

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Kelechi Linardon
PETITIONER

vs.

Timothy H. Gailey, individually and in his official capacity as
Justice of the Justice of the District
Court of Middlesex County

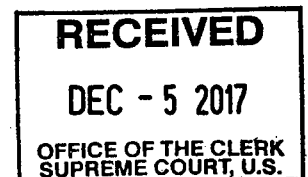
RESPONDENT (S)

ON PETITION FOR A WRIT OF CERTIORARI TO:

United States Court of Appeals
John Joseph Moakley U.S. Courthouse
1 Courthouse Way,
Boston, Massachusetts 02210

PETITION FOR A WRIT OF CERTIORARI

Kelechi Linardon
P.O. Box 52661
Boston, MA 02205



Question(s) Presented

1. Does a judge have entitlement to absolute immunity when a judge denies access to court and violates the rights of party who is disabled, wheel chair bound, home bound, chronically and severely ill under 24/7 observation of medical physicians heart monitoring nursing patients' rights to be deemed medically fit by physician to stand a civil trial as a defendant under title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq. and the Civil Rights Act (42 U.S.C. § 1983)?
2. Does a judge have the entitlement to absolute immunity when a judge denials a disabled wheel chaired patient rights to due process and equal protection under title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq. and the Civil Rights Act (42 U.S.C. § 1983)?
3. Does *The Rooker-Feldman Doctrine* for **injunctive relief** apply when a state judge violates a litigant's 14th amendment to the U.S. Constitution?
4. Can a state judge be subject to a civil rights suit for violating a litigant's 1st Amendment engagement in protective conduct, a judge's retaliation for the exercise of 1st Amendment rights an act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983?

List Of Parties

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

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

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

OPINIONS BELOW

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

The opinion of the United States court appeals at **Appendix A** to the petition and is unpublished.

The opinion of the United States district court appeals at **Appendix B** to the petition and is unpublished.

STATEMENT OF JURISDICTION

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

The date on which the United States Court Appeals decided my case was July 7, 2017 **Appendix B**

An extension of time to file the petition for a writ of certiorari was granted to including December 4, 2017 on October 4, 2017 in Application No. 17A357

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment

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

1st Amendment Retaliation

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Statement of the case

The Petitioner is a disabled home care patient, proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983 and title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 *et seq.* Plaintiff filed a complaint commencing this action on November 20, 2015, against Defendant Timothy H. Gailey, individually and in his official capacity as Justice of the Massachusetts District Court of Middlesex County. In the complaint Plaintiff alleges a violation of the equal protection clause and her right to due process under the United States Constitution. Plaintiff also alleges causes of action for denial of access to courts under the First Amendment of the Constitution and retaliation.

Petitioner is a black female and has chronic physical handicap disability with other medical issues and allergies. Petitioner signed Standard Form Apartment Lease (Fixed Term yearly) with property owner dated August, 2013.

BACKGROUND OF THE CASE

Because Middlesex County has not financed a housing court, the summary process proceedings in this case were held in the Middlesex County, District Court Department, Woburn Division. Tenant would argue that had she been able to avail herself of a housing court, there would be no roadblock in this matter. See Boston Housing Authority v. Hemingway, 363 Mass. 184 (1972) *supra* at 210 (Quirico, J. concurring in part and dissenting in part, joined by Readon and Wilkins, JJ).

On or about February 2015, Tenant deducted \$400.00 from March's rent to abate the heating problems that she was consistently reporting which were caused by defects in the condition of her apartment. Tenant provided an expert's report showing the problems with her ceilings, windows, and sliding door. Tenant also provided Landlord with copies of her heating and gas bills.

Landlord responded, on or about April 21, 2015, by seeking to evict her through Summary Process despite her having a lease with, at least, four (4) months remaining. The underlying action relating to this Summary Process in Woburn District Court is lengthy.

Petitioner suffered racial hate crime and disability discrimination from the landlord

1. Petitioner was severely bitten /injured in petitioner homes by rodents which the landlord knew about. This injury leads Petitioner to be rushed to the hospital urgent care unit on the

same day and was treated for the injury. Petitioner's heat which was paid for by the Petitioners was purposely turned off on February 15, 2015 by the landlord on the coldest days of the year which severely affected petitioner's health. The doctor was called urgently the same day due the severe breathing attack Petitioners had in the middle of the night which was very dangerous for a sick disabled homecare patient.

2. This apartment had many issues; on the first day Petitioner was trying to move in, Petitioner noticed centipedes before Petitioner even put her belongings in. Petitioner was infested with centipedes that crawled through her belongings, which made her worried to even keep her food out. When Ms. Noke came into Petitioners home in 2013, Petitioner even showed her several of the centipedes. A few months after moving in, Petitioner came home and noticed a large crack on the front door cage. When Petitioner opened her door, she noticed large cracks running along the ceiling and walls. Petitioner went into her bathroom and also noticed large running cracks on the floor. All of these occurred on the same day, which were serious concerns. Petitioner contacted the landlord and spoke to Ms. Noke. She responded by stating "**it is sinking again**". I was very shocked to hear this and immediately asked her what she meant by that. She was very rude and defensive. None of the above-mentioned issues were disclosed to Petitioner before moving into this apartment, which was very disturbing and stressful.
3. During the same period, Petitioner's keys to front entrance door could not open the door, which several individuals tried very hard to open, but couldn't open using my key. Sometimes Petitioner was locked out at night and needed to wait for other tenants to let her in, which was very humiliating and exhausting. After several instances of this problem, I contacted the office and it was the community gate security guard who answered. The guard tried to open the door that night with my key. He couldn't open it either, and came back after few hours to bring me a new and working key.
4. The maintenance manager of petitioner's rental property threatened me with physical harm in petitioner home in the past in front of petitioner's guest as retaliation against petitioner for reporting to the Board of Health regarding petitioner's apartment winter repair condition which is not conducive to petitioner handicap conditions. He was very angry when he came into petitioner home and verbally abused Petitioners stating that I should move into a nursing home since I am disabled handicap person, that this place is not for me, I didn't belong here and your kind, do not belong here and that Petitioners is the bad luck of the apartment. He said that the wealthy landlord owned the city, the town hall, and the police department, that they have been in the town longer than I and that I am wasting my time with my complaints. He also said to petitioner that women complain a lot and that Petitioner is a horrible tenant

and many more statements which amounted to verbal abuse of petitioner. The maintenance manager then followed up with threatening me with physical assault. The maintenance manager said that when he is angry he does two things, smokes tobacco or hits his wife and that he wasn't going to smoke but that he would hit me. Petitioner's guest then asked him "so you are going to hit her in front of me a sick patient"? Petitioner filed a report with the police regarding the threat. The police didn't do anything because they knew them as the bragged that they owned the town, the police and the local court house. The Petitioner was afraid for her safety which is also why petitioner sent them a letter and avoided them due to the bodily threat and intimidation and harassment including the fact that petitioner isolated herself in her home while the manager was using the building and gate security camera as a surveillance camera to stuck and invade the petitioners privacy, peace of mind and quiet enjoyment of her home for almost about a year.

