25-5606

ORIGINAL

No. 25-___

IN THE

SUPREME COURT OF THE UNITED STATES

JOAN DOE,
Petitioner

v.

THE BOARD OF TRUSTEES FOR
THE UNIVERSITY OF ARKANSAS, IN
THEIR OFFICIAL CAPACITY, AND
PRESIDENT AND CEO DR. DONALD BOBBITT,
IN HIS OFFICIAL CAPACITY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Joan Doe
Petitioner pro se
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Fayetteville, AR 72703

QUESTIONS PRESENTED

1. Whether the Due Process Clause permits a 13-day interim suspension—without notice or an exigency claim—that merged into an eight month suspension, where the same evidence was used to justify both deprivations?

2. Whether claims under Titles II and V of the ADA may be dismissed on state law or Eleventh Amendment grounds, and whether a state law school must subject itself suit under the ADA?

3. Whether, under Title II of the ADA and the Due Process Clause, a school may condition access to education on a student's submission to a psychiatric exam, absent an exigency claim, where protected speech was the but-for cause of the ordered exam, and whether the First and Fourteenth Amendment require heightened or strict scrutiny review of the claim?

4. Whether an ADA Title V retaliation claim requires the plaintiff to prove retaliatory motive as a threshold element, and whether heightened scrutiny applies when protected speech triggered the state action?

5. Whether review of a Rule 56 motion allows judicial discretion in (1) the evidentiary standard applied, and (2) the use of credibility determinations?

PARTIES TO THE PROCEEDING

Petitioner pro se, who was the appellant below, is Joan Doe.

Respondents, who were the appellees below, are The Board of Trustees for the University of Arkansas, in Their Official Capacity, and Dr. Donald Bobbitt, President and CEO of the University of Arkansas, in His Official Capacity.

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JURISDICTION

The judgment of the court of appeals was entered on December 19, 2024. The court of appeals denied a timely petition for rehearing en banc on February 11, 2025. On April 29, 2025, Justice Kavanaugh extended the time for filing this petition for certiorari to and including July 11, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This case presents nationally important statutory and constitutional questions. The lower court broke from longstanding national precedent and held that a school can lawfully suspend a student without notice for 13 days, then extend the duration to eight months, absent a claim of exigent circumstances.

This case asks whether the constitution allows a public school to compel a psychiatric exam as a condition to access education, when no claim of exigent circumstances exists.

This case presents a question about viewpoint discrimination in professional education programs, that is, whether protected speech alone justifies the school labeling the student-speaker 'mentally unstable.'

Finally, this case presents an opportunity to answer the question of whether the ADA, Titles II and V, validly abrogate Eleventh Amendment immunity in the education setting.

A. Factual Background

Petitioner Joan Doe was a law student at the University of Arkansas' School of Law when, in the final semester of her 3L year, Doe reported harassment. At the time she was a student with a spotless conduct record and good academic standing.

On August 30 and September 4, 2021, Doe reported harassment that she experienced on and off campus, including inside the law school, to selected law school professors. Pet.App.A.11. Doe requested an investigation into the source and a designated safe place to study inside the law school. *Id.*.

The law school responded on September 7 and stated concern with their ability to certify Doe's character and fitness. *Id.*. The stated concern stemmed from Doe's contact with professors, inability to prepare for class, and affected academic performance, but no details were provided. Pet.App.A.12. The law school formally restrained Doe's speech about the matter, directing her to speak only to one law

school official, Susannah Pollvogt, Associate Dean of Student Success, about the harassment. *Id.*. The law school then compelled Doe's speech in a mandatory meeting with university officials Monica Holland, Associate Dean of Students, and Josette Cline, CAPS (counseling and psychological services) Director, Josette Cline. Pet.App.A.34. To support the mandatory meeting, Dean Pollvogt cited authority in Sections 6-701, 6-702, and 6-703 of the Faculty Policies Manual and stated that if Doe did not attend the meeting, "we may not be able to certify your character and fitness in accordance with Section 6-702." *Id.*.

There exists no evidence that Doe had access to the faculty policy manual at the time. *Id.*. Doe initially declined to attend the meeting but was threatened with disenrollment if she did not participate. Pet.App.A.35.

