11-2215

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MARY JO C.,

Plaintiff-Appellant

v.

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM, CENTRAL ISLIP PUBLIC LIBRARY,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

SUPPLEMENTAL BRIEF FOR THE UNITED STATES AS INTERVENOR

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QUESTIONS PRESENTED

In this supplemental brief, the United States will address the following questions:

1. Should this Court reach the constitutional issues described below, where plaintiff seeks no monetary damages barred by sovereign immunity, the State asserts that Title II does not apply to the challenged conduct, and the district court has not ruled on the constitutional issue the State now presents for the first time on appeal?

2. Does Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131 *et seq.*, validly abrogate sovereign immunity with respect to the provision of social services?

SUMMARY OF ARGUMENT

1. This Court should not rule on the validity of Title II's abrogation of state sovereignty immunity, for three different reasons.

First, the abrogation question is irrelevant to this case, because the *Ex Parte Young* doctrine permits the plaintiff to pursue the purely prospective relief she seeks regardless of sovereign immunity. This Court should avoid unnecessary constitutional adjudication by remanding with instructions to the district court to grant plaintiff's motion to name an individual defendant in his official capacity.

Second, pursuant to the procedure mandated by the Supreme Court in *United States* v. *Georgia*, 546 U.S. 151 (2006), this Court should not rule on the abrogation question unless and until it reverses the district court's holding that plaintiff failed to state a Title II claim. Ruling on the abrogation question first risks constitutional adjudication that is both unnecessary and erroneous.

Finally, even if this Court concludes that the abrogation question is relevant to this case and must be decided, it should remand the question – which was neither briefed nor decided below – to the district court to decide in the first instance.

2. Should this Court nonetheless reach the question, it should find that Title II validly abrogates the States' sovereign immunity with respect to claims alleging disability discrimination in the provision of social services. As the Supreme Court held in *Tennessee* v. *Lane*, 541 U.S. 509, 524 (2004), Title II was enacted "against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights." That history, the Court held, authorized Congress to enact prophylactic legislation to protect the rights of people with disabilities to receive on an equal footing all "public services," see *id.* at 528-529, including but not limited to disability benefits and other social services.

Title II, as applied to social services and in general, represents a congruent and proportional response to that record of discrimination. In this context, Title II protects not only the equal protection but also the procedural due process rights of individuals with disabilities who apply for social services. Its requirements – that States grant reasonable accommodations to applicants for social services, and that they otherwise refrain from discrimination on the basis of disability – are carefully tailored to protect against the proven risk of unconstitutional discrimination in the provision of social services, while respecting the States' legitimate interests.

These targeted prophylactic and remedial measures, judged against the backdrop of pervasive unconstitutional discrimination that Congress found in the

provision of social services and many other areas of governmental services, represent a good-faith effort to make meaningful the guarantees of the Fourteenth Amendment, not an illicit attempt to rewrite them. Accordingly, Congress validly abrogated the States' sovereign immunity with respect to claims involving the provision of social services.

ARGUMENT

I

THIS COURT SHOULD NOT RULE ON THE VALIDITY OF TITLE II'S ABROGATION OF SOVEREIGN IMMUNITY

1. This Court should not rule on the validity of Title II's abrogation of sovereign immunity because the State has no such immunity with respect to the purely prospective relief sought in this case. The plaintiff seeks only declaratory and injunctive relief requiring the State to process her application for retirement benefits in conformance with the requirements of federal law. Such relief is available pursuant to the *Ex Parte Young* doctrine regardless of whether Title II validly abrogates sovereign immunity. This Court should not unnecessarily adjudicate the validity of a federal law.

It is by now settled that Title II suits for declaratory and injunctive relief may be brought against individual state officials acting in their official capacity. See *Harris* v. *Mills*, 572 F.3d 66, 72-73 (2d Cir. 2009); see also *McCarthy* v. *Hawkins*, 381 F.3d 407, 414 (5th Cir. 2004) (collecting cases from other circuits).

Accordingly, pursuant to the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908), and its progeny, sovereign immunity does not block a suit that seeks no monetary relief but rather asks only for an injunction to remedy a continued violation of Title II's requirements. See *Harris*, 572 F.3d at 72; *Henrietta D.* v. *Bloomberg*, 331 F.3d 261, 287-288 (2d Cir. 2003).

As the United States explained in its initial brief – and as the State does not contest – the plaintiff can obtain all the relief she seeks pursuant to the *Ex Parte Young* doctrine regardless of whether Title II validly abrogates sovereign immunity. See Br. for the United States as Amicus Curiae and as Intervenor 21-22. To be sure, in order to secure relief under *Ex Parte Young* and render any constitutional adjudication unnecessary, the plaintiff must amend her complaint to name as defendant an individual state official. The plaintiff attempted to do just that before the district court, which denied her motion to amend as futile in light of its determination that plaintiff failed to state a Title II claim (Appendix [A.] 27 n.6).

Neither the district court nor the State has offered any other reason not to grant plaintiff's motion; indeed, the State's brief does not mention the motion. Accordingly, should this Court reverse the district court's judgment that plaintiff failed to state a Title II claim, it should remand with instructions that the district court permit plaintiff to amend her complaint to name an individual defendant.

Such an amendment will obviate any need to adjudicate the constitutional questions raised by the State in this case.

2. Even if the abrogation question were relevant to the relief sought in this case, this Court still should not immediately reach it. Rather, in accordance with the dictates of *United States* v. *Georgia*, 546 U.S. 151 (2006), this Court should begin by addressing the statutory question of whether plaintiff has pleaded a Title II violation. *Georgia* makes clear that lower courts are not to adjudicate the constitutionality of Title II's abrogation without first determining that the issue is properly presented, in the form of a valid Title II claim that does not also state a constitutional violation.

In *Georgia*, the Court instructed the lower courts to carefully determine not only whether plaintiff had stated a Title II claim at all, but also the extent to which "such misconduct * * * violated the Fourteenth Amendment," making Title II's abrogation necessarily valid. 546 U.S. at 159. Only with respect to that conduct which "violated Title II but did not violate the Fourteenth Amendment" should the lower courts go on to determine the validity of Title II's abrogation. *Ibid.*

Since *Georgia*, every circuit court to consider the question has correctly held that, before ruling on the constitutionality of Title II's abrogation, it must determine whether the plaintiff has stated a Title II claim that does not also constitute a constitutional violation. See *Mingus* v. *Butler*, 591 F.3d 474, 483 (6th

Cir. 2010); *Bowers* v. *NCAA*, 475 F.3d 524, 553 (3d Cir. 2007); *Buchanan* v. *Maine*, 469 F.3d 158, 172-173 (1st Cir. 2006); *Guttman* v. *Khalsa*, 446 F.3d 1027, 1035-1036 (10th Cir. 2006); see also *Hale* v. *King*, 642 F.3d 492, 498 (5th Cir. 2011) (following *Bowers* and *Buchanan* without determining whether *Georgia* barred it from doing otherwise). And while this Court has not explicitly held to that effect in a published opinion, it has followed the same practice. See *Bolmer* v. *Oliveira*, 594 F.3d 134, 149 (2d Cir. 2010) (declining to address validity of Title II's abrogation because plaintiff's constitutional claim, if successful on remand, would make such analysis "unnecessary"); *Natarelli* v. *VESID Office*, 420 F. App'x 53, 55 (2d Cir. 2011) (declining to reach abrogation question where plaintiff failed to state Title II claim).

There are sound reasons for this practice. It is a "fundamental and longstanding principle of judicial restraint" that "courts avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988); see, *e.g.*, *Fulton* v. *Goord*, 591 F.3d 37, 45 (2d Cir. 2009) (declining to decide whether Eleventh Amendment immunity had been abrogated or waived). This principle holds even more true where, as here, the constitutionality of an act of Congress is at issue. See, *e.g.*, *Northwest Austin Mun. Util. Dist. No. One* v. *Holder*, 129 S. Ct. 2504, 2513 (2009). To rule on the abrogation question first would be to issue what

amounts to an improper advisory opinion, holding, in effect, that *if* Title II bans the conduct alleged in this case, *then* its abrogation of sovereign immunity is unconstitutional. "A constitutional decision resting on an uncertain interpretation of state law is * * * of doubtful precedential importance." *Pearson* v. *Callahan*, 555 U.S. 223, 238 (2009). So, too, is a constitutional decision invalidating a federal law without first ascertaining that it applies to the case at hand.

Moreover, reaching the constitutional question before resolving whether the statute bars the state conduct at issue is particularly inappropriate with respect to the abrogation inquiry, which requires nuanced statutory construction. As explained further in Point II, *infra*, whether Title II validly abrogates sovereign immunity in this context turns on whether its effect is congruent and proportional to the constitutional problems it remedies. Until a court determines how broadly Title II sweeps, it cannot do so authoritatively. Jumping straight to the "congruent and proportional" test without first determining whether and how Title II applies here does not simply result in *unnecessary* constitutional adjudication. It also results in *flawed* constitutional adjudication.

