'Threat' To
- 'Anyone', Why Am I "Illegally", "Unlawfully" Confined To "Die Here" ?!!

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- The U.S. District Court Western District of Missouri

Central Division- Jefferson City, 'Erred' Summarily Dismissed

- Without Prejudice For Failure To State A Claim.

The U.S. Eighth Circuit Court of Appeals 'Erred' Summarily

- Affirmed The Judgment of The District Court.

REASONS FOR GRANTING THE PETITION

For Grave "Violations" of 'Constitutional Rights', 'Civil Rights-ADA', And 'Civil-Liberties' Has Occurred. Civil Rights § 27 Civil Liabilities-Governmental-Immunity-Official-Capacity Suit--Headnote: Led HN [3] + [3] With Respect To A Suit For Damages Under 42 USC § 1983--Which Provides That Any "Person" Acting Under Color of State Law In Violating Another's Federal Rights Is Liable To The Injured Party--Brought Against A State Official In His Or Her 'Official Capacity', Because The Real Party In Interest Is The 'Government Entity' And Not The Named Official. Title II Prohibits "Public Entities" From Excluding Disabled Individuals From Or Denying Them The Benefits of Programs, Activities, or Services, And From Otherwise Discriminating Against Them. See (42 USC § 12132).

Qualified Immunity "Does Not" Apply To Government Employees Sued Solely In Their 'Official Capacities'. Rights § 12.5 Liability--Local Gov. Officials HN Led HN (4) Led HN [4B] Local Government Officials Sued In The Official Capacity Are "Persons" Under 42 USC § 1983--Which Imposes Civil Liability On Any Person Who Deprives Another Of His Federally Protected Rights--In Those Cases In Which A-

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- Local Government Would Be Suable In It's Own Name

Thus Insofar As Title II of The ADA Created A Private Cause of Action For Damages Against States For Conduct That Actually Violated The Fourteenth Amendment, Title II of The ADA Validly Abrogated State Sovereign Immunity.

The Eleventh Circuit "Erred" In Dismissing The Inmates Title II of The ADA Claims That Were Based On Such Unconstitutional Conduct. This Term Includes State Prisons. Title II of The Act Authorizes Suits By Private Citizens For Money Damages Against Public Entities That Violate 42 USCS - §12132, 42 USCS §12133 Incorporates By Reference 29 USCS §794(A) -

- Americans With Disabilities Act - State "Not Immune" From Suit Under Eleventh Amendment. USCS, Amend. 11, Part 1 of 2 - State 'Was Not'

Protected By Eleventh Amendment Immunity From Claims Under Americans With Disabilities Act Since Congress Validly Abrogated State's Immunity In-

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Enacting ADA, Congress Intended ADA To Provide Clear And Comprehensive National Mandate For Elimination Of Discrimination Against Peoples With Disabilities And To Ensure That Federal Government Played Central Role In Enforcement Of Standards Through Full Use Of It's Legislative Power Under Section 4 of Fourteenth Amendment And Commerce Clause.

(Muller v. Costello, 187 F.3d 2987 Accom. Disabilities Dec. (CCA) ¶ 7-030,

9 AM Disabilities Cas. (BNA) 1064, 1999 U.S. App. Lexis 18651-2nd Cir. 1999).

Under Title II of The ADA, Plaintiff Can Bring Claims Against Individual 'Defendants' In Their 'Official Capacities' Because Actions In Their Official Capacities Qualify Under Definition of Public Entity. A Suit Against Individual Prison Officials In Their Official Capacities Is The Same As A Suit Against The DOC And The 'State of Missouri'. "Kentucky v. Graham (1985)".

'(HMS)' "State Sovereign Immunity, State Immunity" -

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"Congress Abrogated" The State's Sovereign Immunity Under "U.S. Const. Amend-
ment XI When It Enacted The Americans With Disabilities Act, 42 USC §
12101 et Seq. (HNG) Americans With Disabilities Act Defenses → The U.S.
Court of Appeals For The Ninth Circuit Conducted The Necessary Congruence
And Proportionality Tests And Determined That Title II of The ADA of
1990, 42 USC § 12101 et Seq., Does Not Exceed Congressional Auth-
ority Under 'U.S. Const. Amend. XIV § 5'. Accordingly, The Ninth-
Circuit Concluded That Congress Validly Abrogated The 'States' Eleventh-
Amendment Sovereign Immunity Under Title II.

(Disabilities Discrimination, ADA Enforcement)

The Provisions of The ADA 1990, 42 USC §§ 12131-12165 Are
Enforceable Against A State Because The Enforcement of The Legislation
Was A Valid Exercise of Congress' U.S. Const. Amend. XIV § 5 Enforcement-

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Power, And For That Reason 'Does Not' Infringe Upon

Louisiana's Right Under U. S. Const. Amend. XI.

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"(Constitutional And Statutory Provisions Involving 'Citation/Text')"

Civil Rights § 27 Civil Liability -- Government Immunity -- Official Capacity

- Suit --- Headnote: Fed HN [3] ↓ [3] With Respect To A Suit For Damages

- Under 42 USCS 1983 -- Which Provides That Any "Person" Acting Under Color of State

Law In Violating Another's Federal Rights Is Liable To The Injured Party -- Brought

- Against A State Official In His Or Her 'Official Capacity', Because The Real Party

- In Interest Is The 'Government Entity' And 'Not' The Named Official, (1) For

- Liability To Be Established, The Government Entity's Policy Or Custom Must

- Have Played A Part In The Violation of Federal Law, And (2) The Only Immunities Avail-

- able To The State Official Are Those That The Government Entity Possesses.