On September 8, the law school ordered Doe to contact Arkansas' Judges Lawyers Advocacy Program (JLAP) and discuss counseling options. Pet.App.A.12. The following day Doe reported back that JLAP did not recommend counseling. Pet.App.A.12. On September 10, the law school ordered Doe to submit to a psychiatric exam and sign a privacy waiver that released the results of the exam to JLAP, so that JLAP could release the results to the law school. *Id.*.

Doe offered to provide the results directly to the law school, but the law school refused. *Id.*. On September 27, Doe requested additional time to consult with an attorney and for an explanation of the law school's authority to compel the exam. *Id.*. The law school responded by stating that Doe's lack of cooperation meant that

she was not in compliance with the process, but provided no information about the consequences of noncompliance. *Id.*.

On September 30 the law school suspended Doe via email without prior notice. *Id.*. The charges were: failure to comply with law school officials; brought an unauthorized pet onto university grounds; and, left pet feces inside university facilities. *Id.*.

Doe received an administrative hearing on October 13. Pet.App.A.40.

The university's code of conduct states that interim suspensions will only be issued when there is "reasonable cause, based on available fact to believe that a student poses a significant risk of substantial harm to the health, safety, and welfare of others or to property or poses an ongoing threat to the disruption of . . . the normal operations of the university. Pet.App.A.13.

Doe conceded bringing the dog into the law school, but said that others did the same. *Id.*. Doe had complied weeks earlier when she was asked to cease bringing the dog into the building. *Id.*. Doe was not suspended until nearly a month after the last dog incident. *Id.*.

Doe requested and received an administrative hearing where she was found responsible for all misconduct based on the information in her file. *Id.*. Doe contended that the file contained no evidence that she posed a safety threat, no proof that anyone found feces in the building, or that her dog left feces in the building. *Id.*.

Doe filed suit on July 12, 2022, and claimed violations of the ADA, FERPA, and the Due Process Clause of the Fourteenth Amendment. *Id.*. Doe named Defendants the University of Arkansas's School of Law; the Board of Trustees; and, the President and CEO Dr. Donald Bobbitt. *Id.*. Doe sought injunctive relief to reinstate her at the law school and clear her record, compensatory damages, and costs and fees. *Id.*.

A. Law School's Policies and Regulations

For their motion for summary judgment, Respondents' provided the following academic and conduct policies that were in place during Doe's enrollment:

> **Section 3-701 of the Law School's Code of Conduct:**
> Students entering Law School are expected . . . to conform their conduct while in Law School to the professional standards required by the Law School Student Code of Conduct . . . and to be able to satisfy requirements for admission to the Bar. In addition to a bar examination, there are character, fitness, and other qualifications for admission to the bar in every U.S. jurisdiction. Pet.App.A.30.

The Law School's academic policies state that:

> [A]ll students must be able to satisfy the requirements for admission to the bar. In addition to other requirements, this means that all students must be able to demonstrate that they meet requirements of good moral character and mental and emotional stability that are imposed by the Arkansas Board of Examiners . . . . Pet.App.A.31.
>
> The inability or failure to meet . . . these standards may subject the student to administrative action, including, but not limited to, the imposition of conditions upon enrollment[,] suspension, or expulsion from the School of Law. **Such conditions may include, without limitations, requirements**

that a student obtain medical evaluation, treatment, [or] counseling . . . . *Id.*. (emphasis added).

The law school's faculty policies, provide:

> Section 6-701 of the Law School's faculty code states that "[a] student who exhibits **behavior** that suggests or portends an inability to demonstrate character and fitness required to practice law may be required to participate in [JLAP or CAPS] or report to the All University Conduct Board (the AUCB) that oversees student disciplinary matters." Section 6-702 describes the procedure for mandating a student's JLAP or CAPS participation and provides that "*members of the law school community may report* . . . student behavior that may be considered for JLAP, CAPS, or the AUCB." Section 6-703 states that failure to comply with a request to attend JLAP "shall be considered an act of disobedience to educational authority that may, in the discretion of the Dean, result in" a notation on the student's academic record or a report to the bar. Faculty members may also, if appropriate, "refer[] a student to the Honor Council for a violation of the Student Code of Conduct." Pet.App.A.36–37. (emphasis added).