The State nonetheless asks this Court to rule on the abrogation question as an alternative to adjudicating the merits of plaintiff's Title II claim, asserting that the usual rule of constitutional avoidance gives way where the State asserts Eleventh Amendment immunity as a defense. See Br. for State Appellee 25-26

n.7. *Georgia* holds the opposite with respect to the very statute at issue here. And even before *Georgia*, the Supreme Court "routinely addressed *before* the question whether the Eleventh Amendment forbids a particular statutory cause of action to be asserted against States, the question whether the statute itself *permits* the cause of action it creates to be asserted against States." See *Vermont Agency of Natural Res.* v. *United States*, 529 U.S. 765, 779 (2000). That is because resolving the statutory question in a manner that permits this suit against the State is "logically antecedent to the existence of the Eleventh Amendment question." *Ibid.* (citation and internal quotation marks omitted); accord *Broselow* v. *Fisher*, 319 F.3d 605, 607 (3d Cir. 2003). Moreover, deciding the statutory question first cannot subject a State to "prolonged proceedings in federal court," see Br. for State Appellee 26 n.7. The court still decides immediately, given the allegations, "whether States can be sued under this statute." *Vermont Agency*, 529 U.S. at 779.

3. Finally, even if this Court should determine (1) that plaintiff has pleaded a valid Title II claim and (2) that any sovereign immunity issues cannot be avoided through the naming of an individual defendant, it still should not reach the validity of Title II's abrogation on this appeal. That question, as the State has now reframed it, is a complex constitutional question of first impression that was

neither briefed by the parties nor addressed by the district court below.[1] It is this Court's usual practice not to consider an argument raised for the first time on appeal, particularly where the party now raising the argument could have done so below. See, *e.g.*, *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 132-133 (2d Cir. 2008). Accordingly, should this Court find the abrogation question relevant to this case, it should reverse and remand for further proceedings rather than addressing the question in the first instance. See *Singleton* v. *Wulfe*, 428 U.S. 106, 120-121 (1976); see also *Solis* v. *Washington*, 656 F.3d 1079, 1089 n.7 (9th Cir. 2011) (declining to consider argument regarding infringement on state sovereignty that was not litigated below); *Fulton*, 591 F.3d at 45-46 (remanding to district court to decide State's sovereign immunity defense in the first instance).

II

TITLE II VALIDLY ABROGATES STATE SOVEREIGN IMMUNITY WITH RESPECT TO THE PROVISION OF SOCIAL SERVICES

Should this Court nonetheless reach the question, it should hold that Title II of the Americans with Disabilities Act validly abrogates the States' sovereign immunity with respect to claims involving the provision of social services. Title II

[1] As the State acknowledges, while the district court stated that its judgment was on sovereign immunity grounds, its reasoning – as well as the State's briefing below – pertained only to whether Plaintiff failed to state a Title II claim and "overlooked" entirely that the sovereign immunity issue is a "distinct point[]." See Br. for State Appellee 11.

was enacted "against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights." *Tennessee* v. *Lane*, 541 U.S. 509, 524 (2004). Accordingly, Congress had authority pursuant to Section Five of the Fourteenth Amendment to pass prophylactic legislation protecting the right of people with disabilities to receive public services on an equal footing. *Ibid.* Congress's response – barring overt discrimination on the basis of disability and requiring reasonable accommodations with respect to all public services, including the social services at issue here – was congruent and proportional to that record of discrimination.

1. Although the Eleventh Amendment ordinarily renders a State immune from suits in federal court by private citizens, Congress may abrogate that immunity so long as it "unequivocally expresse[s] its intent to abrogate that immunity" and "act[s] pursuant to a valid grant of constitutional authority." *Kimel* v. *Florida Bd. of Regents*, 528 U.S. 62, 73 (2000). There is no question that Congress unequivocally expressed its intent to abrogate the States' sovereign immunity with respect to claims under the ADA. See 42 U.S.C. 12202; *Lane*, 541 U.S. at 518. Similarly, it is settled that "Congress can abrogate a State's sovereign immunity when it does so pursuant to a valid exercise of its power under § 5 of the Fourteenth Amendment to enforce the substantive guarantees of that Amendment." *Lane*, 541 U.S. at 518.

As *Lane* squarely held, the long and broad history of official discrimination suffered by individuals with disabilities authorized Congress to exercise that Section Five authority to protect their constitutional rights with respect to *all* public services and programs. *Lane*, 541 U.S. at 524; accord *Bowers* v. *NCAA*, 475 F.3d 524, 554 & n.35 (3d Cir. 2007); *Constantine* v. *Rectors & Visitors of George Washington Univ.*, 411 F.3d 474, 487 (4th Cir. 2005); *Association for Disabled Ams., Inc.* v. *Florida Int'l Univ.*, 405 F.3d 954, 958 (11th Cir. 2005). The State misreads *Lane* in contending that Congress was required to "identif[y] a pervasive and widespread pattern of constitutional violations with respect to" each type of public service to which Title II applies. See Br. for State Appellee 24. Rather, *Lane* first examined official discrimination against individuals with disabilities in a variety of contexts and determined that this history triggered Congress's Section Five authority to ameliorate such discrimination across the board. See *Lane*, 541 U.S. at 524-528. What it then declined to consider "as an undifferentiated whole" was whether the Title II remedial scheme "is an appropriate response to this history and pattern of unequal treatment." *Id.* at 530. The Court answered that question in the affirmative with respect to access to judicial services and left that question – and only that question – for another day with respect to the other categories of public services that Title II covers.

By contrast, in *Board of Trustees of the University of Alabama* v. *Garrett*, 531 U.S. 356 (2001), the Court found insufficient evidence of state disability discrimination in employment for Congress to use its Section Five powers to remedy such discrimination. See *id.* at 368-372. Accordingly, it found that Title I of the ADA, which bans discrimination by private and public employers alike, did not validly abrogate state sovereign immunity. *Id.* at 374. Because *Lane* found enough evidence of official discrimination in the provision of public services to trigger Congress's Section Five authority, *Garrett* has no application here.

Where it confronts a history of discrimination such as that suffered by individuals with disabilities in the provision of public services, Congress is not limited to barring actual constitutional violations. It "may enact so-called prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct." *Nevada Dep't of Human Res.* v. *Hibbs*, 538 U.S. 721, 727-728 (2003). In particular, Congress may ban "practices that are discriminatory in effect, if not in intent," notwithstanding that the Equal Protection Clause bans only intentional discrimination. *Lane*, 541 U.S. at 520. Accordingly, it is insufficient for the State to establish that it harbors no

"discriminatory intent towards disabled employees." See Br. for State Appellee 24.[2]

What Congress may not do is pass legislation "which alters the meaning of" the constitutional rights purportedly enforced. *City of Boerne* v. *Flores*, 521 U.S. 507, 519 (1997). "[T]he line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies." *Id.* at 519-520. The ultimate question is whether there is "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.* at 520. Put another way, "the question is not *whether* Title II exceeds the boundaries of the Fourteenth Amendment, but *by how much*." *Constantine,* 411 F.3d at 490.

The State errs in relying on *Garcia* v. *SUNY Health Sciences Center,* 280 F.3d 98 (2d Cir. 2001), a case that has been superseded by *Georgia*, *Lane*, and *Hibbs*, as well as this Court's own precedent. See Br. for State Appellee 25. *Garcia* faulted Title II for providing greater protection to individuals with

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[2] In any event, there is no basis for the State's assertion that the fact that it provides disability benefits indicates that it must not discriminate against individuals with disabilities. See Br. for State Appellee 24. As many of the examples in the following discussion show, it is quite possible for a State to administer in a discriminatory fashion programs that largely serve individuals with disabilities.

disabilities than does the Equal Protection Clause, pursuant to which disability discrimination receives only rational basis scrutiny. *Id.* at 109-110. It concluded that Title II validly abrogates sovereign immunity only in those cases where the defendant acted with animus toward individuals with disabilities. See *id.* at 109-112. But as *Lane* made clear, Title II protects individuals with disabilities not only from irrational disability discrimination, but also from violations of constitutional provisions other than the Equal Protection Clause – provisions that trigger more searching judicial scrutiny and greater congressional authority to pass prophylactic legislation. See 541 U.S. at 522-524. Moreover, the overwhelming historical record of discrimination against individuals with disabilities in the provision of public services permitted Congress to exercise greater Section Five authority than contemplated by *Garcia*. See *id.* at 529.

Accordingly, this Court already has limited *Garcia*, finding it to be inapplicable in contexts where Title II protects against due process violations as well as irrational disability discrimination. See *Bolmer* v. *Oliveira*, 594 F.3d 134, 147-148 & n.3, 149 (2d Cir. 2010). This case falls into this category, and so this Court need go no further. In the proper case, however, this Court should entirely overrule *Garcia*, the reasoning of which is incompatible with *Lane*.

2. The State also errs in asking this Court to focus its abrogation analysis myopically on the provision of the disability benefits sought by this particular

plaintiff, rather than looking at the broader category of social services. See Br. for State Appellee 24. Title II is sweeping legislation that remedies a long history of societal discrimination across a great number of activities undertaken by public entities. Congress need not, and cannot, consider every idiosyncratic application such a law may have for individual litigants. Rather, the question is whether Congress acted in a manner calculated to remedy and prevent constitutional violations within broad categories of public services and programs.

Lane illustrates this principle well. The plaintiffs in that case both were paraplegics who contended that courthouses were inaccessible to individuals who relied upon wheelchairs. See *Lane*, 541 U.S. at 513. As a result, one plaintiff alleged that he was unable to appear to answer charges against him, while the other alleged that she could not perform her work as a court reporter. *Id.* at 513-514. The Supreme Court did not limit the abrogation question before it to either the specific judicial services (such as criminal adjudication) alleged to be inaccessible or the particular sort of access sought (wheelchair access to a courtroom). Rather, it framed the question broadly, with respect "to the class of cases implicating the accessibility of judicial services." *Id.* at 531.

