

In The
Supreme Court of the United States

—◆—
JOHN DOE,

Petitioner,

v.

BOARD OF COUNTY COMMISSIONERS
OF PAYNE COUNTY, OKLAHOMA,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit**

—◆—
**RESPONDENT BOARD OF COUNTY
COMMISSIONERS OF PAYNE COUNTY,
OKLAHOMA'S RESPONSE BRIEF**

—◆—
AMBRE C. GOOCH
Counsel of Record
COLLINS, ZORN & WAGNER, P.C.
429 N.E. 50th Street, Second Floor
Oklahoma City, OK 73105
Telephone: (405) 524-2070
E-mail: gooch@czwglaw.com

*Attorneys for Respondent
Board of County Commissioners
of Payne County, Oklahoma*

QUESTIONS PRESENTED

1. Should the Court grant certiorari to determine an issue which Doe forfeited at the district court level and which the Tenth Circuit Court of Appeals expressly declined to consider for that reason?

2. Whether it is appropriate for the Court to grant certiorari where there is no clear split among the circuits as to the proper causation standard for ADA Title II claims.

PARTIES TO THE PROCEEDINGS

The only proper Respondent in this matter is the Board of County Commissioners of Payne County, Oklahoma. In the district court, Doe sued two parties: Advanced Correctional Healthcare, Inc. (“ACH”) and the Board of County Commissioners of Payne County, Oklahoma. During this appeal at the Tenth Circuit, Doe and ACH resolved this case between them and as a result, they jointly requested that ACH be dismissed. On February 17, 2015, the Tenth Circuit entered an Order dismissing ACH. Thus, the only proper Respondent in this matter is the Board of County Commissioners of Payne County, Oklahoma.

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**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

Respondent Board of County Commissioners of Payne County, Oklahoma respectfully submits that this Court should deny the Petition for Writ of Certiorari sought by Petitioner.



STATEMENT OF FACTS

On February 23, 2012, at approximately 7:12 a.m., City of Cushing police officers arrested Petitioner, John Doe (“Doe”) on charges of Assault with a Deadly Weapon on a Police Officer and Obstruction, and transported him to the local municipal lock-up. The next day, February 24, 2012, at approximately 9:14 a.m., Doe was transported and booked into the Payne County Detention Center (“PCDC”). As part of the booking process, PCDC staff conducted a routine medical questionnaire and determined that Doe was HIV positive.

Doe was initially assigned to D-Pod (D202), a general population housing unit. At 4:50 p.m., PCDC Sergeant Annette Anderson (“Anderson”) moved Doe from D-Pod to A-Pod, a segregation pod, where he remained housed until he was released from the PCDC on April 11, 2012. Anderson moved Doe to A-Pod because of the nature of his charge (assault and battery with a deadly weapon) and based on her knowledge of him on the street. She perceived Doe to be violent, and A-Pod is where violent inmates are

housed. Because she perceived Doe to be violent, she was concerned that he might get into a violent altercation with other inmates. She was further concerned about the risk of potential exposure of other inmates to Doe's bodily fluids in the event of such an altercation. She did not move him to A-Pod solely because he was HIV positive. Anderson recorded on Doe's cell assignment log that she was moving him "due to HIV statures [sic]". However, she recorded this information on the log in this manner because she was not aware of how much space was available on the notes section of the computerized cell assignment log.

Contrary to Doe's assertion in his Petition for Writ of Certiorari, rights and privileges in the segregated unit of the PCDC did not "vary dramatically" from those in general population. Inmates in general population are permitted to freely socialize and move about the housing unit during the day; they have unrestricted access to showers, telephones and television during the day; they are allowed to participate in group religious services; and they have access to sources of entertainment that require a partner, like games. In the segregated unit, Doe was allowed out of his cell one hour every day. During this time, he could take a shower, use the phone¹, recreate in A-Pod, and

¹ The inmate phones in all inmate pods in the PCDC require the use of a phone card or collect calls. To obtain a phone card, the inmate must purchase a phone card or a family member or friend can put money on the inmate's phone account for the inmate. Doe did not have a phone card while he was in the PCDC. Doe used the pay phone and the free phone at the

