NO. 25-_____

In the Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

DYNAMIC PHYSICAL THERAPY, LLC, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Louisiana Court of Appeal, First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title III of the Americans with Disabilities Act ("ADA") and § 504 of the Rehabilitation Act ("RA") require public accommodations that receive federal funding to provide reasonable accommodations for people with disabilities and prohibits discrimination based on a disability. In the decision below, the Louisiana First Circuit Court of Appeals held that, for any claims made during the COVID-19 emergency, these statutes are violated only if healthcare providers acted with "gross negligence or willful misconduct," a standard based on the state's public health emergency statute, the Louisiana Health Emergency Powers Act ("LHEPA"). La. R.S. § 29:771.

This decision creates a paradox in which a plaintiff's federal claims may be dismissed based purely on the incident timing, even when such dismissal is not supported by federal law. Additionally, the Louisiana Court of Appeals decision shields a provider who discriminatorily denies care to a patient.

THE QUESTION PRESENTED IS:

Whether a state procedural law that immunizes a healthcare provider from liability during a public health emergency may override a federal substantive claim based on the Americans with Disability Act and the Rehabilitation Act of 1973, effectively denying the corresponding remedy authorized by these federal statutes by forcing plaintiffs to meet a heightened standard to prove federal claims than provided for in the federal statutes.

PARTIES TO THE PROCEEDINGS

Petitioner and plaintiff-appellant below

- JOHN DOE

Respondents and Defendants-Appellees below

- DYNAMIC PHYSICAL THERAPY, LLC
- SCOTT NEWTON, in his official capacity as a physical therapist licensed in the state of Louisiana

LIST OF PROCEEDINGS

The following proceedings are directly related to this petition under Rule 14.1(b)(iii), and involve the same parties and operative facts:

- *John Doe v. Dynamic Physical Therapy LLC and Scott Newton*, No. 2024-LA-0723, State of Louisiana First Circuit Court of Appeals, Judgment entered December 27, 2024 (404 So.3d 1008), writ denied, 2025-C-00105, 407 So.3d 623, entered April 29, 2025.
- *John Doe v. Dynamic Physical Therapy LLC and Scott Newton*, No. 2021-15372, Twenty-Second Judicial District Court of Louisiana, Judgment entered September 21, 2023.

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PETITION FOR WRIT OF CERTIORARI

JOHN DOE, Petitioner, respectfully petitions this Court for a writ of certiorari to review the judgment of the Louisiana Court of Appeal for the First Circuit and the denial of the Louisiana Supreme Court to grant writ.

OPINIONS BELOW

The State Court of Louisiana, Court of Appeals, First Circuit decision affirmed the trial court's dismissal, appears at App.6a. and is reported at 404 So.3d 1008.

The highest state court in Louisiana declined to review the merits; Justice Griffin, Justice McCallum, and Justice Cole would have granted. Justice Griffin assigns reasons; this decision, including the dissent, appears at App.1a to the writ and is reported at 407 So.3d 623.

JURISDICTION

The Twenty-Second Judicial District Court of Louisiana entered judgment on September 21, 2023. (App.23a) The Court of Appeals entered judgment on December 27th, 2024 (App.6a). The highest state court denied timely writ on April 29th, 2025 (App.1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 12182
Prohibition of discrimination by public accommodations

> **(a) General rule.** No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

29 U.S.C. § 794(a)
Nondiscrimination under Federal grants and programs

> **(a) Promulgation of rules and regulations.** No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 U.S.C.S. § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be

submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees

RS 29:773
Limitation of liability during the COVID-19 public health emergency

A. Notwithstanding any other provision of law to the contrary, no natural or juridical person, state or local government, or political subdivision thereof, shall be liable for damages or personal injury resulting from or related to an actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person's, government's, or political subdivision's business operations unless the person, government, or political subdivision failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and the injury or death was caused by the person's, government's, or political subdivision's gross negligence or wanton or reckless misconduct. If two or more sources of procedures are applicable to the business operations at the time of the actual or alleged exposure, the person, government, or political subdivision shall substantially comply with any one applicable set of procedures.

[. . .]

STATEMENT OF THE CASE

I. Legal Background

A. Federal and State Laws

§ 504 OF THE REHABILITATION ACT OF 1973 ("RA") prohibits discrimination in education, employment, access to equal medical care and other areas.[1] The RA recognizes that people with disabilities have historically been treated unfairly, based in part on deeply held fears and stereotypes. The RA aims to improve rehabilitation services and expand access to services. Overall, the RA's purpose is to achieve equal opportunity and full inclusion in society for people with disabilities.

§ 504 violations require showing the plaintiff is 1) a disabled individual; 2) otherwise qualified to participate in the offered activity or to enjoy its benefits; 3) excluded from such participation or enjoyment solely by reason of [their disability][2] The source for the remedies and procedure for the RA of 1973 is Title VI of the Civil Rights Act of 1964 (RA points to Title VI for non-employment-related discrimination)[3] It authorizes individuals to seek relief for rights violations by bringing suits for injunctive relief or money damages.

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[1] 29 U.S.C. § 794.

[2] *Id.*

[3] *Id.*

THE AMERICANS WITH DISABILITIES ACT ("ADA") was enacted in 1990.[4] The ADA's legislative purpose is to create a national mandate for eliminating discrimination against people with disabilities by prescribing national enforceable standards in which the federal government plays a central role.

In *Olmstead v. L.C.*, this Court held that healthcare providers must transfer patients with mental disabilities to less restrictive settings within a reasonable time after their doctor has determined that such a setting would be appropriate for them, and to account for practical considerations from the provider.[5] A hospital institutionalized the plaintiffs beyond their doctor's recommendation, and this decision created what is referred to as the "integration regulation."[6] This Court relied on the purpose section in the ADA, the substantive discrimination clause in the ADA, the remedies clauses in the ADA and RA, and two implementing regulations.[7] *Olmstead* strengthened the ADA and the RA by specifying the responsibilities expected from healthcare providers, emphasizing that providers should evaluate the most appropriate treatment for patients on a case-by-case basis.[8] It also emphasized that providers should have comprehen-

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[4] 42 U.S. Code § 12181 *et seq*.

[5] *Olmstead v. L. C. by Zimring*, 527 U.S. 581, 119 S.Ct. 2176, 144 L.Ed.2d 540 (1999). Basis in the ADA Title II and 28 C.F.R. 35.130(d)

[6] *Id*.

[7] *Id*.

[8] *Id*.

sive, effective plans in place to meet the reasonable-modification standard.[9]

In 2008, Congress amended the ADA to emphasize that it should have broad coverage and protection, overturning cases that limited the ADA's scope.[10]

ADA Title III covers public accommodations, including healthcare providers, generally prohibiting them from denying participation, providing an unequal benefit, and using administrative methods that have discriminatory effects on people with disabilities.[11] Title III prohibits imposing eligibility criteria that exclude or tend to exclude individuals with disabilities from fully enjoying a benefit, fail to make reasonable accommodations to policies, practices, or procedures when necessary to afford services to people with disabilities, and fail to take steps to make sure that no person with a disability is excluded because auxiliary services are absent.[12]

To state a prima facie claim under ADA Title III, a plaintiff must show that (1) they are disabled under ADA definitions; (2) the defendant is a private entity that owns, leases, or operates a place of public accom-

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[9] *Id.*

[10] 122 Stat. 3553; note that the changes were finalized in 2010; *see Sutton v. United Air Lines*, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999); *Toyota Motor Mfg., Ky. v. Williams,* 534 U.S. 184, 122 S.Ct. 681, 151 L.Ed.2d 615 (2002)

[11] ADA *supra* note 4.