In doing so, the Court found relevant to its analysis a number of constitutional rights not implicated by the plaintiffs' claims. Neither of the *Lane* plaintiffs alleged that he or she was excluded from jury service or subjected to a

jury trial that excluded persons with disabilities. Neither was prevented from participating in civil litigation, nor did either allege a violation of First Amendment rights. The nature of plaintiffs' disabilities did not implicate Title II's requirement that government, in the administration of justice, make available measures such as sign language interpreters or materials in Braille. Yet the Supreme Court broadly considered the full range of constitutional rights and Title II remedies potentially at issue in the broad "class of cases implicating the accessibility of judicial services." *Lane*, 541 U.S. at 531.

Similarly, in *Bowers*, the Third Circuit properly looked at Title II's application "in the context of public education," 475 F.3d at 555, not in the narrow context of intercollegiate sports eligibility in which *Bowers* arose. Other courts likewise have declined to focus their inquiries on the narrow sub-category of public education, such as community colleges, at issue in the particular cases before them. See *Toledo* v. *Sanchez*, 454 F.3d 24, 36 (1st Cir. 2006) (rejecting argument that Congress was required to show history of discrimination in higher education in particular), cert. denied, 549 U.S. 1301 (2007).

Accordingly, this Court should determine the congruence and proportionality of Title II as applied to the entire "class of cases" involving state provision of social services. See *Lane*, 541 U.S. at 531. That is the level of generality at which Congress legislated in enacting Title II, and it is also the level

of generality at which many state agencies operate. For example, defendant New York State and Local Retirement System offers not only disability benefits, but also general retirement benefits and death benefits for a variety of public employees at the state and local level. See New York State and Local Retirement System, About Us, available at http://www.osc.state.ny.us/retire/about_us/index.htm (last visited January 11, 2012). Under the State's proposed service-by-service analysis, the agency might be liable for inaccessible services when an individual with a disability seeks disability benefits, but not when that same individual seeks standard retirement or death benefits. *Lane* avoided precisely such a result by adjudicating the abrogation question with respect to the entire class of cases involving all judicial services. And not only are various social services often provided by the same state or local entity (sometimes in the same facilities), but their accessibility implicates similar constitutional concerns and is facilitated through similar Title II remedies, such that they are sensibly considered together with respect to the validity of Title II's abrogation of state sovereign immunity.

3. Title II enforces not only the Equal Protection Clause, but also "a variety of other basic constitutional guarantees, infringements of which are subject to more searching judicial review" than rational basis. *Lane*, 541 U.S. at 522-523. In the particular context of social services, Title II not only ensures that individuals with

disabilities are treated even-handedly, but it also protects their rights guaranteed by the Due Process Clause of the Fourteenth Amendment.

a. Title II remedies the pervasive denial of the equal protection rights of individuals with disabilities in the provision of social services. Before enacting Title II, Congress documented a long history of such discrimination across a broad range of social services, as part of the extensive record before Congress regarding disability discrimination that included 13 hearings and a number of official reports. See *Lane*, 541 U.S. at 516; *id.* at 527 (relying on report by the United States Civil Rights Commission). In particular, any court adjudicating this question must take into account the evidence compiled by the Task Force on the Rights of Empowerment of Americans with Disabilities, a body appointed by Congress that took written and oral testimony from numerous individuals with disabilities from every part of the country as to the obstacles they faced. See *id.* at 527 (relying on Task Force's "numerous examples of the exclusion of persons with disabilities from state judicial services and programs").[3]

[3] This brief cites certain submissions compiled by the Task Force and submitted to Congress. These submissions (along with many others) were lodged with the Supreme Court in *Board of Trustees of the University of Alabama* v. *Garrett*, 531 U.S. 356 (2001), and catalogued in Appendix C to Justice Breyer's dissent in that case. Justice Breyer's dissent cites to the documents by State and Bates stamp number, see *Garrett*, 531 U.S. at 389-424, a practice we follow in this brief. The documents cited herein also are attached for this Court's convenience in an addendum to this brief.

This record demonstrates pervasive official discrimination against individuals with disabilities in the context of social services, as in many other contexts. For example, Congress heard testimony that individuals with a variety of disabilities were denied public housing and excluded from homeless shelters. See, *e.g.*, *Oversight Hearings on H.R. 4498, Americans with Disabilities Act of 1988: Hearing Before the House Comm. on Educ. & Labor* at 229 (1988) (*Oversight Hearings*) (statement of James Brooks of the Disability Law Center) (homeless person with AIDS "denied public housing due to people's primitive values towards people with AIDS").[4] It heard testimony that social service agencies "discriminate[d] against people with traumatic brain injury because of their disability." *Id.* at 50 (statement of Ilona Durkin). And it heard multiple witnesses

[4] See also *Oversight Hearings* at 50 (statement of Ilona Durkin) (individuals with traumatic brain injuries "are kicked out of the homeless shelters if they can even get in"); DE 322 (Addendum at 7) (exclusion of persons with mental illness); CA 216, 223 (Addendum at 5,6) (exclusion of wheelchair users); MI 967-968 (Addendum at 23-24) (shelters not accessible to wheelchair users, forcing them to sleep on the streets or check into a nursing home; the writer compared the latter option to "being incarcerated"); NE 1034 (Addendum at 25) (no shelter space for abused or homeless persons with physical handicaps). One submission to the Task Force complained that public housing authorities maintained a very limited stock of accessible housing, which they then rented indiscriminately rather than reserving them for individuals who needed such apartments. KY 711 (Addendum at 15).

testify about discrimination by vocational rehabilitation agencies. See, *e.g.*, *id.* at 39 (statement of Linda Pelletier); *id.* at 119, 122 (statement of Cathie Marshall).[5]

Submissions to the Task Force by individuals with disabilities further revealed discrimination by state and local social service agencies. The Task Force was told that it was "a common practice" by some agencies, instead of making their facilities accessible, to see clients with disabilities at their homes or in separate government buildings, a practice that "further reinforces the isolation and powerlessness of the disabled community." KY 724-725 (Addendum at 18-19). One individual complained about "the 'gaps' in our social programs," whereby programs meant to serve individuals with disabilities allowed many to "fall

[5] One employee of a vocational rehabilitation facility described at length how his agency would "dogmatically adhere" to "inflexible standards, with no thought given to accommodations where needed," and so ended up discriminating against the very people it was meant to serve. KY 713 (Addendum at 16); accord HI 473 (Addendum at 9) (rehabilitation counselor reports that state social workers regularly "limit the choices and opportunities of disabled persons," including by making decisions on behalf of mentally competent people without any legal authority to do so). See also AL 27 (Addendum at 1) (man denied vocational rehabilitation services, despite high test results, because of his cerebral palsy); HI 456 (Addendum at 8) (state employment services office denied interpreter to deaf person); HI 482 (Addendum at 10) (vocational service agency refused to provide further assistance after person with disability failed "job readiness" exam that "several experts" agreed was improperly constructed and administered by a non-qualified person); MD 789 (Addendum at 21); (vocational rehabilitation agents failed to help deaf people find jobs). A newspaper article submitted to the Task Force documented the manner in which the rehabilitation services system "emphasizes closing client cases rather than providing adequate client services." MI 963 (Addendum at 22).

'through the cracks'" by declaring them ineligible for specious reasons.[6] AR 156 (Addendum at 4). Another reported that women who participated in a disability workshop "were called in and given sex classes," at which they were told "that we should be sterilized because we are retarded." IL 553 (Addendum at 11). And a state employment office told a woman with a social work degree that it "did not 'place people in my condition,'" and that she should seek vocational rehabilitation instead. KY 723 (Addendum at 17).

Congress also had before it numerous examples in case law of state and local governments making decisions in the provision of social services that were motivated by "irrational prejudice" against persons with disabilities. See, *e.g.*, *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (no rational basis for denying permit for home for individuals with developmental disabilities); *id.* at 461-464 (Marshall, J., concurring in part and dissenting in part) (explaining how "the mentally retarded have been subject to a lengthy and tragic history of segregation and discrimination that can only be called grotesque") (internal quotation marks and citation omitted). Indeed, the "judiciary itself has endorsed the basis for some of the very discrimination subject to congressional remedy,"

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[6] See, *e.g.*, NH 1056-1057 (Addendum at 26-27) (people with head injuries have "a difficult time getting benefit[s] because of lack of knowledge on the part of agency staffs"; they are "put on waiting lists to receive services that clearly the law has set down that they should be receiving").

Lane, 541 U.S. at 534-535 (Souter, J., concurring), such as by upholding the compulsory sterilization of people with developmental disabilities, see *Buck* v. *Bell*, 274 U.S. 200 (1927). In many cases, the manner in which States provided social services to individuals with disabilities was to unnecessarily institutionalize them, a practice that the ADA specifically sought to end. See *Olmstead* v. *L.C. ex rel. Zimring*, 527 U.S. 581, 599 (1999).