B. District Court Proceedings

On review of Respondent's motion to dismiss, the district court granted dismissal of Doe's:

(1) Section 1983 claims against the Board of Directors on grounds of sovereign immunity, (*id.* at 16);
(2) Section 1983 monetary claims against university president and CEO, Dr. Donald Bobbitt on grounds of sovereign immunity, (*id.* at 16);
(3) All claims against the law school on grounds of state law and sovereign immunity, (*id.* at 17);
(4) 42 U.S.C. § 2000d-7 claim of the rights and remedies available therein because a typo in one citation contained in Doe's complaint referred to the statute as 2 U.S.C. § 2000d, thus the court found no viable claim based on race, gender, ethnicity, (*id.* at 17);
(5) FERPA (Family Education Right to Privacy Act) violation claim on grounds that the statute lacked a private right for suit, (*id.* at 22–24);
(6) Substantive due process claims, inadequate notice deprived a property right and irrefutable presumption and classification (*id.* at 23–24):
(7) Procedural due process claim regarding the permanent suspension, (*id.* at 25–27).

The court denied Doe's request for an extension of time to respond to the motion for summary judgment. On review of the motion, the District Court granted judgment for Respondents on all of Doe's remaining claims:

(a) Title II ADA discrimination claim, (*id.* at 47–54);
(b) Title V ADA retaliation claim, (*id.* at 54–56);
(c) Procedural due process claim regarding the interim suspension, (*id.* at 56–58).

The court's reasoning follows:

ADA, Title II

On defendants' motion for summary judgment, the court determined that Doe's regarded-as mental and emotional instability status made it reasonable for the law school to conclude that Doe was unfit to join the practice of law. *Id.* at 51.

The court stated that Title II contains no prohibition on the exam Defendants' ordered. *Id.* at 52-53. The court determined that the law school's mandate for the psychiatric testing was a vital business necessity because the law school must certify students' character and fitness. *Id.* at 54.

The court held that the order for Doe's psychiatric examination was not broader or more intrusive than necessary because the law school reasonably believed Doe was unstable. *Id.*.

ADA Title V

The court ruled that because Respondents' internal policies authorize their taken action, in the court's view, no retaliatory motive could be found; the claim failed. *Id.* at 54–56.

Procedural Due Process

Only the procedural due process claim regarding the interim suspension remained; and, the court found that because Doe had graduated and could not face a second interim suspension, the harm was no longer capable of repetition. *Id.* at 56–58.

C. The Court of Appeals' Opinion

The Court of Appeals affirmed the District Court, citing the absence of a genuine dispute of material fact. *Id.* at 60–61. The Court of Appeals denied Doe's petition for rehearing and rehearing en banc. *Id.* at 63.

REASONS FOR GRANTING THE PETITION

I. The lower court's due process decisions violate the Fourteenth Amendment

This Court holds that once a state grants a student the right to an education, that right may not be withdrawn on grounds of misconduct absent fundamentally fair procedures. *Goss v. Lopez*, 95 S. Ct. 729, 736 (1975) (the state has a duty to determine whether the alleged misconduct occurred). *Goss* established the student's protected entitlement to a public education as a property interest the Due Process Clause protects. *Id.* at 733-34. The protected property right is clearly established and (was) uniformly held by the lower courts. *Id.* at 729, 736-37.

A. Due process requirements for disciplinary deprivation

In a disciplinary suspension longer than 10 days, the student must be given oral or written notice of the charges and supporting evidence, and an opportunity to rebut the charges. *Goss*, 95 S.Ct. at 740. Due process guarantees require this basic process to protect a student from mistaken and arbitrary exclusion from school. U.S. Const. amend. XIV, § 1.

A suspension without prior notice and absent an exigency claim violates the student's due process rights. *Haidak v. University of Massachusetts–Amherst,* 933 F.3d 56 (1st Cir. 2019) (finding a due process violation where Haidak was suspended without notice and without an exigency claim); *Barnes v. Zaccari,* 669 F.3d 1295, 1304–06 (11th Cir. 2012) (holding that a pre-deprivation notice and hearing are required absent exigent circumstances), and *Doe v. Miami Univ.*, 882 F.3d 579, 600 (6th Cir. 2018) (requiring notice and a meaningful opportunity to be heard prior to disciplinary suspension).

Even where the unnoticed interim suspension becomes an expulsion, the initial violation of due process rights justifies finding for the student and an award of nominal damages. *Haidak*, 933 F.3d 56 (1st Cir. 2019), citing *Carey v. Piphus*, 98 S. Ct. 1042, 1053 (1978) (Because the right to procedural due process is 'absolute,' or independent of the merits of a clam's substantive assertions, " . . . we believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury.").