[12] *Id.*

modation; and (3) the defendant discriminated against the plaintiff based on the plaintiff's disability.[13]

The remedies and procedures are set forth in §§ 2000a-3(a) of the Civil Rights Act of 1964. Private citizens may bring Title III claims if they seek preventative relief such as an injunction, which can include requiring the public accommodation to provide the service or equivalent alternative, provide an auxiliary aid, or modify a policy. The remedies in this subchapter shall be the exclusive means for enforcing the rights.[14] Additionally, nothing in this subchapter shall preclude an individual from asserting any right or pursuing remedy, and nothing shall preclude a state from asserting any right or remedy unless it is inconsistent with this subchapter.[15]

Courts generally permit plaintiffs to establish a statutory violation under the ADA and RA without proving intent to discriminate. However, a plaintiff must show intentional discrimination for compensatory damages, satisfied by the "deliberate indifference" standard.[16] Deliberate indifference "does not require a showing of personal ill will or animosity toward the disabled person," but only that the "defendant disre-

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[13] *Id.* at § 12182(a); *See also Eaton v. Woodlawn Manor*, 2021 U.S. Dist. LEXIS 203550 (W.D. La. Oct. 5, 2021), citing *Kramer v. Lakehills S., LP*, No. A-13-CA-591, 2014 U.S. Dist. LEXIS 1319, 2014 WL 51153, at *6 (W.D. Tex. Jan. 7, 2014).

[14] 42 U.S. Code § 2000a-6(b)

[15] *Id.*

[16] *A.J.T. v. Osseo Area Sch., Indep. Sch. Dist. No. 279*, 222 L. Ed. 2d 1, 10.

garded a strong likelihood that the challenged action would violate federally protected rights."[17]

Recently, in *A.J.T. v. Osseo Area Schools*, this Court unanimously held that ADA Title II and RA § 504 cannot require children to satisfy the heightened "bad faith or gross misjudgment"[18] In *A.J.T.*, a school denied a girl with epilepsy an educational accommodation.[19] The Eighth Circuit decided that the claim could not move forward because the heightened standard was not met, referencing the Individuals with Disabilities Education Act ("IDEA").[20] This Court recognized that this standard was based on an incorrect assumption that the IDEA makes ADA and RA remedies more difficult to secure for children in the education context. This Court reasoned that this assumption is not textually supported and contradicted clear Congressional intent[21] Nothing in the ADA and RA "should be subject to a distinct, more demanding analysis[22] Congress made their intent clear about disability protections when they overturned *Smith v. Robinson*, a case using a similar assumption, by adding 20 U.S.C. § 1415(l) to ensure that nothing in the IDEA limits the rights or remedies conferred by the ADA, RA, and other

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[17] *Id.* at 6.

[18] *A.J.T. supra* note 16.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

federal laws.[23] This Court also recognized in *Alexander v. Choate* that discrimination against people with disabilities is "most often the product, not of invidious animus, but rather of thoughtlessness and indifference – of benign neglect.[24] As a result, the conduct that Congress sought to cover with the RA would be severely limited if only inclusive of actions "fueled by discriminatory intent."[25]

THE LOUISIANA HEALTH EMERGENCY POWERS ACT ("LHEPA"). In 2003, the Louisiana Legislature passed LHEPA to facilitate the state's response to public health emergencies. LHEPA provides a special affirmative defense for medical providers in public health emergencies by limiting their liability in order to prevent hesitation in providing care.[26] The Act prevents private entities from assuming civil liability for causing death or injury to any person, unless the plaintiff can meet the heightened standard for "gross negligence or willful misconduct." "Gross negligence" is defined as "the want of even slight care and diligence and the want of that diligence which even careless individuals are accustomed to exercise."[27] Additionally, "willful" is "the most egregious conduct ... that exhibits an active

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[23] *Smith v. Robinson,* 468 U.S. 992, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984); overturned.

[24] *A.J.T. supra* note 16, (Sotomayor, J., concurring) (quoting *Alexander v. Choate*, 469 U.S. 287, 295, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985))

[25] *Id.*

[26] *Id.*

[27] *Doe v. Dynamic Physical Therapy*, LLC, 2024-0723 (La. App. 1 Cir. 12/27/24); 404 So.3d 1008, 1017. App.17a.

desire to cause harm, but which is so far from a proper state of mind that it is treated in many respects as if harm was intended."[28]

In 2020, Louisiana's governor declared a public health emergency for the COVID-19 pandemic, triggering LHEPA. Louisiana courts have interpreted its application broadly. In *Lathon v. Leslie Lakes Ret. Ctr.*, the plaintiff slipped and fell at the Center during COVID-19.[29] Louisiana's Second Circuit applied LHEPA's emergency immunity to a premises liability claim, finding the statute immunized all healthcare providers for any personal injury or property damage claim if it arose during a public health emergency.[30]

Defendants raised a Peremptory Exception of No Cause of Action under La. Code Civ. Proc. Art. 927(A)(5). Under Louisiana's Code of Civil Procedure, an exception is a defense, rather than denial or avoidance to the demand used to delay, dismiss, or defeat the demand brought against the defendant.[31] A Peremptory Exception's function is to declare the plaintiff's action legally nonexistent, or barred by effect of law, and henceforth dismiss or defeat the action.[32] Its purpose is to test legal sufficiency by determining whether the law affords a remedy on the facts alleged in the petition. A court must accept well-pleaded allegations as true.

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[28] *Id.*

[29] *Lathon v. Leslie Lakes Ret. Ctr.*, 54479 (La. App. 2 Cir. 09/21/22); 348 So.3d 888.

[30] *Id.*

[31] La. Code Civ. Proc. Art. 921.

[32] La. Code Civ. Proc. Art. 923.

B. An Emerging Doctrine: Reverse-*Erie*

a. An Emerging Doctrine: Reverse-*Erie*

The *Erie* doctrine discourages forum shopping to avoid inequitable administration of the laws.[33] Under this doctrine, a federal court must apply state substantive law when adjudicating a state claim in federal court.

The reverse-*Erie* doctrine aims to address the question of which procedure should be utilized when adjudicating federal claims in state courts. This doctrine discourages forum shopping and avoids inequitable administration of the laws. Similarly, reverse-*Erie* states when the Constitution, Congress, or federal courts explicitly or implicitly mandate federal procedural law in accordance with substantive law, state court musts apply relevant federal procedure. When there is no such mandate, the answer is less apparent, implicating the relationship between state and federal law, as state courts must first decide this vertical choice of law.

