Advocates for Disabled Americans, Veterans, Police, Firemen & Families

Non-Profit organization Defending the Rights Of Disabled Americans Since 1983

Introduction to the Court Re The Amicus Curiae of the Title II ADA Violations

To identify the organization-Advocates for Disabled Americans, Veterans, Police, Firemen & Families

In the Matter of Wall v TSA 21-1220

Introduction to the court of Advocates for Disabled Americans, Veterans. Pohce, Firemen, and Families, a national 501 C3, civil rights, policing organization, formed under the Articles of the Constitution to protect the interest of disabled.

I, now, Darren Aquino, and forever, the CEO and fòunder of this well-regulated militia, civil rights, policing group, exclusively for the disabled, formed in 1983, expounded in 1999, through its 501 c-3 corporation.

The owner and founder of this civil rights protection organization, reserves all rights under the Articles of the Constitution, of this corporate property belonging exclusively to said founder for the sole purpose to defend the Constitutional rights of people with disabilities.

The founder introduces himself to this court, but is known to other courts, three Justices, and six Presidents. The founder is known in states around the country following the introduction of this national, one-of-a-kind, civil rights group, which should be known here and now, as ADA Advocates, for disabled Americans its original founding, this acronym exclusively belongs to the founder, and no other should be using it, as per copyright law. The founder, creator, and the voice of the disabled, helped to amend Section 504 of the Rehabilitation Acts enacted in 1990, by President George Herbert Walker Bush.

In order to participate in our mission, members and volunteers of this organization all have disabilities, or have family members who are disabled. All officers of the organization are required to take an oath, and upon that oath, they receive an ID card with a shield/badge that say, “United States Civil Rights Police. The shield/ID number is the last 4 numbers of their social security number. The members also have an exclusive right to privacy in the roll call listings, a choice to be publicly identified, or not. The ID is for the purpose of identifying themselves when communicating with a disabled individual, as a true and authentic representative of the organization. Also, so they may be identified as an officer of the organization. Members carry ID cards, acting in limited official capacity. We reserve all policing rights and investigative powers regarding disability rights under the mission, duties, rules and regulations, as a militia., civil rights disability organization, formed under the Constitution of the United States of America, for these purposes only, as to the rights of the Constitution, in the forming and founding, policies and practices of this organization upholding, which are, protecting and defending the rights of disabled Americans, who have been exploited, harmed, deprived and denied participation in mainstream America; for those who lack the ability to protect and defend themselves, and I am the exclusive voice and bear all rights and duty under the Constitution of the United States, sworn to protect and defend it against all enemies foreign and domestic, for disabled Americans.

The members and volunteers, understand. and know, all too well, how to protect the interest of people with disabilities who have been pushed aside from mainstream America. This lack of equal access history dates back to the very early 1800s. There are hair raising depictions of the abuse of people with disabilities throughout history The purpose of ADA enactment was to absolutely assure equal protection, equal access, and inclusion in mainstream America. These are constitutional inherent rights, not disputable to any of the entities abandoning their duty, which is set forth by the DOJ.

The founder will point out that the DOJ has abandoned its duty, and has not been able to uphold the said rights for people with disabilities, and the DOJ has ignored thousands and thousands of complaints that come in daily, complaints regarding the limitation of access for people with

disabilities, the lack of modifications, and formats still continue. Reform has not been compliant in every state in the union, thus, limiting the reach of people with disabilities.

Now, I, CEO and founder, Darren Dione Aquino, before this court with an amicus brief, am also seeking to join on behalf of people with disabilities, including myself, court should be aware.

I make this statement voluntarily under the penalties of perjury before this honorable court, I too, suffer from multiple disabilities, one of them being respiratory. I choose to disclose my disability as the CEO and founder, to set the example and pathway to bring back and restore liberty, freedom, inclusion, and the full mainstreaming of the disabled in America. The ignorant attacks by government entities, state, local, and federal, since the pandemic, must be addressed There is no power above the Constitutional rights of "we the people" that supersede the authority of the 14th Amendment for people with disabilities.

Now that the founder is known to this court, as he is known to the country, he will proceed as requested for the inclusion of his input, but he will also scck additional Title Il accommodations from the named entities and defendants, including the court; all disabled are entitled under Title Il to bring meaningful and warranted accommodations, this is not open to discretion, the Constitution is not a discretionary document, but an enforceable one.