In particular, while it was not required to compile a record at such a level of specificity, Congress had before it ample evidence of discrimination by state agencies providing disability benefits and other financial assistance. For example, one disability benefits recipient was improperly classified as non-disabled by a state agency on a mission to reduce the number of people receiving benefits, and so lost her benefits until her Congressman interceded on her behalf. IA 661-662 (Addendum at 12-13). And many state agencies simply were inaccessible for individuals with disabilities seeking benefits. For example, "[m]any Maryland state offices, departments of social services, places where people must go for food stamps, welfare, or other needs," were not accessible to deaf persons because they offered no means for making an appointment other than by phone call. MD 787 (Addendum at 20).[7] Wheelchair-bound persons could "not get transportation to, or

[7] Accord AK 71 (Addendum at 3) (deaf individuals denied access to state services due to lack of sign language interpreters).

access into, food stamps and Medicaid offices." KS 674 (Addendum at 14). A woman with a respirator was denied access to a state Division of Medical Assistance. AK 63 (Addendum at 2). And Congress heard testimony that "applications for various types of public assistance are almost never available in media which a nonprint reader can use." *Oversight Hearings* at 49 (statement of Ellen M. Telker). Consequently, "a blind person may sign releases, consent forms or applications for assistance without understanding or adequately considering the ramifications of the act, possibly waiving important legal rights." *Ibid.*

Not only were such discriminatory practices common, but their consequences were particularly grave in this context. See *Lane*, 541 U.S. at 523 (appropriateness of Section Five legislation turns not only on the pervasiveness of discrimination, but also on the "gravity of the harm [the law] seeks to prevent"). Congress heard testimony that individuals with disabilities were unusually dependent on state social services, making them particularly vulnerable to the failure of such state agencies to provide them access. For example, in 1980, fully two-thirds of working-age individuals with disabilities had no employment. National Council on the Handicapped, *On The Threshold Of Independence* 13 (1988), available at http://www.ncd.gov/publications/1988/Jan1988 (last visited

January 11, 2012).[8] Accordingly, income support and medical benefit programs "provide the basic necessities of life for many severely disabled people, as well as the only hope for a comparatively independent existence." National Council on the Handicapped, *Toward Independence: An Assessment Of Federal Laws And Programs Affecting Persons With Disabilities – With Legislative Recommendations* C-2 (1988), available at http://www.eric.ed.gov/PDFS/ED301010.pdf (last visited January 11, 2012).

b. In the context of social services, Title II protects due process rights as well. Courts have long recognized the procedural due process rights of those entitled to receive essential public benefits. See *Goldberg* v. *Kelly*, 397 U.S. 254, 261-262 (1970). "The fundamental requisite of due process of law is the opportunity to be heard." *Id.* at 267 (citation omitted). And that "opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard." *Id.* at 268-269.

Individuals with disabilities are particularly susceptible to violations of due process, because processes that permit others to be heard may not be adequate for them. Many court decisions have recognized this, including with respect to

[8] This report was one of two that Congress commissioned from the National Council on the Handicapped, an independent federal agency, in the years preceding the ADA's enactment. See Rehabilitation Act Amendments of 1984, Pub. L. No. 98-221, Title I, § 141(a), 98 Stat. 26-27; Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, Title V, § 502(b), 100 Stat. 1829.

individuals with mental illness applying for public benefits – almost precisely the same facts at issue here. See, *e.g.*, *Parker* v. *Califano*, 644 F.2d 1199, 1203 (6th Cir. 1981) (unsuccessful applicant for social security benefits denied due process if the denial was because her mental illness prevented her from understanding process and fully representing her interests); *Young* v. *Bowen*, 858 F.2d 951, 955 (4th Cir. 1988) (same). In particular, this Court has recognized serious due process concerns, and consequently required equitable tolling, where the very disability of an applicant for disability benefits prevents the applicant from successfully navigating the process. See *Stieberger* v. *Apfel*, 134 F.3d 37, 40 (2d Cir. 1997); *Canales* v. *Sullivan*, 936 F.2d 755, 758-759 (2d Cir. 1991).

It is unsurprising that courts are frequently called upon to evaluate the fairness of agency process in this context, because a disproportionate number of recipients of welfare and other cash assistance have mental disabilities. See Ann Marie Rakowski, *Just Who Do You Think You're Talking To? The Mandate For Effective Notice to Food Stamp Recipients with Mental Disabilities*, 37 Colum. J.L. & Soc. Probs. 485, 485-491 (2004). Indeed, notwithstanding the passage of the ADA, widespread complaints persist that state and local procedures fail to ensure that individuals with disabilities receive fair treatment in seeking social services. See, *e.g.*, *id.* at 509-516 (describing New York litigation regarding this question). Individuals with disabilities have the right to a "meaningful opportunity to be

heard," *Lane*, 541 U.S. at 532 (citation omitted), when applying for benefits, and they have suffered the pervasive denial of that right in the context of social services.

4. Title II of the ADA is well tailored to protect the equal protection and due process rights described above without infringing on the States' legitimate prerogatives. It is a "limited" remedy that is "reasonably targeted to a legitimate end" in the context of social services, just as *Lane* found it to be in the context of judicial services. *Lane*, 541 U.S. at 531-533. Title II prohibits only discrimination "by reason of * * * disability," 42 U.S.C. 12132, and so States retain the discretion to exclude persons from programs, services, or benefits for any lawful reason unrelated to disability. Moreover, Title II "does not require States to employ any and all means" to make social services accessible for people with disabilities, but rather requires only certain "'reasonable modifications' that would not fundamentally alter the nature of the service provided." *Lane*, 541 U.S. at 531-532 (quoting 42 U.S.C. 12131(2)).

a. As applied to discrimination in the social services context, Title II's requirements are well tailored to serve a number of prophylactic and remedial functions. The statute protects due process rights by, for example, requiring that public entities provide (1) interpreters for the hearing impaired; (2) assistance for those whose disabilities make it difficult to complete applications for social

services; and (3) physical access to government buildings that provide social services. See, *e.g.*, 42 U.S.C. 12131(2) & 12132; 28 C.F.R. 35.130, 35.150, 35.160, and 35.161. These requirements ensure that persons with disabilities are afforded a "meaningful opportunity to be heard," *Lane*, 541 U.S. at 532 (citation omitted), before being denied social services.

Title II also prevents violations of equal protection. Not only does it directly bar overt discrimination, but its requirements serve to detect and prevent difficult-to-uncover discrimination that could otherwise evade judicial review. See 42 U.S.C. 12101(a)(5) (describing "various forms of discrimination," including but not limited to "outright intentional exclusion," to which individuals with disabilities are subject). When individual public officials make discretionary decisions, as they often must do in this context, there is a real risk that those decisions will be based on unspoken, irrational assumptions, leading to "subtle discrimination that may be difficult to detect on a case-by-case basis." *Hibbs*, 538 U.S. at 736. By prohibiting insubstantial reasons for denying accommodations to persons with disabilities, Title II prevents covert discrimination against disabled applicants. See *Lane*, 541 U.S. at 520 (Congress has authority "to enact prophylactic legislation proscribing practices that are discriminatory in effect, if not intent").

Furthermore, a "proper remedy for an unconstitutional exclusion" does not simply "bar like discrimination in the future," but also "aims to eliminate so far as possible the discriminatory effects of the past." *United States* v. *Virginia*, 518 U.S. 515, 547 (1996) (citation and internal punctuation marks omitted). A simple ban on overt discrimination would have frozen in place the effects of States' prior official exclusion and isolation of individuals with disabilities, under which persons with disabilities were invisible to government officials and planners, resulting in inaccessible buildings and impassable procedures. Removing barriers to integration caused by past discrimination is an important part of accomplishing Title II's goal of reducing stereotypes and misconceptions that risk constitutional violations throughout government services.

That Title II requires States to take certain actions that the Constitution itself would not compel does not make it a disproportionate response. Having identified a constitutional problem, Congress was entitled to pass prophylactic legislation that requires state social service agencies to reasonably accommodate individuals with disabilities in general, not simply in those encounters in which a due process or equal protection violation otherwise would occur. For example, the Supreme Court upheld the family leave provision of the Family and Medical Leave Act, 29 U.S.C. 2612(a)(1)(C), as a valid exercise of Section Five authority, notwithstanding that the FMLA – meant to remedy the long history of employment

discrimination against women – requires the "across-the-board" provision of family leave to men and women alike. See *Hibbs*, 538 U.S. at 722-723, 735-737.

b. Title II accomplishes these critical objectives while minimizing the burden of compliance on States. Public entities need not "compromise their essential eligibility criteria for public programs." *Lane*, 541 U.S. at 532. Rather, they retain the power to set eligibility standards, and an individual with a disability must meet such standards "before he or she can even invoke the nondiscrimination provisions of the statute." *Constantine*, 411 F.3d at 488.

Nor does Title II require States to "undertake measures that would impose an undue financial or administrative burden." *Lane*, 541 U.S. at 532; see *Olmstead*, 527 U.S. at 603-605 (describing limitations on State's responsibility); accord *Constantine*, 411 F.3d at 488-489. For example, Title II requires adherence to certain architectural standards only for new construction and alterations, when facilities can be made accessible at little additional cost. 28 C.F.R. 35.151. By contrast, a public entity need not engage in costly structural modification for older facilities if it can make services accessible in other ways, such as by "relocating services to alternative, accessible sites and assigning aides to assist persons with disabilities in accessing services." *Lane*, 541 U.S. at 532.

These important limitations on the scope of Title II "tend to ensure Congress' means are proportionate to ends legitimate under § 5." *Constantine*, 411 F.3d at 489 (quoting *City of Boerne*, 521 U.S. at 533).

