No. 24-1064

In the Supreme Court of the United States

John Doe,
Petitioner

v.

State of Tennessee, et al.
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1) Does Title II of the Americans with Disabilities Act prohibit disability discrimination in state court proceedings?
2) What is the definition of "discrimination" under the Americans with Disabilities Act ?
3) What is the factual pleading standard for determining the issue of sovereign immunity?
4) Is sovereign immunity abrogated when a plaintiff alleges a state court violated ADA Title II and his fundamental parent-child rights on the basis of disability discrimination?
5) Is a limited remand by a U.S. Court of Appeals proper in pre-trial civil cases and if so, was the September 2020 Court of Appeals order a proper limited remand?

Parties

Petitioner-Appellant-Plaintiff:

John Doe

Respondents-Appellees-Defendants

State of Tennessee;
William Lee, in his official capacity, Gov. of Tenn.;
Johnathan Skermetti,[1] in his official capacity,
Attorney General of the State of Tennessee;
Michelle Long[1], in her official capacity,
Administrator of State Courts, State of Tenn.,
Hon. Craig Monsue, in his Official Capacity, Judge,
Court of General Sessions of Dickson Co;
Hon. David Wolfe, in his Official Capacity
Chancellor of Dickson County Chancery Court;
Dickson County Chancery Court; and,
Court of General Sessions of Dickson County, Tenn.

Proceedings

John Doe et al. v. State of Tennessee et al., No. 24-5280 United States Court of Appeals for the Sixth Circuit. Judgement entered October 28, 2024

John Doe et al. v. State of Tennessee et al., No. 3:18-cv-00471, United States District Court for the Middle Dist. of Tenn. Judgement entered March 29, 2023.

John Doe et al. v. State of Tennessee et al., No. 19-6019, United States Court of Appeals for the Sixth Circuit. Judgement entered Sep.18, 2020.

John Doe et al. v. State of Tennessee et al., No. 3:18-cv-00471,U.S. Dist. Court for the Middle Dist. of Tenn. Judgement Entered - July 12, 2019.

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[1] Johnathan Skermetti and Michelle Long are automatically substituted for Herbert Slatery and Deborah Taylor Tate, respectively, by virtue of Fed. R. Civ Pro. R. 25(d); Fed. R. App. Pro. R. 43(c)(2), or Supreme Ct R. 35(3).

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No orders issued in the proceedings below are known by Petitioner to be published in any official or unofficial reporters.

Basis of Jurisdiction in the Supreme Court

This is a petition for Writ of Certiorari from the United States Court of Appeals for the Sixth Circuit, judgment entered October 28, 2024. No petition for rehearing or rehearing *en banc* was filed subsequently. A 60 day extension was granted by the Clerk of the Supreme Court, February 3, 2025 under Rule 14.5. This case originated in the United States District Court for the Middle District of Tennessee, which had jurisdiction under 28 U.S.C. §§ 1331 and 1343.

Constitutional Provisions, Statutes, and Regulations Involved in the Case

The Supremacy Clause (Article VI, Cl 2) of the United States Constitution:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding"

The Due Process and Enforcement Clauses (Secs. 1 & 5) of the 14th Amendment to the United States Constitution:

Section 1. 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.

...

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Americans with Disabilities Act (ADA), Title II, Part A, and Title V, in pertinent part, codified at 42 U.S.C. §12131-12134, 12201-12203, 12205a:

Title II

Sec. 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means 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, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Sec. 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies,

procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

Sec. 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation

Barriers Compliance Board in accordance with section 12204(a) of this title.

...

Title V

Sec. 12201. Construction

(a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III.

...

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

...

(f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii), specifying that reasonable

modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

...

(h) Reasonable accommodations and modifications

A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) solely under subparagraph (C) of such section.

Sec. 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

...

Sec. 12205a. Rule of Construction Regarding Regulatory Authority

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this chapter includes the authority to issue regulations implementing the

definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

28 CFR Part 35, Subpart B—General Requirements, in pertinent part

§ 35.130 General prohibitions against discrimination
(a) No qualified individual with a disability shall, on the basis of 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 public entity.

(b)
(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—
(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless

such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; - (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are

subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7)

(i)A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(ii) A public entity is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of disability at § 35.108(a)(1)(iii).