The Amicus will demonstrate our position and the right to join, with the highest regard for this court, and its judicial responsibility to uphold the Constitutional rights of people with disabilities. This case should be readdressed on the basis of Tennessee v Lane, whereby, Justice Sandra Day O'Connor pointed out that the duties of the courts were failing to accommodate. The lack of

accommodation in Tennessee v. Lane, led to the de-characterization of disabled defendant, he was documented as refusing to enter the court room. However, George Lane was unable to enter the courtroom due to his disability. He was not provided access and was made to crawl up 2 flights of steps to the court. The lower courts have a duty to uphold the rights of the state's citizens, no one is exempt from the ADA, especially when actions involved infringe on freedom, life, liberty or property. No one is exempt from the ADA , not a judge, no public, state, local. or private entity, none of these branches has the rights to infringe upon the right of the disabled, when it comes to the ADA. 'There is no Rooker Feldman immunity A person lacking the ability to comply due to the nature of their disability, should be accommodated, In the case of

Tennessee v Lane, Justice Sandra Day O' Connor noted that the lower courts were "despicable" in their actions, and that they fail to uphold the rights of the citizens. I, Darren Aquino, do so now, by the power vested in me by the Constitution of the United States of America, as a man, of the age of majority, an American born under the unalienable rights of the United States of America. I am the chief officer and voice of this organization. Counsel is not my voice, neither am I required to defend this organization's statements though counsel. I do have personal counsel, Mr. Julio Portilla, who is aware of this Amicus submission.

The members and officers of the organization are in agreement. To suppress me, is to say that I don't have a voice. Under Title l, Il, and Ill, there is no such requirement. At all times, we revert back to Tennessee v. Lane, all the members and CEO of ADA Advocates are disabled, thus, granting the CEO, the right to submit, would be an accommodation under Title I, Il and Ill, of the ADA. The Amicus is written under liberal construction, and has dictated to an assistant.

Respectfully,

Darren Dione Aquino
CEO, National Chief Advocate

No. 21-1220

IN THE UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

Lucas Wall et al

Plaintiffs-Appellees

v.

Transportation Security Authority

Defendant-Appellant

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES ON THE ISSUES ADDRESSED HEREIN

by

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IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia District

No. 21-1220

INTEREST OF THE UNITED STATES

This case involves a challenge to an Executive Order issued by the President of the United States, Joseph Biden, and subsequent Governors, and subsidiaries (state, local, federal governments, their employees, officers) of the 50 states, regarding the indiscriminate requirements of mask mandates, which contradict the inherent rights of people with disabilities. Title II respectively addresses the sovereign immunity of people with disabilities, it is outlined in the Americans with Disabilities Act, also known as the ADA or the "Act". The entities have no discretionary power through its executive branches.

The purpose of the ADA was to restore independence to individuals with disabilities, after a long train of abuses by the state, local and federal governments, but not limited to.

For this purpose, it is to ensure through the courts authority to uphold the rights of its citizens, first and foremost under Title II. There has been no law legislated by Congress that adversely contradicts the ADA and its empowerment purposes. There are no exceptions to the ADA. Once the accommodations begin,

they cannot be halted, on a discretionary presumption, for example, saying that 'I think you have a contagious disease, hence you must wear a mask.

An airport is a place of public accommodation, There is a multi-function, one of public accommodation, and the other, a sales office. Tickets are purchased through various airlines, since 911, they have taken security measures that are there to secure the safety of all citizens. If a citizen with a respiratory condition, such as myself, asthma and COPD, from 911, is mandated to wear a mask, it is understood that this security measure is to assure to the millions of travelers that I present no risk, that is the limit of the TSA, to ensure that I, or any other individual with disability poses no risk. However, when a medical note is presented, and said individual is still forced to wear the mask which will lead to a compromising medical condition, which would result in the limit of oxygen intake, we then fall under the protection of Title II of the ADA. Disabled individuals have been charged with trespassing for their inability to wear a mask due to the disabilities at hand. The disabilities would have been severely exacerbated. When there is medical documentation, the evidence of harm to the disabled individual, is not an assumption, it is a fact, cannot and should not be applied. The irony of the whole situation is especially seen when at the airport, when one is asked to remove their mask so that TSA can see your face to compare with your ID. On the plane, you can keep your mask down while you're eating or drinking. There is no Federal law that states that we cannot breathe free air. The mask mandate for those disabled

individuals that cannot wear the mask due to their disabilities, is a violation of Title I, II, III and Section 504.

