

October 31, 2005

1664 Buttercup Road
Encinitas, CA 92024

Hon. F. James Sensenbrenner
Chairman, Committee on the Judiciary
United States House of Representatives
2449 Rayburn HOB
Washington, D.C. 20515-4905

FedEx Airbill
7924 2494 7413

Re: Congressional Oversight Request

- Access to the Courts - ADA Title II
- Fraud Upon The Court

Dear Chairman Sensenbrenner:

On July 28, 2005, Speaker Hastert referred my petition in support of the fundamental constitutional right to access the courts as guaranteed by the Americans with Disabilities Act, Title II to the Committee on the Judiciary.¹ Denial of access is due to a decade-old fraud upon the court by federal and state judges against disabled Americans.²

The fraud is so pervasive and clandestine that its eradication can only be achieved through congressional oversight. The courts have refused to inquire into the integrity of their own decisions in dereliction of their inherent judicial authority and obligation to set aside judgments that are fraudulently induced.³

The Congress does not interfere with judicial independence and the separation of powers by investigating decisions produced by fraud upon the court, because such decisions, in essence, are not decisions at all and never become final.⁴ The Constitution provides the Congress with the implied power to conduct oversight to help safeguard the rights of citizens.

Access to the Courts - ADA Title II

In April, 2005, I sent members of Congress a copy of my complaint to the Judicial Conduct and Disability Act Study Committee. The Committee neither acknowledged its receipt nor notified me of the status of my complaint, which documented that:

¹Congressional Record, July 28, 2005, Vol. 151, No. 105, Book II, page H7567.

²Fraud upon the court is "...a scheme to interfere with the judicial machinery performing the task of impartial adjudication, as by preventing the opposing party from fairly presenting his case..." *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 538 F.2d 180, 195 (8th Cir. 1976).

³*Hazel-Atlas Glass Co. v. Hartford-Empire*, 322 U.S. 238, 250 (1944) at 244.

⁴A decision produced by fraud on the court is not in essence a decision at all, and never becomes final." *Kenner v. Commissioner*. 387 F.2d 689, 691 (7th Cir. 1968) at 691.

1. A Ninth Circuit federal district judge extra-judicially proposed, affirmed and promoted a discriminatory California state law that nullifies my fundamental constitutional right to access the courts as guaranteed by the Americans with Disabilities Act, Title II.
2. A three judge panel of the U.S. Court of Appeals for the Ninth Circuit intentionally misapplied the Rooker-Feldman doctrine to deny me access to the federal courts to challenge this law and to remedy the constitutional injuries caused by this law.
3. The Ninth Circuit refused to review my case en banc perpetuating and concealing the fraud upon the court.

On June 6, 2005, I submitted a petition for a writ of certiorari to the Supreme Court. On October 3, 2005, the Supreme Court denied my petition. The Court's denial perpetuates and conceals the fraud upon the court harming me, six million disabled Californians and all Americans.

The Supreme Court has referred to this species of fraud as not only...

"...an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public institutions in which fraud cannot complacently be tolerated consistent with the good order of society." *Hazel-Atlas* at 246.

On October 14, 2005, I applied to the Court for an extension of time to petition for a rehearing, as I am disabled by polio and intractable pain.⁵ My application for extension of time was supported by a tangible offer of proof that I had discovered substantial new information documenting the fraud upon the court.

Applications for extension of time to file documents are routinely made and routinely granted. Supreme Court Rule 30 permits the Clerk to act on them in the first instance.

Although federal courts accommodate disabled judges, the Supreme Court is not required to accommodate citizens' "special needs" and does not advertise that it offers accommodations to meet the special needs of disabled citizens. However, I requested that the Court grant my application for extension of time in recognition of the spirit of the Americans with Disabilities Act, *Tennessee v. Lane*, and the Congressional Accountability Act of 1995.

I directed the Court's attention to the U.S. House of Representatives Committee on the Judiciary's website, which advertises that the Committee "strives to accommodate/meet the needs of those who require special assistance." In that my request was modest,

⁵Exhibit No.1: Application for Extension of Time to File a Petition for Rehearing on Behalf of the Petitioner Jacquelyn Finney.

reasonable and did not prejudice the respondents, it was appropriate that the Court accommodate my special needs.

On October 24, 2005, Justice O'Connor denied my application for extension of time.⁶ The Supreme Court's refusal to accommodate my severe disabilities denied me access to the Court. Justice O'Connor's denial assured that I would not be able to comply with the Court's strictly construed, complex rules to meet the filing deadline.

The Court assured that I would not be able to submit a timely petition for rehearing to meet the heavy burden of proof required by the Court regarding the origin and progression of the fraud upon the court. The fraud nullifies the Court's *Tennessee v. Lane* precedent and subverts the Congress' authority to enact the Americans with Disabilities Act and apply it to the courts.