This Court has explored this quasi-procedural question in numerous cases. In such cases, this Court has considered a combination of the following factors: (1) whether the source of the available federal procedure is internal or external to the text, purpose, or legislative history of the substantive statute; (2) the state court's interest in using its own procedure; (3) whether the state procedure is applied consistently to similar type federal claims or singles out this claim; (4) whether the state procedure uniformly applies to both

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[33] *Hanna v. Plumer*, 380 U.S. 460, 474 (1965) (Harlan, J., concurring).

parties or favors one; (5) the degree to which the state law interferes with the policy goals set forth in the federal substantive law; (6) the degree to which the state procedure is outcome-determinative; (7) risk of forum-shopping; and (8) risk of unequal treatment due to unequal access to courts.[34] Courts vary in how they weigh each factor and whether it follows an analysis more akin to implied pre-emption or choice-of-law.[35]

Central Vermont Railway v. White (1915), is an early reverse-*Erie* case where a railroad employee was killed by a train.[36] Under the Federal Employers Liability Act ("FELA"), his widow brought a negligence suit. The question before this Court was which party bore the burden of proof[37] FELA placed this burden on the defendant, while Vermont law placed it on the plaintiff. Since Congress clearly intended federal procedure to apply to FELA substantive rights, this Court reasoned that applying state law would stand as an obstacle to fully realizing the intent behind FELA and thus the state law should be pre-empted.[38] Alternatively, this Court considered an external-source approach, assuming Congressional intent was not clear.[39] It asserted that a state may apply its own procedural laws to federal claims "as long as the

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[34] Wendy G. Couture, *Cyan, Reverse-Erie, and the PSLRA Discovery State in State Court*, 47 U. ID. SEC. REG. J.L. 21 (2019).

[35] *Id.* at 5-8.

[36] *Cent. R.R. v. White*, 238 U.S. 507, 35 S.Ct. 865, 59 L.Ed. 1433 (1915)

[37] *Id.*

[38] *Id.*

[39] *Id.*

question involves a mere matter of procedure."[40] The question in the case was not procedural, so this Court reclassified the state law as substantive and required the state to apply federal procedure[41][42] This Court established that the procedure creating the cause of action should govern when the state law bars remedy or destroys liability, against Congressional intent or when more than mere procedure is at stake.[43]

In 1942, this Court decided *Garrett v. Moore-McCormac.* Under the Jones Act, the plaintiff sued for injury aboard a ship due to his employer's negligence.[44] The defense argued that the plaintiff signed a waiver, which the plaintiff claimed was fraudulent, state and federal law clashed over which party had the burden to prove the validity.[45] The Jones Act incorporates FELA, but neither law explicitly mentions burden procedure, so the federal procedure source here was external.[46] However, this Court did not rely on Congressional intent, instead relying on longstanding federal admiralty law supremacy and opting for choice-of-law analysis.[47] This Court, borrowing analysis from *Central Vermont*, held that the state rule in dispute

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[40] *Id.* at 511-12.

[41] *Id.* at 511-12.

[42] *Id.*

[43] *Id.*

[44] *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 239 (1942)

[45] *Id.*

[46] *Id.*

[47] *Id.*

did affect the substantive rights of parties, so this law was not "merely procedural" and therefore should *not* overcome a federally established right.[48] This Court, desiring uniform application, saw the state court's decision as a failure to afford the petitioner benefits granted to them by federal law.

In *Brown v. Western*, a railroad employee sued for negligence under FELA.[49] The lower court granted a general demurrer due to plaintiff's failure to state a cause of action.[50] However, Georgia's pleading rule clashed with the federal right to recover under FELA.[51] Georgia's rule of practice construed pleading allegations "most strongly against the pleader."[52] This Court did not attempt to distinguish "substance" from "procedure," instead assuming the duty to review the allegations de novo and determine whether the plaintiff was denied a federally authorized right to trial.[53] It used a broad conflict pre-emption approach, holding that a federal right of recovery cannot be unnecessarily burdened or dismissed by strict local rules for pleadings because such local rules threaten uniform application of federal law.[54] This Court determined Congress intended FELA to provide rights of recovery to plain-

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48 *Id.* at 242.

49 *Brown v. W. R. of Ala.*, 338 U.S. 294, 70 S.Ct. 105, 94 L.Ed. 100 (1949)

50 *Id.*

51 *Id.*

52 *Id.* at 295.

53 *Id.*

54 *Id.*

tiffs in any court, but Georgia's procedural laws inhibited this right.[55]

In 1952, this Court decided *Dice v. Akron,* wherein the plaintiff sued his employer for alleged negligence under FELA. Here, a railroad worker was injured when a train jumped the track.[56] The defense argued that plaintiff signed a release.[57] The dispute centered on whether the judge or jury was to decide the release's validity.[58] Ohio law held this was a question for the judge, while federal law, from which the relevant procedure derived, held it was for the jury.[59] Following choice-of-law principles, this Court weighed state preferences for the state's rule against FELA's policy goals.[60] This Court's majority found reasons to apply federal law were more persuasive including that (a) Ohio law eliminated jury trials for some phases of fraud proceedings; (b) applying Ohio's rule was "wholly incongruous with the general policy of the Act" to give railroad employees a right to recover compensation for injuries; (c) the Ohio rule was incompatible with modern judicial practice; and, (d) the right to jury trials was too "fundamental [a] feature of our system" to be considered "mere procedure" significantly impacting

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55 *Id.*

56 *Dice v. Akron, C. & Y. R. Co.*, 342 U.S. 359, 72 S.Ct. 312, 96 L.Ed. 398 (1952)

57 *Id.*

58 *Id.*

59 *Id.*

60 *Id.*

the outcome.[61] This Court added that such application renders FELA relief inoperative by depriving workers of benefits given by Congress.[62]

The next time this Court addressed reverse-*Erie* was in 1988 in *Felder v. Casey*. Police stopped the plaintiff for questioning, then subsequently beat and arrested him.[63] Plaintiff filed a § 1983 claim against the city but failed to comply with Wisconsin's notice-of-claim law.[64] This notice requirement was absent from § 1983, thus, a conflict existed between the special defense granted by Wisconsin statute to state entities and an individual's right to recover compensation under § 1983.[65] This federal law explicitly contains plaintiff's remedies within the text, providing compensatory relief to those whose federal rights were depleted by state actors.[66]

Since Congressional intent was derived directly from text or historical context, this Court considered internal and external-source theories.[67] Wisconsin's procedural law provided state defendants with a special affirmative defense to minimize liability.[68] This Court

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[61] *Dice supra* note 56.