A mandate to prevent the disabled person from breathing the free air, that would cause harm, exacerbating a conditions, is what the court must look at. The harm it causes, against the constitutionality of the right. The language in the ADA and Title II is clear, accommodate, facilitate, warranted. Generally, the condition dictates the accommodation, not the entity, state, local, or federal entities, they have no subject matter jurisdiction, adversely changing the policy and creating a false illusion of authority. There is no body in government that can change such a law, but Congress.

There are many cases, whereby, the mask mandate has caused harm to disabled individuals, one example is that of an autistic child with sensory impairments, this child cannot tolerate the mask due to his/her sensory delays. The mask causes extreme distress, difficulty breathing and leads to significant tantrums.

There are so any examples of disabled individuals in distress due to the mask mandate. Physicians have supplied documentation for their disabled patients unable to wear the mask due to their severe conditions. PTSD is one of them, whether it be a disabled veteran, a woman who has been sexually assaulted, an individual with anxiety disorder. PTSD and anxiety work hand in hand from an

emotional and mental health stand point, a persons with PTSD from a trauma could have been held by the mouth, compromising their air intake. A person who has drowned, been in a fire, but not limited to. PTSD is a recognized and qualified condition under the ADA, the Act.

The concern to the court is the impact the mask mandate will have to 150 million disabled Americans. The numbers may not seem appropriate, this is due to the fact that the only reporting agency that has an accurate accounting is the Social Security Administration (SSA). Under the Social Security Administration, the agency that I obtain my numbers from, something peculiar happens to the count of disabled, this happens every couple of years, the numbers of disabled decrease, what is unusual is that the number decreases every 2 years. For example, for a person receiving disability from the age of 40 years old, once this person begins to receive his retirement a 67, he becomes a retired person, and is removed as a disabled individual.

There are a variety of disabilities nationwide and they are increasing, 1 in 38 children are born with Autism, they are qualified, but not counted in Social Security Administration. If the parents' income goes over the limit, the child will not qualify for SSA and hence his existence will not be known in the system.

Entities are trying to leverage their right by compromising the authority of the ADA, and are denying people with disabilities.

The defendant, the DOJ, are also derelict in performing their duties for the

disabled. They neglect Title II, in their own practices. They are under the illusion that they are the architects of the ADA, they are the servants as a government entity to enforce the ADA. The rules that they direct others to follow, they do not. It is "We the People" through our elected congressional representatives, beginning with the new improved ADA, the Act, of 1990, since 504, the Rehabilitation Act, was lacking substantial coverage for people with disabilities, and minimized the duty of government entities. The court should also bear in mind that there is no statute of limitations on a disability. The reason I state this is simple logic, how can you impose a time constraint on a person's physical limitation of his performance in a response even to the court without applying warranted accommodations? This is not limited to time, but to facilitating a format of achievability, and thereby, this court, and all courts, being state, local, federal government entities, its employees, affiliates, appointed and elected, have one duty, to uphold the rights of the citizens of the respective states, including the US Corporation practicing in the United States of America. So, on appeal, on address, the fundamental rights of citizens are empowered by choice, and not discretion, under Title II, such as request for counsel, as an accommodation, the court through its own interpretation, violates the right of counsel under the Constitution. The case, being civil, or criminal, should not decide which one gets counsel, but must review the "right" in question, to receive counsel. Would it be fair to say to the court, that a visually impaired individual, also lacking use of his/her upper extremities, be compelled to a

response to any court, in a 10 day or a 20 day response format? The purpose is to define to this court, the right of access by facilitating warranted accommodations, this is not limited to TSA, but to every, and all. The ADA is not the right of the State, but the right of the people. The Constitution does not submit to them, but they must to submit to it.

