
IN THE
SUPREME COURT OF THE UNITED STATES

DUSTIN KING,
Petitioner,

v.

MARION CIRCUIT COURT,
Respondent.

On Writ of Certiorari to the
Seventh Circuit Court of Appeals Panel

PETITION FOR WRIT OF CERTIORARI

Andrea L. Ciobanu
Counsel of Record
CIOBANU LAW, P.C.
8910 Purdue Road
Suite 240
Indianapolis, IN 46268
(317) 495-1090
aciobanu@ciobanulaw.com

QUESTIONS PRESENTED

1. Does the Marion County Circuit Court have sovereign immunity when denying an American Sign Language interpreter, as a judicial and court service, in court-subsidized modest means mediation, pursuant to Title II?

TABLE OF CONTENTS

TABLE OF AUTHORITIES	4
PETITION FOR A WRIT OF CERTIORARI.....	5
OPINIONS BELOW	5
JURISDICTION	5
CONSTITUTIONAL AND STATUROY PROVISIONS INVOLVED	5
INTRODUCTION	6
STATEMENT OF THE CASE.....	7
REASONS FOR GRANTING THE PETITION.....	8
CONCLUSION	21
WORD COUNT CERTIFICATE	22
PROOF OF SERVICE	22

TABLE OF AUTHORITIES

Cases

<i>Ass'n for Disabled Ams., Inc. v. Fla. Int'l Univ.</i> , 405 F.3d 954, 957 (11 th Cir. 2005)	18, 20
<i>Ass'n for Disabled Ams., Inc. v. Fla. Int'l Univ.</i> , 405 F.3d 954, 957 (11 th Cir. 2005)	18
<i>Board of Trs. of Univ. of Ala. v. Garrett</i> , 531 U.S. 356, 365 (2001)	14, 15, 16
<i>Bowers v. NCAA</i> , 475 F.3d 524, 555 (3 rd Cir. 2007)	19
<i>Bowers v. NCAA</i> , 475 F.3d 524, 555 (3 rd Cir. 2007)	19
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997)	11, 17, 18, 19
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997)	11
<i>City of Boerne v. Flores</i> , 521 U.S. 507, 519 (1997)	17
<i>Constantine v. Rectors & Visitors of George Mason Univ.</i> , 411 F.3d 474, 490 (4 th Cir. 2005)	18
<i>Constantine v. Rectors & Visitors of George Mason Univ.</i> , 411 F.3d 474, 490 (4 th Cir. 2005)	18
<i>Kimel v. Florida Bd. of Regents</i> , 528 U.S. 62, 73 (2000)	6, 7
<i>Kimel v. Florida Bd. of Regents</i> , 528 U.S. 62, 73 (2000)	6
<i>National Ass'n of Bds. of Pharmacy v. Board of Regents of the Univ. Sys. of Ga.</i> , 633 F.3d 1297, 1316 (11 th Cir. 2011)	7, 17
<i>Nevada Dep't of Human Res. v. Hibbs</i> , 538 U.S. 721, 737 (2003)	12, 14, 17
<i>Tennessee v. Lane</i> , 541 U.S. 509, 517-518 (2004)	passim
<i>Toledo v. Sanchez</i> , 454 F.3d 24, 36 (1 st Cir. 2006)	19

Statutes

42 U.S.C. § 12202	4, 7
42 U.S.C. §§12131-12165	4
42 U.S.C. 12202	7

Other Authorities

United States Commission On Civil Rights, <i>Accommodating The Spectrum Of Individual Abilities</i> , 20 (1983)	12
United States Commission On Civil Rights, <i>Accommodating The Spectrum Of Individual Abilities</i> , 20 (1983) (Spectrum)	12

Constitutional Provisions

28 U.S.C. § 1254	4
Eleventh Amendment	4
Fourteenth Amendment	4

PETITION FOR A WRIT OF CERTIORARI

Petitioner Dustin King (hereinafter “King”), respectfully petitions this Court for a writ of certiorari to review the judgment of the Seventh Circuit Court of Appeals.

OPINIONS BELOW

The judgment of the Seventh Circuit Court of Appeals overturned the District Court’s judgment which declared that the State of Indiana does not enjoy sovereign immunity because of the abrogation of that immunity sustained in *Tennessee v. Lane*. See Appendices A and B. The Seventh Circuit Court of Appeals reversed holding that Indiana does have sovereign immunity, and remanded with instructions to dismiss without prejudice, to raise a Title II claim in state court. See Appendices B and C.

