UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ABRAHAM RIBICOFF FEDERAL BUILDING

450 MAIN ST.

HARTFORD CT 06103

CASE NO. 3:15 cv 01521

United States of America, Ex. Rel.

Joan T. Kloth-Zanard PLAINTIFF

V.

Department of Social Services

Roderick L. Bremby, Commissioner of the DSS

Governor Dannel Malloy & State of Connecticut

Eva Tar DEFENDANTS

**AMENDED COMPLAINT FOR MOTION TO VACATE & RESCIND LIEN**

**& DEMAND FOR TRIAL BY JURY**

**NATURE OF THE CASE**

1) The Plaintiffs, the United States of America & Joan T. Kloth-Zanard, a resident of New Haven County, and herself residing at 320 North George's Hill Road, Southbury, CT 06488, had her constitutional rights violated by the defendants when they placed an improper lien upon her property with no exculpatory, physical evidence to prove the validity of their claim. Furthermore, the lien was improperly

placed with no amount and for past, present and future claims. The state nor any other body cannot claim future damages that have not occurred.

2) As well, it appears that the Attorney General is not allowed to represent the state as Plaintiff had contacted the AG and it's offices on June 22, 2012 and July 3, 2012, prior to any court filings and this could be construed as Fraud Upon the Courts as well as a violation of the cannons of law related to the following cases: FAIR HEARING REQUEST CASE NO. 434921, STATE CASE NO. HHB-CV: 13-5015788 AND APPELLATE CASE NO. A.C. 36729.
3) Plaintiff petitions the courts to vacate and rescind the lien upon her and her property permanently based on lack of substantial evidence by the defendant. She also motions the court for exculpatory evidence to prove the state's claim.

**AMENDED COMPLAINT TO INCLUDE BUT NOT LIMITED TO:**

4) Extensive ADA Violations including TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA), 42 U.S.C. §§ 12131-12134, SECTION 504 OF THE REHABILITATION ACT OF 1973 (SECTION 504), 29 U.S.C. § 794, SECTION 28 CFR § 35 & 36 FROM THE DOJ OF THE UNITED STATES OF AMERICA
5) Department of Social Services is not protected by Sovereign immunity, as it is a municipality owned/run agency. Jabbar COLLINS, Plaintiff, v. The CITY OF NEW YORK, 923 F.Supp.2d 462 (2013)
    a) Suits for prospective relief are not barred, *id.,* and Eleventh Amendment immunity does not extend to a suit against a state official in their individual capacity, even when the conduct complained of was carried out in accordance

with state law. *Ford v. Reynolds,* 316 F.3d 351, 356 (2d Cir.2003). McFarlane v Roberta, 891 F.Supp.2d 275 (D. Conn. 2012)

i) Municipal entities do not enjoy absolute immunity under the Eleventh Amendment. For example, tt appears that the case of the Department of Social Services for the City of Baltimore is not a state agency, but rather, is a municipal entity.[13] And that municipal entities are liable under §1983 only if "action pursuant to official municipal policy of some nature caused a constitutional tort." Much of the sovereign immunity of the United States was swept away in 1946 with passage of the FTCA, which renders the Government liable "for money damages . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United Page 481 U. S. 693, 28 U.S.C. § 1346(b). Read as it is written, this language renders the United States liable to *all* persons, including servicemen, injured by the negligence of Government employees and Monell v. New York Dep't of Social Service., **436 U.S. 658**, 691, 98 S. CT. 2018, 2036, 56 L.Ed.2d 611 (1978).

ii) Constitutional Tort would be fiduciary responsibility to legally notify the plaintiff of her true educational rights in 1995 under Welfare Reform and the Family Violence Act.

iii) Constitutional torts are violation of one's constitutional rights by a government servant. Constitutional tort actions are brought under 42 USCS §

1983 against government employees seeking damages for the violation of federal constitutional right, particularly those arising under the Fourteenth Amendment and the Bill of Rights.

iv) 42 USCS § 1983 reads as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the U.S. or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

v) Writ of Mandamus is requested to enforce the Federal and State statutes that protect the citizens from Treason and Trespass of the law by a court official or other government official.

vi) Writ of Prohibition is requested to stop the Defendant's vexatious actions and violations of Federal and State Statutes that prohibit any official from ignoring the laws and rules that govern our country.

vii) In approximate 1994, Governor requested to create his own Welfare Reform Act to supersede Federal Laws. This superseding of the Federal Welfare Reform Act should be seen as suspect and retractable as Governor Rowland

was then convicted twice and removed from office and arrested for financially abusing state funding.

**PARTIES**

6) Plaintiff, United States of America

7) Plaintiff Joan T. Kloth-Zanard is a citizen and resident of the state of Connecticut.

8) Defendants Governor Dannel Malloy,, Roderick L. Bremby, Commissioner of the Department of Social Services are employees of the state of Connecticut's Department of Social Services. Eva Tar, the fair hearing officer, who's offices are at DSS in Hartford. The caseworkers for the Department of Social Services involved in 1995 cannot be listed as the State of Connecticut cannot produce the records with their names, thus the plaintiffs can only include DSS and Governor Malloy in this case.

**JURISDICTION AND VENUE**

9) The amount of the controversy exceeds $20,000.

10) The court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, 1332.

11) Venue is proper in this district pursuant to 28 U.S.C. § 1391.