In the 11th circuit now, was notified of an appeal, which was electronically filed, a reasonable accommodation, your court, however, refused. Plaintiff, Darren Aquino, disabled, was quarantined due to covid, bedridden for 60 days, and the district court in Tallahassee refused to take his request for an appeal via fax or phone. He was not allowed electronic submission. Quarantine means he cannot leave the house, nor can anyone come in, the courts blatant disregard for Title II, does hinder the process. The appellate court, after the lower was informed that circumstances were dire, had to protect due process. The appeal was filed anyway, the appeal requires that I notify the court, the only way is to notify by paper, how can one quarantined be able to do this? This is one example of how people with disabilities suffer without a warranted accommodation. These actions hinder due process rights. This court can re-address and direct because the authority rests with you to protect the constitutional rights of "we the people."

Title II must be adhered to, as in Tennessee v Lane. The court should direct the defendant to stay the proceedings until the court of Constitutional authority,

enacts enforcement under Title II, directing the DOJ to notify the SSA and local state disabilities entities/agencies, through procedures using effective communication, whereby, disabled individuals who have suffered from this mask mandate, can enjoin this case. The most comprehensive and compelling law in our nation is the ADA. The fact that an airline, an aircraft, or airport, can criminalize a disabled individual because they cannot wear a mask due to medical reasons is a direct assault of ADA protection.

The liberty, well-being, and freedom of a vulnerable individual cannot be compromised. The defendants are then liable for compensatory damages, but not limited to, for violating the rights of the disabled. The court knows that an entity cannot assume that someone carries a virus when they already had temperature taken etc, they have already entered a place of public accommodation. They have passed the initial stage and because they cannot wear a mask, are then forced to leave. Let those who have not restricted people with disabilities in the 50 states come forth.

The state cannot legislate a law that supersedes the Constitution, neither can the DOJ, especially, if it compromises the disabled individual. Only Congress can legislate, and they did, the ADA. In short, if" I "can't, "you" must. The United States Congress recognized the rising numbers of disabled, those that were neglected, that resulted in harm, and finally, enacted the ADA.

The most compelling demonstration of reckless behavior, violating the

ADA, took place in the state of New York, at the hand of the governor, whereby, he allowed covid infected individuals to be sent to Nursing, endangering our vulnerable. As a result of this reckless behavior by the NYS governor and other governors, over 20,000 mothers, fathers, grandparents, aunts and uncles, those vulnerable and disabled seniors, died. Here come I, today, before you, to state that the actions of these governors should be considered high crimes and misdemeanors, they ignored the remedies and compromised people in Nursing homes across the county. Governor Andrew Cuomo, is, and should be held accountable. Let us consider that 25% of the 22,000 killed were visually and mentally impaired, where was their right to challenge this action, their right to defend themselves. I am that right, I am now and forever, the national chief advocate, to challenge all entities under Title II, State, local and Federal. The actions that took place in these nursing homes during Covid, amount to genocide, and governors must be held accountable. There is no Rooker Feldman immunity for harm to the disabled, the vulnerable. I am here today to exercise their right. The founding of this organization is to protect the interests of Americans with disabilities. Let it be known that the greatest challenge for the disabled is access, be it an elevator, an office, a courtroom, anywhere, but, the accommodation does not stop once the disabled person enters their destination.

I make this amicus to the court, to uphold the power of the people, the protection of the people. We believe that there must be mask exemptions for

people with disabilities. But, entities still violate. I bring this to the attention to the court, as a lay expert and friend to the court. Over the last years, people with disabilities face domestic enemies, the DOJ, police, sheriffs, court system, state, local and federal, denying and depriving the rights of this vulnerable population. The sole purpose of the court system as outlines in Tennessee v Lane, pointed out by Justice Sandra Day O' Connor, the duty of the courts is to uphold the rights of its citizens and nothing more. The United States has a substantial interest in this appeal, which concerns the proper interpretation and application of Title II of the Americans with Disabilities Act of.1990 (ADA), 42 U.S.C. 12131 *et seq.* (Title II),

Accommodation is the successful platform to equality for people with disabilities. That was the intent of the 101st congress enacted by President George Herbert Walker Bush in 1990.The disabilities community are directly being harmed by entities that are violating Title I, II and II, but not limited to.