JURISDICTION

The Seventh Circuit Court of Appeals entered its judgment, denying King’s Petition for *En Banc* on October 23, 2017. See Appendix C. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 5 of the Fourteenth Amendment states as follows:

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

The Eleventh Amendment states as follows:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

42 U.S.C. § 12202 states as follows:

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.

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12131-12165, 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. §12132.

INTRODUCTION

King, a deaf litigant, experienced discrimination and a violation of ADA when he was refused an ASL interpreter in judicial proceedings; more specifically, the right to be provided an interpreter in state court modest means mediation. King was a litigant in a family law proceeding in state court in Marion County, Indiana. Throughout those proceedings, the parties were ordered to mediation and approved for the modest means mediation program, which is court-subsidized by litigants' filing fees in Marion County. King duly paid his filing fee in state court, and also separately qualified for the modest means mediation program. Modest Means mediation in Marion County is a court-subsidized service for low-income litigants

that may benefit and expedite their legal matters by using mediation. The Indiana Supreme Court, which sets various court budgets, approves the Modest Means budget for each county that participates in this program and oversees the entire fund for this program. The Modest Means program is independently run in the Marion County Courthouse and the salary of the administrator for this program is paid through this approved fund. King requested an interpreter be provided so that he could adequately navigate the mediation process. However, his request for an interpreter was denied. After King's request for an interpreter was denied, the parties were no longer ordered to mediation. While King was fortunate enough to have his father-in-law serve as an interpreter throughout the mediation, his access to the state court system were effectively denied as a result of his disability.

STATEMENT OF THE CASE

This case is about the meaning of the Modest Means program in Marion County courts, and how it is a service for purposes of Title II. As such, the Seventh Circuit's failure to address the Modest Means program as a court service, or further analyze Defendant's failure to accommodate King pursuant to Title II regulation in furtherance of a court-sponsored service, is a degradation of the meaning of services as defined by Title II and well-established case law such as *Tennessee v. Lane*. Further, King, as a participating litigant in the Marion County courts, paid his required filing fee, which in part, funds the court-subsidized Modest Means program. Additionally, King was separately approved and qualified for the program and was denied service by virtue of his disability. Preclusion is not a proper

accommodation pursuant to Title II. In denying King's request for an interpreter to accommodate his access to this service, as defined under Title II and reinforced by the teachings of *Lane*, King's rights have been violated, and the very meaning of service has been undermined.

REASONS FOR GRANTING THE PETITION

Although the Eleventh Amendment ordinarily renders a state immune from suits in federal court by private citizens, Congress may abrogate states' immunity if it "unequivocally expresse[s] its intent to abrogate that immunity" and "act[s] pursuant to a valid grant of constitutional authority." *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 73 (2000). There is no question that Congress unequivocally expressed its intent to abrogate states' sovereign immunity to claims under the ADA. *See* 42 U.S.C. 12202; *Tennessee v. Lane*, 541 U.S. 509, 517-518 (2004). Moreover, it is settled that "Congress can abrogate a State's sovereign immunity when it does so pursuant to a valid exercise of its power under § 5 of the Fourteenth Amendment to enforce the substantive guarantees of that Amendment." *Lane*, 541 U.S. at 518. Congress's broad Section Five authority includes the power "to remedy and to deter violation of rights guaranteed [by the Fourteenth Amendment] by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Lane*, 541 U.S. at 518 (brackets in original) (*quoting Kimel*, 528 U.S. at 81). It is beyond dispute that the enforcement power gives Congress the ability to "prohibit[] conduct which is not itself unconstitutional."

National Ass'n of Bds. of Pharmacy v. Board of Regents of the Univ. Sys. of Ga., 633 F.3d 1297, 1316 (11th Cir. 2011).

Generally, Congress's right to abrogate the States' Eleventh Amendment immunity has been recognized, but does require the analysis of two predicate questions before abrogation can occur in specific instances.

The first question is whether Congress unequivocally expressed the intent to abrogate the particular immunity. In this situation, King, as a hearing-impaired litigant, is a qualified individual under the Americans with Disabilities Act. The Act specifically states, "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 competing jurisdiction for a violation of this chapter." 42 U.S.C. § 12202. Therefore, in claims arising under the ADA for qualified individuals, such as King, the State of Indiana is not sovereign from federal or state claims.