There exists no precedent to support Doe's 13-day suspension, issued without notice and absent an exigency claim. Allowing the lower courts' ruling to stand will

abrogate the entire due process doctrine in the education setting. The merger of the 13-day interim suspension into an 8 month suspension, where the evidence still contained no exigency claim, further abrogates this Court's precedent requiring the amount and type of due process afforded to match the severity of the deprivation of right. The circuit conflict that Doe's opinion created will likely widen without this Court's intervention.

B. Substantive doctrinal requirements

Due process provides students with substantive rights to continued education, to be free from reputational harm, and from arbitrary official stigma. A student's constitutionally protectible property right in continued enrollment gives rise to these substantive rights, or the benefits the enrollment creates. *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 222-23 (1985) (holding that where such a right exists, the student's property interest gives rise to substantive rights under the Due Process Clause); and *Paul v. Davis*, 96 S. Ct. 1155, 1163 (1976) (providing the stigma-plus test to evaluate claimed violations of due process). Arkansas recognizes the protected property interest a student has in education. *See Smith v. Denton*, 320 Ark. 253, 261 (1995) ("To deprive a student of her educational property interest on narrowly formal grounds as exemplified in these circumstances is to violate the spirit of the procedural due process clause.").

Government deprivation that arbitrarily classifies a student without the use of evidence standards or findings of fact violates due process guarantees. *Cleveland Bd. of Ed. v. LaFleur*, 94 S. Ct. 791 (1974). In *LaFleur*, this Court struck down

restrictions on pregnant teachers where no evidence showed they were unable to fulfill their job duties. *Id.* The loss of substantive rights created by enrollment in professional education cannot be remedied by a subsequent re-enrollment or graduation. Labeling a student mentally unstable based on the exercise of protected speech constitutes an arbitrary classification in violation of due process.

B. Deference toward universities

Universities have almost unfettered discretion to craft their deprivation and post deprivation procedures at will. For example, Doe's law school affords itself the authority to order medical treatment and mental health care for law students. App. A.36–37. Universities are multi-million dollar businesses with very little external oversight. Once a university begins a deprivation procedure, students have no timely mechanism for recourse other than the judicial system. Reliance on the guarantees of due process must be available.

The exercise of this Court's power is required to bring the due process protections for college students into focus.

II. Are public schools immune to Title II of the ADA

A deep controversy exists around the validity of the stated remedies that Title II of the ADA provides. A claimed violation of Title II of the ADA grants the claimant access to the rights and remedies available under Title II, and under Section 505 of the Rehabilitation Act, as well as to those available under Title VI of the Civil Rights Act of 1964. This linkage creates a powerful deterrent, if it is enforced. Not

all circuits honor the statute's express provisions. This issue of national importance requires this Court's intervention.

A. *Lane's* Eleventh Amendment immunity waiver extends

The holding in *Lane* should extend to Doe's Title II claim. *Tennessee v. Lane*, 124 S. Ct. 1978, (2004). Doe's protected speech that petitioned the government is the but-for cause of all of her claims. The fundamental right of access to the courts constitutes a valid abrogation of Eleventh Amendment immunity. Since the fundamental right of access to the courts originates in the First Amendment, the abrogation applied to claims regarding access to the courts should extend to claims regarding the right to petition the government.

In *Lane*, this Court established that Title II validly abrogates Eleventh Amendment immunity for claims that relate to the fundamental right to access the courts. *Tennessee v. Lane*, 124 S. Ct. 1978, 1993–94, (2004). In an earlier decision, this Court expressly stated that the right of access to the courts originates in the First Amendment right to petition. *BE&K Construction Co. v. NLRB*, 122 S. Ct. 2390, 2400 (2002) ("[The] right to petition extends to all departments of the Government. The right of access to courts is indeed but one aspect of the right of petition.").

Indeed, Doe's protected speech exercised to petitioned Respondents for redress provided the but-for cause of all the subsequent adverse action. Doe's Title II claim originates from the exercise of the fundamental right to petition. The *Lane* holding

said that Title II validly abrogates Eleventh Amendment immunity in cases involving access to the courts. Access to the courts is derivative of the First Amendment right to petition the government, thus the *Lane* holding naturally extends to Doe's claims. *Lane, supra.*

This Court should intervene and extend the *Lane* holding to Title II claims that include both a petition for redress and disability discrimination in the education setting.