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

...

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

...

Section 35.139 Direct threat.
(a) This part does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.

(b) In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

Statement of the Case

John Doe is the father of three children, referred to in lower court proceedings as Johnsons Doe I, II, and III. Doe had been a stay-at-home parent for much of 2015-2017. Doe's marriage to the children's mother, Corrine Oliver,[1] lasted until Doe literally wanted to kill himself. Contemporaneous with their separation, Doe was hospitalized for February 1-5, 2018 to stabilize for suicidal ideation. Doe had no prior history of mental heath hospitalizations. He was diagnosed with depression and anxiety, prescribed medication and released as no longer a threat to himself and others.[2]

From the time of his release until February 13, 2018, John Doe stayed with family out of state. While Ms. Oliver was aware that Doe had been released from the hospital, she did not know his whereabouts during this time and she took no legal action then.

Knowing Doe's divorce filing was imminent, on March 1, 2018, Corrine Oliver sought an order of protection on behalf of her and the Doe children in the Dickson County General Sessions Court. Ms. Oliver's written petition itself leans heavily on Doe's hospitalization, mental health diagnosis, treatment, and generalized statements about escalating and unpredictable behavior. Judge Craig Monsue of the Dickson County General Sessions Court, issued the *ex parte* "no contact" order pending a hearing. The Dickson County General Sessions Court is a county-funded court and the appropriate venue under state

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[1] In the proceedings below, Doe had initially referred to Corrine Oliver as "Jane Doe," but she opposed being referred to pseudonymously.

[2] Petitioner's focus is here is legal. I will leave mental health statistics and research aside for now.

law for such a petition when a divorce has not yet been filed.

At the ensuing hearing, where the burden of proof under state law was merely preponderance of the evidence[3], Corrine Oliver called as a witness the sheriff's deputy who had conveyed Doe to the hospital for the mental health episode in the late hours of January 31, 2018. While Doe was admittedly suicidal, the Deputy testified that Doe made no threats against anyone and was cooperative. Ms. Oliver's lawyer argued on her behalf that Doe's mental health and not being included in Doe's treatment was the reason she was scared and needed protection. In fact, Ms. Oliver's counsel compared Doe's mental health to a potentially rapid dog on the loose. General Sessions Judge Craig Monsue issued a domestic abuse order of protection, ordered that Doe have "no contact" with Ms. Oliver or the Doe children, and further expressly stated that he was not making a custody determination, deferring to the Chancery Court.[4]

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[3] "Preponderance of the evidence" is the right standard for a domestic abuse order between two adults, but it is not the proper standard for entering a no contact order between a parent and child. Doe had sought to address this in the courts below.

[4] At issue in this case is the "no contact" orders as it relates to the Doe children and Monsue failing to make a custody determination. A fair understanding of the testimony presented in the state courts is that the Doe-Oliver relationship had degraded to the point both parties admitted it had become increasingly turbulent, and at times had been *mutually* physically abusive. Domestic abuse and child abuse are distinguishable under the law. Likewise, a a domestic abuse finding does not necessitate Monsue enter a "no contact" order regarding the children and to expressly not consider child custody. There was no child protective services or law enforcement investigation regarding domestic or child abuse as

There was no discussion of continuing the parent-child relationships with least restrictive measures.

In the meantime, Doe had filed for divorce. Upon the order of protection being issued in the general sessions court, the Dickson County Chancery Court, a state-funded court, had jurisdiction to modify the order of protection and make child custody determinations within the divorce proceedings. Initially, the case was assigned to Judge David Wolfe.

Wolfe never permitted Doe a temporary hearing to regain visitation with his children during the pendency of the divorce proceedings. Wolfe never made a finding of the children's best interests. Wolfe did not apply the child custody factors in the Tennessee statutes. All Wolfe did was express concern about Doe's mental health and set aside any decision or proper hearing.

Even after Judge Wolfe had a report in his hand indicating Doe's medication was likely to address any anger issues, Judge Wolfe utilized a stigma that Doe was a potential danger to his children based solely on having a mental health diagnosis.

Judge Wolfe and the Tennessee Courts do not recognize the applicability of ADA Title II in state court proceedings. Judge Wolfe never considered any evidence in the case during the six months the case was before him. The filing of the second amended complaint in this case resulted in Judge Wolfe recusing himself in the divorce proceeding.