The second question in this two-part analysis asks whether Congress acted pursuant to a valid grant of constitutional authority in so expressing an intent to abrogate state immunity. Congress can abrogate a State's sovereign immunity when it does so pursuant to a valid exercise of its power under § 5 of the Fourteenth Amendment to enforce substantive guarantees of that amendment. Congress' enforcement power is broad and includes the authority both to remedy and deter violations of rights. The Supreme Court has repeatedly held that Congress may enact prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct.

In the Seventh Circuit Court of Appeal’s Panel’s Decision, the Panel claimed that it would not discuss the merits of King’s Title II claim. The Panel reiterated the District Court’s finding that Indiana has no sovereign immunity since it falls within the abrogation of immunity pursuant to *Tennessee v. Lane*, and disagreed with that finding. The Panel stated that § 5 prophylactic legislation requires proof that future violations are likely to occur. The Panel stated that the appellants in *Lane* proved that Title II properly abrogated states’ sovereign immunity only in cases implicating “fundamental right of access to courts.” The Panel further stated that the Constitution does not guarantee freestanding fundamental right of access to courts. See Appendix A.

In this situation, the Court of Appeals’ panel did not engage in this two-step analysis to determine whether the State of Indiana’s sovereign immunity rights were abrogated for purposes of enforcing constitutional rights. See Appendix A. The Panel distinguished this matter from *Tennessee v. Lane*, stating that in *Lane*, the Supreme Court found that Title II properly abrogated states’ sovereign immunity in cases implicating fundamental rights of access to the courts. The Panel; therefore, did not engage in a statutory analysis of the relevant authorities at issue, and did not determine the source of Congressional authority related to the Congressional intent to abrogate. As such, its determination that the State of Indiana’s sovereign immunity was not abrogated was incorrect in conclusion and incorrect in analysis.

The Seventh Circuit Court of Appeals Panel held that King did not demonstrate a fundamental right was violated when Marion Circuit Court failed to

provide a translator for court-subsidized mediation for a hearing-impaired litigant. See Appendix A. In opposition to this stance, the Department of Justice iterated in its statement of interest and at oral argument that the Department disagreed with the Panel’s position that sovereign immunity applied and that a such a right does not have to be a fundamental right for a violation of Title II to occur. See Appendix E. Further, the Department argued that the Modest Means program was a service, which is protected and contemplated pursuant to Title II and *Lane*, which could not be abrogated by a sovereign immunity claim. However, *Tennessee v. Lane* grants Congress § 5 authority to combat violations of Title II rights. Title II was enacted to combat pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights. *Lane*, 541 U.S. at 524. While Title II is recognized to encompass some fundamental rights, Title II is also much broader in scope. *Id.* at 518.

Title II prohibits a public entity from discriminating against qualified persons with disabilities in the provision or operation of public services, programs, or activities. *Id.* at 517. The term “public entity” includes state and local governments, as well as their agencies and instrumentalities. *Id.* While some of the rights protected by Title II are fundamental rights, others are protected by the Due Process Clause of the Fourteenth Amendment, which, in part, requires States to afford certain civil litigants a meaningful opportunity to be heard by removing obstacles to their full participation in judicial proceedings. *Id.* at 523.

Because Title II is valid legislation to enforce the Fourteenth Amendment in the context of institutionalization, the ADA abrogation provision is valid as applied to this case. In *Lane*, the Supreme Court considered the claims of two plaintiffs, George Lane and Beverly Jones, “both of whom are paraplegics who use wheelchairs for mobility” and who “claimed that they were denied access to, and the services of, the state court system by reason of their disabilities” in violation of Title II. *Id.* at 513. Lane was a defendant in a criminal proceeding held on the second floor of a courthouse with no elevator. *Id.* “Jones, a certified court reporter, alleged that she had not been able to gain access to a number of county courthouses, and, as a result, has lost both work and an opportunity to participate in the judicial process.” *Id.* at 514. The state argued that Congress lacked the authority to abrogate the state’s Eleventh Amendment immunity to these claims. The Supreme Court in *Lane* disagreed. *Id.* at 533-534.