[62] *Id.*

[63] *Felder v. Casey*, 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123 (1988)

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*, at 157 (Justice O'Connor dissenting)

held states are permitted to implement their own procedure, unless the purpose or effect poses an obstacle to Congressional goals.[69] Federal laws meet state courts, but "only insofar as those courts employ rules that do not impose unnecessary burden on rights of recovery authorized by federal law."[70] This Court determined enforcing Wisconsin's statute prevented plaintiffs from compensation for rights deprived by a state entity.[71] Applying state law in *Felder* thwarts federal policy goals, impermissibly forcing injured persons to exhaust nonjudicial remedies absent from § 1983.[72] Drawing on principles of uniformity, this Court also decided the Wisconsin law was outcome-determinative, since such cases would frequently and predictably proceed in federal court if not for this law.[73]

The same year, in *Monessen Southwestern Railway Co. v. Morgan*, this Court held the defendant's interest in limiting their damages was too substantial for state law to deprive them that interest.[74] The dispute centered on a conflict between Pennsylvania law, allowing prejudgment interest to accrue against the defendant and FELA, limiting such accrual.[75] This

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[69] *Felder supra* note 63.

[70] *Id.*, citing *Brown v. Western R. Co. of Alabama,* 338 U.S., at 298-99

[71] *Felder supra* note 63.

[72] *Id.*

[73] *Id.*

[74] *Monessen S. R. Co. v. Morgan*, 486 U.S. 330, 108 S.Ct. 1837, 100 L.Ed.2d 349 (1988)

[75] *Id.* at 333.

Court viewed this state law to have equal application to similar claims, but unequal effects on parties, increasing the plaintiff's recovery amount by over 20 percent.[76]

In 1990, this Court decided *Howlett v. Rose*, an illegal search case. A state waiver-of-sovereign-immunity statute prevented certain § 1983 cases from being brought in state court.[77] This Court deemed the source of federal procedure was internal, establishing that a state statute cannot alter an existing interpretation of a federal statute, and a State court's control over its own procedure and its responsibility to enforce federal laws are both fundamental.[78] Balancing these needs, this Court decided a *neutral* state procedure is permissible, so long as federal law is not disrupted.[79] Because this state law favored the defendant, it should be pre-empted.[80]

Johnson v. Fankell, decided in 1997, limits federal laws displacing states' abilities to apply its own procedure.[81] This Court noted, where federal law causes the state court to fundamentally restructure its operations, the federal law should not apply.[82] In Johnson, the state rule was neutral, procedural, and consist-

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[76] *Id.* at 335.

[77] *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990)

[78] *Id.* at 372-73

[79] *Id.*

[80] *Id.* at 380.

[81] *Johnson v. Fankell*, 520 U.S. 911, 117 S.Ct. 1800, 138 L.Ed.2d 108 (1997)

[82] *Id.* at 922.

ently applied to these claims.[83] The defendant-employer desired pre-emption, seeking to shirk liability in a § 1983 claim, using a federal immunity procedure.[84] The Idaho court denied defendants' immunity and prevented appeal under Idaho law.[85] This Court held that state law prevailed because the federal procedure defendants relied on did not originate from the same source as the plaintiff's claim.[86] Unlike the Howlett Court, which favored the internal-source theory, this Court considered both internal and external favoring neither. It emphasized importance on the source for federal procedure and limited the outcome-determinative test to the "ultimate disposition" of the case.[87]

Recently, this Court decided *Williams v. Reed*, recognizing that state law immunizing government conduct otherwise subject to suit under § 1983 is pre-empted, even when federal litigation occurs in state court.[88] Precedent settled this narrow issue.[89] Unemployed workers sued the Alabama Department of Labor for delays processing their unemployment claims.[90] Alabama law effectively immunized the state from § 1983 claims which challenged administrative process

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83 *Id.* at 923.

84 *Id.*

85 *Id.*

86 *Id.* at 921.

87 *Id.*

88 *Williams v. Reed*, 145 S.Ct. 465, 221 L.Ed.2d 44 (2025)

89 *See Felder supra* note 63; *Howlett supra* note 77; *Haywood v. Drown*, 556 U.S. 729, 129 S.Ct. 2108, 173 L.Ed.2d 920 (2009)

90 *Williams supra* note 88 at 469

delays through a failure-to-exhaust defense.[91] This Court deemed this impermissible.[92] The federal procedure at issue was the plain text and purpose for § 1983. Additionally, this Court considered historical usage and state sovereignty to address procedural and substantive challenges regarding the decision to award unemployment benefits[93] This Court categorized applying the state law as a procedural challenge, and favored the federal right[94] Although the state rule applied to all unemployment compensation appeals, it favored defendants by barring plaintiffs' access to courts to complain about delays until defendants resolved such delays. It contradicted § 1983's legislative intent to provide immediate redress for violations, nullifying the federal.[95] The Alabama rule was also outcome-determinative, since it led to dismissing claims without reaching the merits.

II. Factual Background

Due to severe chronic back pain, plaintiff/appellant, John Doe ("Mr. Doe"), was referred to defendants/appellees physical therapist Scott C. Newton ("Newton") and Dynamic Physical Therapy LLC ("Dynamic") by his physician and interventional pain management specialist, Dr. Steve C. Lee ("Dr. Lee"), for heated aquatherapy, a low-impact physical therapy modality

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91 *Williams supra* note 88.

92 *Id.* at 470.

93 *Id.* at 471; *see also Williams v. Reed*, 145 S. Ct (Thomas Dissenting).

94 *Id.* at 471.

95 *Id.* at 470.

used to improve physical function and reduce pain in patients with limited mobility or balance.[96] Dr. Lee informed Mr. Doe that he specifically prescribed aquatherapy because regular therapy would not be fully successful on its own.[97] Aquatherapy involves physical therapy in a pool.[98] It is unique from regular therapy because it decreases stress on a patient's muscles and joints. The warm water can also help alleviate pain and promote relaxation.[99] Having suffered excruciating back pain for years with standard treatments providing little or no relief, Mr. Doe was eager to try this alternative method. On December 1, 2020, Dr. Lee faxed the referral to Dynamic. Healthy Blue Louisiana Medicaid sent Mr. Doe a letter approving treatment dated December 21, 2020.[100]

On December 30th, 2020, Mr. Doe completed an initial intake assessment, where Newton determined that he was a good candidate for aquatic physical therapy, subsequently setting the first therapy appointment to be the following day. The two discussed policies and executed routine paperwork. After their initial meeting, Newton avoided direct interaction with Mr. Doe. At no point did Newton or anyone else at Dynamic examine, ask, or give Mr. Doe the opportunity to provide information concerning his HIV status, such as CD4 count or whether he had open wounds or comorbid

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96 Writ of Certiorari to La. Sup. Ct. at 1, ¶ 2

97 Verified Petition for Damages at 2, ¶ 9.

98 First Supplemental and Amended Petition for Damages at 4 ¶ 14.

99 Appellate Brief to La. Sup. Ct. at 6, ¶ 2.

100 Verified Petition for Damages at 1, ¶ 4-5.

conditions, that could ascertain whether he had *any* contraindications for aquatherapy.[101] This information would have shown that his HIV was undetectable and untransmissible. Mr. Doe had been taking antiretroviral therapy (ART), which suppresses the HIV virus, for many years.[102]

The next morning, before the December 31st, 2020, appointment, Newton called Mr. Doe to tell him that Dynamic would not provide him aquatherapy explicitly because he is HIV-positive, asserting that HIV is a contraindication for aquatherapy.[103] Mr. Doe was shocked and confused by this generalization. Contrary to the authority of his physician, pain management doctor, and insurance approval, Dynamic asserted that this denial was treatment-based.[104] Per the Center for Disease Control ("CDC"), HIV can only be a contraindication for aquatherapy in the limited circumstance that the patient is seriously immunocompromised.[105] The CDC provides that individuals with HIV who manage their condition and have a stable status can engage in aquatherapy safely, provided they follow general hygiene practices to prevent

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101 Verified Petition for Damages at 2, ¶ 8

102 First Supplemental and Amended Petition for Damages at 3 ¶ 7.

103 *See* Verified Petition for Damages at 2, ¶ 7 and 10; Original Brief on Behalf of Defendants/Appellees, Dynamic Physical Therapy, LLC and Scott Newton, PT at 18, ¶ 1.