The Court intentionally denied me sufficient time to:

- Perform the extensive legal research required to present and justify "...intervening circumstances of a substantial or controlling effect [fraud upon the court] or other substantial grounds not previously presented..." Rule 44(2).
- Prepare "models, diagrams, and exhibits [to illustrate the origin and progression of the fraud] forming part of the evidence [to] be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted..." Rule 32(1).
- Contract with a printing company to prepare petitions in a 6¹/₈ by 9¹/₄ inch booklet format..." Rule 33(1).
- "File 40 copies of the rehearing petition..." Rule 44(1).

No court, government agency or individual has ever disputed my facts and conclusions. On April 5, 2005, the U.S. Department of Justice expressly stated that my case had been "carefully reviewed."⁷ DOJ's careful review did not result in any dispute, correction or clarification of my facts and conclusions.

Fraud Upon The Court

The Supreme Court's denial of my request perpetuates and conceals a decade-old fraud upon the court that renders Congress' guarantee of disabled Americans' access to the courts illusory. No court has reviewed the merits of my case on the pretext that the Rooker-Feldman doctrine bars jurisdiction. The Rooker-Feldman doctrine does not bar general and as-applied challenges to a state law for compliance with the requirements of the Fourteenth Amendment and the Americans with Disabilities Act, Title II.

⁶Exhibit No. 2: Supreme Court Docket for 04-1653.

⁷Exhibit No. 3: April 5, 2005 Letter from DOJ, R.M. Wohlenhaus, Deputy Chief, Disability Rights Section.

Moreover, in March, 2005, the Supreme Court's decision (*Exxon Mobil v. Saudi Basic Industries*) placed stringent limitations on the application of that doctrine. Between April and October, 2005, the Supreme Court vacated and remanded at least five (5) other cases in light of *Exxon-Mobil*.⁸

Rather than vacate and remand my case, the Court denied my cert petition. To my knowledge, my case is materially indistinguishable from those five cases that were vacated and remanded pursuant to the Court's application of its stringent limitations on the Rooker-Feldman doctrine. My research indicates that my case represents the Court's sole exception to its application of its *Exxon-Mobil* precedent.

The Court's selective enforcement of its *Exxon Mobil* precedent against me provides strong circumstantial evidence of the extension of the fraud upon the court to the highest echelons of the federal and state judiciaries. The Supreme Court is unwilling to acknowledge, much less use its inherent judicial authority to set aside judgments that are fraudulently induced. *Hazel-Atlas* at 249-50.

Rather, the result of that Court's actions is to conceal and perpetuate this fraud. Equity requires that a judgment, however final, must be vacated if based upon fraud. *Id.* at 244. The Court has held that a judgment based on fraud upon the court, can, and should be, vacated regardless of its age. *Id.*

Congressional Oversight

The Congress can act to eradicate this fraud upon the court that nullifies disabled Americans' fundamental constitutional right to access the courts. My case validates and substantiates Congressman Sensenbrenner's plan⁹ to assure that the federal courts are not above the law.

My case justifies:

1. The creation of an Office of Inspector General for the Federal Judiciary, which will enable the Congress to take corrective legislative action to eradicate fraud upon the court, because the federal courts refuse to invoke their inherent judicial authority to police themselves.
2. The Congress' reassertion of its oversight authority to discipline judges, because the federal courts refuse to invoke their inherent judicial authority to police themselves.
3. The protection of the civil rights of disabled Americans, like Terri Schiavo and myself, by assuring that the federal courts' invoke their jurisdiction to decide the merits of ADA cases.

⁸Exhibit No. 4. Supreme Court Dockets: 04-1, 04-745, 04-1667, 04-1113, 05-199.

⁹The Honorable F. James Sensenbrenner, Jr., Zale Lecture in Public Policy. Stanford University, May 9, 2005.

In *Tennessee v. Lane*, the Supreme Court assured disabled Americans that their fundamental Constitutional right to access state courts cannot be abridged by state laws, policies, customs and practices. The Court's precedents have guaranteed to African-Americans, women, homosexuals and other groups that their fundamental constitutional right to be free of discrimination cannot be abridged by state laws, policies, customs and practices.

In defiance of the Congress, the Supreme Court's denial of any remedy to me has the practical effect of declaring to disabled Americans that they are inferior to all other human beings and are undeserving of the enforcement of their fundamental constitutional right to access the courts as guaranteed by ADA, Title II.

Request

Disabled Americans must depend upon the Congress to act as the conscience of a compassionate society that vindicates the interest of the public against judicial fraud upon the court. The courts' purpose is to interpret and enforce the laws passed by the Congress, not to legislate from the bench to violate the law, to subvert precedent, and to defy Congress.

I respectfully request that the Congress exercise its constitutional oversight authority in support of disabled Americans' fundamental constitutional right to access the courts as guaranteed by the Americans with Disabilities Act, Title II.

Your consideration of my petition continues to be greatly appreciated.

Sincerely yours,

Jacquelyn Finney
Telephone: (760) 436-0183

Exhibits

1. Application for Extension of Time
2. Supreme Court Docket: 04-1653.
3. April 5, 2005 Letter from the Department of Justice, R.M. Wohlenhaus, Deputy Chief, Disability Rights Section.
4. Supreme Court Dockets: 04-745, 04-1, 04-1667, 04-1113, 05-199.