5. Petitioner was constantly retaliated against (bullying, harassment, and invasion of privacy, insults, emotional and verbal abuse) by the landlord management since Petitioner's complaint at a government public agency. The law in Massachusetts presumes that the landlord has a retaliatory motive if the landlord commences an eviction or increases the rent within six months after the tenant has exercised any of the following tenant rights: Using the repair and deduct remedy, or telling the landlord that the tenant will use the repair and deduct remedy; Complaining about the condition of the rental unit to the landlord, or to an appropriate public agency after giving the landlord notice; beginning arbitration based on the condition of the rental unit; The punishment Petitioner received from the landlord included those listed above. The landlord management violated the housing Act by using self-help tactics including harassing, evicting and discriminating against me because Petitioner exercised her legal rights protected by the Act including opposing practices that are unlawful under the Act; Informed law enforcement officials of practices that the person believes are unlawful under the Act.
6. The Petitioner exercised her tenants' rights after she made several requests to the landlord to repair the defects repair in her home which they refuse to repair. Petitioner also made several attempts to the city board of health to inspector, to come and inspect her home and the inspector also refused to inspect petitioners home because he knows the landlord and are close friends with the landlord. The landlord failed to disclose the serious inhabitable defects in petitioner's apartment during the rental process. Petitioner deducted the sum of \$400 which was a small portion of her monthly rent from my March 2015 month rent for needed winter repairs which the landlord refuse to repair by failing to perform his duties as a landlord for almost two years. Petitioner started making this

repair request since 2013 and yet Petitioner continued paying full the rent. In 2015, Tenant provided an expert's report showing the problems with her ceilings, windows, and sliding door. Tenant also provided Landlord with copies of her heating and gas bills. Landlord denied Tenant's allegations.

7. The landlord attempts to wrongfully evicted Petitioner because of \$400 which she rightfully deduction from her monthly rent while she was still paying full rent till December 2015 same month of the eviction is an act of retaliation because petitioner made a complaint at the HUD. The landlord wrongful eviction actions are based on a discriminatory motive because Petitioner engaged in the protected activity, and the landlord's conduct is retaliatory. The landlord refuses to provide services to Petitioner home while providing services to other tenants when Petitioner was paying monthly rent. Petitioner watched many times the landlord maintenance workers knock/enter from door to door neighbor's home for maintenance services and they skip and walked past Petitioner home intentionally. The landlord intentionally refused and neglected to properly address and repair the inhabitable issues in a Petitioner home for a long time, even after several requests from the petitioner which is violation of the leasing contract agreement entered with Petitioner as the tenant.
8. The landlord is in violation of Chapter 93A of the Massachusetts General Laws "Consumer Protection Law." and the M.G.L., c. 186 According to the M.G.L., c. 186, Structural Elements: Landlords must maintain the foundation, floors, walls, doors, windows, ceilings, roof, stairwells, porches, chimneys and all structural elements so as to exclude wind, rain, and snow; so as to be rodent-proof, weather tight, watertight, and free of chronic dampness, in good repair and fit for human habitation at all times. Petitioner as a tenant and customer is entitled to a safe and habitable living environment throughout my entire tenancy. No one deserves to have inhabitable safety conditions in their home leading to bodily harms in a place that they are paying a lot of money for rent and utilities. The landlord failed to disclose the serious defects in Petitioner apartment during the rental process, which makes it an unfair and deceptive act and according the law: (1) Conditions and Maintenance of a Dwelling Unit. It shall be an unfair or deceptive act or practice for an owner to: (a) Rent a dwelling unit which, at the inception of the tenancy 1. Contains a condition which amounts to a violation of law which may endanger or materially impair the health, safety, or well-being of the occupant; or 2. is unfit for human habitation; (b) Fail, during the terms of the tenancy, after

notice is provided in accordance with M.G.L. c. 111, s. 127L, to 1. Remedy a violation of law in a dwelling unit which may endanger or materially impair the health, safety, or well-being of the occupant, or 2. maintain the dwelling unit in a condition fit for human habitation; provided, however, that said violation of law was not caused by the occupant or others lawfully upon said dwelling unit; (c) Fail to disclose to a prospective tenant the existence of any condition amounting to a violation of law within the dwelling unit of which the owner had knowledge or upon reasonable inspection could have acquired such knowledge at the commencement of the tenancy; (d) Represent to a prospective tenant that a dwelling unit meets all requirements of law when, in fact, it contains violations of law; (e) Fail within a reasonable time after receipt of notice from the tenant to make repairs in accordance with a pre-existing representation made to the tenant; (f) Fail to provide services and/or supplies after the making of any representation or agreement, that such services would be provided during the term or any portion of the term of the tenancy agreement; (i) Fail to comply with the State Sanitary Code or any other law applicable to the conditions of a dwelling unit within a reasonable time after notice of a violation of such code or law from the tenant or agency. Chapter 93A of the Massachusetts General Laws commonly called the "Consumer Protection Law." it prohibits the use of any unfair and deceptive acts and practices in the conduct of any trade or business. Renting housing is generally considered to be a trade or business, and the Massachusetts Attorney General has issued regulations which define unfair and deceptive acts or practices in the rental housing field.

9. Among the things that constitute an unfair practice is if landlord fail to disclose to a tenant or prospective tenant any fact the disclosure of which may have influenced the tenant not to enter into the transaction. Also listed as an unfair practice is any violation of any law meant to protect consumers and any act which is oppressive or otherwise unconscionable in any respect. According to Supreme Judicial Court Boston Massachusetts on Gender, Racial, Ethnic Equality in court it state, "*Courts must take special care to treat all victims of crime with respect and sensitivity to the trauma that they have experienced.*" Petitioner has been a victim of punishment, torture and trauma from the time petitioner notified the HUD regarding the landlord matters.
10. Landlord did discriminate against Petitioner and failed to accommodate Petitioner disability and handicap medical condition. Petitioner's landlord refused to make several repairs in petitioner home which caused Petitioner several bodily harm knowing that

Petitioner was a handicap patient, they refused to modify petitioner home to meet ADA accommodation rules and requirements for handicap accessible housing for a disabled person including the fact that petitioner suffered severe slips and falls in her bathroom for not having a ADA bathroom.

11. In petitioner's complaint, petitioner contends that during 2013 petitioner asked for reasonable modification accommodations in her home and an accommodation regarding the weatherproofing of the windows and sliding doors to keep the cold air out due to Petitioner medical condition. Landlord told petitioner that they are very good for winter and energy saving, but that was not true the landlord obviously did not conduct a move in ready inspection check list repairs as prescribed by the law, to properly prepare the apartment for a new tenant to move in. Landlord said that the accommodation would not be required because the apartment already met the accommodation request. In addition to the request for weatherproofing the windows and sliding doors, Petitioner asked for an accommodation regarding the infestation of insects in her home, to which Petitioner is allergic to. Petitioner accommodation request was reasonable and Landlord did not respond in a reasonable time frame because of a "big job" Landlord was involved with. M. G. L.c. 151B § 4(7) prohibits discrimination in the terms, conditions and privileges of housing accommodations because of handicap. G.L. c. 151B§4(7A) states that discrimination on the basis of handicap includes (1) a refusal to make, at the expense of the handicapped person, reasonable modification of existing premises occupied or to be occupied by such person if such modification is necessary to afford such person full enjoyment of such premises. In the case of publicly assisted housing or contiguously located housing consisting of ten or more units, reasonable modifications must be at the expense of the owner or other person having rights of ownership. M.G.L. c.151B§4(7A). In order to establish a prima facie case of handicap discrimination in housing, Petitioner must demonstrate that (1) she suffers from a handicap as defined by the statute; (2) that Landlord knew of Petitioner handicap or could be reasonably expected to know of it; (3) that the accommodation sought may be reasonably necessary to afford Petitioner an equal opportunity to use and enjoy the premises; and (4) that Landlord has refused to make the requested accommodation. Buckley v. Wolfinger, 18 MDLR 158 (1996). When Landlord fails to rebut Petitioner claims, Petitioner need only establish a prima facie case of housing discrimination in order to prevail. See, e.g. Mohamed et al v. Leone, 25 MDLR 110(2003); Gardner v. Pianka, 28 MDLR 189(2006).