(Continued on following page)

go to other cells in A-Pod to talk to inmates through the cell door. While inmates in the A-pod were not given access to sources of recreation which require a partner, such as board games, they were allowed access to recreation in the form of books, magazines, and playing cards. Although inmates in the segregated unit were not permitted to attend group religious services, they were provided with access to individual religious services, which occurred on a more frequent basis than the group religious services in general population. Except for one or two occasions, Doe received a visit from a pastor every week he was detained in A-Pod and he was never denied a request to visit with any pastor, preacher, or other spiritual advisor. While Doe did not have access to television during his detention in A-Pod, this was only because another inmate had destroyed the television that was provided by the Jail in the A-Pod about a week before Doe was placed there.



PROCEDURAL HISTORY

Doe filed suit on January 30, 2013, alleging violation of Title II of the Americans with Disabilities Act (“ADA”) by the Respondent Board. Leading up to trial, the parties proposed their respective jury instructions. The Respondent Board, consistent with the

PCDC to make calls, and he was never denied a request to use the free phone.

established Tenth Circuit precedent regarding the causation standard for ADA Title II claims, proposed instructions informing the jury that it had to find, by a preponderance of the evidence, that Doe “was denied the benefits of programs and services that were available to other inmates solely because he was HIV positive. . . .” Resp. App. 1 (Defendant’s Requested Jury Instructions 16, 18, and 21). In his Petition for Writ of Certiorari, Doe claims that he proposed a “determining-factor” jury instruction. However, he did not. To the contrary, Doe requested an instruction which informed the jury that it had to find, by a preponderance of the evidence, “that his exclusion from equal participation in services and programs generally was because of his HIV status.” Resp. App. 2 (Doe’s Requested Jury Instructions, Dkt. 257, p. 10). Doe did not request any jury instruction further explaining what was meant by the phrase “because of his HIV status,” nor did he request any instruction setting forth the relevant causation standard by which that phrase was meant to be understood.

The case proceeded to trial on August 12, 2014. At the conclusion of the parties’ presentation of evidence, the district court provided written instructions to the jury which set forth the following as the three essential elements of Doe’s ADA Title II claim:

- (1) he is a qualified individual with a disability;
- (2) he was either excluded from participation in or denied the benefits of Payne County Detention Center’s services, programs, or

activities, or was otherwise discriminated against by the jail's officers or employees, and

(3) such exclusion, denial of benefits, or discrimination was solely by reason of plaintiff's disability.

Resp. App. 3 (Court's Jury Instruction 12).

The district court also instructed the jury that, if it found that Doe was excluded from participation in or denied benefits of Payne County Detention Center's services, programs, or activities, or otherwise discriminated against by the jail's officers or employees for any reason other than, or in addition to, his HIV-positive status, then it must find that Doe had not proven the third essential element of his ADA Title II claim. Resp. App. 3 (Court's Jury Instruction 14).

Doe objected to the Court giving any jury instructions which articulated the "sole motivation" causation standard for ADA Title II claims. Doe further objected to the verdict form to the extent it memorialized the "sole motivation" standard. However, Doe did not propose any alternative instruction setting forth either the "motivating factor" or the "but for" standard as the proper standard. The district court overruled Doe's objections, finding that *Fitzgerald v. Corr. Corp. of Am.*, 403 F.3d 1134, 1144 (10th Cir. 2005), established the "sole motivation" standard as the appropriate causation standard for ADA Title II

claims and was binding Tenth Circuit precedent on that issue.

The jury rendered its verdict on August 14, 2014, finding: 1) that Doe was a qualified individual with a disability under Title II of the ADA; 2) that Doe was excluded from participation in or denied the benefits of Payne County Detention Center's services, programs, or activities, or was otherwise discriminated against by the jail's officers or employees; and 3) that such exclusion, denial of benefits, or discrimination was not solely by reason of plaintiff's disability. This resulted in a jury verdict in favor of the Board and the district court entered Judgment in its favor on August 14, 2014.