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of the hearing. To date, Doe has never been charged or convicted with domestic abuse or child abuse, nor to his knowledge has he even been investigated. For her part, Ms. Oliver has subsequently been expressly found to be not credible in later state court proceedings.

As outlined in the proffered second amended complaint, at Doe's divorce trial in February 2019 conducted by another state judge, the "no contact" order regarding the children and Ms. Oliver was lifted. The second court-ordered psychologist would testify at trial in February 2019 that there is no scientific basis that a depressed parent poses an increased risk of harm to their children. Doe was effectively re-united with his children in early Spring 2019 after a brief period of professionally supervised visitation that found no issues. Doe was on the same mental health medication in Spring 2019 as he was in February 2018. The dismissal of Doe's Title II ADA claims in the courts below appear to based on alleged failure to state a claim.

Doe notified the district court when the no contact order had been lifted, thus the immediate injunctive *relief* Doe had sought was moot.

In the first appeal order, the sixth circuit found many of Doe's claims moot on this basis, even though Doe asserted in briefs that he was still subject to certain state laws and practices while his children were minors and thus the issues were capable of repetition yet evading review. See Sixth Circuit September 18, 2020 order, Appendix 61-62.

On remand, Doe sought to amend and supplement the complaint. When Doe had filed the original complaint, he had not anticipated the federal court would act more slowly that the state court and did not plead, properly, that he and his children were still under jurisdiction of certain statutes and thus matters were capable of repetition, yet evading review. However, Doe was denied in the district court from amending and supplementing the complaint because the first appeal order was purportedly a limited remand and the court of appeals later agreed. Appendix 12.

Argument

Our federal Union is less perfect when state courts ignore and openly mock federal law.

The Americans with Disabilities Act, signed into law by a George H.W. Bush on July 26, 1990, was intended to be a sweeping civil rights act to prohibit discrimination against individuals based on disability. *See generally* 42 U.S.C. §12101. Unlike some statutes which address a fleeting emergency of the day, Congress has acted to give effect to the ADA's original sweeping intent when this Court has given the act a limited interpretation. *See* Findings and Purposes of ADA Amendments Act of 2008, Pub. L. 110-325, §2, Sept. 25, 2008, 122 Stat. 3553.

Question #1 - Does ADA Title II prohibit disability discrimination in state court proceedings?

ADA Title II was intended to apply to all levels of state and local government and *all* such public entities' activities. *Innovative Health Systems v. City of White Plains,* 117 F.3d 37, 44-45 (2nd Cir. 1997); *Yeskey v. Com. of Pa. Dept. of Corrections*, 118 F. 3d 168, 170 (3rd Cir. 1997); *Johnson v. City of Saline*, 151 F. 3d 564, 569-570 (6th Cir. 1998); *Lee v. City of Los Angeles*, 250 F. 3d 668, 691 (9th Cir. 2001); *Bledsoe v. Palm Beach Cty, Siol and Water Conserv,* 133 F.3d 816, 821-822 (11th Cir 1998). *See also* Preamble to 1991 Regulations, contained at 28 CRF Chap. 1, Part 35, Appendix B, Comments on Sec. 35.102. The Fifth Circuit has been less definitive, applying ADA Title II to "all the operations" of government. *Frame v. City of Arlington* 657F.3d 215, 225 (5th Cir 2011).

The other circuits seem to be following a case-by case approach, as appears to be this Court's

practice thus far. *See e.g. Pennsylvania Dept. of Corrections v. Yeskey,* 524 U.S. 206 (1998) (ADA Title II applies to state prisons.) *Tennessee v. Lane,* 541 U.S. 509 (2004)(ADA title II applies to physical access to the courts.)

Regardless of whether the Court answers broadly[5] or narrowly, certainly the Dickson County Chancery and General Sessions Courts are subject to ADA Title II. The state courts clearly meet the definition of a public entity, as defined in 42 U.S.C. § 12131. For the purposes of 42 U.S.C. § 12131, a court, through its *activities* (hearings, trials, orders, court-ordered programs, judgements, etc.) bestows the *benefit* of equal justice under the law and non-violent resolution of grievances and disputes necessary to an orderly society.