To reach this conclusion, the Court applied the three-part analysis for Fourteenth Amendment legislation established by *City of Boerne v. Flores*, 521 U.S. 507 (1997). The Court considered: (1) the “constitutional right or rights that Congress sought to enforce when it enacted Title II,” *Lane*, 541 U.S. at 522; (2) whether there was a history of unconstitutional disability discrimination to support Congress’s determination that “inadequate provision of public services and access to public facilities was an appropriate subject for prophylactic legislation,” *Id.* at 529; and (3) “whether Title II is an appropriate response to this history and pattern of unequal treatment,” as applied to the class of cases implicating access to judicial

services. *Id.* at 530. With respect to the first question, the Court found that Title II enforces rights under the Equal Protection Clause as well as an array of rights subject to heightened constitutional scrutiny under the Due Process Clause of the Fourteenth Amendment. *Id.* at 522-523. With respect to the second question, the Court conclusively found a sufficient historical predicate of unconstitutional disability discrimination in the provision of public services to justify enactment of a prophylactic remedy pursuant to Congress’s authority under Section 5 of the Fourteenth Amendment. *Id.* at 523-529. During the early twentieth century, the eugenics movement labeled persons with mental and physical disabilities as “sub-human creatures” and “waste products” responsible for poverty and crime. United States Commission On Civil Rights, *Accommodating The Spectrum Of Individual Abilities*, 20 (1983) (Spectrum). This record demonstrates that “Congress was justified in concluding that this ‘difficult and intractable proble[m]’ warranted ‘added prophylactic measures in response.’” *Lane*, 541 U.S. at 531 (*quoting Nevada Dep’t of Human Res. v. Hibbs*, 538 U.S. 721, 737 (2003)).

And finally, with respect to the third question, the Court found that the congruence and proportionality of the remedies in Title II should be judged on a category-by-category basis in light of the particular constitutional rights at stake in the relevant category of public services. *See Id.* at 530-531. The Supreme Court declined to “examine the broad range of Title II’s applications all at once, and to treat that breadth as a mark of the law’s invalidity.” *Id.* at 530. Instead, the Court concluded that the only question before it was “whether Congress had the power

under § 5 to enforce the constitutional right of access to the courts.” *Id.* at 531. Viewed in light of *Lane*, Title II is valid Fourteenth Amendment legislation as applied to cases relating to judicial services.

In sum, Title II is aimed at the enforcement of a variety of basic rights—including the right of access to courts. The language used in *Tennessee v. Lane* does not limit the scope of Title II’s protections to fundamental rights; it includes “basic rights,” and other rights protected by the Due Process Clause. Although *Lane* ultimately upheld Title II as valid Fourteenth Amendment legislation only as applied to access to courts, its conclusions regarding the historical predicate for Title II are not limited to that context. The Supreme Court did not begin its “as-applied” analysis until it reached the third step of the *Boerne* analysis addressing the Act’s congruence and proportionality. *See Lane*, 541 U.S. at 530-532. At the second step, the Court considered the record supporting Title II in all its applications and found the record included not only “a pattern of unconstitutional treatment in the administration of justice,” *Id.* at 525, but also violations of constitutional rights in the context of voting, jury service, the penal system, public education and institutionalization, *Id.* at 524-525. That record, the Court concluded, supported prophylactic legislation to address discrimination in “public services” generally. *Id.* at 529. In describing the adequacy of the historical predicate, the Court also spoke in general terms, remarking, for instance, on “the sheer volume of evidence demonstrating the nature and extent of unconstitutional discrimination against persons with disabilities in the provision of public services.” *Id.* at 528. In

concluding that “the record of constitutional violations in this case far exceeds the record in *Hibbs*,” *Id.* at 529, the Court specifically referred to the record of “exclusion of persons with disabilities from the enjoyment of public services,” rather than to the record of exclusion from judicial services in particular. *Id.* Thus, the adequacy of Title II’s historical predicate to support prophylactic legislation addressing discrimination in public services is clear. Likewise, there is an ample historical basis for applying Title II to disability discrimination relating to institutionalization.

Section 5 of the Fourteenth Amendment gives Congress the “authority both to remedy and to deter violation of [Fourteenth Amendment] rights by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment’s text,” *Hibbs*, 538 U.S. at 727 (*quoting Board of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 365 (2001)). Section 5 “is a ‘broad power indeed,’” *Lane*, 541 U.S. at 518 (citation omitted), empowering Congress not only to remedy past violations of constitutional rights, but also to enact “prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct,” *Hibbs*, 538 U.S. at 727-728. Accordingly, Congress did not exceed its authority in enacting Title II of the ADA, as applied in the context of judicial services.

Therefore, the Panel decision, which relied improperly on the assumption that Title II only protected fundamental rights, was erroneous. This error is not harmless because it effectively bars all consideration of basic rights and services

that were meant to be protected and included within Title II, and further is a deviation from previous case law such as *Tennessee v. Lane*.