12. Here, Petitioner made Landlord aware of Petitioner disability immediately and immediately asked for accommodations for the disability. Petitioner provided the Landlord with reasonable accommodations needed, explaining that her disabilities and medical breathing condition required the carpet to be thoroughly cleaned, the curtains be free of dust, a roll-in shower with completely a flat entrance for wheelchair roll-in, grab bars in the shower, hand held shower head, ADA taller toilet with grab bars, Reachable lower bathroom floating sink with opening to allow wheelchair to roll-in, remove and flattening or level the room transitions (entrance door, bedrooms door and bathrooms door), double door fridge, Modify kitchen for ADA, lowered for wheelchair height, the front entrance door pick-hole because of her physical disability, and the floor needed to be continuous or have a ramp like connection to accommodate her mobility equipment's wheelchair/walker. Since the complaint, the petitioner have been aggressively harassed, bully, retaliated and discriminated by the landlord including deprivation of service as they provide to other tenants, petitioner private affairs has been put in the public as a method of humiliation which caused Petitioners a lot of health trauma and emotional distress. The Landlord also intruded petitioner solitude and seclusion and violated petitioner right to privacy since the petitioner moved into apartment in the community which has caused her a lot of traumatic stress sometimes. The landlord has been evading petitioner privacy with the community security cameras and using the security guards at the gate to harass me, petitioner guests, discussing petitioner affairs with neighbors and having petitioner neighbors who are her friends keep track of petitioner every step she take to the point Petitioners have become a prisoner in petitioner home. Petitioner private has been constantly violated to the point that Petitioners couldn't even call ambulance when she have emergency for the fear of petitioner privacy been publicize as the landlord has done several times. The stress and traumas Petitioners went through from the landlord has affected petitioner daily life. Due to the gross invasion of privacy by the landlord with the surveillance camera use in tracking petitioner every movement, the oppression of the landlord to the Petitioners was so severe to the point that Petitioners can't even open petitioner curtain most of the times.

13. The landlord's wrongful eviction actions were based on a discriminatory, racial hatred motive because Petitioner engaged in the protected activity, and the landlord's conduct was retaliatory. Petitioner has been discriminated against, and the landlord violated the discrimination laws. Petitioner was a victim of punishment by landlord as a result of exercising petitioner tenant legal right.

Petitioner has been discriminated against, and violated so much by the landlord due to the fact that petitioner's health was constantly at risk due the inducing stress. Petitioner's landlord had been trying to evict her since petitioner complaint to HUD even though petitioner payed rent and did not bother anybody just because she engaged in the tenant protected activity by asking the landlord to make repairs in petitioner's home and to stop evading petitioner privacy.

14. Petitioner's landlord property manager publicly slandered and defamed petitioner name, and harassed Petitioner at home which prevented Petitioner from having peace of mind and enjoyment of petitioner home that she was paying to rent. She targeted Petitioner with ill hatred and malice because Petitioner refused to allow petitioner's landlord to prey on petitioner's private affairs and invade petitioner space which she decided to use a different method (eviction) to taint and publicly humiliate me. Petitioner's landlord property manager Ms. Eddie Noke came to petitioner's home while Ms. Noke was intoxicated with Marijuana smell. She demanded to talk about petitioner's private affairs which petitioner refused to do and informed Ms. Noke of her right to privacy. While the Petitioner not knowing at the that time of Ms. Noke dangerous obsession for the Petitioners ex-partner, Ms. Noke insisted, making obsessive remarks and demanded that petitioner should bring petitioner's ex-partner back home. However Petitioner refused to do so and asked Ms. Noke to leave her home. In response she threatened petitioner that she is the kind of woman that doesn't back down on what she wants. She claimed they owned city officials and as a tenant petitioner's life would be miserable if she didn't bring her ex-partner back or discuss her private affairs. Ms. Noke's gross obsession was very uncomfortable, dangerous and unsafe for the petitioner.

In Petitioner letter dated March 1, 2014, Petitioner stated that she needs "an expedited resolution so that she can be able to heat petitioner's home properly and be comfortable", which shows that Petitioner continued to remind Landlord of accommodation request. Landlord's reply was that Petitioner should go to a nursing home. Landlord did not want to accommodate Petitioner disability and medical conditions. Landlord knew Petitioner had a physical impairment which substantially limited one of more of Petitioner's major life activities. The impairments are recorded and Petitioner had brought up the disability and other medical conditions to Landlord. Discrimination prohibited by the Fair Housing Act includes the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604 (f) (3) (B). See M.G. L. c. 151B, § 4 (7A) (2). Here, the Petitioner has provided sufficient and substantial evidence that Landlord refused to make reasonable accommodations that would be necessary to afford Petitioner equal opportunity to use and enjoy the apartment.

Landlord did not accommodate the Petitioner request that impacted Petitioner disability and medical condition. Chapter 151B, Section 4 Paragraph 7a pertains to persons with disabilities. It describes what are reasonable modifications and reasonable accommodations and defines the discrimination involved when an owner refuses to make these changes. Here, Petitioner provided sufficient and substantial evidence that Landlord knew that Petitioner apartment was cold and that cold was impacting Petitioner disability and medical conditions and failed to adjust and fully correct the reasonable accommodations. "A 'reasonable accommodation' is one which would not impose an undue hardship or burden on the entity making the accommodation." Peabody Props., Inc. v. Sherman, 418 Mass. 603 , 608 (1994).

When temperatures are low, the cold air can take Petitioner breath away. In fact, it can do a number of harmful things to Petitioner lungs. But there are ways to protect Petitioner lungs and other medical conditions. Non-disabled residents of the complex can easily open and close heavy curtains that would have helped alleviate, but not solve, the cold air from entering from the sliding doors and other areas of the apartment. By contrast, Petitioner was unable to do so without assistance or straining, falling and aggravating her disability. Otherwise, Petitioner would have had to live without natural sunlight from the sliding door. The accommodation requested should be recognized as "reasonable" under c. 151B, section 4(7A). Landlord made this matter into "unhappy" tenant that should be ignored instead of taking time to explore the scope of Petitioner handicap as well as the availability and feasibility of various accommodations. Landlord was discriminatory against Petitioner based on Petitioner disability, medical conditions, sex and marital status.

Tenant respectfully submits that the Woburn District Court (Gainley, J.) through its orders and decisions effectively eviscerated the Summary Process as that codified process has been ruled upon by the Supreme Judicial Court and by this Court. See M.G.L. c. 239 §8A; M.G.L. c. 111 §127C-D; see also M.G.L. c. 111 §127H. Tenant argues that she satisfied her obligations of rent payment under her lease. Tenant contends that the Woburn District Court violated her statutory and constitutional rights, both State and Federal, by allowing her to be evicted despite her lease through Summary Process. See also Residential Landlord-Tenant Handbook, Flaschner Judicial Institute, 3rd Ed, (2013) § 11.4.

Retaliation and Discrimination: State law makes it illegal for the landlord to threaten to take any action against a tenant for engaging in the following "protected activities": Notifying your landlord in writing of violations of the state Sanitary Code; Reporting your landlord to health inspectors, local boards, or other officials for violations of law.

The Landlord's retaliated and discriminated against petitioner for reporting to the Board of Health regarding her apartment winter repair condition and problems. It is illegal for a landlord to retaliate against a tenant in Massachusetts, who has exercised a legal right, including: complaining to the landlord about unsafe living conditions, complaining to a government agency, such as a building or health inspector, about unsafe living conditions. Massachusetts State Laws prohibit Landlord Retaliation. Landlord violated my right to be free from retaliation and discrimination, for exercising my legal rights. By law, a landlord cannot try to evict a tenant, raise the rent, or change the terms of the tenancy because the tenant has complained of conditions to the landlord in writing, or to any government agency, or because the tenant has organized or joined a tenants' union or engaged in certain other protected activities. Yet Judge Gailey didn't give Petitioner a chance to be deemed medically fit to stand a hearing before he unfairly sanctioned me and entered a default judgement while Petitioner was in the hospital for been severely sick and under medical treatment health monitoring evaluation. Judge Gailey engaged in abuse of power and intentional disregard of the Constitution and laws he swore to defend. Petitioner alleges that judge Gailey has engaged in conduct that is in violation of the US Constitution and "prejudicial to the effective and expeditious administration of the business of the courts. A judge should strive to maintain confidence in our judicial system, but Judge Timothy Gailey's willful misconduct in office, conduct that is prejudicial to the administration of justice actions destroy confidence in the judicial system. Judge Gailey deprived Petitioner of her right to due process, equal protection, discriminated against her, violated her constitutional rights and showed an evidence and pattern of behaving or ruling in a manner that is prevented or hindered her from receiving full, fair, impartial hearings or the full, fair, impartial administration of justice.