Please also let it be known that the character and integrity of an appointed juris varies from state to state, in actuality, it is a contradiction to the oath of office, as Justice O'Connor pointed out in the case of George Lane, regarding the harm he suffered. In a controversy in a lower court in the Eastern District of New York, Judge Joanna Seybert was reckless, violating her oath of office to uphold the rights of those under the protected class of the ADA , the constitution's 14th Amendment, which outright contradicts Tennessee v Lane. Justice Sandra Day O'Connor, on a request for a review by the high

court, regarding this case in the Eastern District, allowed me to communicate to the court in an accessible manner. I had suffered a long train of abuses by a Juris who was practicing his opinion outside the oath of his office, denying me access. Because of the standing of this organization, Advocates for Disabled Americans, Veterans, Police, Firemen & Families, the Marshall's office in the Supreme court, took my phone call as the national chief, and delivered a message to the Justice O'Connor that the plaintiff was suffering, the marshall responded, and Justice O'Connor informed that Marshall to have me fax the concerns to her office, upon her review, Justice Arthur J. Spatt was asked to recuse himself. What the court should recognize is that Justice O'Conner under Title II made access.

It should be noted that the Justice stated that she could not disclose what action would be taken, but that action is going to be taken, and the Marshall in her authority, complied with the Title II request to fax to the high court the deprivations I was suffering.

I can give dozens of remedies to this court, and every state in the union, as to how to reduce the court calendar on matters involving ADA compliance and remedies, the exuberant number of ADA cases should demonstrate to the court that there is non-compliance to the ADA, in every state. I agree to some respect, that some cases may be frivolous, but, in this Amicus, we are talking about the right to breath, the right to breathe the free air, and the inability to.

As an advocate, I defend the right of the ADA for those that due to their disability cannot speak for themselves.

The greatest controversy of Title II is that states believe they have a discretionary authority over Title II, to remove its power, they do not. Together, the DOJ should be directed forthwith to advise airlines and state that it is not a federal crime for people with disabilities not to wear a mask, and the obvious should be construed, that persons with underlying conditions will put themselves in harm's way, we are free Americans and you cannot compromise the airways of a disabled individual.

Respectfully, I ask this court that I may join this case, and that you would order the DOJ and the clerk of this court, and nay Federal court in the United States, that they comply fully to Title II of the ADA.

Let it be known that this advocate, Darren Aquino, functions better orally, due to his disability. This Amicus was dictated.

STATEMENT OF THE ISSUES

The Amicus will address the following to the United States, by the voice of "we the people" through the voice of Darren Aquino, national chief advocate for disabled,

1. Established our standing and rights to address the Title II violations suffered by the disabled, as a result of the mask mandate.

2. Disabled individuals were imposed masking mandates even though a reasonable modification/accommodation is required under by Title II and Section 504.

STATEMENT OF THE CASE

1. Statutory And Regulatory Background

The Rehabilitation Act prohibits discrimination on the basis of disability in federally funded programs or activities. Section 504 provides that "[n]o otherwise qualified individual with a disability 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." 29 U.S.C. 794(a).

Similarly, Title II, which extends Section 504's prohibition to all public entities, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination

by any such entity." 42 U.S.C. 12132. Under Title II's implementing regulations, public services must be equally available to persons with disabilities and to persons without. 28 C.F.R. 35.130(b)(1)(i)-(iii). In addition, these regulations require "[a] public entity [to] make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

Conclusion

This case concerns the ability of certain individuals with disabilities to obtain reasonable modifications/accommodations without obstruction regarding the mask mandate.

To mitigate the risks posed by the ongoing COVID-19 public health crisis, the Centers for Disease Control and Prevention (CDC) recommends universal indoor masking. Beyond its general recommendations, the CDC also recognizes that COVID-19 poses a heightened risk of severe complications to persons with

[2] The terms "reasonable accommodation" and "reasonable modification" are "used interchangeably" in the case law for Title II and Section 504 "without apparent distinction." *Berardelli* v. *Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 116-117 (3d Cir. 2018); *Wong* v. *Regents of Univ. of Cal.*, 192 F.3d 807, 816 n.26 (9th Cir. 1999).

certain disabilities, including Down syndrome, heart conditions, immunocompromised states, and chronic lung diseases such as moderate to severe asthma. CDC, *People with Certain Medical Conditions* (last updated Dec. 14, 2021), https://perma.cc/CR5W-3Q63.

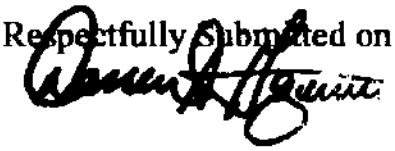
Plaintiffs are disabled individuals unable to wear masks due to their variety of disabilities. Other people with disabilities also suffering from this mask mandate had no chance to join this case since there was no notification by the DOJ. This advocate, Darren Aquino, was contacted, to express the concerns of, and the violations of Title II of the ADA.