The Panel stated in its decision that it would not engage in a Title II analysis because Indiana's sovereign immunity was not abrogated, but then conducted part of the *Garrett* analysis within the opinion, further confusing and contradicting previously held caselaw on the subject matter of Title II abrogation. The Panel stated that King had failed to demonstrate how awarding him damages would protect anyone's constitutional rights under Title II, as well as failed to demonstrate how his current action against Marion Circuit Court would plausibly function as a prophylactic against future constitutional violations.

Once Congress' authority and reasoning is supported by findings under the two-part analysis, Congress can use its § 5 authority to enact prophylactic legislation for remedies or prevention of practices that are discriminator in effect. In order to determine whether Congress' use of § 5 authority is remedial or improper substantive redefinition, the court must engage in the congruence and proportionality test, a three-step inquiry first adopted by the Supreme Court in *Boerne* and later adopted in *Garrett. Lane*, 541 U.S. at 520-521.

The first step requires the identification, with some precision, the scope of the constitutional right at issue. *Id.* at 540 (*See Garrett*, 531 U.S. 356, 365 (2001)). In this situation, Title II of the Americans with Disabilities Act purports to enforce a panoply of constitutional rights of disabled persons; not only equal protection rights against discrimination, but also certain rights protected by the Due Process Clause.

Id. Some of the access to court rights include (1) right of a criminal defendant to be present at all critical stages of trial, (2) the right of litigants to have meaningful opportunity to be heard in judicial proceedings, (3) the right of criminal defendants to trial by a jury of his peers, and (4) public right of access to criminal proceedings.

Id. at 541. In this context, the scope of the constitutional issue include access to courts, despite the fact that the Panel stated that this case involved no constitutional dimension at all. Title II protects litigants' access to courts, especially including communication.

The second step examines whether Congress identified a history and pattern of violations of these constitutional rights by states with respect to disabled persons. *Garrett*, 531 U.S. at 368. Under this step, the majority of circuits have adopted the deliberate indifference standard, which does not require a litigant to show that the state actor was motivated by "animus" or ill will but only that it knew that a federally protected right was substantially likely to be violated and nonetheless failed to act. In this situation, there has been a multitude of evidence showing that hearing-impaired litigants, while only making up a small percentage of the litigants passing through Marion Circuit Court, are denied interpreters for court-subsidized mediation. Marion Circuit Court argues that its substitution, full blown court hearings, are an adequate remedy. However, hearing-impaired litigants should not be forced to circumvent alternative, lower-cost proceedings simply because Marion Circuit Court does not want to pay an additional fee for American Sign Language interpreters.

The third step of the inquiry asks whether the rights and remedies created by Title II are congruent and proportional to the constitutional rights it purports to enforce and the record of constitutional violations adduced by Congress. *Garrett*, 531 U.S. at 374. Title II requires on pain of money damages, special accommodations for disabled persons in virtually every interaction they have with the state. It says 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. *Lane*, 541 U.S. at 549. Disabled persons are considered qualified if they meet the essential eligibility requirements for the receipt of the entity's services or participation in the entity's programs, 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. *Id.* (Emphasis added). In analyzing the rights created in Title II, it is clear that the statutory provisions grant constitutional protect to qualified individuals' full benefit and enjoyment of services, programs, or activities of a public entity, and that reasonable modifications to communication, or provision of auxiliary aids and services, should be given to those qualified individuals for full enjoyment.

It is well established that Congress is not limited to barring actual constitutional violations. Rather, Congress "may enact so-called prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct." *Hibbs*, 538 U.S. at 727-728; *accord National Ass'n*

of Bds. of Pharmacy v. Board of Regents of the Univ. Sys. of Ga., 633 F.3d 1297, 1316 (11th Cir. 2011). In particular, Congress may ban “practices that are discriminatory in effect, if not in intent,” notwithstanding that the Equal Protection Clause bans only intentional discrimination. *Lane*, 541 U.S. at 520.

What Congress may not do is pass legislation “which alters the meaning of” the constitutional rights purportedly enforced. *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997). “[T]he line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies.” *Id.* at 519-520. The ultimate question is whether there is “a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.” *Id.* at 520. Put another way, “the question is not whether Title II exceeds the boundaries of the Fourteenth Amendment, but by how much.” *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 490 (4th Cir. 2005). Thus, the only question for this Court is whether Title II, as applied to the class of cases at issue here, is congruent and proportional to the discrimination it remedies and prevents.

The Supreme Court did not limit the abrogation question before it to either the specific judicial services (such as criminal adjudication) alleged to be inaccessible or the particular sort of access sought (wheelchair access to a courtroom). Rather, it framed the question broadly, with respect “to the class of cases implicating the accessibility of judicial services.” *Lane*, U.S. 541 at 531.