Doe appealed the judgment against him. On appeal, Doe argued that *Bones v. Honeywell Int'l, Inc.*, 366 F.3d 869 (10th Cir. 2004), was the controlling Tenth Circuit precedent on the issue of causation and that the district court erred in issuing the jury instructions which included the "sole motivation" causation standard. Doe also argued in favor of applying the "motivating factor" causation standard as "the proper standard for claims under Title II of the ADA. . . ." A three-judge panel of the Tenth Circuit affirmed the district court's decision finding that the district court was bound by the Tenth Circuit's precedential opinion in *Fitzgerald, supra*, which established the "sole cause" standard as the proper standard for ADA Title II claims. As to Doe's argument in favor of the "motivating factor" standard as

the proper standard, the Tenth Circuit panel found that:

Moreover, we have had occasion to interpret and apply the Supreme Court’s [*University of Texas Southwestern Medical Center v. Nasser*, 133 S.Ct. 2517 (2013)] decision, and we conclude it stands for the proposition that the standard of causation for a Title VII retaliation claim is “but for” causation. . . . If *Nasser* suggests anything regarding the instruction issue presented, it suggests that a mixed-motive standard does not apply to any claims other than Title VII discrimination claims.

Pet. App. 12a-13a. The Tenth Circuit panel also acknowledged that some of its sister circuits had relied upon this Court’s opinion in *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), to apply the “but for” causation standard to ADA claims. However, the Tenth Circuit noted that *Gross* was an Age Discrimination in Employment Act (“ADEA”) case, not an ADA case, and it declined to consider whether the “but for” causation standard was the proper standard because it found that Doe had forfeited that argument at the district court level because he failed to request such an instruction and because he had not argued plain error on appeal. Pet. App. 13a-14a. Doe filed a Petition for Rehearing *en banc*; however, the Tenth Circuit declined further review.



REASONS FOR DENYING THE WRIT

I. In Doe’s Petition for Writ of Certiorari, Doe asks the Court to resolve an issue which he forfeited at the district court and which the Tenth Circuit expressly declined to consider for this very reason.

Doe challenges the “sole cause” causation standard as the proper causation standard under Title II of the ADA. He formulates the question presented in his Petition for Writ of Certiorari as: “Does the Americans with Disabilities Act require a plaintiff to prove that her disability was the ‘sole cause’ of the challenged conduct . . . or does the Act permit claims when disability discrimination is accompanied by other factors . . . ?” In other words, Doe asks the Court to determine whether or not the “sole cause” causation standard is the proper standard for ADA claims – specifically, ADA Title II claims.² Inherent in this request, however, is a request for the Court to determine what alternative standard (either the “motivating factor” or the “but for” standard) is the proper causation standard under ADA Title II if the Court should find that the “sole cause” standard is not a proper standard. Indeed, it would serve little value and make little sense for the Court to issue an opinion merely holding that the “sole cause” standard was not proper without setting forth the proper

² Doe also asks the Court to consider summary reversal. However, Doe provides absolutely no argument indicating why the Court should grant such extraordinary relief.

alternative standard. If this is in fact what Doe asks the Court to do, then his Petition for Writ of Certiorari should be denied as such an opinion would serve merely as a source of confusion. As such, a request for the Court to determine the proper causation standard for ADA Title II claims is inherent in Doe's question to the Court.³

Although Doe does not expressly argue in favor of either the "motivating factor" or the "but for" standard in his Petition for Writ of Certiorari, it is clear from reading his Petition that, relying upon this Court's opinion in *Gross, supra*, Doe implicitly argues in favor of the "but for" causation standard for ADA Title II claims. However, Doe never requested a jury instruction on either the "motivating factor" or the "but for" causation standards at the district court level. He merely objected to the Board's proposed jury instruction on the "sole cause" standard and did not propose an instruction on one of the alternative standards. On appeal to the Tenth Circuit, Doe expressly argued for a "motivating factor" standard as "the proper standard for claims under Title II of the ADA. . . ." The Tenth Circuit acknowledged that some of its sister circuits had relied upon this Court's opinion in *Gross, supra*, to apply the "but for" causation standard to ADA claims. However, the Tenth Circuit also noted that *Gross* was an ADEA case, not

³ Indeed, Doe argues that the grant of his Petition "is needed to ensure a uniform application of the proper ADA causation standard among the circuits." Petition, p. 12.

an ADA case, and declined to consider whether the “but for” causation standard was the proper standard because it found that Doe had forfeited that argument at the district court level as he failed to request such an instruction and because he had not argued plain error on appeal.

