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Supreme Court, U.S.  
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App No \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

Howard R. Hershops,  
Petitioner,

vs.

California Superior Court County of Santa Clara  
Respondent.

On Application for an Extension of Time to  
File Petition for a Writ of Certiorari to the  
California Supreme Court

PETITIONER'S APPLICATION TO EXTENTION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI

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## DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Howard R. Hershings states that he is representing himself In pro Se and the only parties to this Petition for Writ of Certiorari are the California Superior Court and the parties in their official capacity for their acts in violations of the Americans with Disability Act/Rehabilitation Act which imposes liability on the State of California and County of Santa Clara.

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2 and 30.3, Petitioner Howard R. Herships respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended for 60 days up to and including November 10, 2023.

The California Supreme Court entered its order on June 14, 2023, denying review. Absent an extension of time, the Petition for Writ of Certiorari would be due on September 12, 2023.

Petitioner is filing this Application more than 10 days before that date as Supreme Court Rule 13.5 requires that.

This Court has Jurisdiction over the California Supreme Court judgment Exhausting Petitioner's State remedies under 28 U.S.C. § 1257 which was entered on June 14, 2023 which is attached as appendix 1.

#### BACKGROUND

This case has its origin a "Settlement Agreement" between the United States of America and the California Superior Court County of Santa Clara which required the Court to comply with Americans with Disability Act.

The "Settlement Agreement" required "[T]he Court will develop a written policy for provision of auxiliary aids or services when necessary to ensure

**effective communication in the Court system’s programs, services and activities.”**

Petitioner is hearing impairment which requires the use of hearing aids to effectively communicate a necessary life function.

The Santa Clara County Jail was at all times under a Consent Decree in Chavez v. Santa Clara County which required implementation of ADA requirements within 180 days of March 20, 2019 required for hearing impaired inmates to be provide their hearing aids and put in place a ADA/Coordinator to assist hearing impaired inmates.

The Consent Decree provisions during the very time frame of these proceedings herein January 8, 2020 through March 27, 2020 were never implemented as admitted to by the Santa Clara Counsel Report to the Santa Clara Board of Supervisors report dated November 2, 2021.

Petitioner made a Court appearance on January 17, 2020 and requested “Accommodations” to Courtroom personnel and the only “auxiliary aids” provided was the Court’s amplification audio system and the Court acknowledge but made no inquiry into Petitioner’s disability which was required by the “Settlement Agreement” and by Federal Regulations, 28 CFR § 35.160 (b) (2), as well as the controlling case law in the Ninth Circuit in Duvall v. County of Kitsap 260 F. 3d 1124 at 1139-1141.

The Respondent Court proceeded to sentence Petitioner to sixth months in the County Jail with no ability to communicate with Court Appointed legal counsel.

In fact the whole process even admitted to by the Santa Clara County District Attorney's Office took all of ten minutes from appointment until sentencing all done with no ability to communicate of any investigation as to any facts by court appointed legal counsel.<sup>1</sup>

Petitioner then filed a Writ of Mandate into the Sixth Appellate District seeking release as Petitioner had no legal representation in a criminal case and had no ability as the County refused to release Petitioner's hearing aids and the Superior Court refused to inquire into Petitioner's disability denying Petitioner any and all ability to partake in the Court process.

The Santa Clara County Public Defender's Office then sent Petitioner a letter while in custody that the Santa Clara County Public Defender's Office was unilaterally withdrawing from all legal representation in the criminal case and that Petitioner would have to file his notice of appeal.

These acts prejudiced Petitioner as it left Petitioner unrepresented in a criminal case even after the Court on March 6, 2020, reappointed the "PD" and

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<sup>1</sup> This was admitted to by the Santa Clara County District Attorney's Office in their response to Petitioner's Writ of Mandate filed into the Sixth Appellate District on January 29, 2020, seeking review of the denial of accommodations by the Superior Court for Petitioner's disability, which asserted that Petitioner was never represented by legal counsel due to the denial of effective communication.

order the Department to obtain the record of the denial of “accommodation on January 17, 2020”, as the Court set a hearing for March 13, 2020.

The Santa Clara Public Defender’s Office once again did nothing and never communicated with Petitioner of obtained the record and no hearing was ever heard on March 13, 2020, even after ordered to by the Court.

The Santa Clara County Public Defender’s unilaterally withdrawing from legal representation violated California Rules of Professional Conduct Rule 1.16 and California case law that withdrawing from representation in a criminal case requires Court permission.