Accordingly, the Court found relevant to its analysis a number of constitutional rights and fact patterns even though they were not implicated by the plaintiffs' claims – including exclusion from jury service, violation of First Amendment rights, and failure to make available measures such as sign-language interpreters or materials in Braille. *Id.* Similarly, in *Association for Disabled Americans*, the Eleventh Circuit properly looked at Title II's application "in the context of a public education institution," *See Ass'n for Disabled Ams., Inc. v. Fla. Int'l Univ.*, 405 F.3d 954, 957 (11th Cir. 2005). It did not limit its focus to the particular defendant (a university) or the disabilities of particular plaintiffs. Other courts likewise have correctly declined to focus their inquiries on the narrow sub-category of public education, such as community colleges, at issue in the particular cases before them. *See Toledo v. Sanchez*, 454 F.3d 24, 36 (1st Cir. 2006) (rejecting argument that Congress was required to show history of discrimination in higher education in particular); *accord Bowers v. NCAA*, 475 F.3d 524, 555 (3rd Cir. 2007).

There is good reason for these courts' determination that the validity of Title II as Fourteenth Amendment legislation must be adjudicated as applied to broad categories of services provided by public entities. Title II is sweeping legislation that remedies a long history of discrimination across a variety of activities undertaken by public entities. Congress was entitled to pass legislation broadly remedying such discrimination "even if in the process it prohibits conduct which is not itself unconstitutional." *City of Boerne*, 521 U.S. at 518. Accordingly, it is expected and

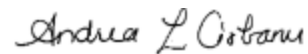
permissible for Section Five legislation to apply in situations where the constitutional rights it protects are not violated.

Following *Lane* and *Association for Disabled Americans*, this Court should determine the congruence and proportionality of Title II within the entire “class of cases” involving the provision of judicial services. *See Lane*, 541 U.S. at 531. Individuals with disabilities face similar discrimination in this class of cases, while “the manner in which the legislation operates” to remedy such discrimination is comparable in such cases. *Id.* at 531 n.18. Moreover, individuals with disabilities often suffer multiple related discriminatory actions arising out of a public entity’s failure to make accessible a public facility, which often can house multiple services and programs. For example, a public park can be used for many purposes other than recreation – including educational programs, with respect to which the Eleventh Circuit already has held that Title II validly abrogates sovereign immunity. *See Association for Disabled Ams.*, 405 F.3d at 958.

CONCLUSION

The petition for writ of certiorari should be granted for the above reasons.

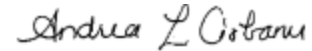
Respectfully submitted,



Andrea L. Ciobanu
Counsel of Record
CIOBANU LAW, P.C.
8910 Purdue Road
Suite 240
Indianapolis, IN 46268
(317) 495-1090
aciobanu@ciobanulaw.com

WORD COUNT CERTIFICATE

I, Andrea L. Ciobanu, attorney for the Petitioner, do swear or declare that this brief contains 4,369 countable words using the word count feature of Microsoft Word.



Andrea L. Ciobanu
Counsel of Record
CIOBANU LAW, P.C.
8910 Purdue Road
Suite 240
Indianapolis, IN 46268
(317) 495-1090

PROOF OF SERVICE

I, Andrea L. Ciobanu, attorney for the Petitioner, do swear or declare that on March 16, 2018, as required by Rule 29, I served a copy of this petition on each party to the above proceeding or that party's counsel, and on every other person required to be served, by United States Mail for delivery within 3 business days. Courtesy copies of the amended motion for in forma pauperis, appendix, and Petition for Certiorari, were further additionally served by Electronic Mail on March 16, 2018.

The names and addresses of those served are as follows:

Kyle Hunter
OFFICE OF THE INDIANA ATTORNEY GENERAL
302 West Washington Street
Indianapolis, Indiana 46204
Telephone: (317) 234-3502
Fax: (317) 232-7979
Kyle.hunter@atg.in.gov

INDEX TO APPENDICES

APPENDIX A (Court of Appeals Panel Opinion filed August 18, 2017).....	1a
APPENDIX B (Court of Appeals Order Denying Petition for En Ban Rehearing).....	9a
APPENDIX C (District Court Opinion filed September 13, 2016).....	10a
APPENDIX D (Plaintiff's grant of <i>in forma pauperis</i> filed July 1, 2014).....	19a
APPENDIX E (Department of Justice Amicus Curiae brief filed February 17, 2017).....	20a