REASONS FOR GRANTING THE PETITION

TO THE HONORABLE COURT:

Comes Now the petitioner, very respectfully alleges and prays as follows:

1. INTRODUCTION

This action is brought the petitioner against Judge Timothy H. Gailey, individually and in his official capacity as Administrator of the Judicial System.

The memorandum from the federal judge in this matter brought to the appeals court stated that "the actions of the respondent who is also a judge were judicial acts entitling him to absolute immunity from suit and that under the Rooker-Feldman doctrine, a federal court lacks jurisdiction over a final judgement of the state.

The Petitioner alleges a violation of title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq.

Respondent has moved to dismiss on several grounds. The Petitioner alleges a violation of the Civil Rights Act (42 U.S.C. § 1983). The Petitioner alleges a violation of 14th amendment to the U.S. Constitution. The Petitioner alleges a violation of 1st Amendment to the U.S. Constitution. The Petitioner urges the Court to grant certiorari, because contrary to the basis on which the respondent seeks such dismissal:

- (1) Plaintiff has pleaded a prima facie case under title II of the ADA.¹
- (2) Congress has specifically abrogated the States' eleventh amendment immunity for suits brought pursuant to the ADA;
- (3) Under title II of the ADA the defendants can be sued in their official capacities; and
- (4) Judges do not enjoy absolute immunity for acts that are administrative rather than judicial in nature.

Review is warranted to determine if the respondent acts were Judicial Acts entitling him to absolute immunity.

FACTS AND PROCEDURAL HISTORY

District Court (Gainley, J.), acting as a Housing Court, erred as a matter of law or as matter of abuse of discretion when he allowed Appellee Landlord/Plaintiff/ Cliffside Realty Trust (hereinafter "Landlord") to evict Appellant Tenant/Defendant/Linardon (hereinafter "Tenant")

Pursuant to Mass. App. P 16(d), the parties are hereinafter designated by the category to which that party belongs, e.g., Tenant and Landlord.

A. Did the Woburn District Court (Gainley, J.), acting as a Housing Court, err as a matter of law or as matter of abuse of

discretion when it denied Tenant's Motion to Amend Complaint on or about August 28, 2015, to include Tenant's claims of racial and disability discrimination, among others.

1. *Can a state judge be subject to a civil rights suit for violating a litigant 1st Amendment engagement in protective conduct, A judges retaliation for the exercise of 1st Amendment rights an act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983?*
- B. Did the Woburn District Court (Gainley, J.), acting as a housing court, err as a matter of law or as matter of abuse of discretion when it denied Tenant's motions to postpone her appearances in court and at her deposition due to medical emergency on or about May 14, 2015, August 27, 2015, September 24, 2015, and on October 15, 2016.
 2. *Does a judge have the entitlement to absolute immunity when a judge denies a disabled wheel chaired patient rights to due process and equal protection under title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq. and the Civil Rights Act (42 U.S.C. § 1983)?*
- C. Did the Woburn District Court (Gainley, J.), acting as a Housing Court, err as a matter of law or as matter of abuse of discretion when it granted Landlord's Motion for Sanctions finding that "Tenant without just cause refused to attend her deposition . . . I find the doctor's [sic] note totally conclusory and no way excusing her failure to show any effort to comply with [the Court's orders]" on or about September 24, 2015.
 3. *Does a judge have the entitlement to absolute immunity when a judge denies access to court and violates the rights of party who is disabled, wheel chaired, home bound, chronically and severely ill under 24/7 observation of medical physicians heart monitoring nursing patients' rights to be deemed medically fit by physician to stand a civil trial as a defendant under title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq. and the Civil Rights Act (42 U.S.C. § 1983)?*
- D. Did the Woburn District Court (Gainley, J.), acting as a Housing Court, err as a matter of law or as matter of abuse of discretion and retaliation when it Defaulted and ordered the wrongfully eviction while still paying rent due to the Tenant filling a complaint against the (Gainley, J.) at the Federal Court prior to the eviction date?
 4. *Can a state judge be subject to a civil rights suit for violating a litigant's 1st Amendment engagement in protective conduct, a judge's retaliation for the exercise of 1st*

Amendment rights an act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983?

Can a judge get immunity if you were deprived of your civil rights? This action was brought under the Civil Rights Act (42 U.S.C. § 1983) and under violation of title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 *et seq.* Petitioner has pleaded a prima facie case under title II of the ADA. The Court first had to decide whether a state judge could be subject to a civil rights suit for an injunction in the first place under Suit Used 1871 Rights Act Usually referred to as Section 1983, this law permits suits for damages or injunctive relief against those who, under color of state law'' violate an individual's civil rights. Congress has specifically abrogated the States' eleventh amendment immunity for suits brought pursuant to the ADA; Under title II of the ADA the defendants can be sued in their official capacities; and Judges do not enjoy absolute immunity for acts that are administrative rather than judicial in nature. Judges who are sued under 42 U.S.C. § 1983 are completely immune from individual liability for damages resulting from their "judicial acts." Judges are not immune from 1983 suits seeking some kinds of injunctions. See *Pulliam v. Allen*, 466 U.S. 522 (1984). Whether something a judge does should be considered a "judicial act" depends on "whether it is a function normally performed by a judge." *Stump*, 435 U.S. at 362. The immunity depends on whether the person was acting in his or her official capacity and whether s/he had any reason to know that his or her action would violate an individual's federally protected rights.

This case requires the review of the scope of a judge's immunity on damage liability when sued under 42 U.S.C. § 1983.

Judicial immunity also bars suits that are brought under 42 U.S.C. § 1983 but there are two exceptions to absolute judicial immunity: (1) when the judge's actions are taken outside his role as a judge, i.e., entirely non-judicial conduct, or (2) when the judge's actions are taken in the complete absence of jurisdiction. Washington, May 14, 1984- The Supreme Court ruled that state judges may be sued for civil rights violations and may be ordered to pay the lawyers' fees of those who sue them successfully. Washington, Jan. 12, 1988- The Supreme Court ruled 8 to 0 that state court judges may be sued on allegations of discrimination or other illegality in the demotion or dismissal of court employees.

1. ARGUMENT

Petitioner Has Alleged a Prima Facie Case Under Title II of the ADA

Despite Respondent's contentions, there is no question that Petitioner has sufficiently pleaded a prima facie case of discrimination under title II of the ADA. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that there is no set of facts that plaintiff could prove which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 46, 78 S. Ct. 99, 102 (1957); Fed. R. Civ. P. 12(b)(6). Further, pro se complaints must be liberally construed and should not be held to the same high standard as formal complaints filed by attorneys. Estelle v. Gamble, 429 U.S. 97, 105, 97 S. Ct. 285, 291 (1976); Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 595 (1972); Ferranti v. Moran, 618 F.2d 888, 889 (1st Cir. 1980). It is under this more lenient standard that Petitioner's complaint should be read.

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The statute defines the term "qualified individual with a disability" as "an individual with a disability who, with or without ...the provision of right to be medically deem fit for a chronic nursing home disabled patient under medical observation by a certified doctors and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." See 42 U.S.C. § 12131(2).

