

1 THE PETITION SATISFIES ALL OF THE CRITERIA  
2 FOR EN BANC REVIEW

3 Rehearing en banc is warranted, because the panel's decision conflicts with  
4 decisions from the United States Supreme Court and the U.S. Court of Appeals  
5 for the Ninth Circuit, i.e.:

- 6 • *Tennessee v. Lane* , 124 S. Ct. 1978 (2004)
- 7
- 8 • *Columbia Court of Appeals v. Feldman* , 460 U.S. 462 (1983)
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- 10 • *Duvall v. County of Kitsap* , 206 F.3d 1136, 1140 (9<sup>th</sup> Cir. 2001)
- 11
- 12 • *Kougasian v. TMSL, Inc.* , 359 F.3d 1136, 1140 (9<sup>th</sup> Cir. 2004)
- 13
- 14 • *Maldonado v. Harris* , 370 F.3d 945 (9<sup>th</sup> Cir. 2004)
- 15
- 16 • *Wolfe v. Strankman* , No. 02-15720 (9<sup>th</sup> Cir. December 14, 2004)
- 17
- 18 • *Bianchi v. Rylaarsdam* , 334 F.3d 895 (9<sup>th</sup> Cir. 2003)
- 19
- 20 • *Fontana Empire Center v. City of Fontana* ,  
21 307 F.3d 987, 992 (9<sup>th</sup> Cir. 1992)
- 22
- 23 • *Noel v. Hall* , 341 F.3d. 1148, 1154 (9<sup>th</sup> Cir. 2003)
- 24
- 25 • *Armstrong v. Davis* , 275 F.3d 849 (9<sup>th</sup> Cir. 2001)
- *Walters v. Reno* , No. 96-36304 (9<sup>th</sup> Cir. 1998)
- *Crowder v. Kitagawa* , 81 F.3d 1480 (9<sup>th</sup> Cir. 1996)

1 Rehearing en banc is warranted, because the panel’s opinion directly conflicts  
2 with *Tennessee v. Lane* , *supra*.

3 1. In his 2002 brief to the U.S. Supreme Court regarding *Popovich v. Court*  
4 *of Common Pleas of Ohio*, 276 F.3d 808, Solicitor Olson wrote:

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6 “The... Court raised the Rooker-Feldman defense before the district  
7 court, which rejected the argument... the Court renewed its argument in  
8 its initial brief to the court of appeals, but neither the panel nor the en  
9 banc panel addressed it. Neither the court nor Popovich mentions this  
10 issue in its petition...”

11 “There is little relevant authority addressing the distinction between  
12 judicial and administrative acts for purposes of triggering the Rooker-  
13 Feldman doctrine. Because of the difficulty and relative novelty of that  
14 question, the United States takes no position on the ultimate question of  
15 whether Rooker-Feldman bars Popovich’s claims.” (Addendum p.20)

16 *Tennessee v. Lane, supra* addressed that novel question, affirming the  
17 Sixth Circuit’s en banc opinion in *Popovich, supra* without considering,  
18 much less asserting, the Rooker-Feldman doctrine to bar the court’s  
19 jurisdiction to review and reverse a judge’s order during a judicial  
20 proceeding denying ADA accommodations, confirming that ADA Title  
21 II access to court claims are not barred by Rooker-Feldman, specifically  
22 in judicial proceedings affecting due process.

23 2. The issue of splitting the Ninth Circuit was raised by Justice Ginsburg,  
24 who stated that it was “important” for a circuit to be “internally  
25 consistent,” and that the Ninth Circuit may be “too large to be always

1 consistent...” (Addendum p.42) Justice Ginsburg’s concurring opinion  
2 in *Tennessee v. Lane, supra* stressed that: “Legislation [ADA Title II]  
3 calling upon all government actors to respect the dignity of individuals  
4 with disabilities is entirely compatible with our Constitution’s  
5 commitment to federalism properly conceived.”  
6

7 Judge O’Scannlain’s<sup>1</sup> opinion that the court’s size leads to too  
8 many three-judge panels, which then produce decisions that are at odds  
9 with each other is self-evident from the conflicts produced by the  
10 panel’s unpublished memorandum in *Finney v. Nugent* with every other  
11 applicable case.  
12

13 Not only was the panel’s decision inconsistent with all other  
14 applicable circuit decisions, its non-publication ensures that the  
15 inconsistencies are buried, i.e., that issues of extraordinary importance  
16 would have evaded future review absent appellant’s Herculean efforts to  
17 seek a published, en banc review through the Ninth Circuit’s hostile  
18 procedures that erect virtually insurmountable obstacles for disabled pro  
19 se litigants.  
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22 Chief Judge Schroeder (Footnote No.1) minimized both the  
23 hardship of obtaining en banc review and the frequency and necessity of  
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25 <sup>1</sup> “Controversial Court” by Spencer Michaels, *The News Hour with Jim Lehrer*, January 17, 2005.