As such, by implicitly asking the Court to reject the “sole cause” standard in favor of the “but for” standard, Doe asks the Court to review in the first instance a legal issue which he forfeited in the district court and which the Tenth Circuit expressly declined to consider for that reason. The Court does not review in the first instance legal issues the lower courts failed to address. *See Brumfield v. Cain*, 135 S.Ct. 2269, 2282 (2015) (refusing to address an issue the lower court had not decided); *Meyer v. Holley*, 537 U.S. 280, 291-92 (2003) (refusing to consider an issue not directly decided by the lower court); *Pennsylvania Dept. of Corrs. v. Yeskey*, 524 U.S. 206, 212-13 (1998) (“Where issues [were not] considered by the Court of Appeals, this Court will not ordinarily consider them.”); *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (dismissing the writ as improvidently granted after concluding the lower court did not “expressly address the question on which we granted certiorari”).

II. The split among the circuit courts on the issue presented in Doe’s Petition for Writ of Certiorari is not as dramatically lopsided as Doe maintains and the lack of a clear split among the circuits as to the proper causation standard for ADA Title II claims warrants denial of Doe’s Petition.

In his Petition for Writ of Certiorari, Doe asserts that “the sole-cause standard applied to ADA claims by the Tenth Circuit has been rejected by every other circuit.” Petition, p. 8. However, Doe’s assertion in this regard is simply not correct and the split among the circuits on this issue is not as dramatic as Doe claims. Indeed, Doe admits in footnote 3 of his Petition that, unlike Doe’s claims herein, the opinions from the First, Sixth, Eighth, Eleventh, and the District of Columbia Circuit upon which he relies involved claims under ADA Title I, not ADA Title II. Doe attempts to wave off this important distinction by claiming that it is immaterial because: 1) the causation language of Titles I and II are similar; 2) the Tenth Circuit has mandated a “sole cause” standard for Title I claims as well; 3) some circuits rejected the “sole cause” standard for Title I claims based on legislative history concerning Title II; and 4) the “sole cause” standard is at odds with Title II-specific cases in the remaining circuits. Petition, pp. 8-9, fn3.

However, Doe’s reliance on these Title I opinions does not provide support for granting the Petition for Writ of Certiorari as he contends. Of the Title I circuit

opinions which Doe cites, only the Sixth and Eleventh Circuits actually addressed the issue of whether the “sole cause” standard is the proper causation standard under ADA Title I. See *Lewis v. Humboldt Acquisition Corp., Inc.*, 681 F.3d 312, 314-21 (6th Cir. 2012); *McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068, 1074 (11th Cir. 1996). Contrary to Doe’s assertion, the First, Eighth, and D.C. Circuits have not expressly rejected the “sole cause” standard for ADA Title I claims. Rather, in the opinions cited by Doe, those circuits merely applied a different causation standard without any discussion of the “sole cause” standard. See *Katz v. City Metal Co.*, 87 F.3d 26, 33 (1st Cir. 1996); *Pedigo v. P.A.M. Transp., Inc.*, 60 F.3d 1300, 1301 (8th Cir. 1995); *Adeyemi v. Dist. of Columbia*, 525 F.3d 1222, 1226 (D.C. Cir. 2008). It simply does not appear that those circuits have specifically addressed whether the “sole cause” standard is the proper standard under either ADA Titles I or II. Indeed, in *Leary v. Dalton*, 58 F.3d 748, 752 (1st Cir. 1995), the First Circuit noted that “[t]he precise relationship between the ADA’s liability standards and the sole causation test is not well settled” but declined to further address the issue.

Furthermore, the Sixth Circuit has held that “. . . a plaintiff proceeding under title II of the ADA must, similar to a section 504 plaintiff, prove that the exclusion from participation in the program was ‘solely by reason of [disability].’” *Sandison v. Michigan High Sch. Athletic Ass’n, Inc.*, 64 F.3d 1026, 1036 (6th Cir. 1995). Despite the admittedly strong opinion

in *Lewis, supra*, which actually discussed the similarity of the statutory causation language in Titles I and II (see *Lewis*, 681 F.3d at 315), *Sandison* is still good law in the Sixth Circuit as of the date of this writing. As such, Doe's assertion that the Tenth Circuit is the only circuit which utilizes the "sole cause" standard is simply incorrect with regard to ADA Title II claims.