In the case at bar, petitioner easily satisfies the prima facie elements for her cause of action under title II of the ADA. Petitioner has averred that she has a chronic disability was under a serious medical observation on 27/4 heart monitoring device, that her doctors provided support medical documents to the Petitioners lawyer as requested by the court to be excused from any court hearing which would affect her critical 24/7 heart monitoring observation until medical deem fit to come to court as the defendant. Read liberally, as the complaint must be, Petitioner has sufficiently alleged that she is an "individual with a disability" under title II. See 42 U.S.C. § 12102(2). In addition, plaintiff has clearly alleged that she was "qualified," because she has stated that she was a defendant in a case before Judge Gailey from which it follows that petitioner met the essential eligibility requirements to be medically excused to deem fit by physicians to participate in her trial. Finally, Petitioner has alleged that she was discriminated against by respondent. She alleged that her request and was denied of a due process, and was defaulted by the respondent even though the petitioner had a lawyer and provided medical physicians letters on time to the court there by rendered unable to effectively participate in her own trial. Plaintiff has therefore alleged that she was "excluded from participation in or

denied the benefits of" defendants' program. 42 U.S.C. § 12132. Thus, petitioner has pleaded her prima facie case.

2. ARGUMENT

A proverb by Benjamin Franklin says

"For the want of a nail, the shoe was lost, For want of a shoe, the horse was lost,
For want of a horse, the rider was lost,
For want of a rider, the battle was lost,
For want of a battle, the kingdom was lost,
And all for the want of a horseshoe nail."

- a. What would have been said here, in 2016, when, "for want of \$400.00, a chronic ill home bound nursing disabled patients Tenant's home was lost while never missed paying rent"?
- b. What would have been said here, in 2016, when, "for want of \$400.00, a chronic ill home bound nursing under medical observation 27/4 heart monitoring chronic disabled patients Tenant's life would have ended prematurely on December 17, 2017(had It not been that her relatives was present witnessing) under the order of Judge Gailey in malicious retaliation and racially acts motivated hate crime and committed outside of his jurisdiction. The petitioner is a good contributor and a positive role model in society, non-violent, humanitarian, an advocate of elderly and disabled, human rights that never harmed a soul in her life.
- c. On December 17, 2015, Judge Gailey in retaliation for filing this complaint maliciously evicted the plaintiff from her home while she was still paying rent and furthermore used the local police department with whom he conspired with the rich real estate landlord(who claimed to own every officials in the city) committing a deadly racial hate crime, evicting with excessive force, police brutality and attempted murder claiming that the petitioner who was very ill on a heart monitor, who was inside her own home on that day was "trespassing and more including down-pack wrongful malicious bad faith retaliation accusations" and permanently traumatized till present a chronic sick disabled heart monitoring patient in her home which petitioner was rushed by Ambulance to the hospital with life threaten trauma caused by the brutality on same day, while she was still paying rent. The argument is that the alleged conduct was not judicial in nature and that the lawsuit should proceed.

The First Amendment protects the right to be free from government abridgment of speech. Retaliation for the exercise of First Amendment rights is a blackletter constitutional violation. In fact, an act taken in retaliation for the exercise

of a constitutionally protected right is actionable under § 1983 even if the act, when taken for a different reason, would have been proper.

- d. What would have been said here, in 2016, when, "for want of \$400.00, a chronically ill home bound nursing disabled patients Tenant has been homeless for the past two years and suffered serious setbacks and physical injuries, infections, debilitating health conditions while displaced under Judge Gailey engagement in actions to interfere with the Petitioner legal duty imposed on the litigant by the Appellate Court, engaged reckless endangerment of a handicapped person's life, aided and abetted the police officers to physically harm and traumatized a sick disabled person in her home conspired with a local wealthy developer landlord to abuse a disabled person of color tenant, and conspired with the landlord in the case in preventing petitioner's constitutional right to appeal his wrongful decision to the appeals court.

Review is warranted to determine if The Rooker-Feldman Doctrine for injunctive relief applies when a state judge violations a litigant 1st and 14th amendment to the U.S. Constitution

The respondent alleged that the captioned case is barred against him under The Rooker-Feldman Doctrine. Based on the language of the ADA, respondent argument is without merit.

§ 1983 allows for injunctive relief against a judicial officer where declaratory relief was violated or where declaratory relief was not available. However, the Rooker-Feldman Doctrine does not bar suits for damages under title II of the ADA Considering the motions for accommodations and the refusal of the court to certify it for interlocutory appeal, an argument can be made that declaratory relief was not available. With respect to accessing judicial services, persons with disabilities are looking at fundamental rights or at the very least something higher than rational basis. Therefore, there simply cannot be a compelling reason or even a good reason to deny a person with a disability trying to access judicial services the accommodations/modifications he or she is entitled to under the ADA. Accordingly, such a denial is a violation of the 14th amendment to the U.S. Constitution. It seemed out of place for a district court judge to self-diagnose a patient when he is not a certified medical doctor or to ask a patient to come to court to be self-diagnose her when she is not a medical doctor either and he did not care about certified doctors opinion or restrictions or even contact the physician if needed directly if he needed for further clarification. A patient/defendant should not be punished or sanctions by a judge for been critically sick beyond her control when the Judge (Gailey) himself who is a human too could be sick at anything and would not want his civil rights and constitutional rights violated with unnecessary harsh punishment for been ill.

The Respondent violated the Petitioners civil rights and First Amendment on retaliation while the Petitioner engaged in protected conduct. The Respondent adverse action was taken against the Petitioner that would deter "a person of ordinary firmness" from continuing to engage in that speech or conduct. The adverse action was motivated by the Petitioner's protected conduct. First Amendment retaliation claims have been recognized where:

- "a tavern owner and its manager were harassed following complaints they made to city officials, including harassment by prolonged and conspicuous presence, affecting business volume, by city's law enforcement."
- "a bungalow owner's building permit was revoked immediately after the town learned that the owner would not dismiss his federal lawsuit against it."
- "a civil-engineering firm, which specializes in designing and installing alternative subsurface sewage disposal systems, criticized the Department of Sewage Disposal Management and then license revocation proceedings were initiated against it."
- "after homeowners petitioned the city council (and distributes fliers and letters) to complain about fencing and tree requirements, the city's building inspectors refused to grant the homeowners an extension of their building permit and failed to provide the plaintiffs with notice that their permit was about to expire even though such notice was routinely given to other similarly-situated property owners."
- "a tow-truck operator criticized the police department, which then removed his towing company from the department's approved towing list."

The Respondent Judge Gailey conspired with the local wealthy developer landlord to engage in actions with intimidation of inferiority, superiority to infringement on petitioner's civil liberty and interfere on Petitioner constitutional rights in order to block any future liability for offenses that they committed against the petitioner which many of these offenses resulted in physical harm and property harm to the Petitioner. The respondent's actions were unconstitutional, a derivation of equal protection under the law, and an attempt to intimidate the petitioner without any basis. The Respondent Judge Gailey conspired with the local wealthy developer landlord in retaliation for the police complaint in past made against the maintenance manager of petitioner rental property who threatened petitioner of physical harm in petitioner home in the past in front of petitioner's guest as retaliation against petitioner. Every citizen has the right if there is a question of an injustice, especially in matters involving federal protection laws (such as discrimination, obstruction of justice, bullying and stalking, slander and defamation, abuse of power, abuse of discretion, physical abuse, racism, abuse of a disabled, violation of civil rights and many more). The Petitioner has a right to be protected by the same law, to be free from racial abuse, retaliation, harassment, slander, defamation, severe threat on

her life, well- being, and threats on her ability to live as a free human being, to be safe as a free human being and as person created equal. The respondent's eviction actions in the local court (petitioner is the defendant in that case) were based on a discriminatory, retaliation, racial ill hate personal motive because the petitioner engaged in protected activity, and the defendant's conduct was retaliatory and in violations of the 1st amendment.

What would have been said here, in 2016, when, "for want of \$400.00, a chronic ill home bound nursing disabled patients Tenant's suffered a wrongful complaint filed against her through the Petitioner was the victim which was ordered by the Respondent. On or about May 2016, Petitioner was made aware for the first time, that Judge Gailey maliciously in retaliation for filing this complaint to this federal court and appealing his decision, he had the local police department brutalized a very sick patient (Petitioner) in her home and traumatizing her in front of her relatives while on a wheel chair/walker and a holder of a heart monitor. The police in a mostly white majority town, followed his order because the local police department (whom the landlord claimed that he owned), had always targeted the petitioner in revenge.