1 the decisions in which en banc review is required. Rather, she is  
2 concerned with the Ninth Circuit’s judges’ self-interest, declaring”

3 “...I think we must be concerned if Congress decides it is  
4 going to punish a court or a circuit for decisions that are  
5 unpopular. The Constitution prevents Congress from getting  
6 rid of judges it doesn’t like.”

7 The Constitution also prevents an activist Ninth Circuit Court  
8 from getting rid of disabled litigants it doesn’t like who request that state  
9 judges enforce Congress’ mandate as stated in *Tennessee v. Lane, supra*.

10 The panel’s unpublished memorandum, absent en banc review is  
11 internally inconsistent with all other published opinions. This fact  
12 undermines Judge Kozinski’s testimony to Congress (Addendum, pp.  
13 26-41) and his 2004 Hofstra Law Review article. Judge Kozinski stated  
14 that in the oral screening process there is ubiquitous risk that:  
15

16 “...Your eyes glaze over, your mind wanders and the urge to say  
17 okay to whatever is put in front of you becomes almost  
18 irresistible.” (Addendum p.5)

- 19 3. The issues of deliberate indifference, discriminatory animus, retaliation  
20 and obstruction of justice by the California court system against a  
21 disabled pro se attorney, litigant, and juror in violation of ADA Title II  
22 and *Tennessee v. Lane, supra*, are matters of extraordinary importance,  
23 which the panel ignored.  
24  
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- 1 4. The issue of a facially unconstitutional and discriminatory state rule of  
2 court, the application of policies, procedures and practices that deny  
3 access to the courts to disabled persons is a matter of extraordinary  
4 importance, which the panel ignored.  
5
- 6 5. The issue of denial of access to the California courts to appellant, caused  
7 by the state appeals court's discriminatory refusal to reasonably  
8 accommodate appellant in violation of ADA Title II, is a matter of  
9 extraordinary importance, which the panel ignored.  
10
- 11 6. The panel's memorandum conflicts with authoritative decisions of every  
12 other United States Court of Appeals that has addressed the issue:  
13
- 14 • The Sixth Circuit's en banc determination in *Popovich, supra*, was  
15 affirmed by *Tennessee v. Lane, supra* . Rooker-Feldman does not  
16 bar jurisdiction to remedy judicial decisions concerning disability  
17 discrimination by state court judges in both judicial and  
18 administrative proceedings.  
19
  - 20 • The First Circuit has stated that "...the lack of finality of  
21 judgment in the case at the time [in parallel state proceedings]  
22 prevented the Rooker-Feldman doctrine from coming into play."  
23 Consequently, ADA suit against state judges, administrators, and  
24 court entities is not barred prior to a final judgment. *Badillo -*  
25

1 *Santiago v. Naveira Merly*, \_\_F.3d\_2004 WL 1687881 (1<sup>st</sup> Cir. July  
2 29, 2004).

3 *Appellant has been denied all meaningful opportunity to obtain a*  
4 *final judgment, due to Judge McConnell's deliberate indifference*  
5 *to her request for accommodation to access the appeals court to*  
6 *obtain a final state court ruling.*

- 7
- 8 • The Second Circuit has stated that Rooker-Feldman does not bar  
9 ADA suit in federal court, because the state board stipulated that  
10 the ADA applied to its examination procedure and it was required  
11 to make reasonable accommodations for disabled applicants.