5. Finally, the validity of Title II's application to the social services context must be viewed in light of the broader purpose and application of the statute. Congress found that the discrimination faced by persons with disabilities was not limited to a few discrete areas. To the contrary, Congress found that persons with disabilities have been subjected to systematic discrimination in a broad range of public services. See 42 U.S.C. 12101(a)(3). As harmful as discrimination is when felt in just one place, it is that much worse when it manifests in every part of society. Individuals with disabilities, Congress found, suffered from the "kind of 'class or caste' treatment that the Fourteenth Amendment was designed to abolish." *Plyler* v. *Doe*, 457 U.S. 202, 216 n.14 (1982).

Title II's application to the provision of social services, thus, is part of a broader remedy to a constitutional problem that is greater than the sum of its parts. It operates not in isolation, but in conjunction with Title II's application to courthouses, education, and all other public services and programs. Before enacting Title II, Congress compiled a voluminous record of official discrimination against individuals with disabilities in virtually every public service or program imaginable. See *Lane*, 541 U.S. at 528 (noting "the sheer volume of evidence

demonstrating the nature and extent of unconstitutional discrimination against persons with disabilities in the provision of public services"). In response to that record, it required public entities to take reasonable measures in every context to ensure that individuals with disabilities can be full participants.

Ending discrimination in one context is part of ending it in others, both by putting a stop to irrational stereotypes and by laying the foundation for greater participation by individuals with disabilities in other areas. See *Association for Disabled Ams., Inc.* v. *Florida Int'l Univ.*, 405 F.3d 954, 959 (11th Cir. 2005) ("Discrimination against disabled students in education affects disabled persons' future ability to exercise and participate in the most basic rights and responsibilities of citizenship, such as voting and participation in public programs and services."). In particular, many social services permit individuals with disabilities to live more independently, join the workforce, and otherwise integrate into the larger community. Cf. *Olmstead*, 527 U.S. at 600 (unnecessary segregation of individuals with disability is discrimination, in part because it "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life"). Title II's application to social services is just one part of a much larger project, which itself is a proportional and

congruent response to the myriad of constitutional violations it remedies.[9]

CONCLUSION

This Court should not reach the question of whether Title II validly abrogates the States' sovereign immunity in the context of social service provision. Should it reach the question, it should find that abrogation valid.

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General

s/ Sasha Samberg-Champion
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[9] The Court in *Lane* did not examine the congruence and proportionality of Title II as a whole because it found that the statute was valid Section Five legislation as applied to the class of cases before it. Similarly, because Title II is valid Section Five legislation as applied to discrimination in social services programs, this Court need not consider the validity of Title II as a whole. It remains the position of the United States, however, that Title II as a whole is valid Section Five legislation because it is congruent and proportional to Congress's goal of eliminating discrimination on the basis of disability in the provision of public services – an area that *Lane* determined is an "appropriate subject for prophylactic legislation." *Lane*, 541 U.S. at 529.

CERTIFICATE OF COMPLIANCE

This brief complies with the type volume limitation imposed by Federal Rule of Appellate Procedure 32(a)(7)(B). This brief was prepared with Microsoft Word 2007 and contains 7614 words of proportionately spaced text. The typeface is Times New Roman, 14-point font.

s/ Sasha Samberg-Champion
SASHA SAMBERG-CHAMPION
Attorney

Dated: January 11, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2012, I electronically filed the foregoing SUPPLEMENTAL BRIEF FOR UNITED STATES AS INTERVENOR with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I also certify that six hard copies of the same were sent by certified mail.

I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Sasha Samberg-Champion
SASHA SAMBERG-CHAMPION
Attorney

ADDENDUM

00027 AL 106

Mr. Justin Dart
c/o Vocational Rehabilitation Service
1608 13th Avenue South, Suite 201
Birmingham, AL. 35256

Dear Mr. Dart:

I regret that I will be unable to speak at the Public Forum which is being held in Birmingham on August 16, 1988. I would, however, like to submit my written testimony to you in the form of this letter.

In June 1977 I went to try to get Vocational Rehabilitation Services, but the Counselor said he could NOT help me because I had Cerebral Palsy. This made me very angry because after he told me this he went ahead and gave me all of his test which I scored very high on. Even after seeing the test results he still said that he could not help me because I have Cerebral Palsy. After enrolling at Jefferson State Junior College in 1982 several of the advisors started trying to get me help from Vocational Rehabilitation Service, but to no avail.

In the spring of 1981 I first started going to Jefferson State I was riding what was at that time a Positive Maturity bus. This bus took me for a quarter and a half, but all at once "they" Positive Maturity stopped and said they could not take me anymore because the school was so far out. This caused me to have to make other arrangements regarding transportation, which was a headache.

On August 4, 1988 in the Birmingham Post Hearld I was referred to a a Cerebral Palsy "victim" instead of an individual who has Cerebral Palsy.

Thank you for your time and consideration regarding this testimony. If you have any questions, please feel free to contact me at the following address and telephone number:

Mike Holsombeck
5224 Georgia Road
Birmingham, AL. 35212
(205) 592-7061

Sincerely,

Mike Holsombeck/ats

Mike Holsombeck

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ACCESS ALASKA

3710 Woodland Drive, Suite 900
Anchorage, AK 99517
Toll Free: (800) 478-4488
(907) 248-4777

3550 Airport Way, Suite 3
Fairbanks, AK 99709
(907) 479-7940

January 10, 1989

Justin Dart
907 6th St., S.W., Apt. 516C
Washington, D.C. 20202

Dear Justin:

As a long time friend and advocate of Independent Living Centers and civil rights for persons who experience disability, I would like to share with you an article about a different type of discrimination.

Bonnie is not "sick" but because she uses a respirator, the Alaska State Division of Medical Assistance (an agency that administers attendant services) and a number of residential programs across the United States have denied Bonnie access to their programs.

After 14 years Bonnie decided to leave the nursing facility she had resided in and continue her education outside the state. Academically she has been accepted into at least ten university graduate programs but as soon as the schools learn about her use of a respirator, they begin making excuses for why Bonnie should look elsewhere. (i.e., no "skilled care" on campus, liability for her health, etc.)

As I stated and you can probably tell by reading the enclosed article, Bonnie is not sick, she is however being discriminated against because she uses a ventilator. She considers her ventilator "adaptive equipment" and is more aware of her health care needs then anyone.

There are schools with support systems around the country that will accept Bonnie as a student but they do not offer the program she is interested in. She asks "why must I just attend a school willing to deal with my respirator?, what about equal opportunity in education?

AK-16

Cheryl A Walsh
Division of Vocational Rehabilitation
675 7th Ave. Station B
Fairbanks, AK 99701

1. Please continue to work on Social Security reform to include SSA as well as SSI. Current disincentives make it difficult for disabled individuals to return to employment.
2. Deaf individuals who rely on American Sign Language are often denied access to services in State ~~[redacted]~~ other agencies receiving federal $ as direct service providers are uncertain how to obtain interpretors or are uncertain how to pay for the interpreters.
3. The public assistance office requires a great deal of paper work to be completed by the applicant. Applicants unable to complete the paperwork are referred to other agencies or are left to their own resources to complete it. This process may screen individuals out who need the services. It seems appro. ~~for~~ the public asst. worker to assist in completing the necessary paper work.
4. I feel there is reverse discrimination toward blind individuals - they receive twice the benefits other disabled individuals receive.

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

I am a 19 year Veteran of Rehabilitation Services, and I am concerned about the "gaps" in our social programs. Many agencies provide services to the disabled, yet there are many persons with disabilities who do not fit the guidelines of the existing programs. They fall "through the cracks", and are not eligible for various reasons. I would like to see an overall review and revision to correct these "gaps" and a more comprehensive coverage for our disabled persons.

signed Mavis Mitchell

address: 3005 Ridge Pass
Little Rock, Ark. 72207

tel:

00216

We disabled people also face discrimination in other modes of Transportation. When I, and some of my clients, have attempted to ride the the Greyhound bus lines, we have been told that we could not travel on their buses without an attendant. This is true even if the disabled person is perfectly capable of traveling alone. Therefore, if we want to travel alone, we are banned from using one of the most economical means of transportation. In addition, the Greyhound company discriminates against those in wheelchairs by not having lift-equipped buses.

Another incident of discrimination happened to me when I recently went to the Long Beach airport. I made arrangements with United Airlines to get assistance on and off the plane at that airport. The customer representative approved these arrangements. When I got to the airline ticket counter, the actual carrier turned out to be United Express. The agent at the ticket counter told me that, even though I had made prior arrangements, they had no facilities to assist me into the plane.

However, my experience pales in comparison to that of a client of mine, on her recent trip from Los Angeles to Tokyo. When she confirmed her travel arrangements with United Airlines to travel alone, an airline employee assured her that these plans would be satisfactory. My client was not informed by the airline employee that she was not allowed to travel without an attendant until she was actually on the plane! In addition, when she arrived at her layover destination, her daughter was required to lift her into an airport wheelchair, instead of the airline personnel doing it. Finally, for the majority of the two-hour layover, she was forced to sit in a chair in the airport waiting area. This was extremely difficult to do because of the balance problem related to her disability. She was not allowed to use an airport wheelchair because, she was told by an airport employee, it might be required for another purpose. Although, there were many available in the wheelchair concession stand.