The promise of protection for qualifying individuals with a disability does not reach to the state and county courts of Tennessee. In addition to the county-specific allegations herein, Tennessee recently flagrantly decided that Title II of the ADA does not apply to its juvenile court proceedings or to its child services agency. *In re Kamdyn,* E2023-00497-COA-R3-PT (Tenn. Ct App. 2024).[6]
In doing so, Tennessee appears to have joined Alabama, Hawaii, Florida, Massachusetts,

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[5] It appears that as a matter of statutory interpretation, the federal court of appeals are further splitting on the issue of whether public employment is covered under ADA Title I or Title II as a manner of statutory interpretation. *See Brumfield v. City of Chicago,* 735 F. 3d 619 (7th Cir. 2013). While this case could help clarify the split, if answered broadly, the specific issue is not directly presented here, as thus far, Doe's state employment remains unaffected.

[6] Unless expressly marked as non-precedential, cases not designated for publication are citable as precedent in the Tennessee Court of Appeals.

Mississippi, and South Dakota. *S.G. v. Barbour Cnty. Dep't of Human Res.*, 148 So.3d 439, 446-47 (Ala. Civ. App. 2013); *In re Doe*, 100 Haw. 335, 60 P.3d 285 (2002); *M.C. v. Dept. of Children and Families*, 750 So.2d 705, 706 (Fla.Dist.Ct. App.2000); *In re Adoption of Gregory,* 434 Mass. 117; 747 N.E.2d 120 (2001) *Curry v. McDaniel,* 37 So.3d 1225, 1233 (Miss. Ct. App. 2010; *Arneson v. Arneson,* 670 N.W.2d 904, 911 (S.D. 2003).

Other state courts have not been so defiant. The issue regarding applicability of the ADA in state court proceedings is expressly noted as unresolved in Iowa and apparently Virginia. *In re JL*, 868 N.W.2d 462, 467-68 (Iowa Ct App 2015). *Harris v. Virginia*, Case # 1126-21-4, (Vir. Ct. App 2022, J. Rapheal, *concurring.)* Alaska, Colorado, North Carolina, Utah, Wisconsin, and the District of Columbia have either considered their court procedures in compliance with the ADA or require separate consideration of the ADA. *J.H. v. State, Dep't of Health & Soc. Servs.*, 30 P.3d 79 (Alaska 2001); *In re S.K.*, 440 P.3d 1240, 1250 (Colo. App. 2019););); *In re C.M.S.*, 184 N.C.App. 488, 646 S.E.2d 592, 595 (2007). *State ex rel. K.C. v. State*, 362 P.3d 1248, 1251-53 (Utah 2015); *In re Torrance P.*, 187 Wis.2d 10, 522 N.W.2d 243, 245-46 (Ct.App.1994); *In re H.C.*, 187 A.3d 1254, 1266 (D.C. 2018).

California has enacted a statute adopting Title II of the ADA as state law, though its jurisprudence on the applicability of the ADA in state courts appears to the contrary. *Compare* Calif. Civ. Code, Div. 1, Sec. 54.1(d) *with In re M.S.*, 95 Cal. Rptr. 3d 273 (Cal. Ct. App. 2009). Connecticut now clearly accepts the ADA application to juvenile services, but not necessarily its courts. *In re Elijah C.*, 165 A. 3d 1149 (Conn. 2017).

Asked to expressly resolve this apparent conflict between its own case law and the Tennessee courts on this appeal, the Sixth Circuit chose to avoid expressly addressing it, instead seeming to impliedly accept the reach of ADA Title II to state courts.

This case presents an opportunity to resolve nearly 35 years of ambiguity regarding the applicability of the Americans with Disabilities Act in state court proceedings.

Question #2 - What is the definition of "discrimination" under the Americans with Disabilities Act?

ADA Title II prohibits discrimination against a qualified individual with a disability, but does not define "discrimination" as is done in Title I. *Compare* 42 U.S.C. §12132 *with* §12112(b).