12 *D'Amico v. New York State Bd. of Law Examiners*, 813 F. Supp.  
13 217 (W.D.N.Y 1993)

14 Likewise, CRC 989.3, upon which appellant relied, states:

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16  
17 **“(a)[Policy]** ...Nothing in this rule shall invalidate the  
18 remedies, rights, and procedures accorded to any qualified  
19 individuals with disabilities under state or federal law.”  
ER 108

20  
21 “An applicant whose request is denied can bring an action  
22 for injunctive relief in state or federal court to compel  
23 consideration of the accommodation request.”  
ER 114 #8 ¶ 2

- 24
- 25 • The Tenth Circuit has stated that “non-judicial acts are either  
legislative or ministerial. A legislative act ‘looks to the future and

1 changes existing conditions by making a new rule to be applied  
2 thereafter to all or some part of those subject to its power,’  
3 *Feldman* at 1312.” The court held that when states act in a  
4 legislative role to promulgate new rules, Rooker-Feldman does  
5 not apply. *Johnson v. State of Kansas* , 81 F.3d 172 (10<sup>th</sup> Cir.  
6 1996).

8 CRC 989.3 is a legislative, not a judicial act, as it states:

9  
10 **“Drafter’s Notes 1996** – the council adopted this rule to  
11 help implement the Americans with Disabilities Act which  
12 requires public entities, including the courts, to make  
13 reasonable accommodations in policies, practices or  
14 procedures to avoid discrimination against persons with  
15 disabilities.” ER 110

#### 16 I. Introduction

17 On January 13, 2004, a panel of this court ruled that the Rooker-  
18 Feldman doctrine bars jurisdiction for declaratory and injunctive relief from  
19 Constitutional and Federal Statutory injuries caused by CRC 989.3, facially  
20 and as-applied.

21 *The panel ignored the salient issue that CRC 989.3 was drafted to*  
22 *achieve the nefarious purpose of barring suit under ADA Title II, although the*  
23 *Rule’s policy and procedures expressly state that all acts pursuant to its*  
24 *application are “purely administrative” and permit a plaintiff to “...bring an*  
25 *action for injunctive relief in state or federal court.” ER 108, 114*

1 Appellant is a totally disabled pro se plaintiff who offered  
2 overwhelming, undisputed, documented evidence that Rooker-Feldman does  
3 not bar suit. Although the court has the discretion not to consider evidence, the  
4 court “must actually exercise its discretion rather than ignore the evidence or  
5 reject it *sub silent io.*” *Brown v. Roe*, 279 F.3d 742, 744 (9<sup>th</sup> Cir. 2002).  
6 Moreover, plaintiff is entitled to the same right as a pro se prisoner who was  
7 ignorant of the law to have evidence considered that supports her access to the  
8 courts claim. *Jones v. Blanas* , No. 02-17148 (9<sup>th</sup> Cir. December 27, 2004).  
9

10 According to Judge Kozinski’s “personal observations” regarding  
11 “*REAL*” issues of judicial ethics in the Ninth Circuit:<sup>2</sup> (Addendum pp. 1-12)  
12

- 13 • “How close a look any one judge takes in a particular case is  
14 strictly a matter of the judge’s own conscience. It’s one of the  
15 embedded ethical issues that no one ever talks about...”
- 16 • “It often takes a frantic act of will to continue questioning  
17 successive staff attorneys about each case, or to insist on reading  
18 key parts of the record or controlling precedent to ensure that the  
19 case is decided by the three judges whose names appear in the  
20 caption, not by a single attorney...”
- 21 • “Justice is served when judges apply the law impartially,  
22 regardless of the personal views of the decision maker... ‘Justice  
23 is judging according to the law and the judge who ignores (more  
24 rightly, defies) law to do what he thinks is justice, acts unjustly’  
25 footnote 24...”

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25 <sup>2</sup> “THE *REAL* ISSUES OF JUDICIAL ETHICS,” by Judge Alex Kozinski, Hofstra Law Rev. Vol. 32, No. 4,  
Summer, 2004

- 1 • “The temptation to decide cases in a way that will please those in  
2 the political process... is one of the most ubiquitous moral hazards  
3 facing members of the judiciary...”
- 4 • “Giving short shrift to small cases, signing on to the work of staff  
5 and calling it my own, bending the law to reach a result I like--  
6 and the dozens of other ways in which I feel the pressure to do  
7 something unethical, yet wholly undetectable by anyone other  
8 than me--all these temptations I must fight off many times every  
9 single day...”
- 10 • “A judge can appear to act ethically and still betray his  
11 responsibility in essential respects, and in ways that no one will  
12 ever know about...”
- 13 • I am reminded that among the most reviled participants in the  
14 Third Reich’s persecution of Jews and other minorities were  
15 German judges who enforced the Nuremberg laws. These judges  
16 claimed as justification that they were simply applying the  
17 law...”<sup>3</sup>

18 *Tennessee v. Lane, supra* and ADA Title II, advise appellant, as a  
19 disabled person who is otherwise qualified, that:

- 20 • She is guaranteed the fundamental right to access all state court  
21 programs, services and activities.
- 22 • It is unconstitutional for any person to discriminate against  
23 disabled persons in state court programs, services and activities.