With regard to the Title II circuit opinions upon which Doe relies, *Powell v. Nat'l Bd. of Med. Exam'rs*, 364 F.3d 79, 89 (2d Cir. 2004), does not support his contention that the Second Circuit has rejected the "sole cause" standard for ADA Title II claims. Rather, in *Powell*, the Second Circuit merely held that the plaintiff could not obtain money damages from a state university under ADA Title II unless she could show that a violation of the Act was motivated by either discriminatory animus or ill will stemming from plaintiff's disability. *Id.* In reaching its decision in this regard, the Second Circuit relied upon its earlier holding in *Garcia v. S.U.N.Y. Health Sciences Ctr. of Brooklyn*, 280 F.3d 98 (2d Cir. 2001), wherein it examined whether claims for money damages against the state under ADA Title II were barred by the Eleventh Amendment to the U.S. Constitution. The Second Circuit in *Garcia* held that such claims were only permissible under the Eleventh Amendment if the plaintiff could establish that the Title II violation was motivated by either discriminatory animus or ill will stemming from plaintiff's disability. *Id.* at 107-13. The issue addressed in *Powell* and *Garcia* is completely unrelated to and has no bearing on the issue

of the proper causation standard for ADA Title II claims. Neither *Powell* nor *Garcia* even address, let alone reject, the “sole cause” standard for said claims. The Second Circuit appears to have adopted a “substantial factor” causation standard for ADA Title II claims. However, in reaching that decision, the Second Circuit did not expressly reject or even discuss the “sole cause” standard. Rather, the Second Circuit reached its somewhat unique position by way of analysis of common law proximate causation. See *Henrietta D. v. Bloomberg*, 331 F.3d 261, 278-79 (2d Cir. 2003).

Moreover, putting aside the important distinction between ADA Titles I and II claims for the moment, there is very little agreement among the circuits regarding the proper causation standard. As discussed above, both the Tenth and Sixth Circuits utilize the “sole cause” standard for ADA Title II claims. As also discussed above, the Second Circuit appears to have adopted a “substantial factor” standard for ADA Title II claims.

The First and Eighth Circuits employ the “motivating factor” standard for ADA Title I claims (see *Katz* and *Pedigo*, *supra*), while the Fourth and Ninth Circuits use the “motivating factor” standard for ADA Title II claims. See *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 470 (4th Cir. 1999); *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1099 (9th Cir. 2013). It is unclear from the case law, but it appears that the D.C. and the Fifth Circuits also utilize the “motivating factor” standard for ADA Title

I and II claims, respectively. *See Adeyemi, supra; Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005) (citing *Soledad v. U.S. Dep't of Treasury*, 304 F.3d 500, 503-04 (5th Cir. 2002)).

The Sixth and Eleventh Circuits use the “but for” causation standard for ADA Title I claims (*see Lewis and McNely, supra*), while the Third and the Seventh Circuits employ the “but for” standard for ADA Title II claims. *See New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 300 fn4 (3d Cir. 2007); *Washington v. Indiana High Sch. Athletic Ass'n, Inc.*, 181 F.3d 840, 849 (7th Cir. 1999).

As shown above, the Tenth Circuit is NOT the sole Circuit to apply the “sole cause” standard for ADA Title II claims, as Doe contends. The lack of a clear split among the circuits regarding the proper causation standard for ADA Title II claims warrants denial of Doe’s Petition for Writ of Certiorari at this time. Awaiting further development of the issue in the courts of appeals is most appropriate; there is no risk of forum shopping among the circuits as ADA Title II claims are only properly brought in the jurisdiction in which the state or local governmental entity is located.



CONCLUSION

Doe's Petition for Writ of Certiorari should be denied. His request for summary reversal should also be denied.

Respectfully submitted,

AMBRE C. GOOCH

Counsel of Record

COLLINS, ZORN & WAGNER, P.C.