104 Original Brief on Behalf of Defendants/Appellees, Dynamic Physical Therapy, LLC and Scott Newton, PT at 16, ¶ 1

105 *See* Verified Petition for Damages, p.2, ¶ 8; *See also*, *Precautions and Contraindications*, Aquatic Resources Network (ARN) 59 (2010).

infections and consult their healthcare provider before starting any new exercise regimen.[106]

The choice to issue a blanket-denial to HIV-positive patients was allegedly in the interest of safety, and it drew upon outdated, generalized fears about HIV. The CDC does not have any reported instances where HIV was transmitted through water, at least in part because chlorine kills germs found in blood.[107] HIV cannot survive outside the body for long and is transmitted only through certain bodily fluids such as blood, semen, rectal fluid, vaginal fluid, and breastmilk.[108] HIV cannot be transmitted through casual contact such as shaking hands, hugging, or sharing drinks, but can be transmitted through sexual contact, sharing needles and syringes, childbirth, or breastfeeding.[109]

Mr. Doe knew that patients living with HIV were not automatically precluded from undertaking aquatherapy, so he requested a letter from Newton explaining why he was being denied the care to which he was prescribed by his doctor.[110] Newton agreed to send this explanation but never did. He simply reiterated the denial, adding that Mr. Doe should "let [him] know" if he wanted to try land-based treatment.

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106 Appellate Brief to La. Sup. Ct. at 6, ¶ 2.

107 Centers for Disease Control and Prevention, *What to Do When There is Blood or Vomit in the Pool*, HEALTHY SWIMMING, (May 8, 2025), https://www.cdc.gov/healthy-swimming/response/responding-to-blood-and-vomit-in-the-pool.html.

108 First Supplemental and Amended Petition for Damages at 2, ¶ 4 and 5.

109 *Id.* at 2, ¶ 4.

110 Verified Petition for Damages at 10-11, ¶ 10.

He took no steps to get Mr. Doe that treatment.[111] Newton attached a SharePoint link to a document entitled "Aquatics Consent and Pt. Info Form.docm" ("Form"), which he assured Mr. Doe that all patients sign.[112] Mr. Doe was unable to access the document through this link because the permission settings were exclusive.[113] Newton said that this Form lists HIV as a contraindication, but when Dynamic produced the Form in litigation, it revealed that neither HIV nor AIDS were listed therein, instead listing "infectious processes such as hepatitis A, Strep throat, vaginal or urinary infection, staphylococcus infection or other communicable diseases."[114] The Form then states: "Please sign below to confirm that you…do not have any of the symptoms listed above."[115] Mr. Doe did not sign the form.

Newton's refusal caused Mr. Doe to suffer anxiety, shame, and exacerbated depression, as well as continuous, untreated, severe back pain.[116] Mr. Doe has been unable to locate another aquatic physical therapy provider near his home and is restricted by his limited transportation options.[117]

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111 Email from Scott Newton, Physical Therapist, Dynamic Physical Therapy, to John Doe, (Dec. 31, 2020, 10:29 CDT).

112 *Id.*

113 *Id.*

114 Aquatics Therapy Consent and Patient Information at 2.

115 *Id.*

116 Writ of Certiorari to La. Sup. Ct. at 2, ¶ 2.

117 Verified Petition for Damages at 3, ¶ 11.

III. Procedural History

Mr. Doe filed a Verified Petition for Damages against the defendants in The Twenty Second District Court for the Parish of St. Tammany on December 20, 2021.[118] Mr. Doe alleged that Newton and Dynamic violated the ADA, the Louisiana Civil Rights Act for Persons with Disabilities, and the RA by withholding medical care to Mr. Doe, a person living with HIV.[119] The Petition alleged that the defendants' conduct was discriminatory and caused Mr. Doe to suffer injuries.[120] In response, defendants filed an Answer on February 1, 2022, generally denying the allegations.[121]

On July 10, 2023, defendants filed a Peremptory Exception of No Cause of Action, a defense under Louisiana Code of Civil Procedure Article 927, alleging that their actions and decisions regarding Mr. Doe were purely treatment-based, and possibly a result of medical malpractice and ordinary negligence, but did not result from bias or intentional discrimination.[122] The Exception asserted that the Louisiana Governor signed an emergency declaration for the COVID-19 pandemic that triggered LHEPA, thereby barring the defendants' liability from litigation stemming from *any* action, including federal causes of action, taken with

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[118] Verified Petition for Damages at 1.

[119] *Id.* at 3-4, ¶ 12, 15-18; Ex Parte Motion for Leave to Amend and First Supplemental and Amended Petition for Damages at 1.

[120] Verified Petition for Damages at 3-4, ¶ 12-13 and 17-18.

[121] Defendant's Answer.

[122] *See* Peremptory Exception / memo in support; Louisiana Code of Civil Procedure p83, Title 1, Ch3, Art 927.

less than "gross negligence or willful misconduct."[123] LHEPA provides an immunity defense for medical providers to combat state court claims during public health emergencies. The defendants alleged that Mr. Doe failed to state a cause of action because LHEPA barred his claims against them since the conduct in question occurred within the course and scope of their employment as healthcare providers during the pandemic. Mr. Doe opposed the Exception, asserting LHEPA only covers negligence claims and that the defendants' conduct was intentional, not medical malpractice or negligence. Also, he asserted that his cause of action stemmed from federal sources. The trial court sustained the Exception but granted Mr. Doe time to amend his petition. On October 11, 2023, Mr. Doe filed a First Supplemental and Amended Petition for Damages.

The defendants filed a second Peremptory Exception of No Cause of Action, again invoking LHEPA's medical malpractice defense, alleging that Mr. Doe failed to plead sufficient facts for "gross negligence" or "willful misconduct." The trial court held a hearing on March 14, 2024, where Judge Zaunbrecher granted this Exception and dismissed Mr. Doe's allegations with prejudice. The judge signed the Judgment, and the Clerk of Court issued the Notice of Judgment on April 8, 2024. Mr. Doe timely filed the Motion and Order for Devolutive Appeal on June 3, 2024. Judge Zaunbrecher granted the Motion on June 5, 2024, and made the matter returnable to the Louisiana First Circuit Court of Appeal on July 20, 2024.

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[123] Defendant's Peremptory Exception.