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24 <sup>3</sup> In Auschwitz, the gassing of prisoners began under a euthanasia edict for all physically  
25 handicapped and mentally retarded. Approximately 70,000 were killed by summer, 1941.  
“Auschwitz: Inside the Nazi State” by Laurence Rees, Public Broadcasting System, aired January  
19, 2005.

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- Opposing attorneys who discriminate against disabled persons and state judges who permit their discrimination have violated the Constitution.
- State judges who retaliate against disabled persons who blow the whistle on judges’ unconstitutional discrimination have violated the Constitution.
- Anyone who creates and maintains a hostile environment that permits and encourages disability discrimination by targeting a disabled person to prevent access to the court has violated the Constitution.
- The California judiciary enacted CRC 989.3 expressly to comply with ADA Title II, but the rule violates ADA Title II by, among many other violations, failing to provide an administrative mechanism for appellant to request that the presiding trial judge order opposing state attorneys to reasonably accommodate her disability.
- Appellant exercised her constitutional right by the only procedure made available to her by the California court – a motion for protective order.

- 1           • The presiding trial judge not only denied the motion and the  
2           motion for reconsideration but ordered \$1119.00 in sanctions (to  
3           punish an “uppity cripple” who refused to submit to his  
4           oppression) in retaliation for appellant’s exercising her  
5           constitutional rights.  
6
- 7           • Although CRC 989.3 guarantees that state and federal declaratory  
8           and injunctive relief are available to appellant, the California  
9           judiciary has opposed her access to any federal relief.  
10
- 11          • The federal district court dismissed appellant’s case on  
12          jurisdictional grounds, and in the alternative, on other grounds,  
13          with prejudice in violation of the plain law of the Ninth Circuit  
14          and with knowledge of the Supreme Court’s imminent decision in  
15          *Tennessee v. Lane* that would apply to her case.  
16
- 17          • A Ninth Circuit panel filed an unpublished memorandum  
18          supporting the district court’s opinion, which guarantees that  
19          appellant has no remedy and will not be permitted future access to  
20          federal and California courts due to disability discrimination,  
21          animus, coercion and retaliation as a pro se private attorney  
22          general, litigant and juror and ruling that she cannot obtain  
23          damages for intentional discrimination, coercion and retaliation.  
24  
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1 It strongly appears that Judge Kozinski's personal observations regarding  
2 *real* issues of judicial ethics in the Ninth Circuit are the *real* cause for denial of  
3 appellant's appeal. Appellant's petition for rehearing en banc and suggestion  
4 should be expeditiously granted and expeditiously decided. The panel's bias is  
5 readily apparent. There exists a strong appearance of impropriety, which  
6 merits the exclusion of those judges for rehearing by any panel or any en banc  
7 panel.  
8

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10 II. The Panel's Memorandum Rests on Suppression and Mischaracterization of  
11 the Facts and Controlling Law.

12 A. The Rooker-Feldman doctrine does not bar ADA Title II lawsuits to  
13 remedy direct constitutional injuries that stem from a state court's  
14 written, purely administrative policy and guidance to the public that  
15 were in place at the time of the injuries and that are likely to cause  
16 future repetition of the same injuries.  
17

18 CRC 989.3 fails to provide an administrative procedure and  
19 process to compel opposing attorneys and any persons whatsoever to  
20 accommodate appellant's disabilities. This failure caused one of  
21 appellant's constitutional injuries for which the panel has barred suit.  
22

23 The Ninth Circuit's homepage advertises the final report of its  
24 Task Force on Racial, Religious and Ethnic Fairness. (Addendum,  
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1 pp.44-47) The report states that lawyers have reported one or more  
2 instances of bias by other counsel, judges and court staff.