B. Circuits are split over Eleventh Amendment immunity for ADA Title II

The First, Third, Fourth and Eleventh Circuits hold that Eleventh Amendment immunity does not bar Title II claims in the education setting. *Toledo v. Sanchez,* 454 F.3d 24 (1st Cir. 2006) (concluding that Title II, as applied to the cases implicating the right of access to public education, constitutes a valid exercise of Congress's § 5 authority to enforce the guarantees of the Fourteenth Amendment); *Bowers v. NCAA,* 475 F.3d 524, 535–36 (3d Cir. 2007) (passing on the constitutional question and deciding that the Eleventh Amendment presents no jurisdictional bar to an ADA Title II claim); *Constantine v. Rectors & Visitors of George Mason University,* 411 F.3d 474, 484 (4th Cir. 2005) (holding that Title II of the ADA is valid § 5 legislation, at least as it applies to public higher education); and, *Ass'n for Disabled Americans, Inc. v. Florida Int'l Univ.,* 405 F.3d 954, 959 (11th Cir. 2005)

(holding that Eleventh Amendment immunity provides no bar to a Title II claim in the higher education setting).

The Ninth Circuit holds that Title II validly abrogates states' Eleventh Amendment immunity on the basis of the entity's acceptance of federal funds. *Hason v. Medical Bd. of Cal.*, 279 F.3d 1167, 1171 (9th Cir. 2002), see also *Phiffer v. Columbia River Corr. Inst.*, 384 F.3d 791 (9th Cir. 2004).

Five Circuits' Courts of Appeal uphold Title II against a state's claim of immunity in the education setting. The rest of the Circuits present a mixed bag of interpretation, creating an unconstitutional inconsistency in the application of Title II.

C. Claimants' access to the linked statutes must be upheld

The enforcement provision for Title II incorporates by reference §505 of the Rehabilitation Act of 1973, 92 Stat. 2982, as added, 29 U. S. C. §794a, which authorizes private citizens to bring suits for money damages. 42 U. S. C. §12133. *Tennessee v. Lane*, 124 S. Ct. 1978 (2004). Congress linked the ADA, all titles, to Section 504 of the Rehabilitation Act and to The Civil Rights Act of 1964 thereby granting claimants who allege state violations of the ADA access to Section 1983 remedies. *Id.*. The linkage creates a powerful deterrent, if it is enforced. Without this Court's express direction, lower courts will continue to dismiss or deny access to these rights and remedies. The lower court in Doe dismissed Doe's claim to the linked rights and remedies because Doe didn't state a claim under "race, color, or national origin." Pet.App.A.17.

D. Under the Supremacy Clause, the law school must be subject to suit

The plain text of Title II provides that the university and the law school are public entities that must be subject to suit. Title II defines a public entity as "(1) [a]ny state or local government, and (2) [a]ny department, agency, special purpose district, or other instrumentality of a State . . .." 28 C.F.R. § 35.104. The law school meets the criteria to be a public entity as defined by Title II.

The Supremacy Clause requires that federal law sits above state law. U.S. Const. art. VI, cl. 2.

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Students must be able to pierce the liability shield of state universities and their departments when deliberate, unconstitutional acts violate clearly established rights, particularly when the state actors are legal scholars.

Without fear of judicial accountability, what policing mechanism keeps a university or its departments from violating students' rights? The law school meets all the criteria Title II requires for an entity to be subject to suit. This Court's authority is required to bring state law into proper alignment with federal law.

III. Can a school condition access to education on a student's compliance with a psychiatric exam?

There exists an unconstitutional pattern of extreme deference afforded to university decisions in Title II cases; the origin traces to *Horowitz*, but that cite misleads.

Title II predicts that government entities will discriminate on the basis of disability, else Congress wouldn't have created the law. 42 U.S.C. §§ 12131, et. seq.. But Title II does not provide a legal test to objectively determine whether a school's claimed essential eligibility criteria are essential for the program or simply a post hoc descriptive to justify school officials' improper use of authority.