Title II and Section 504 "aim to root out disability-based discrimination, enabling each covered person (sometimes by means of reasonable accommodations) to participate equally to all others in public facilities and federally funded programs." *Fry* v. *Napoleon Cmty. Schs.*, 137 S. Ct. 743, 756 (2017). These statutes and their implementing regulations place an "affirmative obligation" on public entities "to make reasonable modifications in their policies, practices, or procedures when necessaryto avoid discrimination on the basis of disability.

Plaintiffs Have Suffered, Or Imminently Will Suffer, An Injury-In-Fact

Plaintiffs have been, or imminently will be, injured by mask requirements, because this mandate denies them an opportunity to participate in public activities-that is equal to that enjoyed by persons without disabilities.

Respectfully Submitted on April 17, 2022, by:



Darren Dione Aquino

CEO & Founder of ADA Advocates, National Chief Advocate

Americans with Disabilities Act of 1990 (ADA),
42 U.S.C. 12101*et seq.passim*
42 U.S.C. 12101(a)(2) 3, 19
42 U.S.C. 12101(a)(3) 3, 14, 19
42 U.S.C. 12101(a)(5) 3
42 U.S.C. 12101(a)(6) 3
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42 U.S.C. 12101(a)(9) 4
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42 U.S.C. 12111-12117 (Title I) 4, 6, 10, 11
42 U.S.C. 12131-12165 (Title II)*passim*
42 U.S.C. 12131(1) 14
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42 U.S.C. 12132 5, 37, 65
42 U.S.C. 12133 5, 68, 71
42 U.S.C. 12181-12189 (Title III) 4
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Civil Rights Act of 1964,
Titles III, IV, VI, & VII, 42 U.S.C. 2000b-2000e*et seq.*43
Title VI, 42 U.S.C. 2000d*et seq. passim*
Title VII, 42 U.S.C. 2000d-7*passim*

Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997*et seq*,Pub. L. No. 96-247, 94 Stat. 349.29, 43

Developmental Disabilities Act of 1984, 42 U.S.C. 6000*et seq*.29

Equal Access Act, 20 U.S.C. 4071*et seq*.58

Rehabilitation Act of 1973, 29 U.S.C. 701*et seq.*,
29 U.S.C. 701(a)(2) 3
29 U.S.C. 701(a)(5) 3
29 U.S.C. 794 (Section 504)*passim*
29 U.S.C. 794(a) 5, 46
29 U.S.C. 794(b) 5-6
29 U.S.C. 794a(a)(2) 68

Voting Rights Act of 1965,
42 U.S.C. 1973*et seq*.43
Title I, § 5, 42 U.S.C. 1973c 45

1. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, contains an "antidiscrimination mandate" that was enacted to "enlist[] all programs receiving federal funds" in Congress's attempt to eliminate discrimination against individuals with disabilities. Congress found that "individuals with disabilities constitute one of the most disadvantaged groups in society," and that they

2. "continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations,

3. education, transportation, communication, recreation, institutionalization, health services, voting, and public services." 29 U.S.C.701(a)(2) & (a)(5).

2. Finding that Section 504 was not sufficient to bar discrimination against individuals with disabilities, Congress enacted the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101*etseq.*, to establish a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1). Congress found that "historically, society has tended to isolate and segregate individuals with disabilities," and that "such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. 12101(a)(2). Discrimination against persons with disabilities "persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services." 42 U.S.C. 12101(a)(3). In addition, persons with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

42 U.S.C. 12101(a)(5).
Furthermore, "people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally." 42 U.S.C. 12101(a)(6). "[T]he continuing existence of unfair and unnecessary discrimination and prejudice," Congress concluded, "denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous." 42 U.S.C. 12101(a)(9). In short, Congress found that persons with disabilities have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not

truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

42 U.S.C. 12101(a)(7).
Based on those findings, Congress "invoke[d] the sweep of congressional authority, including the power to enforce the fourteenth amendment" as authority for its passage of the ADA. 42 U.S.C. 12101(b)(4). The ADA targets three particular areas of discrimination against persons with disabilities. Title I, 42U.S.C. 12111-12117, addresses discrimination by employers affecting interstate commerce; Title II, 42 U.S.C. 12131-12165, addresses discrimination by governmental entities in the operation of public services, programs, and activities, including transportation; and Title III, 42 U.S.C. 12181-12189, addresses discrimination in public accommodations operated by private entities.