A number of our agency's clients have been discriminated against by various businesses in the area. One of them was denied access to a store simply because she was in a wheelchair. Another client was denied access to a fast-food restaurant because she was also in a wheelchair.

Another area where our clients have experienced discrimination is in the area of housing. One client was denied the opportunity to rent an apartment simply because of a mobility impairment. In addition, another one of our clients who is in a wheelchair was denied the possibility of renting an apartment, even though she was willing to do any accessibility modifications herself.

The homeless disabled that we serve have also faced great discrimination in our community. Many of the shelters in our area, which are supposed to be accessible to all types of disabilities, have refused to serve those in wheelchairs. The staff at these shelters have said that those who use wheelchairs could not be accomodated in cases of emergency. However, during times of calm, these places are supposed

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A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

Clients are denied access to local restaurants because they used a wheelchair - the restaurant owner said it was too crowded + dangerous

Clients cannot go to needed medical facilities - despite the legal accessible transportation inadequacy -

Local airport is inaccessible to many disabled because planes are mounted from ground up a flight of stairs -

Clients have been denied access to local homeless shelters because their disabilities are considered "insurance risks" should they have an accident. Especially true for clients with epilepsy

signed Helene Pizzano

address: Disabled Resources Center
1045 Pine Ave
Long Beach, CA 90813

tel:
213 437-3543

00322

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A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

The mentally ill are being turned out onto the streets with little or no follow up care - No where to go - Even many shelters discriminate against them by refusing them a place to stay -

Many of the Mentally ill are not able to speak out for themselves or to band together to empower themselves -

signed Carol A. Wells - Program Director

address: Mental Health Association in Delaware
1813 N Franklin St.
Wilm, De 19802

tel:

302-656-6308

HI-6(2)

A deaf man was a mechanic experiencing physical problems which no longer allowed him to work. The Hawaii State Employment Service refused to provide an interpreter for him to access their services.

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A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

My deaf client, who receives Federal Section 8 subsidies for her housing, must provide her own interpreter, door signaller & deaf fire alarm system because housing services are limited to providing only initial interpreter for orientation & installation assist for any deaf adaptive devices. Although advocacy from HCIL indicates no section 504 violation - enactment of ADA would help to accommodate such persons - not only those within fully Federally or State owned buildings. A major part of this client's IL services has been counseling & guidance regarding her basic rights -- this is a problem area -- clients who may be unaware or uneasy about asserting basic civil rights or rehab rights.

As an IL rehab counselor employed by State of Hawaii DVR, I witness almost daily the more subtle psychological & social discrimination whereby social workers and other service providers limit the choices & opportunities of disabled persons by making judgments & decisions for clients who do not have cognitive deficits nor guardians over their persons.

signed _____

address: Mona Nekomoto
MONA NEKOMOTO, IL SPECIALIST
C/O DVR-ILP
1000 BISHOP ST #302
HONO HI 96813

tel:

(30)

00482

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A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

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I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

i have just been offered a sheltered workshop position in lieu of further services from the division of vocational rehabilitation based on a report from network, inc. ~~to~~ with which i coop in a "work assessment survey."

i have since consulted with several experts who have said that the 17-item evaluation did not accomplish its purported aim of determinin my "job readiness." the staff person who administered the assessment was not a qualified puson. and i understand that the instrument was purporting to evaluate two things that needed to be evaluated separately. i am closed off from further services as a result of "failing" an inadequate evaluation tool. of course, i ariel appeal, etc. but it requires much time and energy to do this early time i ask for help to go back to work

?

signed Sharon P. Yokote Sharon P. Yokote

address: 916C green St
Honolulu, Hi 96822-3512

tel: (808)5360362

B.A. UHM 1971 Zoology
A.S. KCC 1977 Legal ~~Assistant~~

(4)

My supervisor gave me more work than anyone else today. I know the others are paid more than me. Why do I have to work harder to keep my job?

I went to a disability conference and the hotel wouldn't let me check in because I didn't have a credit card. No one will give me one when they know I work at a workshop.

I went to the theater and they said I couldn't stay. They wouldn't let me sit in the aisle because my chair would block it. They wouldn't let me transfer because then I couldn't move fast if there were a fire. I'm furious! I know the fire code. They don't.

When I went to rent a car the sales person read through the various insurance options very quickly, and then expected an immediate response. I can't process oral information quickly. I asked to read the policy for myself and the sales person sighed and gave me a look that really embarrassed me.

I went to a restaurant and the menu was put together like a book. The menu used long fancy words. Because I'm LD I couldn't read it.

My paratransit bus was 45 minutes late. I lost control of my bladder since there was no accessible bathroom at the mall. . And I had timed my trip so carefully!

All the women in my workshop were called in and given sex classes. They told us that we should be sterilized because we are retarded. That's not right.

I broke my leg and went to the hospital. They wouldn't call an interpreter.

My friend has to be in the hospital for several weeks and asked if the hospital had closed captioned TV. He was told he was crazy to expect such special treatment.

I went to a hearing on the school budget. No interpreter. I left.

I went to a large department store and wanted to use the restroom but it is not accessible.

I wanted to use the subway but the elevator was out of order and I had to go to another station.

I went to eat in a restaurant but could not get in because it is inaccessible.

I missed getting a package again. Since I can't get to the mailbox because of the steps and the kid who checks for me was sick I didn't know there was a package. It was sent back.

My parking space was taken again by a pickup. I called the management. Nothing. I called the police to ticket. They said they would. The truck has been there for three days. I still have no parking. I want to puncture his tires!

The hearing people don't know sign language which they cause the deaf people to be suffer - Please High School for hearing student will have sign language class.

I filed a complaint with the **Iowa Civil Rights Commission** and after an investigation on my complaint the Iowa Civil Rights Commission stated they could not assist on this matter because I did not follow proper grievance procedures through my Union.

In 1973 the **Social Security Administration** found through the decision of the State **Disability Determination Services** that the limitations caused me by mental illness were considered "disabling." Consequently I was awarded SSDI benefits that were retroactive to 1972. In 1974, after 2 years of DI benefits I was eligible for Social Security **Medicare** benefits. Medicare Part A and B along with my private health care plan helped defray the cost of my medical care over the years.

However, in 1980 the U.S. Congress ordered a step up in Social Security's reviews of disability claims. And in 1981 Marien Hanssen from Iowa's **DDS** determined that medical evidence showed that I was no longer disabled and my benefits were terminated as were the the benefits of tens of thousands of other disabled persons across the Nation. It was later found through Joint Hearings held by the U.S. House and Senate that many disabled persons were be unjustly "kicked off" the disability rolls. It was found that the DDS's were in fact disregarding medical evidence presented them in order to fulfill a directive from SSA to "cut" DI benefits. Hearings also showed that although persons working within the SSA and DDS were aware of such directive they so testified at these hearings that they did not know where the directive originated. Because of this discriminatory practice many disabled persons were made to suffer needless hardships.

In 1893 I developed heart problems that involved hospitalization in ICU. Also in 1983 my wife miscarried and in both cases the physicians felt these medical incidents could be related to the strees we were forced to undergo in the lose of my DI benefits.

In 1981 Marian Hanssen requested medical evidence from me to be used by the DDS in it's determination of my continued period of disability. When such evidence was forwarded to her she used the evidence against me by re-wording it's contents. Physicians reported one thing and she would construe another, for example;

Physician: "He can only take care his own every day needs and do such things as simple household chores."
Hanssen: "evidence shows that you can think, communicate and follow simple directions. Evidence also shows that you can do unskilled labor."
Physician: "he can do such things as get a hair cut..."
Hanssen: "evidence shows that you are capable of traveling around the community."

In 1982 my family and I were fortunate to gain the assistance of Congressman Tauke's office in the guidance of the steps that had to be taken in order for me to regain my DI benefits. The Congressman and his Caseworker, Carole Snodgrass, assisted us in the gathering of medical evidence to present to the Administrative Law Judge hearing my appeal. (a copy of the ALJ's decision is enclosed). My hearing was held on March 9, 1982 and the judge ruled in my favor. At that hearing the judge reached over and shut off the tape recorder and told those present that he wanted to make remarks off the record. In those remarks he told me, my family and friends in part: "after seeing a medical record such as your's there is no doubt in my mind what-so-ever about you not being able to do substantial gainful activity. By the word 'activity' I mean employment." at this point the judge picked up a hand full of my medical records from the box they were in and laid them on the table saying; "when I see such a medical history I can only sadly say that what they (e.g. SSA and DDS) have done to you and others like you is criminal and should be handled as such. You have been made to suffer needlessly over the past months and I want you to know that I am ordering that you be reinstated to benefits."