Title II Prohibits "Public Entities" From Excluding Disabled Individuals From

- Or Denying Them The Benefits of Programs, Activities, Or Services, And From Otherwise

- Discriminating Against Them. See (42 USCS § 12132).

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Qualified Immunity "Does Not" Apply To Governmental Employees

Sued Solely In Their 'Official Capacities' Rights 12.5 Liability--

- Local Gov. Officials - HN Led HN (4) Led HN [4B]. Local Government

- Officials Sued In Their Official Capacities Are "Persons" Under 42 USCS 1983---

- Which Imposes Civil Liability On Any Person Who Deprives Another of His Federally

- Protected ^{is} Protected Rights --- In Those Cases In Which A Local Government Would

Be Suable In It's Own Name. Thus Insofar As Title II of The ADA Created

- A Private Cause of Action For Damages Against States For Conduct That Act-

- ually Violated The Fourteenth Amendment, Title II of The ADA Validly Abrogated

State Sovereign Immunity. The Eleventh Circuit "Erred" In Dismissing

- The Inmate's Title II of The ADA Claims That Were Based On Such Unconstitutional

- Conduct. This Term Includes State Prisons. -

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Title II of The Act Authorizes Suits By Private Citizens For Money Damages

Against Public Entities That Violate 42 USCS § 12132, 42 USCS § 12133 In-

-corporates By Reference 29 USCS § 794A)-Americans With Disabilities

Act- State "Not Immune" From Suit Under Eleventh Amendment.

USCS, Amend. 11, Part 1 of 2- State 'Was Not' Protected By Eleventh Amendment

Immunity From Claims Under Americans With Disabilities Act Since Congress Validly

Abrogated State's Immunity In Enacting ADA, Congress Intended ADA To Provide

Clear And Comprehensive National Mandate For Elimination of Discrimination Against

Peoples With Disabilities And To Ensure That Federal Government Played Central

Role In Enforcement of Standards Through Full Use of It's Legislative Power

Under Section 4 of Fourteenth Amendment And Commerce Clause. (Muller v. -

-Costello, 187 F.3d 298 7Accom. Disabilities Dec. (CEH) 7-030, 9AM Disabi-

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-ities Cas. (BNA) 1064, 1999 US App. Lexis 18651 (2nd Cir. 1999).

Under Title II of The ADA, Plaintiff Can Bring Claims Against Individual Defendants In Their Official Capacities Because Actions In Their Official Capacities Qualify Under Definition of Public Entity. A Suit Against Individual Prison Officials In Their Official Capacities Is The Same As A Suit Against The DOC And The 'State of Missouri'. "Kentucky v. Graham (1985)".

Claims Against Individual Defendants In Individual Capacities, However, Do Not Qualify Under The ADA Definition of Public Entity.

(HN2) State Sovereign Immunity, State Immunity The Eleventh Amendment Prohibits A Citizen From Suing A State For Monetary Damages In Federal Court Without It's Consent. However, Congress May Abrogate The State's Eleventh Amendment Immunity When It Both Unequivocally Intends To Do So And Acts -

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- Pursuant To A Valid Grant of Constitutional Authority, Namely It's
- Fourteenth Amendment § 5 Powers. (H5)
- '(H5)' "State Sovereign Immunity, State Immunity"
- "Congress Abrogated" The "States' Sovereign Immunity Under" US Const.
- Amendment XI When It Enacted The Americans With Disabilities Act, 42 USC § 12101 et Seq.
- (H6) Americans With Disabilities Act, Defenses → The U.S. Court of Appeals
- For The Ninth Circuit Conducted The Necessary Congruence And Proportionality
- Tests And Determined That Title II of The ADA of 1990, 42 USC § 12101 et Seq.,
- Does 'Not' Exceed Congressional Authority Under US Const. Amend. XIV § 5.
- Accordingly, The Ninth Circuit Concluded That Congress Validly Abrogated The
- 'States' Eleventh Amendment Sovereign Immunity Under Title II.

(Disability Discrimination, ADA Enforcement) -

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- The Provisions of The ADA 1990, 42 USC §§ 12131-12165, Are
- Enforceable Against A State Because The Enforcement of The Legislation
- Was A Valid Exercise of Congress' U.S. Const. Amend. XIV § 5 Enforcement
- Power, And For That Reason 'Does Not' Infringe Upon
- Louisiana's Right Under U.S. Const. Amend. XI.

CONCLUSION

Dear United States Supreme Court of America, For The Federal Questions, Laws Civil,
And Constitutional I Pray That This Supreme Court 'Review' And Grant Certiorari To The
U.S. Supreme Court,

The petition for a writ of certiorari should be granted. For 'Grave Injustice' Has Occured
For Far Too Long. ♦♦♦

Respectfully submitted,

Lewis Eugene Day

Date: September 27, 2023

Certified & Verified Pursuant To 28 USC § 1746