The Sixth Appellate District in Petitioner’s Writ of Mandate seeking accommodations for a hearing impaired defendant in a criminal case in case No. 047816 requested responses and caused to be sent to the Trial Court notice of the petition and the only party responding was the Santa Clara County District Attorney’s Office who then proceeded to request two extensions of time all unbeknown to Petitioner because the County Jail refused to provided Petitioner notice of Filing sent to Petitioner in the county jail.<sup>2</sup>

The Deputy District Attorney then filed an opposition and once again never served Petitioner and in the opposition the in which the District Attorney misrepresented the controlling law by asserting that the Court by providing the

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<sup>2</sup> The Santa Clara Jail has no law library and does not provide photocopying services or paper or mailing to the Court. The only means of writing is #2 pencil which is 2 inches in length and the only means of mailing is to request the prison chaplain to mail the documents for inmates seeking access to court.

“Court’s Amplification Audio System was all that was required under the ADA and Petitioner’s Request for the ability to communicate with court appointed legal counsel was meritless as Petitioner was provide the Court’s Amplification system.

The irony here is that very same issue was addressed by the Duvall Court 260 F. 3d 1139-41 (9<sup>th</sup> Cir 2001) where the Court stated”[E]specially when the accommodation is provided based upon stereotyped assumptions about the person's disability, such as the assumption that all hearing-impaired individuals need sign-language interpreters, or all hearing-aid wearers may be accommodated by a sound-amplification system.”

Petitioner was never allowed access to Court to oppose these blatant attempts by the District Attorney’s Office to interfere in Petitioner’s protected activity under 42 U.S.C. sections 12203 (a) and (b) which is actionable under 42 U.S.C. § 12133, which in itself a violation of access to court a federal constitutional violation.

The Santa Clara County Public Defender’s Office never implemented 28 CFR § 35.105 (c) (1) (2) and (3) by doing a “Self-evaluation” of just how the Department was going to implement the ability to communicate with a hearing impaired party as admitted to in Petitioner’s Public Records Request which the Department of Justice’s regulations required.

Moreover, the Public Defender's Office never also created a staff position for an ADA Coordinator required by 28 CFR § 35.107.

Additionally in further violation of the Department of Justice regulations for public entities never created a TTY phone system for hearing impaired defendants to communicate in real time with the Public Defender's Office in violation of 28 CFR § 35.161 et. seq.

All of these violation resulted in violations of 28 CFR § 160 (a) (1) which required a "public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others."

These failures to implement these Federal Regulations by the Santa Clara County Public Defender's Office denied Petitioner a qualified hearing impaired individual with a disability shall, by reason of such disability, was 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 i.e. legal representation.

More importantly, because the services of the Public Defender's Office were a Court System's program of services and activities of the Court to ensure effective communicate it was directly related to the "Settlement Agreement" which was never implemented by the Respondent Court.



Petitioner filed his own notice of appeal of the Limited Jurisdiction Court and attempted to object to the Appellate Division hearing an appeal of right in which the very subject matter determination places the Appellate Panel to decide an issue of if the trial court's denial of accommodation was constitutes intentional discrimination entitling Petitioner for a law suit for damages in violation of Title II under both the ADA and the Rehabilitation Act.

California requires that all appellate review from limited jurisdiction court be heard by the Appellate Panel of the Superior Court to review their fellow judge's determination pursuant to California Penal Code § 1466 and California Rules of Court Rule 8.850.

This placed the Appellate Panel to decide a case in which the Appellate Panel has a "Direct Personal, Substantial and a Pecuniary interest in the outcome as it would be rendering a decision against the very Court that the judges are members of.

The Court refused to address the issue and held that that "[S]tates may exercise broad discretion when considering what representation to allow and may require an indigent [defendant] 'to accept against his will a state appointed attorney' representation on a direct appeal without violating the federal Constitution".

In this case the Court appointed attorney on appeal asserted that by the Court's providing Petitioner the Court's Amplification system was all that the Court had to do under the ADA standards Federal case law and there was no need for Petitioner to be able to communicate with court appointed legal counsel.

Petitioner filed a Petition to Transfer this case to the Appellate Panel based upon this Court's decision in *Williams v. Pennsylvania* that the opinion of an Appellate Panel in which the Court had a Direct, Personal, Substantial and Pecuniary interest in the outcome of the case constituted "Structural Error".

The Appellate Panel summarily denied said request and Petitioner filed a Writ of Mandate into the Sixth Appellate District asserting that the opinion of the Appellate Panel denied Petitioner his federal Constitutional rights to an appeal of right as the Court had a Direct, Personal, Substantial and Pecuniary interest in the outcome as once again it would admit to a damage suit against the Court under both the ADA and the Rehabilitation Acts sections 504 and 794 (a).

The Sixth Appellate District summarily denied writ and Petitioner filed a Petition for Review in the California Supreme Court seeking to Exhaust State Remedies under California Rules of Court Rule 8.508 on these very same issues.

The California Supreme Court denied review on June 14, 2023 and Petitioner is now preparing the records to file a Writ of Certiorari to this Court on a question of can an Appellate Panel of the Santa Clara County Superior Court hear

an appeal of right in which the Court must decide an issue which would hold the Court reasonable for damages by the acts of its fellow Judge who has intentionally discriminated against a hearing impaired defendant by denying accommodations which were requested and totally ignored on numerous requests.