It was during this time that the Congress was holding hearings on the issues that surrounded the disabled and their lose of benefits. Congressman Tauke used my case as he prepared his statement to the House Select Committee On Aging. In 1983 when he made his statement before the Committee he made mention of my case by saying in part; "he enjoys good periods of mental health in which he wishes to offer his services to the community. Yet he fears doing so because the SSA may misconstrue these volunteer services as employment..." And I do hold

These things sincerely happened! They are the types of things which prevent men and women who happen to have disabilities from being productive members of our communities. They are the types of things which prevent disabled individuals from working and living independently. I want to thank particularly Congressman Major Owen and Senator Lowell Weiker for their interest in the Americans With Disabilities Act. I want to thank Justin Dart, Jr. for his commitment of time and financial support in an effort to assist the disabled in their fight for equality. It is quite ob.ious officials of the United States Department of Education did not have sense enough to pay heed to Mr. Dart's concern. Hopefully our elected officials in the United States Congress will do a little better. I also wish to thank Mr. Dart for his moving and spirited presentation last week at the annual convention of the American Council of the Blind in Little Rock, Arkansas. I am pleased that this organization has a representative serving with Mr. Dart on the National Task Force to research discrimination against the disabled in America. Through Mr. Dart's contact, well over 2,000 blind and visually impaired individuals were impacted by the difference the Americans With Disabilities Act could make in their lives. On behalf of the American Council of the Blind, the Center for Independent Living for which I work, and on my own behalf as a disabled individual, I continue to offer assistance to the taskforce about the passage of this much needed law.

I must, however, close with a somber note. As we advocate together to at last obtain equal rights for all disabled individuals, we must remember thst we still have a very long way to go if we are to realize full enforcement of the civil rights laws we already have. As long as our national monuments are not fully accessible to all of those having disabilities, as long as the Social Security Administration has the ludicrous audacity to continue to provide blind and reading disabled recipients with notices about their benefits instead of print rahte' than large print, Braille, or other means as they would choose, as long as persons who are in wheelchairs cannot get transportation to, or access into, food stamps and Medicaid offices, as long as blind, visually impaired, and other reading disabled individuals are unable to read food stamps

00711

Ken Duncan
2116 Cherokee Parkway
Louisville, Ky. 40204

My name is James Kenneth Duncan, my neck was broken sixteen (16) years ago at the C. 5-6 level. I have a disability and I use an electric wheelchair as a tool for freedom and independence. Compared to friends and other people with disabilities I have been very lucky (if lucky can be used to discribe anyone who has been discriminated against), the discrimination I have faced is the kind of discrimination those of us with disabilities face everyday.

To attend a class at the University of Kentucky I was forced to use a loading ramp, to get in and out of a building, whose grade was so steep that someone had to hold on to the back of my chair so I could safely go down it and someone to push me up the ramp after class because my electric chair would not pull it. Once inside someone had to unlock an elevator,usually with garbage in it, so I could get to class. At the University of Louisville a professor did not like the accessible classroom we were assigned, so he had my classmates carry me up three flights of stairs to a classroom he liked, this was not only dangerous but humiliating. During a fire drill I was carried down stairs because the only ramp was on the other side of the building. At a movie theater in E-town I was put in a small office or I could not watch the show, at restaurants in Louisville I have been moved back into dark corners and while shopping with friends I have been ignored or treated like, beause I have any disability, I must have a speach, hearing and mental disability. Then of course usually I am forced to ride on busy streets because there are no curbcuts or the curbcuts are not up to code.

There is acessible public housing people with physical disabilities cannot rent because "able bodied"people are renting them or they are not on an accessible fixed bus route, of course many of these so called accessible apartments are not up to code. Finally being treated as less than equal or human is the worst discrimination.

Solutions - courts accept we are covered under the fourteenth amendment, make public transit and common carriers provide accessibility that is not unequal, demeaning or humiliating. Build adaptable housing, both public and private, with adaptable public housing prioritized for people with physical disabilities and recognize us as <u>people</u> with disabilities, respect our abilities and don't put up barriers to our independence.

The main problem seems to be, that in trying to conduct all actions in a purely non-discriminatory manner, the DES is actually being discriminatory to a large number of disabled people simply by requiring them to conform to the same rules and procedures as everyone else, while refusing to make reasonable accommodations for special needs. For example, recently I accompanied one of our clients to the local DES to fill out certification paperwork for the Job Training Partnership Act (JTPA). He was in the process of applying for a slot in a local Nurse's Aide training course. We were told by the employment counselor that he (client) would have to take a test prior to being allowed to fill out the papers. When I questioned him (employment counselor) about this test, I was told that it was a new requirement. The problem was, that since the client had limited comprehension of the written word, he would score much lower than his actual capability. He was however, able to understand those same words when verbalized. I suggested to the employment counselor that I be allowed to read the questions and was turned down. He stated that the individual being tested had to do it in written form. Now this may seem to be a very minor and insignificant incident that warrants no special consideration. But, I submit that when we dogmatically adhere to these inflexible standards, with no thought given to accommodations where needed, or to the effects they can produce, then we have in fact contributed to an act of discrimination against a disabled person, albeit unintentional. But whether intentional or not, the effect is the same.

Let's face facts! A large percentage of the people we serve have difficulty doing some of the things which we so-called "normal" people hardly give a second thought to. omething as simple as filling out an application for employment (for you or I) can be tremendouly difficult or impossible for some of our clients. But yet, the DES and almost all employers require that one be completed before any consideration for employment is granted. Since the application itself is the first step in the screening out process, how does one hope to compete? We all know, or should realize that the hiring process itself - - contrary to what the law says it should be, or what employers claim it is - - is in fact, <u>not</u> an unbiased selection procedure. Rather, it is a process of elimination, rejecting that which does not measure up to standard by making clear distinctions between individuals. Any dictionary will define this as - discrimination. In and of itself, the term "discrimination" (as I understand the term) is not a bad thing. We use it everytime we choose one course of action over another, or choose one person over another for a particular function. Discrimination in this sense is quite simply, a selection between alternatives. However, when it is used to make a clear distinction between individuals on the basis of factors that have absolutely no bearing on one's ability to do a job, and if this results in that person being excluded from further consideration, then a wrong has been done. One might ask at this point, " What does that have to do with applications, in regard to disabled persons?" To answer that question, allow me to digress a bit.

4

service in Lexington. Shortly after I moved to Lexington in June of 1986, I went resume in hand, to the State office Building looking for employment. When I was able to see the counselor, at long last, she explained they did not "place people in my condition" nor did they serve them on a professional level (I have a B.S.W.). She explained that I should see a Vocational Rehabilitation Counselor.

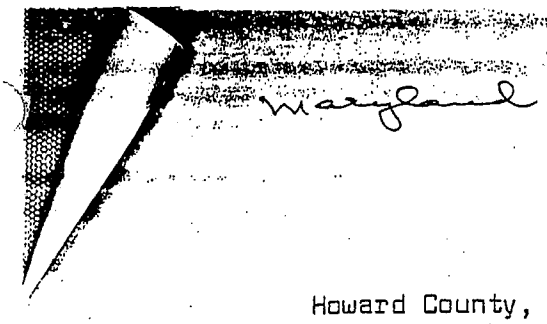
Another shock I had that year was the segregated seating

arrangements in Rupp Arena. My husband and I bought group tickets for a concert (we were there with a group of twelve) and when we were seated, it was explained that we had to sit with the "wheeled people". If my husband had been able bodied, I would have had to sit alone.

There is also a problem in the area of architectural barriers to the use of public services. It is a common practice of some agencies to

see their clients in the client's home or some other accessible building outside their own. This further reinforces the isolation and powerlessness of the disabled community. The concept of "separate but equal" has never and will never work.

III In order to empower the disabled citizens of Kentucky, we need a system of attendant care which covers a wider spectrum of our population. This program needs to address the need of people with developmental disabilities as well as



00787

DISCRIMINATION DIARY

Howard County, Maryland, has four or five large libraries of which only one has TDD since 1976. Most of the time this one is not accessible either. When we dial the No. we get a recording that asks us to leave our name, number and message; they will call us back. That seldom happens. They use volunteers to answer the TDD and use that as an excuse for not calling us back. It seems since TDD is there for more than ten years, the expense of making this acessible could have been worked into their budget long since. In reality, we deaf in Howard County are left without library service.

I wanted to call the Patuxent Institution - a prison - to drop off books for the library there. The letterhead provide a TDD No. to call but when I called, I found myself in contact with the State Police, who asked me whether this is an emergency. I said "No" because I was trying to reach the librarian in the prison and why am I talking with the police. I was told that all Maryland state letterhead has the same - police - number on the letterhead. We are made to feel that we are abusing an emergency number. The deaf inmates in the prison have no access to TDD at all.

Many Maryland state offices, departments of social services, places where people must go for food stamps, welfare, or other needs - where appointment is needed - are not accessible on TDD. Many places do advertise or list a TDD number but do not answer this phone when we try to call there. We have to ask a hearing person to call on voice to alert them of a TDD caller. Even the Better Business Bureau, In Baltimore, has a negative attitude on TDD, and do not have it easily available for calls. Some places use the excuse that the TDD is out of order which can only be due to rust from lack of use because they have not answered that phone.

00789

I used to work in NASA on all 5 deaf employees were laid or fired in 18 months after working for more than 10 years. No deaf works there now. RMS who controlled NASA does not give or promote deaf for other jobs as it did to hearing employees.

Referral for interpreting on phone calls is needed in Balto. 24 hrs daily.

Voc Rehab. agents should do more for deaf in finding jobs.

(3)

00963

Clients and counselors agree: Rehab system must improve

BY DEBORAH ADAMS RORABACK
Free Press Special Writer

Letters and phone calls from both rehabilitation clients and counselors further document what I brought out in my series: The present rehab services system emphasizes closing client cases rather than providing adequate client services.