429 N.E. 50th Street, Second Floor

Oklahoma City, OK 73105

Telephone: (405) 524-2070

E-mail: gooch@czwglaw.com

Attorneys for Respondent

Board of County Commissioners

of Payne County, Oklahoma

**UNITED STATES DISTRICT COURT FOR
WESTERN DISTRICT OF OKLAHOMA**

JOHN DOE,
Plaintiff,

v.

BOARD OF COUNTY
COMMISSIONERS OF
PAYNE COUNTY,
OKLAHOMA, and
ADVANCED
CORRECTIONAL
HEALTHCARE, INC.,
Defendants.

Case No. CIV-13-108-F

(Filed Jul. 29, 2014)

INSTRUCTION NO. ____

**Plaintiff was Denied Services
Because of his HIV Status**

The third element of Plaintiff's claim requires him to establish by a preponderance of the evidence that his exclusion from equal participation in services and programs generally provided was because of his HIV status.

Authority:

See 42 U.S.C. § 12132, *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1193 (10th Cir. 2007), *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) (holding that discrimination under the ADA extends

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to discrimination against inmates in a county jail), and *Bragdon v. Abbott*, 524 U.S. 624 (1998) (holding that the ADA extends to individuals who are HIV positive even where such an individual is not in the symptomatic stage).

**UNITED STATES DISTRICT COURT FOR
WESTERN DISTRICT OF OKLAHOMA**

JOHN DOE,
Plaintiff,

v.

BOARD OF COUNTY
COMMISSIONERS OF
PAYNE COUNTY,
OKLAHOMA, and
ADVANCED
CORRECTIONAL
HEALTHCARE, INC.,

Defendants.

Case No. CIV-13-108-F

SEALED◇

(Filed Aug. 14, 2014)

INSTRUCTION NO. 12

ADA CLAIM – ESSENTIAL ELEMENTS

In order for plaintiff to prevail on his ADA claim against defendant, plaintiff must prove the following three essential elements by a preponderance of the evidence:

- (1) he is a qualified individual with a disability;

◇ The Tenth Circuit unsealed materials previously sealed in that court, by Order dated August 18, 2015.

(2) he was either excluded from participation in or denied the benefits of Payne County Detention Center's services, programs, or activities, or was otherwise discriminated against by the jail's officers or employees, and

(3) such exclusion, denial of benefits, or discrimination was solely by reason of plaintiff's disability.

With regard to essential element number one, you are instructed that the parties have stipulated that plaintiff is a qualified individual with a disability because of his HIV-positive status. Thus, essential element number one is not in dispute and you must find on the verdict form that this element has been proven by a preponderance of the evidence.

**UNITED STATES DISTRICT COURT FOR
WESTERN DISTRICT OF OKLAHOMA**

JOHN DOE,
Plaintiff,

v.

BOARD OF COUNTY
COMMISSIONERS OF
PAYNE COUNTY,
OKLAHOMA, and
ADVANCED
CORRECTIONAL
HEALTHCARE, INC.,

Defendants.

Case No. CIV-13-108-F

SEALED◇

(Filed Aug. 8, 2014)

INSTRUCTION NO. 14

**SOLELY BY REASON OF
PLAINTIFF'S DISABILITY**

With respect to essential element number three, you are instructed that plaintiff must prove by a preponderance of the evidence that he was excluded from participation in or denied benefits of Payne County Detention Center's services, programs, or activities, or otherwise discriminated against by the jail's officers

◇ The Tenth Circuit unsealed materials previously sealed in that court, by Order dated August 18, 2015.

or employees solely by reason of his HIV-positive status.

If you find that plaintiff was excluded from participation in or denied benefits of Payne County Detention Center's services, programs, or activities, or otherwise discriminated against by the jail's officers or employees for any reason other than his HIV-positive status or for any reason in addition to his HIV-positive status, then you must find that plaintiff has not proven essential element number three.

On the other hand, if you find that plaintiff has proven by a preponderance of the evidence that he was excluded from participation in or denied benefits of the Payne County Detention Center's services, programs, or activities, or otherwise discriminated against by the jail's officers or employees solely by reason of his HIV-positive status, then you must find that plaintiff has proven essential element number three.