Petitioner had filed a cause of action against the California Superior Court County of Santa Clara pursuant to 42 U.S.C. 12101 et seq under the ADA and under 29 U.S.C. sections 504 and 794 (a) based upon these violations since Oct. 15, 2020 for damages for “intentional discrimination” in the United States District Court Northern District of California case No. 20-CV- 0720 JD, which predates the appellate opinion.

The defendants in this action asserts that the Defendant California Superior Court is immune from cause of actions under the ADA and the Rehabilitation Act as you cannot sue the State as they have absolute immunity under the Eleventh Amendment.

Defendant California Superior Court County of Santa Clara asserts this in their current motion to dismiss under FRCP Rule 12 (b), even through Title 42 U.S.C. section 12202 holds that a State has no immunity for violations under the Americans with Disability Act and the Rehabilitation Act.

Defendants also assert in their motion that under Rucker-Feldman doctrine the decision of the Appellate Panel denying Petitioner from asserting Accommodation due to the ineffective assistance of Court appointed legal counsel.

However, the State Decision is not final as Petitioner has until September 12, 2023 to file a Petition for Certiorari from the denial by the California Supreme Court.

Currently this Motion is pending in the Northern District Court with a hearing set for August 24, 2023, which will require the filing responsive pleadings into the Northern District.

#### Reasons For Granting An Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Petitioner is representing himself In Pro Per in this Appeal from a criminal case in which the California Superior Court Appellate Panel ruled that Petitioner a hearing impaired defendant can be denied Petitioner's rights to Accommodation which denied Petitioner's rights to legal representation in a criminal case when the Judge denied correction of custody credits **"The court cited to no authority in support of its order denying prior credits"**.

These acts were done to a hearing impaired defendant who never had any ability to communicate with legal counsel all done in violation ADA and the

Rehabilitation Act, which were done while already under a “Settlement Agreement” prohibiting this very conduct.

2. Petitioner has litigation deadlines in the Northern District Court of California which requires the filing of opposition to the two motions to dismiss that the defendants can deny accommodations to a hearing impaired defendant in a criminal case which denies legal representation as these facts do not support a cause of actions under the Americans with Disability Act.

3. The Northern District Court of California under General Rule 56 also requires that all ADA cases must proceed which requires initial disclosures under FRCP, Rule 26 (a) (1) and the filing of FRCP 12 (b) motion does stay the disclosures of the Documents which will show that the Defendant Court and the Public Defender’s Office never provided any means of communication.

4. These disclosures are all relevant to the issues before this Court and are required under the General Order 56 and can be submitted as appendix to the Writ of Certiorari.

5. Additionally, the determination made by the Northern District Court of California on the denial of accommodations will be also relevant as the Appellate Panel made no determination as Appellate Panel blocked said determination of a denial accommodation as the Court recognized that to do so would impose liability in a Federal Court for damages, which cause Petitioner having to serve an

additional 30 days beyond the sentence imposes all because there was no legal representation in a criminal case.

6. The above issues was never ruled upon the merits as every State Court denied review summarily as State Court system did not want to impose liability on the California Superior Court.

7. This case presents issues of importance under the Americans with Disability Act and the Rehabilitation Act when a State Court denies accommodations to a hearing impaired defendant and proceeds with no ability to communicate with court appointed legal counsel who can make a determination on the denial of accommodations without having a "direct, personal, substantial and pecuniary interest in the outcome of the case.

8. This is shown even in the Appellate Panel's determination which held that Reviewing Court has sole discretion to deny a hearing impaired defendant in a criminal case the right to accommodation to partake in the court process because the of defendant was represented by Court appointed legal counsel who has sole authority to decide the issues on appeal and can waive a hearing impaired defendant's rights to legal representation.

9. According to the Appellate Panel's Opinion said acts were done with no authority which deprived petition of his liberty interest of some 30 days.

10. The current standards in the California Judicial system shows that the California Court system's "self-serving" summarily denial shows that all state court refuses to address the issues on the merits of the denial of ADA and rehabilitation because the State Court Systems recognize has a direct, personal, substantial and pecuniary interest in the outcome and simply denies review.

11. An Extension of time will not cause prejudice to Respondents, as this Court would not review this case until after October 2023-2024 will start regardless of whether an extension is granted.

12. An extension of 60 days is requested from September 12, 2023 up to and including November 13, 2023 as the Sixty day is Veterans Day which the Court is closed.

### CONCLUSION

For the forgoing reasons, Petitioner respectfully request that the time to file the Petition for a Writ of Certiorari in this mater be extended 60 days, up to and including November 13, 2023.

Dated August 2, 2023

Respectfully submitted

  
Howard R. Herships