This revenge which is still current and ongoing while petitioner is still displaced from home was done because; petitioner had spoken and stood up against elderly who was been abuse by the police in the past. Petitioner had acted as an disabled advocate and human rights person showing how the police abused an elder civil servant with advanced dementia, a disabled person of color whom they publicly in the apartment compound in front of other tenants, emotionally humiliated and abuse after they called me to come and claim him because he simply lost his way in the apartment compound and they thought that he was my dad just because he was another black person but he was a parents to the second and only other former black tenants(landlord also removed them on racial housing discrimination even though their family was hard working professional people), in the apartment complex. This act in the past was conduct without even a single respect for an elderly or a dementia person. This abuse lasted for about one hour on that day which was very humiliating. Judge Gailey, "acting in his official capacity as judge under color of law as he claimed," maliciously and without a proper probable cause issued a wrongful complaint against the Petitioner (just to damage the petitioners reputation in the society) for allegedly violating Massachusetts law i.e. trespass and more in her own home which the petitioner was not made aware though she was the victim in her own home where she was been nursed as a homecare nursing wheel chaired sick person who the local Authority trespass in her own home without warranty. The respondent, conspired with the local the wealthy landlord who claimed in the past that they owned the city, court house, the police department and everything else to a file the alleged for December 17, 2015 evictions even though the petitioner, an innocent person in a walker/wheel chair in heart monitoring in her home was actually the victim of the police brutality and excessive force on that day while she was the person that was

severely violated and victimized. Judge Gailey actions to physically harm a helpless chronic homecare sick disabled patient in her home in front of her relatives that witnessed the assault and made her homeless, therefore affecting and interruption petitioner nursing home service and the heart monitoring process due to lack of, which the petitioner had to undergo an urgent medical procedure as a result of the physical harm/police brutality in her own home over a \$400 wrongful eviction which the landlord cashed the petitioner's December 2015 month rent check is not a judicial act rather it is a retaliations.

Judge Gailey severely caused permanently injuries and trauma to the petitioner who was harmed in her own home in front of her relatives in retaliation for filing a complaint against him at the US District court. Judge Gailey had a complete disregard for human life or for a sick disabled patient's life which is not a judicial act but an abuse of judicial discretion, personal revenge and a violation of the petitioners 1st amendment rights. Furthermore, Judge Gailey had the petitioner evicted from her home while paying rent, while a stay of execution was filed; while an appeal was filed and petitioner was racially targeted by white police officers who broke into the plaintiff's home, while she was return back to her kitchen from the living room which she followed the officers orders when they suddenly broke into her home. Without any announcement, thought the petitioner was nowhere near the policer officers who entered her home through the kitchen door which was the only entrance door. They still proceeded to try to shoot the handicap person on a heart monitor even though petitioner didn't violate any laws in her own home. The officers still inflicted a major physical injuries on a sick person and put her in trauma with the use of excessive force, physically abused a handicap while holding her disabled medical walker/wheelchair and heart monitor device in front of her relatives who also suffered trauma as they witness the physical attack. The actions of the officers was an abuse of discretion, was a premeditate act and of a racial discrimination hate crime and the reckless endangerment of a sick patient in her own home.

The petitioner was rushed to the hospital by ambulance as her life line machine went off, on a serious heart attack risk on the day of the wrongful Eviction when the police took her medical heart monitor which she was wearing on her body and slammed it on the floor including damaging the petitioners phone and other disabled devices she was holding during that wrongful eviction day. The police officers completely neglected the fact that the petitioner was stating that she filed a "stay of Executions", she was on heart monitor device, going to her kitchen and also that she already filed an appeal which she was willing to show them a copy of the appeal filed, which they refuse and stated "we got you now." The plaintiff was humiliated, severely traumatized and suffered post-traumatic stress and is still homeless. Till the present time, she has suffered a lot of harm on the street as a result of Judge Gailey's violations of her civil and constitutional rights. On the same date, Judge Gailey maliciously

informed the public, publicized the wrongful complaint as well as the driving license office which is how the plaintiff was made aware this complaint. The petitioner who is a good contributor to the society, who is known as a kind hearted, volunteer of advocacy to elderly and disables, who has never committed any crime and has no intentions to commit either, suffered a serious traumatic stress and humiliation on that day till present for this malicious allegations as a result of judge Gailey's retaliations for filing a complaint against him.

The Respondent's intimidation and abuse of discretion actions against the petitioner did not stop after the wrongful eviction but worsen even while the Petitioner was homeless and in a very poor health conditions affected by the homelessness. It continued when the Respondent allowed the landlord to continue bullying and harassing the Petitioner who is a disabled patient including publicly slander and defaming her and to ruin her reputation rendering useless to the society. It is also the Respondent who removed Petitioner from her own home and yet continued to corroborate to attempt to maliciously damage her background due to ill racial hate and frivolously abuse of power which is considered an abuse and cruelty to a handicap person, violation of the ADA act.

Covenant of Quiet Enjoyment or Possession.

Here, Tenant was not an at-will tenant subject to the whims or idiosyncrasies of the Landlord or its agents. Rather, Tenant had a lease. See Residential Landlord-Tenant Bench book, 3rd edition, Fleischer, Judicial Institute p. 43 (2013).

It has been established that, in today's world, "[w]hen Americans . . . seek 'shelter' today, they are seeking a whole package of goods and services - a package which includes not merely walls or ceilings, but also, adequate heat, light, ventilation serviceable plumbing facilities, secure windows and doors, proper sanitation and proper maintenance." *Javins v. First Natl. Realty Corp.*, 428 F.2d. 1071, 1074 (D.C. Cir. 1970). By entering into her lease, Tenant was entitled to rent an apartment with adequate heat.¹³ There is no question that adequate heat was a material significant feature of her lease. See *DiBella v. Finumara*, 63 Mass. App. Ct. 640, 646 (2005).

Tenant asserts that Landlord was obligated to take Tenant as she was, similar to that of a personal injury party. Because of her health issues, Tenant needed a warm apartment, not a drafty one. Here, there is no question raised that Tenant was evicted for behavior-based fault or for good cause. See e.g., Costa v. Fall River Housing, 71 Mass. App. Ct. 269, (2008), FAR 451 Mas. 1103, (2008). Rather, this case involves the covenants which run through the lease for the Landlord to provide adequate heat in exchange of rent. See M.G.L. c. 186, §14; Al-Ziab v. Mourgis, 424 Mass. 847, 850 (1991).

The issue is not one of materiality, but, rather, simply, was Tenant

entitled to abate her rent? See *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 194 (1973); M.G.L. c. 239, §8A. The issues raised in this action are those concerning the covenants found to be created by the lease. See MPS, *Landlord and Tenant Law, Daher and Chopp*, 3rd ed., Vol. 33, §10; see also, *Landlord Survival Guide*, GBREB 8th Ed., *Philips Liptin*, p. 70; see also M.G.L. c 239 §8A; M.G.L. c 111 §127. Here, Landlord expressly covenanted to provide a specific apartment to Tenant upon Tenant's promise to pay rent. Landlord impliedly covenanted that Cliffside would not exercise any power to deprive Tenant the use of a specific apartment unless Tenant breached her rental contract. Tenant consistently paid her monthly rent. Tenant consistently provided written documentations about her complaints with the care and maintenance of the apartment by Landlord. During the term of the leases, Tenant was entitled to possess Apartment #108. She made it her home. Tenant asserts that she did not breach her lease by withholding a small sum as abatement.

Landlord did not remedy the situation merely by arguing that she should have rented another apartment on the opposite side of the building so as to have access to solar power for heating. Landlord had did not remedied the heating situation for almost 3 years of complaints by Tenant. Landlord certainly did not prove that Tenant breached the leasing contract by withholding a small portion of the rent on one occasion. See *Boston Housing Authority v. Hemingway*, supra; M.G.L. c. 239 §18A

Under this covenant alone, the Woburn District Court erred as a matter of law when it allowed Landlord to evict Tenant in December 2015, 6 months earlier, prior to what would had been end of a term lease.