The First Circuit heard oral arguments on November 18, 2024, and issued its judgment on December 27, 2024, affirming the trial court's decision granting defendants' Exception, dismissing Mr. Doe's claims with prejudice. The court found that Mr. Doe's allegations, even if true, did not establish that defendants acted with gross negligence or willful misconduct, only ordinary negligence. Therefore, they did not create any cause of action.[124] The First Circuit extended the LHEPA defense to preclude federal disability claims, asserting that LHEPA "contains no limitation" during public health emergencies, and therefore cannot be pre-empted.[125] The First Circuit did not explore the text or legislative purpose of the federal disability laws, only exploring Louisiana's tort and civil procedure laws.

The Louisiana Supreme Court denied Mr. Doe's petition for writ of certiorari. Justice Griffin issued a dissenting opinion stating that the application of LHEPA was absurd, and even if LHEPA applied, it would be pre-empted by Mr. Doe's federal claims.[126]

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[124] App.17a-18a.

[125] App.19a.

[126] *Id.* (Griffin, J., dissenting, App.6a)

REASONS FOR GRANTING THE PETITION

I. THE LOUISIANA COURTS' DECISION DEFIES SCOTUS AND FEDERAL STATUTORY AUTHORITY

A. The Louisiana Courts' Decisions Disregard This Court's Precedent in *Olmstead*

In *Olmstead v. L.C.*, this Court considered individual patients' rights to freedom while considering providers' rights to work within their realistic capacities.[127] However, the Louisiana courts suggest that federally mandated reasonable accommodations and discussion about the ADA's purpose, substance, and remedies are disregarded during public health emergencies because LHEPA's broad scope bars liability, imposing an undue burden on plaintiffs asserting their federal rights. These technicalities in Louisiana law do not warrant denying the federal rights under which the allegations are brought.

B. Contradicting *Olmstead* and Federal Law, the Louisiana Courts' Decisions Weaken Protections for Individuals with Disabilities

Olmstead achieves the ADA's and RA's goals, specifying healthcare providers' responsibilities. The Louisiana courts were not concerned that Dynamic did not assess Mr. Doe for *any* contraindications before denying him care, contradicting this Court's emphasis

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127 *See Olmstead supra* note 5.

on case-by-case evaluations to ascertain the most fitting placement for patients.

Additionally, the Louisiana courts' LHEPA application allowed a physical therapist to disregard a Louisiana state-licensed medical doctor's opinion without reason or consequence, weakening *Olmstead*. Mr. Doe not only had his physician and pain doctor's prescription for this treatment, but notably, insurance approved his care. Dynamic's refusal to treat him without medically supported reasoning disregarded physician authority, enabling healthcare professionals to arbitrarily deny disabled individuals' care. The Louisiana courts allowed the defendants to avoid federal liability simply based on the incident's timing, despite their responsibility under *Olmstead* to maintain a comprehensive, effective plan to meet ADA's reasonable-modification standard.[128] Dynamic never created a plan to ensure that persons with disabilities were included in their services. If this decision stands, ADA enforcement established in *Olmstead* would deteriorate in Louisiana.

It has been long-established that federal law preempts state laws that effectively immunize actors who violate individual rights.[129] This Court has repeatedly balanced the state court's interest in using their procedural law with the federal law's policy goals, pre-empting state law when applying it unnecessarily

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[128] ADA *supra* note 4.

[129] *See e.g. Felder supra* note 63; *Olmstead supra* note 4; *Williams supra* note 88; *Haywood v. Drown,* 556 U.S. 729, 129 S.Ct. 2108, 173 L.Ed.2d 920 (2009); *Howlett supra* note 77; *Fankell supra* note 81.

burdens a federal substantive right, and poses an obstacle to Congress' full purposes and objectives.

Conversely, the Louisiana courts concluded that the state's procedural rules should prevail without discussing the federal substantive right at stake. No legal reasoning exists to burden an individual's federal right by allowing LHEPA immunity from liability. Dismissing this suit based on LHEPA did not ease burdensome litigation but instead resulted in lost opportunity to adjudicate the federal violation. LHEPA is intended to encourage healthcare professionals to provide services without fearing liability during a public health emergency. The way Louisiana courts applied LHEPA permits discriminatory denial to healthcare services and undermines the legislative purpose behind the ADA, RA, and LHEPA itself, leading to absurd results. Congressional objectives behind the ADA and RA authorize a national mandate to prohibit discrimination against individuals with disabilities (ADA) and to achieve equal opportunity and full inclusion in society for people with disabilities (RA). Applying LHEPA in ADA and RA cases is an obstacle to their full accomplishment.[130] Contrary to LHEPA's purpose, this application encourages providers to refuse treatment, rather than encouraging treatment.

The Louisiana courts ignore that LHEPA's enforcement dictates the ultimate disposition of federal civil rights claims, depending on whether it is brought in federal or state court. Federal courts have not delin-

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130 ADA *supra* note 4.

eated such stringent immunity standards and are not bound by LHEPA.

II. THIS CASE PRESENTS A RECURRING, NOVEL QUESTION OF FEDERAL IMPORTANCE

Certiorari is also warranted because the question is novel and unique, giving this Court an opportunity to provide clarity and pave the way for public emergency statutes that do not stifle a plaintiff's federal rights.

A. The Decisions Below Raise a Novel Variation on the Reverse-*Erie* Doctrine

Past reverse-*Erie* cases share the vertical conflict over which procedure to use in a state court while adjudicating a federal substantive claim, but only to an extent. The question before this Court presents a novel and timely variation on this longstanding conflict, warranting this Court's review for pertinent judicial guidance.

This Court has long held that state procedural rules cannot unnecessarily burden or nullify federal rights.[131] It has protected individuals' federal claims, allowing states to apply their own procedural law only where no pre-emption exists and it is not outcome-determinative.[132] This Court has also ruled that state laws blocking lawsuits under § 1983 and FELA are invalid, even in state courts, if they prevent people

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131 *See Haywood v. Drown,* 556 U.S. at 736; *Felder supra* note 63 at 138.

132 *See Felder supra* note 63.

from enforcing their federal rights.[133] This Court has never considered whether emergency-based state immunity statutes designed to insulate healthcare providers from tort liability may be applied in state court to bar antidiscrimination claims arising under federal law.

Like § 1983 and FELA, the ADA and RA are federal statutes which provide remedies for individuals whose statutory rights have been violated. In the instant case, this Court can further shape the reverse-*Erie* doctrine in the narrower and novel context around public health emergencies, such as the COVID-19 pandemic.

In response to state emergencies, such as COVID-19, states implemented health emergency statutes, like LHEPA, to protect public health and safety and "the protection of human life."[134] More notably, these statutes include broad immunity provisions covering healthcare providers.[135] In providing healthcare providers with legal protections, these state immunity laws aimed to alleviate the substantial burden on the healthcare system for providers to render continued services and preserve access to care supporting the state's response to COVID-19.[136]

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[133] *Williams supra* note 88; *Brown supra* note 49 at 362-63; *Dice supra* note 56 at 362-63.