The ADA expressly gives the U.S. Attorney General rulemaking authority. The Attorney General's ADA Title II regulations prohibit discriminatory outcomes and lost opportunities; discriminatory effects, as well as complete exclusions; perpetuating or aiding another entity's discrimination, segregation based on disability; and discriminatory surcharges. 28 CFR § 35.130

In deciding a case under §504 of the Rehabilitation Act, this Court previously stated, that disability discrimination was "most often the product, not of invidious animus, but rather of thoughtlessness—of benign neglect," and could not be so limited as to "proscribe only conduct fueled by a discriminatory intent." *Alexander v. Choate,* 469 U.S. 287, 296 (1985). This is of note because the ADA and the Rehabilitation Act are generally given consistent interpretation.

However, the Sixth Circuit has joined other circuits in imposing an intentional discrimination requirement for monetary damages under Title II of

the ADA. *Knox County v. M.Q.*, 62 F.4th 978, 999–1000 (6th Cir. 2023) Whether intent is a requisite under Title II of the ADA and the appropriate methodology of determining intent has not been directly considered by this Court.

Question #3- What is the factual pleading standard for determining the issue of sovereign immunity?

This Court has not previously expressly set a pleading standard for determination of Sovereign Immunity. In *U.S. v. Georgia,* 546 U.S. 151 (2006), the Court considered all filings by the *pro se* prisoner plaintiff when finding his claims properly withstood a sovereign immunity challenge, and remanded with instructions he be allowed to file an amended complaint.

Seemingly, the Sixth Circuit decision here has required a heightened pleading standard for sovereign immunity and ADA Title II previously unknown, applying a "but for" test as if this case is a tort, disregarding the more detailed criteria in the circuit precedent. *Compare* Appendix at A-10-A-11, *with Finley v. Huss,* 102 F.4th 789 (6th Cir. 2024)(explaining direct and indirect methods of proving intentional discrimination.)

Question #4- Is sovereign immunity abrogated when a plaintiff alleges a state court violated ADA Title II and his fundamental parent-child rights on the basis of disability discrimination?

In *Tennessee v. Lane,* 541 U.S. 509 (2004) this Court held that sovereign immunity is properly abrogated for disability discrimination claims which deprive the plaintiff of a fundamental liberty interest. The most fundamental liberty interest protected by the 14th Amendment to the U.S

Constitution is the parent-child relationship. *Santosky v. Kramer,* 455 U.S. 745 (1982), *see also Quillion v. Walcott, 434 U.S. 246* (1978).

Doe believes these holdings are entitled to *stare decisis* and should logically be read together to clarify the law as it stands, not find and protect newly recognized rights. The law, as it stands, permits abrogation of sovereign immunity for violations of Title II of the ADA that infringe the parent-child relationship, as alleged here. Doe is not asking the Court to create any new rights, just clarify that existing case law is properly read together. Doe completely respects the reservations of prior dissents.

However, the dissents in *Lane* and the reservations in *Lane* again expressed in *U.S. v. Georgia* about expanding in this area, away from the express rights in the Constitution has given rise in the courts below to the idea that perhaps *Lane* is either limited or no longer good law. *See* October 28, 2024 Sixth Circuit Order, Appendix 9 -10 (limiting *Lane* to recognize only access to the courts and requiring Doe to prove a specific violation of the 14th Amendment applying *U.S. v. Georgia.) See also Magistrate Order,* Aug. 15, 2022 *at Appendix 38-39.*

Question #5 - Is a limited remand by a U.S. Court of Appeals proper in pre-trial civil cases and if so, was the September 2020 Court of Appeals order a proper limited remand?

The sixth circuit decided on the second appeal in this case that its order in the first appeal was a limited remand and thus Doe was not permitted to further supplement and amend his complaint. October 28, 2024 Order, Appendix 12. Limited remands in the sixth circuit are typically limited to re-sentencing in criminal cases and when issued give

express detail as to the procedure to be followed. *See discussion U.S. v. Obi,* 542 F.3d 148, 154 (6th Cir. 2008). The sixth circuit simply did not do anything to indicate the first appeal order was a limited remand. *See* Sixth Circuit September 19, 2020 order, Appendix 57-66. The propriety of the practice and the appropriate procedure of a United States Court of Appeals making a limited remand appears a novel issue in this Court.

Conclusion

With sincere appreciation for this Honorable Court's due consideration, for these reasons, Petitioner requests the Court grant certiorari to address these unresolved questions of nationwide significance to fundamental liberty interests of qualified individuals with disabilities.

Respectfully Submitted,
April 4, 2025

John Doe, Pro Se