3 (Addendum, page 45) Should the Ninth Circuit fail to provide an  
4 administrative remedy for racial, religious and ethnic bias in revision  
5 of its programs, that failure would be affirmative approval and  
6 encouragement to injure persons in the exercise of their  
7 constitutional rights to access federal courts. *Armstrong v. Davis* ,  
8 275 F.3d 849 (9<sup>th</sup> Cir. 2001).  
9

10  
11 B. Rooker-Feldman does not bar ADA Title II suit to remedy harm that  
12 is part of an unconstitutional and discriminatory pattern of officially  
13 sanctioned behavior, violative of the plaintiff's fundamental  
14 constitutional and federal statutory rights. *Armstrong v. Davis*,  
15 *supra*. Appellant has alleged this harm with thorough particularity  
16 by undisputed facts and documentary evidence.  
17

18 C. Judge Goodwin and the Ninth Circuit have ruled that, when  
19 constitutional questions are in issue, the availability of judicial  
20 review is presumed, and the court will not read a statutory scheme to  
21 take the extraordinary step of foreclosing jurisdiction, unless  
22 Congress' intent to do so is manifested by clear and convincing  
23 evidence. *Walters v. Reno* , 145 F.3d 1032 (9<sup>th</sup> Cir. 1998). Appellant  
24  
25

1 has raised and thoroughly briefed facial and as-applied constitutional  
2 questions re: CRC 989.3.

3 D. Judge Goodwin and the Ninth Circuit have ruled that, when  
4 government rules, policies, procedures and practices are  
5 affirmatively and expressly misleading, constitutional due process  
6 violations are compounded. *Walters, supra* .

7  
8 E. Judge Goodwin and the Ninth Circuit have ruled that a pro se  
9 appellant has the constitutional right to injunctive relief from the  
10 coercive effect of a school policy regarding the inclusion of “under  
11 God” in the Pledge of Allegiance.

12  
13 Although Judge Goodwin ruled in a published opinion that the  
14 inclusion of “under God” in the Pledge violates the Establishment  
15 Clause, (*Newdow v. U.S. Congress* , 292 F.3d 597 (9<sup>th</sup> Cir. 2003), he  
16 ruled in an unpublished opinion that appellant has no fundamental  
17 constitutional right to be free from discrimination in California  
18 courts, ignoring and defying *Tennessee v. Lane, supra*.

19  
20  
21 Judge Goodwin granted Mr. Newdow the injunctive “...relief to  
22 which he is entitled.” Judge Goodwin denied plaintiff the injunctive  
23 relief to which she was constitutionally entitled. Judge Goodwin  
24 wrongly granted the California court system unconstitutional relief  
25

1 from the mandates required by ADA Title II and the U.S.  
2 Constitution.

3 The U.S. Supreme Court reversed Judge Goodwin's published  
4 opinion in *Newdow, supra* . The Ninth Circuit's en banc review of  
5 appellant's case can prevent the waste of judicial resources and  
6 undue burden, delay and costs to appellant in order to reverse the  
7 panel's unconstitutional, unpublished memorandum.  
8

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10 F. Judge Alarcon and the Ninth Circuit have previously ruled on CRC  
11 989.3 and its accommodations request form's referral requirement  
12 for accommodation decision to the trial presiding judge, but they did  
13 not consider facially and as-applied unconstitutional and  
14 discriminatory issues. *Memmer v. Marin County Courts* , 169 F.3d  
15 630, 633-34 (9<sup>th</sup> Cir. 1999).  
16

17 G. The U.S. Supreme Court and the Ninth Circuit have ruled that state  
18 court entities, judges, employees, opposing attorneys and other  
19 persons may neither enact discriminatory laws, rules, policies,  
20 procedures, and practices nor engage in any discriminatory conduct  
21 that violates the fundamental constitutional right of disabled persons  
22 to access state courts. *Tennessee v. Lane, supra, Duvall, supra,*  
23 *Memmer, supra*. The panel did not consider appellant's inability to  
24  
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1 access the California court as a pro se attorney, litigant and juror due  
2 to illegal acts of disability discrimination that were only possible due  
3 to the facially unconstitutional, discriminatory policy itself and its  
4 procedures, processes and practices as applied to appellant.  
5

6 H. Appellant has exclusively confined her requested injunctive and  
7 declaratory relief and damages request to that which stems from  
8 constitutional and statutory injuries caused by facially  
9 unconstitutional and discriminatory rules, policies, procedures and  
10 practices.  
11