Courts defer to universities' decisions when asked to use Title II to evaluate a professional school's decision to suspend a student for failing to meet essential eligibility criteria post enrollment. *See Neal v. E. Carolina Univ.*, 53 F.4th 130, 146-47 (4th Cir. 2022) (reasoning that the court's comparative disadvantage in determining whether plaintiff is qualified to continue in the Doctor of Medicine program causes the court to accord great respect to the school's professional judgment on the issue) (cleaned up), *citing Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454, 463 (4th Cir. 2012):

> Because courts are ill-suited to the task of determining the "essential eligibility requirements" of an academic program, we traditionally afford "'great' deference to a school's determination of the qualifications" for its programs.

Neal cited *Horowitz* to support the notion that this Court affirmed the judicial practice of affording deference to a school's decisions. *Neal*, 53 F.4th 130, 145 (4th Cir. 2022), citing *Bd. of Curators of the Univ. of Mo. v. Horowitz,* 98 S.Ct. 948, 956 (1978) ("Courts are particularly ill-equipped to evaluate academic performance.").

But *Horowitz*, a 1978 decision, did *not* contemplate Title II of the ADA; the *Horowitz* citation, in the context of a Title II claim, misrepresents this Courts' direction. Certainly, federal courts that are properly equipped to evaluate securities law and antitrust liability, are equally well equipped to evaluate academic policies against the fundamental fairness doctrines of the constitution.

Deference to school decisions in Title II cases conflicts with the approach this Court used in *Martin*. *PGA Tour, Inc. v. Martin*, 121 S. Ct. 1879, 1896–97, (2001). The Court declined to defer to the PGA's " . . . claim that all the substantive rules for its "highest-level" competitions are sacrosanct and cannot be modified." *Id.*. The Court viewed the PGA's argument as a contention that being an elite sports organization exempted it from Title III's reasonable modification requirement. *Id.*.

The *Martin* Court could have claimed an ill suited position to evaluate the decisions of a professional sports league and deferred to the PGA's unique position to determine what is best for its competitions. Instead this Court undertook considerable analysis of expert testimony in the record before reaching its determination. *Martin, supra.*

Courts' practice of setting aside independent judicial review in favor of deference to school officials means that the same state officials Congress reasonably predicted would engage in discriminatory conduct now have de facto judicial review power in the very claims that allege their malfeasance.

Doe's case turns on speech as the but-for cause of adverse state action that culminated in an unnoticed suspension. Those facts should trigger strict scrutiny,

but the lower court used an inarticulated rational basis review standard that deferred to the university's arguments for any rational reason.

Courts' deference to schools' decisions about the substance and application of their eligibility criteria negates the private right of action provision of Title II of the ADA and conflicts with the nondelegation clause of the constitution. 42 U.S.C. § 12133 (providing a private right of action to individuals aggrieved under the terms of the statute), and *see U.S. v. Georgia,* 546 U.S.. 151, 154 (2006) (affirming the individual private right to sue contained in Title II of the ADA), and *see* U.S. Const., Art. 1, § 1 (restricting legislative power to Congress).

Where a Title II claim does not involve fundamental rights, a balancing test should be applied to measure the interests of each party against the cost of the deprived right. The test(s) should be uniformly implemented so that the outcomes are reasonably predictable and consistent. Only this Court can correct the pattern of deference to state officials in Title II cases and set forth a review framework that prevents essential eligibility requirements from functioning as thinly veiled discriminatory screens.

A. Why are the outcomes of Title II claim reviews drastically different between the Department of Justice's enforcement and the judiciary's

No rational basis exists for a federal district court to uphold an Arkansas law school's right to apply state policies in a manner that the Department of Justice declared illegal in Louisiana (2014) and in Tennessee (2024). The Fourteenth Amendment's protections require uniform application of federal laws.

The Department of Justice possesses statutory authority to interpret, regulate, and enforce Title II of the ADA for government entities. *Bragdon v. Abbott,* 118 S. Ct. 2196, 2203, (1998) *citing* Exec. Ord. No. 12250, 3 C.F.R. § 298, 28 C.F.R. 35.90(G)(b)(6).

The Department of Justice charges violations of Title II when a public entity probes a person's mental health history or status. *See U.S. Dep't. of Justice Letter re: TBLE Invest.*, USAO No. 2023V00171, (Dec. 17, 2024), Pet.App.B. In its letter of findings to the Tennessee Board of Law Examiners, the Department said that the "exclusion of applicants or restrictions imposed upon them based on their status as a person with a disability [ ] do not serve the goal of ensuring fitness to practice law." *Id.* at 1. Tennessee subsequently adopted a conduct only inquiry on its bar application.