3. This case involves a suit filed under Title II and Section 504. Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. 12132. A "public entity" is defined to include "any State or local government" and its components. 42 U.S.C. 12131(1)(A) and (B).

A "[q]ualified individual with a disability" is a person "who, with or without reasonable modifications meets the essential eligibility requirements" for the governmental program or service. 42 U.S.C. 12131(2). Congress expressly abrogated the States' Eleventh Amendment immunity to private suits in federal court. 42 U.S.C. 12202.

Section 504 of the Rehabilitation Act of 1973 provides that "[n]o otherwise qualified individual with a disability in the United States 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." 29 U.S.C. 794(a). A "program or activity" is defined to include "all of the operations" of a state agency, university, or public system of higher education "any part of which is extended Federal financial assistance." 29 U.S.C. 794(b). As with Title II, protections under Section 504 are limited to "otherwise qualified" individuals, that is those persons who can meet the "essential" eligibility requirements of the relevant program or activity with or without "reasonable accommodation[s]."*Arline*, 480 U.S. at

287 n.17. An accommodation is not reasonable if it either imposes "undue financial and administrative burdens" on the grantee or requires "a fundamental alteration in the nature of [the] program." *Ibid.* Section 504 may be enforced through private suits against programs or activities receiving federal funds. See *Strathie*v. *Department*

In contrast, the record before Congress supported Congress's decision to abrogate Eleventh Amendment immunity for Title II. Congress assembled a record of constitutional violations by States - violations not only of the Equal Protection Clause but also of the full spectrum of constitutional rights the Fourteenth Amendment incorporates - which Congress in its findings determined "persist[ed]"in areas controlled exclusively or predominantly by States, such as education, voting, institutionalization, and public services. These well-supported findings justify the tailored remedial scheme embodied in Title II. Congress formulated a statute that is carefully designed to root out present instances of unconstitutional discrimination, to undo the effects of past discrimination, and to prevent future unconstitutional treatment by prohibiting discrimination and promoting integration where reasonable. At the same time, Title II preserves the latitude and flexibility States legitimately require in the administration of their programs and services. Title II accomplishes those objectives by requiring States to afford persons with disabilities genuinely equal access to services and programs, while at the same time confining the statute's protections to "qualified individual[s]," who by definition meet all of the States' legitimate and essential eligibility requirements. Title II simply requires "reasonable" modifications that do not impose an undue burden and do not fundamentally alter the nature or character of the governmental program. The statute is thus carefully tailored to prohibit only state conduct that presents a substantial risk of violating the Constitution or that unreasonably perpetuates the exclusionary effects of the prior irrational governmental segregation of persons with disabilities.

2. In addition, Congress validly removed States' immunity to private suits brought to enforce Section 504 of the Rehabilitation Act. Section 2000d-7 of Title 42 contains an express statutory provision removing Eleventh Amendment immunity for Section 504 suits. If this Court upholds the constitutionality of Title II's abrogation, then the validity of Section 2000d-7 follows as a matter of course. In any event, this provision is a valid exercise of Congress's power under the Spending Clause to impose unambiguous conditions on States receiving federal funds. By enacting Section 2000d-7, Congress put

state agencies on notice that accepting federal funds waived their Eleventh Amendment immunity to discrimination suits under Section 504.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (Section 504), and the relationship between those statutes and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.* (IDEA).

Congress gave the Attorney General express authority to issue regulations under Title II, see 42 U.S.C. 12134(a), and directed all federal agencies to issue regulations implementing Section 504 with respect to programs or activities that receive federal financial assistance, see 29 U.S.C. 794(a). Additionally, the Department of Education administers the IDEA and has promulgated regulations implementing that statute. See 20 U.S.C. 1406; 34 C.F.R. Pt. 300. The Attorney General has authority to bring civil actions to enforce both Title II and Section 504, see 42 U.S.C. 12133; 29 U.S.C. 794a, and may bring actions to enforce the IDEA upon referral from the Department of Education, see 20 U.S.C. 1416(e)(2)(B)(vi), 1416(e)(3)(D).