Covenant of Habitability

Tenant properly defended herself against Landlord by arguing that she had a right to abate the rent by \$400 for Landlord's habitual violation of the implied warranty of habitability. See M.G.L. c 239 §8A Nowhere in the Woburn District Court docket is there any indication that the Court even recognized that, the implied warranty of habitability, when landlord did not remedy the situation. Tenant was entitled to self-help by abating the rent. See M.G.L. c. 239, §8A codifying *Boston Housing Authority v. Hemingway*, 363 Mass. 184 (1973). Pursuant to M.G.L. c. 239, §8A, Tenant could have withheld the entire month's rent.

Fraudulent Misrepresentation

Tenant also tried to defend herself by arguing that Landlord, as being adequately habitable, fraudulently represented the apartment because she was not provided with the inspection report prior to her moving into the apartment in 2013. As the Woburn District Court did not even address this issue, Tenant asserts that the Court erred as a matter of law.

Medical Documentation

The sole basis for the Woburn District Court's ultimate decision of default was that the Court concludes that her Medical documentation was "conclusory".

The Woburn District Court is not comprised of medical doctors. By determining that Tenant's medical documentation was conclusory, the Woburn District Court exceeded its authority. See M.G.L. c 151B, §B. It also violated federal law governing disability. See 42 U.S.C. §3602(h)(1) (definition of disability - "physical impairment . . . which substantially limits one or more major life activities of a person." See generally, *Flagg v. AliMed, Inc.* 466 Mass 23, 28-33 (2013); *Gauthier v. Sunhealth Specialty Servs., Inc.*, 555 F.Supp. 2d 227, 237 (D. Mass. 2008); See also Reasonable Accommodation Issues in Housing, *Alexander Mitchell-Munevar*, GBLS, Chapter 3. Tenant was not a "deadbeat" tenant. She was making every possible argument to defend her home. Eight months (April to November, 2015) is not an unusual amount of time to try a summary process action, especially when, as here, Tenant is, and was, in and out of the hospitals. The importance of one's home is recognized as a basic necessity of the modern life by both the Judiciary and the Legislature. The Woburn District Court's decision made a mockery of summary process.

Jurisdiction.

While the decision of the Woburn District Court may be seen as an interlocutory decision depriving this Court of jurisdiction, it does not do so when, as here, that court erred as a matter of law. It also does not lose jurisdiction when, as here, that court abuses its discretion.

Here, the decisions of the Woburn District Court judge Gailey are plainly wrong and abusive in violations of the petitioner constitutional rights.

No Harm or Injustice to Landlord.

No evidence of harm or injustice to Landlord was presented to the Woburn District Court in this action from Tenant's withholding a small portion of the monthly rent for March 2015 and continued paying full rent for the next nine month even on the month December 2015 when she was wrongfully evicted from her home while the landlord cash her rent check and tenant remained on the street in the middle of freezing cold a heart monitoring patient during Christmas.

In the face of no evidence being presented of harm or prejudice to landlord, and in the face of other, less devastating, possible decisions though the petitioner didn't have a chance of due process, the Woburn District Court or Landlord can make no showing that the disputed decision, including eviction, were the only possible outcome when the petitioner did not even have any dues process. Cf. *Feldman v. Jasinski*, 2009 Mass. App. Div. 249 (2009). Chapter 239, §8A expressly provides guidance for a rent withholding. Cf. *Drucker v. Chin*, No. 01822 (November 1974); *Chandler v. Johnson*, No. 09-P-2272 (2011).

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There can be no question that Landlord was a business as defined by M.G.L. c. 93A. All Tenant's arguments under the statutory housing scheme also apply to her statutory claims of unfair, fraudulent, and unjust practices. See M.G.L. c 93A. Because the Woburn Judicial Court did not provide any accommodation for Tenant's health issues; these claims of violation of M.G.L. c. 93A were not heard. Had they been heard and Tenant succeeded, Landlord could have been found to owe Tenant damages of three times the full monthly rent and her attorney's fees and costs.

No Notice

M.G.L. c 239 §8A requires notice of eviction. Tenant has maintained her argument that landlord improperly notified Tenant of eviction. The Woburn District Court made no ruling on this argument by Tenant. In the absence of a ruling, this court is required to accept Tenant's supposition.

Emotional distress.

Had Tenant been allowed to amend her complaint, she might also added a count for the infliction of emotional distress caused by losing her home. Landlord also may have been found to be retaliating for Tenant's seeking her legal rights. Here, there can be no argument that Tenant was inflicted with emotional distress by being forced to lose her home and by becoming homeless. Cf. Simon v. Solomon, 385 Mass 91, 99 (1982) ("actual and consequential damages [for reckless infliction of emotional distress]" or three months' rent, whichever is greater, plus costs and attorneys' fees).

Application Fee

Tenant also argued that Landlord violated the statutory procedure for becoming a tenant. See M.G.L. c. 186, §15B; see also, Mellor v. Berman, 390 Mass. 275, 278 (1983); Mellor v. Berman, 13 Mass.App.Ct., 983, 983, (1982). Here, in 2013, Cliffside charged Tenant an additional \$100.00 to process her application for the Cliffside Apartment No. 108. M.G.L. c. 186, §15B does not allow Cliffside to charge for application processing. See Dolbern v. Friedman, No. 10034 (208); Broad St. Associates v. Leine, No. 12-P-2041 (2011). Again, Tenant is entitled to recover damages.

Security

Landlord was entitled to get first month's rent, last month's rent, and a security deposit. See M.G.L. c 186 §15B. Here, Tenant provided a security deposit in the sum of \$1,725.00. Landlord didn't record this rent, but rather, recorded the increased rent. Landlord also did not provide the banking account information as it was required to provide. See M.G.L. c 186 §15B (1)(a)&(d-e).

Discrimination

Disability

Tenant is disabled, as defined. She has physical limitations requiring numerous hospitalizations.

Tenant argues that the hidden reason for her eviction was racial and disability discrimination, not the abatement of \$400.00. It has been long settled that a landlord cannot discriminate for either reason. See ADA; Civil Rights Act. Tenant properly notified landlord about the Cliffside Managers' treatment of her.

No Harm To Landlord

Where, as here, landlord offered no evidence about the possible harm or prejudice to it, no evidence about the need for immediate termination of her lease, and no evidence demonstrating the error of Tenant's belief racial and handicap discrimination, combined with all of the errors of law by the Woburn District Court, then, Tenant is reasonable in her supposition of racial and handicapped discrimination. See Harris v. Harvey, 605 F.2d 330, 335 n.7 (7th Cir. 1979); M.G.L. c 239 §9-10; see also Title II of the ADA; Civil Rights Act 42 U.S.C.A. §1988.

Constitutional Rights

All of the errors instead herein demonstrate that Tenant was evicted illegally in error of the law. Said accumulative errors also violated Tenant's State & Federal Constitutional rights of due process and equal protection.

The Fourteenth Amendment explicitly prohibits states from violating an individual's rights of due process and equal protection.

Is a suit against judge Gailey for violating constitutional and civil rights a within the meaning of the Petition Clause of the First Amendment?

Justice Brennan faced this question, thirteen years ago in *Briscoe v. Lahue*, 460 US 325, at 346 (1983) in his dissent. It is short enough to be quoted in the entirety: "Justice Marshall's Dissenting opinion, post, presents an eloquent argument that Congress, in enacting Section 1983, did not intend to create any absolute immunity from civil liability for 'government officials involved in the judicial process ...' The Judiciary will become 'democratized.' The question is whether it will embrace, assist, and guide that process. In this case, what the court should do, whether by way of Points Two or Three above, is to deny any judicial immunity at this stage and to allow all questions of defense to go to the jury. The policy of judicial immunity is wrong and that wrong principle was created by the Judiciary. It is a maxim of jurisprudence: 'No one may benefit from their own wrong.' 'Democratizing the Judiciary' means in this case: 'Let the Jury decide the constitutional credibility of the defense.' For the Constitution is theirs no less than yours.