The Department also found Title II violations in the Louisiana Supreme Court's practice of mental health screening of bar applicants. See U.S. Dep't. of Justice Letter, re: U.S. Invest. of La. Lic. Sys. (DJ No. 204-32M-60, 204-32-88, 204-32-89), Pet.App.C. Louisiana's law schools and board of bar examiners subsequently changed to a conduct only inquiry. The Department reached a settlement agreement with Louisiana that required changes to its bar application process and payment of compensatory damages to injured applicants.

This Court should grant the petition and set forth a rule of law that will bring uniformity and fundamental fairness to this matter.

C. Can viewpoint discrimination be justified by an interest in regulating law students

The state's interest in regulating the profession of law does not justify viewpoint discrimination that chills speech.

Ostensibly neutral policies may function as viewpoint discrimination when the policy justifies adverse action against a speaker because of the speaker's viewpoint. *Rosenberger v. Rector and Visitors of the University of Virginia*, 115 S. Ct. 2510, 2518–20 (1995) (targeting particular views by speakers on a subject is a blatant form of First Amendment violation). Content discrimination is presumptively unconstitutional and must be justified by the government under strict scrutiny." *Id.*.

The First Amendment protects nondisruptive student speech. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 89 S. Ct. 733, 740, (1969) (upholding First Amendment protection of student speech that does not materially disrupt the operation of the school).

Government authority may not be used to probe individual beliefs. *Baird v. St. Bar of Ariz.*, 91 S. Ct. 702, 706, (1971) (stating that the First Amendment gives freedom of mind the same security as freedom of conscience). In *Baird* the Court held that the First Amendment prohibits a State from excluding a person from a profession solely because she holds certain beliefs. *Id.* at 706, citing *U. S. v. Robel*, 88 S.Ct. 419, 425-26, (1967) (finding a First Amendment violation in a screening provision for a security program designed to protect against sabotage of the national defense).

A rule of law that chills student speech cannot be justified by a school's stated business necessity to certify a student's character for the practice of law. This nationally important issue requires this Court's intervention.

IV. Does a Title V claim require showing motive, or does the statute require showing causation

The lower court infused a motive element into Title V of the ADA that immunizes the entity if its pre-existing policies permit the action taken. Like all retaliation statues, Title V contains a causation element, but to be sure, no motive element exists. When, as here, speech is the but-for cause of the adverse action, courts have a constitutional duty to evaluate the claim under the strict scrutiny standard of review. This Court's intervention is required to establish a uniform review standard for Title V claims.

A. The text of the statute provides a causation test, not a motive requirement

The starting point in reviewing claimed statutory violations must be the text of the statute, which reveals no motive element. The complete text of Title V states:

> **42 U.S.C. § 12203. Prohibition against retaliation and coercion**
> **(a) Retaliation**
> No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or *because* such individual made a charge, testified, assisted, or participated in any manner . . . under this chapter. (emphasis added)
>
> **(b) Interference, coercion, or intimidation**

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of . . . any right granted or protected by this chapter.

The text of Title V makes no mention of a motive element. To read a motive requirement into the ADA's anti-retaliation provision contradicts this Court's consistent teaching that courts must not add words to a statute. As this Court stated in *Lamie v. United States Trustee*, 124 S. Ct. 1023 (2004):

> "It is well established that courts are not at liberty to pick and choose among congressional enactments, and when the statute's language is plain, the sole function of the courts is to enforce it according to its terms."

B. Title V retaliation claims require a uniform standard of review; the *Mt. Healthy* evidence based test should be step one

To determine whether protected speech is the but-for cause of responsive adverse state action, courts must evaluate the evidence to determine whether the government would have taken the adverse action absent the protected speech. *Mt. Healthy City School District v. Doyle*, 97 S. Ct. 568, 575–77, (1977) (holding in part that where First and Fourteenth Amendment rights were concerned the District Court had a duty to determine by a preponderance of the evidence whether the school district would have taken the same action against the teacher in the absence of the teacher's protected conduct).

Statutory review must be uniform and consistent, particularly when determining constitutional issues. The recurring nature of disability accommodation requests and responsive adverse state action compels a national standard of review for these

claims. Step one of the analysis must be an objective, standards based evaluation of state action absent protected speech to determine whether retaliation occurred.