[134] La. R.S. § 29:761

[135] La. R.S. § 29:773

[136] *Welch v. United Med. Health,* 348 So.3d 216, 222 (citing *Hayes v. Univ. Health Shreveport, LLC*, 332 So.3d 1163, 1166 n.2); *see Warren v. Flint*, 2024 Mich. App. LEXIS 5805, at *19

In the instant case, the Louisiana courts improperly supplanted federally protected rights by automatically granting LHEPA immunity to Dynamic solely because their denying services to Mr. Doe occurred during a declared public health emergency.[137] Harshly applying LHEPA to defeat Mr. Doe's ADA and RA claims precludes the courts from adjudicating these claims, and is "wholly incongruous with the general policy" contained in those federal civil rights statutes.[138] Following long-standing reverse-*Erie* doctrine, Mr. Doe's federal substantive rights under the ADA and RA are too substantial to be unnecessarily burdened or dismissed by mere procedural shields.[139]

Furthermore, LHEPA application undermines the federal statutes' uniform nationwide application "essential to effectuate its purposes."[140] Just as § 1983 and FELA protect individuals' federal statutory rights, the ADA and RA protect individuals with disabilities from discrimination. When a state immunity law bars a federal claim from being heard in state court, it obstructs the purposes of the ADA and RA. Displacing federal antidiscrimination rights by a state procedural law directly implicates the reverse-*Erie* doctrine.

B. State Courts Apply Emergency Immunity Laws Inconsistently

Similar to LHEPA, other state responses to the COVID-19 pandemic universally granted liability

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137 App.19a.

138 *Dice supra* note 61 at 362.

139 *See Brown supra* note 49; *Dice supra* note 56.

140 *Id.*

immunity to healthcare providers and facilities, except for gross negligence and willful misconduct. These immunity provisions shared substantial state interests in incentivizing continued care during the public health emergency without legal risks.[141] Yet, state immunity laws reflect broad and varied language, leading to widespread legal challenges and variable judicial interpretations among state courts.

Healthcare providers and facilities raised state statutory immunity as affirmative defenses in wide range of tort claims, including medical malpractice, premises liability, and cases unrelated to COVID-19. In turn, courts have interpreted immunity provisions along a broad spectrum, from expansive language to immunize most events arising during COVID-19 to narrower interpretations to require a nexus between the provider's conduct and COVID-19.

Courts in Arizona, Indiana, and Louisiana upheld immunity for actions based on medical procedures unrelated to a COVID-19 diagnosis, general pandemic policies, and premises liability claims absent a factual nexus between the care at issue and COVID-19.[142]

Most courts have generally interpreted COVID-19 immunity narrowly, requiring only a material connection to the state's COVID-19 response. The Connecticut Supreme Court denied immunity to a hospital where delayed care due to COVID-19 testing protocols led to

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[141] *Mills v. Hartford Healthcare Corp.*, 347 A.3d 605, 619-20 (2023); *see Resurgens, LLC v. Ervin*, 894 S.E.2d 408, 411 (2023).

[142] *Roebuck v. Mayo*, 536 P.3d 289, 294 (2022); *Fluhr v. Anonymous Dr. 1*, 234 N.E.3d 912, 917-18 (2024); *Williams v. Touro Infirmary*, 382 So.3d 345, 352, 357-58 (2023).

a fatal misdiagnosis unrelated to COVID-19, emphasizing a need for a "material" connection between the act and COVID-19 response.[143] Similarly, a Georgia court denied immunity for injuries from elective surgery because the procedure was unrelated to emergency management activities.[144] Additionally, courts in Michigan, Illinois, and West Virginia follow a substantial COVID-19 connection scope, granting immunity when treatment directly involved COVID-19 or pandemic conditions significantly disrupted care provisions and rendered assistance to the State during the public health emergency.[145]

Mr. Doe's situation is not complicated. Dynamic's care denial was unrelated to COVID-19. Rather, Dynamic denied care to a person with a disability based only on that disability. LHEPA's blanket immunity confounds this otherwise clear case by eliminating Mr. Doe's federal substantive claims. Louisiana courts, divergent from most states' judicial interpretations, did not consider the relationship between the treatment and the pandemic. They justified denying Mr. Doe's federal civil rights claims based merely on timing with the pandemic, without examining whether the omission from care bore any relationship to the state's response to the pandemic.

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[143] *Mills v. Hartford Healthcare Corp.*, 347 A.3d at 533-34, 550-51.

[144] *Resurgens, LLC v. Ervin*, 894 S.E.2d 408, 413-14 (2023).

[145] *Warren*, 2024 Mich. App. LEXIS 5805, at *17-18; *Price v. Raleigh Gen. Hosp., LLC,* 914 S.E.2d 743, 748-49,752 (2025); *See James v. Geneva Nursing & Rehab. Ctr., LLC,* 2024 IL 130042, 479 Ill. Dec. 489, 250 N.E.3d 251 (2024).

Without clarity from this Court, individuals, like Mr. Doe, bringing forward federal claims face inconsistent access to justice depending solely on how broadly a state court chooses to interpret its own emergency immunity statute. The frequency regarding reverse-*Erie* cases is increasing as more federal civil rights cases get brought, which has led to a rapid increase in procedural limits on causes of action. If left ambiguous, these immunity statutes encourage forum shopping to favor the court which will interpret the statute in an agreeable way. The instant case was brought in state court asserting claims for federally protected rights, which were effectively blocked due to a state procedural rule. This decision encourages future plaintiffs to favor federal court over state court.

C. The Decisions Below Hinder Enforcing Federal Antidiscrimination Laws

The consequences from the decisions by the Louisiana courts extend beyond Mr. Doe, impacting people living with disabilities throughout the nation. Allowing these decisions to stand could impact individuals seeking to enforce federal rights in state courts, only to be stopped by state procedural technicalities. Just as this Court recognized in *Felder* that § 1983 creates a federal cause of action to remedy violations of constitutional and federal rights by state actors, the ADA and RA similarly provide a private right of action for people with disabilities who face discrimination, demonstrating a remedial purpose grounded in federal law.[146]

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146 *Felder supra* note 63.

The Louisiana Courts' decisions raise dangerous precedent. If states may invoke emergency immunity statutes to preclude ADA and RA claims in their courts, the federal guarantee against discrimination becomes conditional. In the instant case, the Louisiana courts altered the elements of the federal cause of action by importing a heightened fault standard gross negligence not required under federal law. This is not a tort claim. It is a civil rights claim. Yet, the Louisiana courts treated it as if the federal rights at issue could be dismissed like a malpractice suit, resulting in absurdity and undermining one public health crisis due to the unrelated existence of another.

The Louisiana courts' decisions threaten both uniform enforcement of federal civil rights law and the federal-state balance of power. It invites defendants to stretch immunity doctrines beyond their original intent – particularly during crises – creating accountability gaps where none should exist. The rule of law does not vanish in emergencies.

D. This Case Presents an Ideal Vehicle to Resolve the Federal Question

This case presents a focused vehicle for resolving a federal question regarding first impression. The decision before this Court rests entirely on the legal determination of whether a state procedural immunity statute may displace a federal cause of action under the ADA and RA in state court.