Roraback

This letter came from the mother of a 21-year-old woman who has multiple sclerosis:

"My daughter sought support from Michigan Rehab in order to take some basic college courses at the local community college, and they managed to convince her that she could not succeed. Instead, she was placed at Goodwill Industries, where she sorted and sized donated clothes in a dimly lit, windowless and dirty room. It was quite an experience for my daughter. She came face to face with the grim realities of being handicapped in Michigan."

Is this just an isolated case? Are other clients being similarly discouraged?

A young man with a severe form of arthritis wrote: "Now I know I am not alone. It seemed unfair to me that MRS (Michigan Rehabilitation Services) would make me attend school full time and participate in college work study besides, when I am physically unable to handle full-time work. Both MRS and the state are still in the dark ages. Please tell me some of the better states for attending school for the handicapped, as I can't wait for reform."

With the Rehabilitation Act of 1973, Congress mandated that disabled people be the chief architects of their own rehabilitation programs. Rehab clients are often not aware of their rights as rehab services consumers.

DISABLED NEWSREEL

Earlier this year, Deborah Adams Roraback reported on the experiences of clients and practices of counselors with vocational rehabilitation programs in Michigan. Since her series ran, the State of Michigan has gotten more federal money for Michigan Rehabilitation Services and the Michigan Commission for the Blind. Roraback, who lives is Dearborn, is a handicapper with multiple sclerosis who is completing her master's degree in social work at the University of Michigan. This is her follow-up report.

— Jim Neubacher

Attorney Timothy Cook of the Public Interest Law Center of Philadelphia advises, "Find the training program you want and then go to your VR (vocational rehabilitation) agency and ask them to sponsor you. If they say the program you desire is somehow 'inappropriate,' immediately ask to appeal that decision. Further, the client's IWRP form (Individual Written Rehabilitation Program) serves as the point of protection for the client in the system. The handicapped person doesn't have to (accept) that form unless it accurately reflects what they want for themselves in terms of a rehabilitation program."

Rehab counselors who contacted me expressed frustration with a system that uses case-closure numbers to assess job performance. More than one counselor told me he had been denied vacation time because his production numbers were low. One counselor said, "Perhaps it's time for our agency to re-evaluate and redefine our mission and change from a closure-oriented system to a quality-service-provision system." He suggested the creation of district consumer advisory councils to give the agencies (Michigan Rehabilitation Services and Michigan Commission for the Blind) [illegible] on service

Acc[illegible] ff, the reh[illegible] nized the[illegible] are devel[illegible] Beginning program f[illegible] 1973 Reh[illegible] must have council mad[illegible] handicappers

Michigan's [illegible]ent Living Council (S[illegible]) has been meeting since last September and is developing a five-year plan to address independent living needs of handicappers. SILC is a joint council established by MRS and MCB, whose membership includes agency representatives and rehab-agency-appointed consumers. It remains to be seen if SILC will be a meaningful voice for rehab services consumers in Michigan.

In addition to more consumer involvement, there is a need for the rehab agencies to employ more handicappers to ensure adequate representation.

"It's almost patronizing .... We are an agency run by a significant number of TABs (Temporarily Able Bodied) for handicappers ..." said one MRS employe. This counselor suggested the agencies hire more handicappers in the future.

I'm hoping all involved get together to discuss these issues and work to get the consumers more involved, which will improve services. It will also result in consumers becoming more active in securing state dollars for these agencies, translating into additional federal dollars.

The provision of quality rehabilitation services is a basic issue, an important issue, to disabled and non-disabled persons alike.

00967

votejust.2
votejust

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

In Ann Arbor, Michigan, affordable, accessible housing is the major issue. People wait months and even years for appropriate housing. In the meantime, because our shelters are dangerous and not wheelchair accessible, we have had clients at the Ann Arbor Center for Independent Living who have felt forced to camp out, live in cars or survive on the streets. One wheelchair-user has often been seen sleeping on the sidewalk, his head under his wheelchair for protection, in front of #1 North Main - an ultra expensive, new office development that can't find tenants.

(over)

signed Verna H. Smyth,
address: Coordinator of Advocacy Services
Ann Arbor Center for Independent Living
2568 Packard Rd.
Ann Arbor, Mi 48104
tel: (313) 971-0277 - wk

Other homeless with disabilities feel forced into living in nursing homes while they wait for scarce Section 8 or other subsidized housing to become available. I assert that living in a nursing home for no better reason than the lack of affordable, accessible housing is not only being homeless — but being incarcerated for being homeless.

The second most important basic issue is accessible transportation. At a recent meeting to discuss the issues which came out of our Disable Citizen's Concerns Survey. one woman commented, "Living in affordable, accessible housing without accessible transportation is like being held under house arrest.

We in Ann Arbor applaud all of your efforts and the stand you have taken. We will be holding a meeting similar to this and will be encouraging the writing of discrimination diaries and will coordinate their collection and distribution. We fully support the ADA, Michigan's H.B. 5250 and the Fair Housing Act. Thank you.

(1)

01031

NB47(1)

A VOTE FOR JUSTICE.

I URGE THE CONGRESS TO ENACT, AND THE PRESIDENT TO SUPPORT AND TO SIGN, LEGISLATION SUCH AS THE AMERICANS WITH DISABILITIES ACT OF 1988, WHICH WILL EFFECTIVELY PROTECT ALL PERSONS WITH DISABILITIES AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP.

I FURTHERMORE URGE THE ESTABLISHMENT OF THOSE BASIC SERVICES AND HUMAN SUPPORT SYSTEMS NECESSARY TO MAKE RIGHTS REAL IN EVERY DAY LIFE, AND WHICH WILL ENABLE ALL PEOPLE WITH DISABILITIES TO ACHIEVE THEIR FULL POTENTIAL FOR INDEPENDENCE, PRODUCTIVITY AND QUALITY OF LIFE IN THE MAINSTREAM OF SOCIETY.

I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:

(1) There are no Mental Health boarding Houses in Omaha or Shelters for Abused & homeless that have accomodations for the Handicapped (Physically)

(2) Our Office of County Assistance has several steps & Get into their office which I cannot get up or down

(3) Medical Doctors discount physical Complaints of Know Mental Patients trying to attribute their physical ills to their Mental Illness. (This has happened to me)

(4) I have had my fingernails broken off by staff members in Psyche. Hospitals, been physically & Verbally abused by Psyche ward staff.

(5) I continue to be denied my rights of visitation & Custody of my 2 Children & my Mental Illness has been used as a reason, even though the Professionals who Assess me feel I am stable and functional. cont—

G.A. boarding house - Shelters - medical - Court - cont Med - Short curbs - No Money - No affordable Public transportation that I can get on -

signed Jacqie Coffman (Paranoid Schizophrenic Recovering alcoholic with borderline personality Disorder, spinal arthritis & clinical de foot.

address: 2454 Harney Street #9
Omaha Nebraska
68131

tel: Daytime Phone M-W-T-F-
Day House 4102 So. 13 St
444-6176

NH-)

NEW HAMPSHIRE CHAPTER
National Head Injury Foundation INC.

2 Industrial Park DR.
~~105 Loudon Road, Building 3~~
P.O. Box 7259, Heights Station
Concord, N.H. 03301-7259
(603) 225-8400

Testimony of Michele Anderson, Exec. Dir.
New Hampshire Chapter-National Head Injury Foundation
Regarding Discrimination Against
Individuals With Head Injury

I. Introduction

A. Head Injury is the new kid on the block.
B. Only recognized 2 years ago as a disaiblity by Social Security
C. This population often has a difficult time getting benefit because of lack of knowledge on the part of agency staffs.

II. Nature of head injury makes self advocacy difficult

A. Families are ashamed and discriminate against loved one; however, Foundation founded by families and professionals wanting to see change

B. Highly recovered head injured individuals will bring their issues to you in the future

III. Brain injured without mobility issues

A. Have same physical accessibility/as other individuals with mobility problems

IV. Transportation

A. Most of the system in general is descriminatory for all disabled.

B. N.H. I-L Center, until recently, did not have a van able to carry disabled persons who are mobile; there are head injured with vision difficulties, head injured with neurological problems which preclude driving; head injured who must take medications for seizures and may not drive until seizure-free for one year.

V. Discrimination within Developmental Services

A. Only families and consumers who scream the loudest get heard when it comes to receiving services
B. Head injured individuals are put on waiting lists to receive services that clearly the law has set down that they should be receiving.
C. N.H. is a state which shows fiscal responsibility but often social irresponsiblity in meeting its obligation under the law. This state has a surplus of funds, and a situation of waiting lists is certainly out of line.
D. Head injury is a young movement, and it will become a more forceful one in verbalizing these discirminatory practices.

VI. Discrimination by the Independent Living Movement

A. Lost Part A funds because fed. regs. require:

--application
--medical release
--signature from a physician certifying disaiblity
--financial information

just to receive the servcies of

--information and referral
--education about head injury
--support groups

Each of these tremendously changes the quality of life for head injured individuals and their families. For them to jump through 10 bureaucratic hoops in order for our agency to receive funds to enhance and enable their independence is clearly ludicrous.

VI. Rehabilitation Discrimination

A. A person on medicaid or other medical insurance is not receiving the rehabilitation services necessary for the highest recovery possible. Policies or rules and regulations only allow payment of traditional medical models.

B. Head injured need services asoon as possible after an accident in the non-medical areas of:
1. cognitive rehabilitation
2. Psychological guidance, including behavior mgmt

C. Physical therapies and ADL training need to be more inte and for much longer periods than most policies allows.