C. When protected speech is the but-for cause of retaliation, strict scrutiny analysis must be step two of an objective review

Reports of wrongdoing presented to state officials implicate the right of the people to petition the Government. U.S. Const. Am. I. The right to petition lives among the other guarantees of the First Amendment and strongly provides assurance of the freedom of expression. *McDonald v. Smith*, 105 S. Ct. 2787, 2790 (1985).

The right to protected speech must be absolute. If, under review of a Title V claim, the *Mt. Healthy* test indicates that retaliation occurred, the next step in the review should be a strict scrutiny analysis. To survive under strict scrutiny the state must show that its regulation targets a substantive evil, and that its terms are narrowly tailored toward that end. *NAACP v. Button*, 83 S. Ct. at 339 (1963) (regulations targeting professionalism may not create a chilling effect on political expression or other protected speech).

The importance of the rights at stake, the recurrence of the issue, and the imbalance of power between the state actors and students compel the mandate of a uniform standard of review for ADA Title V claims. This nationally important issue requires this Court's intervention.

V. Whether a court reviewing a Rule 56 motion must apply the proper evidentiary standard, refrain from resolving credibility disputes, and draw all reasonable inferences in favor of the nonmoving party

This Court gives the Federal Rules their plain meaning when the text is clear and unambiguous. *Bus. Guides, Inc. v. Chromatic Commc'ns Enterprises, Inc.*, 111 S. Ct. 922, 928, (1991) (discussing specifically the requirements of Rule 11 without limiting the doctrinal principle thereto).

A motion for summary judgment must be reviewed according to uniform evidentiary standards. *Anderson v. Liberty Lobby*, 106 S. Ct. 2505, 2513, (1986) (holding that the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment). Under this standard, determinations must be highly probable. *Colorado v. New Mexico*, 104 S. Ct. 2433 (1984) (determining that "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue).

Perceptions about Doe's mental instability that are supported in the record enough for a reviewing judge to adopt them as fact would be supported by observed and documented instances of unstable conduct, outbursts perhaps, or maybe illegal conduct. The record contains not one allegation about Doe's conduct. All of the allegations are about Doe's speech.

B. Impermissible Credibility Determinations (and unfavorable inferences)

On review of Respondents' motion for summary judgment the district court assigned improper credibility determinations that are highly prejudicial against Doe, some examples follow:

> But the wide-ranging conspiracy theory Doe posits . . . is too far beyond the pale of human experience to credit without supporting evidence, of which Doe has provided none. Pet.App.A.51.
>
> On this record, the only reasonable inference that the Court can draw is that Doe's reports stemmed at least in part from a degree of mental instability. Pet.App.A.51.
>
> Allowing Doe to seek treatment for her condition would have been a "reasonable modification" which made Doe "otherwise qualified." Pet.App.A.51.
>
> The Court now turns to whether Doe could become "otherwise qualified" through a "reasonable modification. [ ] Unlike the athlete's age in *Pottgen*, mental instability is not immutable; treatment is available for many underlying causes. Pet.App.A.51–52.

Credibility determinations are improper on review of a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2513 (1986) (stating that credibility determinations and the weighing of evidence are a jury function, not a judge's on a motion for summary judgment). The nonmoving party, Doe in this case, should receive the benefit of all justifiable inferences. *Tolan v. Cotton*, 134 S. Ct. 1861, 1863, (2014) (requiring that on a motion for summary judgment, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor), and Fed. R. Civ. P. 56(a) and (e).

The trend of judicial deference to universities' judgments breached the operation of the federal rules of procedure in Doe's case. The District Court adopted Respondents' views about Doe's instability, but neither provided an evidentiary

basis for the conclusions drawn. Speech is not conduct, except in very rare circumstances that aren't present here. However concerning Doe's speech seemed to some, the rule of law must be consistently and objectively applied. An outcome that rests on a form of judicial review that so far departs from this Court's rules can't be valid as a rule of law. This Court should grant the petition to preserve the uniform application of the Federal Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted this 10th day of July, 2025,

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CERTIFICATE OF COMPLIANCE

In accordance with Supreme Court Rule 33.1(h), I, Joan Doe, certify that this petition complies with the word count limitation by containing 7,548 words.

Respectfully submitted this 10th day of July, 2025,

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