Judge Gailey is not immune from Suit

Given the abrogation of state immunity by the ADA, claims can be

brought against a state judge in his/her individual or official capacity under the ADA but for the doctrine of judicial immunity. It has been established that this doctrine generally affords judges immunity from damage suits. See Stump v. Sparkman, 435 U.S. 349, 356 (1978). However, the Supreme Court has held that judges can be held liable for damages² in suits where actions which are administrative in nature are challenged. See Forrester v. White, 484 U.S. 219, 224-225 (1988). The Court in Forrester refused to attach judicial immunity to a judge's decision to fire a court employee, because the act was not judicial in nature. The Court held that truly judicial acts must be distinguished from the administrative, legislative or executive functions that judges may occasionally be assigned to perform. According to the Court, it is the nature of the function performed -- adjudication -- rather than the identity of the actor who performed it -- a judge -- that determines whether absolute immunity attaches to the act. Any time an action taken by a judge is not an adjudication between parties, it is less likely that the act [will be found to be] a judicial one. Cameron v. Seitz, 38 F.3d 264, 271 (6th Cir. 1994).

In Morrison v. Lipscomb, 877 F.2d 463 (6th Cir. 1989), a Chief Judge's moratorium on writs of restitution during two holiday weeks was challenged by a landlord unable to redeem his property from a tenant for those two weeks. The Court of Appeals for the Sixth Circuit held that the moratorium, though performed by a judge, was not a judicial act entitled to absolute immunity. The court noted that the act was not judicial in nature, because the legislature could have easily issued the moratorium as well.

In Slyvester Harris v. Richard G. Harvey, Jr., 605 F.2d 330 (7th Cir. 1979) This action was brought under the Civil Rights Act (42 U.S.C. § 1983) by a former Racine, Wisconsin, police lieutenant against a Racine County, Wisconsin, judge and against Gerald Clickner, Racine County District Attorney. Plaintiff claimed that defendants' actions, of judicial racial bias and discrimination against him, deprived him of Fourteenth Amendment due process and equal protection of the laws.

The claim for the jury in the trial of the matter was whether the defendant had through non-judicial acts motivated by racial animosity inflicted injury including loss of employment opportunity, injury to reputation and emotional distress on the plaintiff. The jury trial commenced on February 27, 1978. During the trial, presiding Judge Gordon ruled as a matter of law that defendant acted under color of law and in the absence of all jurisdiction (App. 18). On March 8 the jury returned a special verdict that Judge Harvey's actions concerning the plaintiff were racially motivated, that plaintiff was injured by such racially motivated acts with respect to his reputation in the community, reputation and working ability within the police department, and opportunities for advancement within that department.

The jury also found that Judge Harvey's racially motivated acts had caused the plaintiff humiliation, embarrassment and mental distress and interfered with his continued employment. The jury set compensatory damages at \$60,000. It also found that Judge Harvey's actions were done maliciously, wantonly or oppressively and therefore assessed \$200,000 punitive damages against him. In a lengthy and persuasive opinion the district judge refused to disturb the verdict (App. 26-38) and later awarded plaintiff attorneys' fees in the amount of \$7,500 (App. 39) in lieu of the \$39,120 claimed (App. 38). We affirm.

Neither Judicial Nor Prosecutorial Immunity Protects the Acts for Which Defendant Was Held Liable. In support of reversal, defendant's principal argument is that he is immune from any liability to plaintiff for damages arising from his acts on the ground that he enjoyed judicial and prosecutorial immunity. As to the former, the trial judge properly applied the rule of *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331, in holding that the acts perpetrated outside of Judge Harvey's courtroom and not then a part of his judicial functions were undertaken in the "absence of all jurisdiction."

We can agree with the district court that Judge Harvey's attacks on plaintiff were not part of his duties; Barr would not afford him a defense even if it did apply to judges. It is undisputed that defendant did not offer a qualified immunity defense below, but in any event such a defense would not withstand the jury's finding. *Rosenblatt v. Baer*, 383 U.S. 75, 84, 86 S.Ct. 669, 15 L.Ed.2d 597.

This Claim Is Cognizable under the Equal Protection Clause of the Fourteenth Amendment.

In the 'kids for cash' scandal case, Philadelphia, Jan. 10, 2014. District Court for the Middle District of Pennsylvania granted plaintiffs' motion for partial summary judgment against former Luzerne County Juvenile Court Judge Mark Ciavarella, the judge at the center of the now infamous 'kids for cash' scandal. Specifically, U.S. District Court Judge A. Richard Caputo found that Ciavarella violated the constitutional rights of the children who appeared before him to an impartial tribunal, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Ciavarella is currently serving a 28-year federal prison sentence following his criminal conviction in February 2011 on charges arising out of the scandal. While American courts have a long history of protecting judges from suit by litigants who have appeared before them, Judge A. Richard Caputo ruled that Ciavarella is not immune from suit for his non-judicial conduct associated with the violation of the children's rights.

SUMMARY

The petitioner's case presents extraordinarily important issues warranting a carefully prepared Petition. The issues involve fundamental questions of and facial challenges to the entitlement to absolute immunity for respondent who violated the due process and equal protection of a severely ill disabled patient/petitioners rights to be deemed medically fit to stand for a court case trial, with respect to accessing judicial services and equality. Accommodating a person with a disability through reasonable modifications/medically deem fit violates the due process clause as well. Persons with disabilities are looking at a fundamental right or at the very least something higher than rational basis. Therefore, there simply cannot be a compelling reason or even a good reason to deny a person with a severe disability trying to access fair judicial services the accommodations he or she is entitled to under the ADA. Accordingly, such a denial is a violation of the 14th amendment to the U.S. Constitution. In recognition of the seriousness of these issues, the Court of Appeals stayed its mandate and four judges on the Court of Appeals would have granted to reverse.

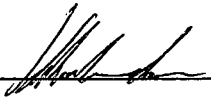
This court should not dismiss Judge Gailey from the case before petitioner has an opportunity to prove that the Judge acted administratively, not judicially, when refusing petitioner's the right to be medically deem fit for trial. Judge Gailey does respond in his official capacity for any injunctive relief the petitioner is requesting and also responds in his individual capacity to the extent the acts in controversy are administrative in nature and not protected by the absolute immunity doctrine. In any event the federal court gave no consideration to this issue what so ever, but found Respondent (Gailey) The Rooker-Feldman Doctrine immunity rights an absolute bar to Petitioners claims injunctive relief and constitutional rights violations. This court should undo go the damage caused by the federal court to appropriately defining/ review the federal court jurisdiction or application of The Rooker-Feldman Doctrine for injunctive relief when a state judge violates a litigant 1st and 14th amendment to the U.S. title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq and Civil Rights Act (42 U.S.C. § 1983). Based on the language of the ADA, respondent' argument is without merit.

§ 1983 allows for injunctive relief against a judicial officer where declaratory relief was violated or where declaratory relief was not available. However, the Rooker-Feldman Doctrine does not bar suits for damages under title II of the ADA Considering the motions for accommodations and the refusal of the court to certify it for interlocutory appeal, an argument can be made that declaratory relief was not available. Given the abrogation of state immunity by the ADA, claims can be brought against a state judge in his/her individual or official capacity under the ADA but for the doctrine of judicial immunity. It has been established that this doctrine generally affords judges immunity from damage suits. However, the Supreme Court has held that judges can be held liable for damages in suits where actions which are administrative in nature are challenged.

CONCLUSION

For the forgoing reasons, Petitioner Kelechi Linardon respectfully requests that the petition for a Writ Of Certiorari should be granted.

Respectfully Submitted,



Date: 11/29/17