**UNITED STATES DISTRICT COURT FOR
WESTERN DISTRICT OF OKLAHOMA**

JOHN DOE,
Plaintiff,

v.

BOARD OF COUNTY
COMMISSIONERS OF
PAYNE COUNTY,
OKLAHOMA, and
ADVANCED
CORRECTIONAL
HEALTHCARE, INC.,
Defendants.

Case No. CIV-13-108-F

(Filed Jul. 30, 2014)

**DEFENDANT'S PROPOSED
JURY INSTRUCTION NO. 16**

AMERICANS WITH DISABILITIES ACT, TITLE II

The Plaintiff is claiming damages under a federal statute, Title 42 U.S.C. § 12132, which is known as the Americans with Disabilities Act, Title II. This Act provides that:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity

In this case, the Plaintiff claims that while he was incarcerated in the Payne County Detention Center in the Spring of 2012, he was denied the benefits of programs and services that were available to other inmates solely because he was HIV positive, and that he was damaged as a result of such denial.

The Plaintiff has sued the Defendant Board of County Commissioners of Payne County under the Americans with Disabilities Act, Title II. Under Title II of the ADA, the Board is the properly named legal party to Plaintiff's claim in this case.

**UNITED STATES DISTRICT COURT FOR
WESTERN DISTRICT OF OKLAHOMA**

JOHN DOE,
Plaintiff,

v.

BOARD OF COUNTY
COMMISSIONERS OF
PAYNE COUNTY,
OKLAHOMA, and
ADVANCED
CORRECTIONAL
HEALTHCARE, INC.,
Defendants.

Case No. CIV-13-108-F

(Filed Jul. 30, 2014)

**DEFENDANT'S PROPOSED
JURY INSTRUCTION NO. 18**

42 U.C.S. [sic] § 12132 CLAIM - ELEMENTS

In order to prove his Americans with Disabilities Act claim against Defendant Board of County Commissioners of Payne County, the Plaintiff must prove each of the following essential elements by a preponderance of the evidence:

- 1) that Plaintiff Doe is a qualified individual with a disability; AND
- 2) that Plaintiff was excluded from participation in or denied meaningful access to

the benefits of a public entity's services, programs, or activities; AND

- 3) that such exclusion or denial of meaningful access to such benefits was based *solely* on Plaintiff's disability.

If you find that the Plaintiff has failed to prove any one of these elements above, your deliberations end and you must return a verdict for the Defendant.

AUTHORITY: *Doe v. Craig County, et al.* 2012 WL 2904518 *6 (N.D. Okla. December 22, 2011)

Gohier v. Enright, 186 F.3d 1216, 1219 (10th Cir. 1999)

Robertson v. Las Animas County Sheriff's Department, 500 F.3d 1185, 1193 (10th Cir. 2007)

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**DEFENDANT'S PROPOSED
JURY INSTRUCTION NO. 21**

**ELEMENT #3: THE ALLEGED EXCLUSION
FROM PARTICIPATION IN OR
DENIAL OF MEANINGFUL AC-
CESS TO BENEFITS WAS BASED
SOLELY ON PLAINTIFF BEING
HIV-POSITIVE.**

You are instructed that, in addition to elements #1 and #2, Plaintiff must prove that his alleged exclusion from participation in or denial of meaningful access to the Jail's programs, services, or activities, was based *solely* on the fact he is HIV-positive.

In other words, if you find that Plaintiff was excluded from participation in or denial of meaningful access to the Jail's previously listed services, programs, or activities for any reason other than his HIV positive status OR for any reason(s) in addition to his HIV positive status, then your deliberations end and you must return a verdict for the Defendant.

AUTHORITY: Doe v. Craig County, et al. 2012 WL 2904518 *6 (N.D. Okla. December 22, 2011)

Fitzgerald v. Corr. Corp. Of America,
403 F.3d 1134, 1144 (10th Cir. 2005)

Breedlove v. Costner, 405 F.App'x 338,
341 (10th Cir. 2010)

Hughes v. Colo. Dept. of Corr., 594
F. Supp. 2d 1226, 1244 (D. Colo.
2009)