12 An exhaustive listing supporting this statement is found at: ER 1-41,  
13 78-103, 105-170, Appeal Opening Brief, Reply Brief, Appellant's  
14 Request for Judicial Notice and Supplemental Request for Judicial  
15 Notice. Specific references to examples from the aforementioned  
16 exhaustive listing are found at ER 1, lines 1-12 and 24-28; ER 2  
17 lines 1-17; ER 5-6; ER 12, lines 12-16; ER 19, lines 21-28; ER 20,  
18 lines 1-23; ER 84-87, lines 1-10; ER 90-91, lines 1-8; ER 93, lines  
19 16-18; ER 94, lines 16-21; ER 96, lines 21-24; ER 97, lines 13-16;  
20 ER 98, lines 14-18; ER 99, lines 9-27; ER 102, lines 1-17.  
21  
22

23 I. Appellant's request that the district court assume jurisdiction over  
24 her state lawsuit was expressly contingent upon the court's decision  
25

1 to grant or deny relief from constitutional and federal statutory  
2 injuries, stemming from a facially unconstitutional, discriminatory  
3 CRC 989.3 and the fraudulent policies, procedures, practices and  
4 conduct undertaken pursuant to CRC 989.3. ER 102-103.

5  
6 Moreover, as a pro se attorney, appellant is held to less stringent  
7 standards than formal pleadings by lawyers. Appellant's Opening  
8 Brief, pp. 46, 47 lines 1-12.

9  
10 J. The panel's finding that appellant requested the district court to  
11 order Judge Nugent to rule in her favor regarding the protective  
12 order is factually inaccurate and *is not stated anywhere in*  
13 *appellant's pleadings*. The panel ignored appellant's facts, which  
14 must be assumed to be true, i.e., that ADA prohibits discrimination  
15 by Judge Nugent, opposing attorneys and all other defendants.  
16 Appellant had the fundamental constitutional right to request a  
17 protective order from discrimination by opposing attorneys.  
18 Moreover, the motion for protective order was only necessary,  
19 because CRC 989.3 does not provide an administrative grievance  
20 procedure, which violates ADA Title II's mandate. See 28 C.F.R.  
21  
22

23 In addition, the panel misstates that sanctions for requesting a  
24 protective order are mandatory. Cal. Code Civ. Procedure Section  
25

1 2023 flatly contradicts the panel’s memorandum. ER 72. Judge  
2 Nugent’s ruling stated that CCP Section 2023 permits the judge to  
3 use his discretion not to impose sanctions, if appellant acted “with  
4 substantial justification or other circumstances make the imposition  
5 unjust.” Judge Nugent determined that appellant’s request to be free  
6 of disability discrimination by opposing attorneys is substantially  
7 unjustified, flatly contradicting both ADA Title II and the San Diego  
8 Superior Court’s Local Policy Against Bias.  
9

10  
11 Appellant has documented that the declarations on which the  
12 sanctions were based are false. Judge Nugent ignored appellant’s  
13 undisputed facts in his rulings. His imposition of an \$1119.00  
14 sanction in retaliation for requesting protection for disability  
15 discrimination violates ADA Title II. In addition Judge  
16 McConnell’s denial of access to the Appeals Court, which required  
17 an illegal \$655 filing fee, violates ADA. Rooker-Feldman does not  
18 bar suit. *Tennessee v. Lane, supra, affirming Popovich, su pra.*  
19  
20 Appellant could not obtain a final decision in state court. She did  
21 not seek relief from Judge Nugent’s denial of a protective order and  
22 sanctions in federal court.  
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1 K. Both the panel and the district court ignored *Kougasian, supra* in  
2 that allegations of false declarations and obstruction of justice do not  
3 justify Rooker-Feldman abstention. The panel ignored the district  
4 court's opinion that did not reference that *Bianchi* applied to  
5 appellant's case in any way. ER 180-183. The Bianchi court  
6 addressed only final state court judgments, which purportedly  
7 offered meaningful review. Bianchi supports appellant's position. In  
8 addition, the panel also ignored *Maldonado, Fontana, Noel , and*  
9 *Wolfe, supra,* which are inconsistent with the panel's opinion.  
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11  
12 L. The panel's opinion ignored and exacerbated the inherent tension  
13 between the Rooker-Feldman doctrine, the doctrine of Judicial  
14 Immunity, and ADA Title II. The panel ignored its duty pursuant to  
15 *Tennessee v. Lane, supra* to resolve the tension to favor appellant,  
16 not the state discriminators to enforce her fundamental due process  
17 right to access state courts.  
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19  
20 M. The panel ignored violations of ADA Title II by Judges Weber,  
21 Strauss, McConnell, Director Vickrey and the court entity  
22 defendants, which are not barred by Rooker-Feldman.  
23