Unlike reverse-*Erie* cases entangled with state tort claims or questions of fact or intent, this petition raises a pure question of law. The claims arise under federal antidiscrimination statutes, and the Louisiana courts reached no factual findings on the merits. The

record is simple and undisputed. The sole issue is whether LHEPA, a state statute triggered by temporality, may act as a categorical bar on federal claims grounded in the ADA and RA.

This Court has never addressed how reverse-*Erie* principles apply to ADA Title III or to state statutes enacted in response to a public health emergency. Nor has it been considered whether a procedurally triggered state immunity law may elevate the standard or wholly preclude adjudication of a federal civil rights claim. This petition earnestly presents that question while supplying an ideal opportunity for this Court to clarify the limits on state procedural authority under the Supremacy Clause.

III. SUCH HIGH IMMUNITY SEVERELY WEAKENS THE ADA AND RA § 504

A. The ADA And RA Are Intended to Have Broad Coverage

Congress intended the ADA's reach to be broad, encompassing conduct such as outright exclusion, discriminatory effects of architectural, transportation, communication barriers, overprotective rules and policies, failure to make modifications on existing practices, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities under the umbrella of discrimination.[147] Refusing treatment to a patient based solely on their HIV status violates the ADA. Without LHEPA's invocation, Newton's conduct unquestionably would qualify as discriminatory. Louisiana courts' decisions below threatens the foundation of prima facie ADA and RA

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147 42 U.S.C. § 12101(a)(5).

cases. These long-standing statutory federal rights are being cast aside on a legally flawed technicality.

B. Interpreted Too Broadly, LHEPA Makes the ADA Functionally Inoperative

The Louisiana courts' interpreting LHEPA's blanket immunity for providers from liability thwarts intended federal protections, and renders the ADA and RA inoperative during public health emergencies. This allows discrimination when the incident happens during such emergencies, even if the treatment was wholly unrelated to the public emergency. Dynamic offers physical therapy and did not treat COVID-19. Their services were minimally affected by the pandemic. LHEPA's application to the ADA during emergencies negates disparate impact claims, accounting for many ADA lawsuits. This dismissal undermines the ADA's uniform application based on broad state law application.

Federal statutes are meant to protect Americans with disabilities, even during crises. When federal law controls, such law must be given uniform application nationwide to effectuate its purposes.[148] This Court determined that releases assigned to defeat an injured employee's claims contradict a federal statute's goals[149], and this logic may be applied here.

LHEPA presents a paradox obstructing the ADA and RA, intended to protect Americans with disabilities, a population particularly vulnerable to discrimination during public health emergencies. This Court's recent

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148 *Dice* 342 U.S. at 361.

149 *Id.*

A.J.T. decision solidifies that children with disabilities do not have to meet a heightened standard to exercise their rights.[150]

IV. THE STATE COURT'S RULE IS 'ABSURD'

Certiorari is also warranted because overbroadly applying LHEPA leads to absurd results in practice.

A. LHEPA's Purpose Is To Protect Well-Intentioned Healthcare Professionals, Not Punish Plaintiffs

LHEPA is meant to protect well-intentioned healthcare entities from withholding care fearing liability, yet nothing in the legislative text suggests it is meant to excuse apathetic or ill-intentioned conduct unrelated to the emergency.[151] LHEPA's stated purposes include: to protect human life, control the spread of disease, and meet immediate emergency need.[152] LHEPA's actual text provides for coordinated, appropriate responses in public health emergencies.[153] Specifically, the statute aims to guarantee continued care in crises.[154] Dynamic invoked LHEPA immunity to justify *refusing care* to a patient solely based on his HIV status for a service wholly unrelated to the pandemic. Newton's refusal was based on an outdated stigma that HIV is a contraindication for aquatherapy, disproven scientifically, and contrary to the advice of

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150 *A.J.T.,* 222 L.Ed.2d at 15

151 La. R.S. § 29:760 *et seq*.

152 *Id.*

153 *Id.*

154 *Id.*

Mr. Doe's physician and pain doctor. It is 'absurd'[155] for defendants to invoke LHEPA for these purposes.

The courts applying LHEPA to this case serves neither state nor federal interests, and instead leads to 'absurd'[156] results undesirable to both.

B. This Interpretation of LHEPA Opposes Federal Interests

The ADA creates a national mandate to eliminate discrimination against people with disabilities by prescribing nationwide enforceable standards. The RA bans discrimination in education, employment, access to equal medical care and other areas. Both the ADA and RA also offer legal remedy when these federal rights are violated.

The Louisiana courts' decisions do not serve these interests. In denying writ, the Louisiana Supreme Court refused to engage with the claims' merits, refusing to hear the case solely on civil liability immunity applicable under state law. The Louisiana First Circuit, while engaging minimally with the merits, cited LHEPA as the reason for their decision, applying a heightened standard "because the denial of the aquatic physical therapy by healthcare providers occurred in December of 2020, which was during the declared public health emergency due to the pandemic."[157] Thus, they only discussed the ADA and RA claims in LHEPA's context, imposing its heightened standards on federal claims.

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155 *Doe v. Dynamic Physical Therapy, LLC*, 2025-00105 (La. 04/29/25), 407 So.3d 623, 624, Justice Griffin dissent.

156 *Id.*

157 *Doe supra* note 31 at 1014.

Within the same decision, they assert LHEPA has "no limitations[158] This is deeply concerning, and illustrates such broad interpretation for an immunity statute, one with no material connection to the patient's treatment, "may be of questionable constitutionality on multiple grounds."[159]

C. Lack of Clear Standards Allows Subjective, Arbitrary Application

If upheld, the Louisiana courts' rulings set a dangerous precedent that allows state immunity statutes to override federal law and, more alarmingly, federally mandated rights and protections. LHEPA is so broad that it permits overextension and misapplication without limits. The statute is vague, ambiguous, and gives excessive discretion which leads to arbitrary application.

As noted previously, this immunity statute's broadness elevates the burden of proof even with federal claims, purely based on timing. While COVID-19 brought an unprecedented emergency, imposing a heightened standard on plaintiffs simply due to variables, such as demographics and the claim's timing, is problematic and leads to absurd results.[160] It allows private entities to shirk liability even when the facts are independent from the public health emergency, and so should be pre-empted by federal claims.

A provider must satisfy the reasonable-modification standard, and maintain effective, comprehensive

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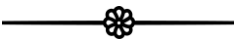
158 *Id.* at 18.

159 *Mills*, 347 A.3d at 552.

160 *See A.J.T. supra* note 16.

plans to anticipate people with disabilities seeking services.[161] If a provider had refused treatment outside the pandemic, as Dynamic did to Mr. Doe, this would violate the ADA. That the violation occurred during the pandemic is mere circumstance and should not relieve Dynamic from liability for such breaches. The Louisiana courts' decisions excuse providers who were noncompliant with the ADA pre-pandemic, simply due to temporal coincidence.

161 *See Olmstead supra* note 5.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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