24 N. The panel ignored *Duvall, supra* , that specifically reviewed the  
25 administration of a state lawsuit, a state judge's ADA

1 accommodation actions during judicial proceedings, ADA  
2 discriminatory state court policies and procedures and the actions of  
3 court employees regarding both the application and violation of the  
4 ADA Title II. Rooker-Feldman was never raised to bar federal  
5 jurisdiction by the *Duvall* panel.  
6

7 O. The panel ignored appellant's jury service ADA claims, which are  
8 not barred under Rooker-Feldman, as they have never been reviewed  
9 at all in state court.  
10

11 P. The panel's defiance of the U.S. Supreme Court's opinion in  
12 *Tennessee v. Lane, supra* , mirrors the Fifth Circuit's defiance of the  
13 Supreme Court ruling that mandated the abolition of intentional  
14 racial discrimination against prospective jurors.  
15

16 *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

17 The Fifth Circuit refused to recognize and remedy discrimination  
18 against prospective jurors who happen to be members of targeted  
19 groups, i.e., women, Jews and disabled. The Fifth Circuit ignored  
20 the ramifications of an express policy by the Assistant Dallas County  
21 District Attorney in 1996, entitled Jury Selection in a Criminal Case:  
22

23 "I don't like women jurors, because I can't trust them... Jewish  
24 veniremen generally make poor state's jurors... Look for physical  
25 afflictions... These people usually sympathize with the accused."

1 Appellant would have been discriminated against, because she is  
2 a member of all three targeted groups. In 2005, the Ninth Circuit,  
3 like the Fifth Circuit, has issued an unpublished panel memorandum  
4 that permits the California judiciary to exclude her from prospective  
5 jury service solely on the basis of her physical afflictions. The  
6 panel's ruling permits state courts within the Ninth Circuit's  
7 jurisdiction to inflict constitutional injuries, based solely on animus,  
8 against appellant and all disabled persons targeted for  
9 discrimination.  
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12 Q. The panel's unpublished memorandum assures that disabled persons  
13 in states within the jurisdiction of the Ninth Circuit are neither  
14 advised nor warned that ADA Title II suit is jurisdictionally barred  
15 to remedy direct constitutional injuries that stem from affirmatively  
16 and expressly misleading state court administrative policies that lull  
17 them into a false sense of personal security that they will not suffer  
18 constitutional injuries denying them access to the courts due to  
19 perverse disability discrimination.  
20  
21

22 R. The panel has interpreted the ADA statute to produce absurd,  
23 nonsensical results, dictating that disabled persons have no remedy  
24 in federal court whatsoever for disability discrimination by state  
25

1 courts. Its opinion should be afforded no deference. *United States*  
2 *v. Wilson*, 503 U.S. 329, 334 (1992), *Ma v. Ashcroft* 361 F.3d 533  
3 (9<sup>th</sup> Cir. 2004).

4 S. The need for a published opinion is supported by California Judicial  
5 Council's Access and Fairness Advisory Committee member, Mary  
6 Ann Jones, who stated in her 1997 law review article regarding CRC  
7 989.3 that:

8  
9 “...At this time, no reported cases dealing with accommodations  
10 under this rule exist... **until such time as denials of requested**  
11 **accommodations result in writs to the Court of Appeals**  
12 **followed by published decisions, judges will not have a well**  
13 **developed body of case law dealing specifically with this**  
14 **rule...**” (Emphasis supplied, Opening Brief, p. 23)

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17 **III. Conclusion**

18 For the foregoing reasons, the Court should expeditiously grant  
19 rehearing en banc, disqualify the panel members from any rehearing panel,  
20 reverse the panel's memorandum in its entirety, decide all issues presented in  
21 appellant's opening brief, and expeditiously publish any future decision.  
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Respectfully submitted,

Date: January 25, 2005

Jacquelyn Finney  
(Type)

"/s/"  
Jacquelyn Finney  
Appellant, Pro Se