12) Plaintiff filed a suit and requested permission to sue back in July 2012 with the Claims Commissioner.

    a) Under General Statutes Chapter 53, the Claims Commissioner has only 90 days within which to respond.

b) Plaintiff repeatedly emailed and called asking about the status of this request and were told for 2.5 years that it was "sitting on the commissioner's desk" by his clerk, Tara Dupont and Erica Searles (Unsure of last name).

c) On the following dates, Plaintiff repeatedly contacted the Claims Commissioner and Commissioner Bremby and others as to the status of this request to sue DSS.

   i) August 2, 2012, Letter

   ii) On or About July 12, 2013, Phone call

   iii) August 1,2014, Letter

   iv) October 20, 2014 series of emails including a response from Tara stating it is still pending with no decision having been rendered.

   v) October 21, 2014, after finding out about General Statute pertaining to the Claims Commissioner, Plaintiff's letter cites General Statute Chapter 53.

d) Claim Commissioner's refusal to respond within the 90 Days allotted by General Statute Chapter 53 shows that they were out of time limit to respond and thus gave up their right to make any decision as to the validity of this suit, and thus their right to have a voice in this matter.

13) Jurisdiction of this matter finds that *Rooker–Feldman* which is a limited doctrine aimed at preventing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review of those judgments," is not applicable based on the four prongs used to test for jurisdiction in state contested matters. Prong 1:The plaintiff was NOT losers in a case initiated by the state for false neglect charges. In fact, the plaintiff never was given the opportunity to contest and try her

case for educational violations and denials by DSS as she was never informed of this right to have a fair hearing. DSS has no proof otherwise either as they cannot produce the Plaintiff's records prior to 2010. Prong 2: Plaintiff was harmed by DSS's decision. It was the defendant's negligent actions that caused the harm. Prong 3: The plaintiff had no need to ever invite the district court to review any lower court decision as she was never given this opportunity. Prong 4: Because the Plaintiff's basic rights to a fair hearing and trial were never provided, no district court was ever brought in to contest it. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280, 283–4, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). The Second Circuit has adopted a four-part test for determining whether *Rooker–Feldman* strips jurisdiction:

14) *Rooker–Feldman* directs federal courts to abstain from considering claims when four requirements are met: (1) the plaintiff lost in state court, (2) the plaintiff complains of injuries caused by the state court judgment, (3) the plaintiff invites district court review of that judgment, and (4) the state court judgment was entered before the plaintiff's federal suit commenced. *McKithen v. Brown,* 626 F.3d 143, 154 (2d Cir.2010). DCF and the Social Workers contend that, because Ms. McFarlane is seeking only a reversal of the state juvenile court judgment, she falls well within the bounds of *Rooker–Feldman. See* Defendant's Memorandum of Law in Support of Motion to Dismiss Amended Complaint ("Memo. Supp. Mot. Dismiss Am. Compl.") (Doc. No. 29–1) at 7–10.

15) Defendants intentionally omitted information about the plaintiff's rights in 1995 and then subsequently falsely placed her name on the abuse and neglect registry. Plaintiff Kloth-Zanard began to discover these intentional omissions and committed acts by

accident when a false lien was placed on her home by DSS related to the time period of 1995-1998.

16) Plaintiff did not actually discover about the placement on the Abuse and Neglect Registry until about June 2012, and thus this is when the Statute of Limitations began for the filing of the DCF complaint.

a) This accidental disclosure in 2012 resulted in a timely and diligent research on Plaintiff Kloth-Zanard's part related to the potential harm from this omitted information, thus tolling the statue of limitations.

**FACTUAL BACKGROUND:**

17) The plaintiff alleges the following facts:

a) Plaintiff was a victim of Domestic Violence when she came to CT in 1995. She was protected under the Family Violence Laws as a separate class of citizen under Welfare Reform.

b) The defendant's claim that the Plaintiff received between $21,000 and $25,000 in cash assistance from 1995-1998.

c) While DSS clams they gave me cash assistance in from July 1997-July 1998 this is not possible, as the plaintiff was was working for Adam Broderick's Salon and Spa and in July 1998 ended up on Unemployment, which will confirm this as a fact.

d) In addition, the amount of money $22,000 plus the child support that was paid and removed from the total figure of $28,310 over a supposed period of 39 months, amounts to $725 a month in cash, which comes out to $4.22 an hour. Minimum

wage in 1995 through October 1996 was only $4.25. It is highly suspect that the state would have given any claimant under the new Welfare Reform act, almost minimum wage.

e) In addition, the Welfare Reform act only allowed for a person to receive cash assistance for 18-21 months, thus making 39 months a violation of the Welfare Reform Act by the Appellee or a gross overstatement of the time the Appellant was receiving state cash assistance.

f) In February 2012, A lien was placed upon the Plaintiff's property without properly notifying her so she could contest it in court before it's placement.

g) The Defendants placed an illegal open-ended lien upon the plaintiff's property for past, present and future aid for her and her extended family.

h) Plaintiff contends that she never received any cash assistance and if she did it was for a very small amount.

i) Neither DSS, nor the State Nor the Governor can produce any exculpatory, physical evidence that the Plaintiff received cash assistance. The defendant's only evidence is an admitted "reconstructed spreadsheet" that no one knows who, how, when or with what that it was created.

j) The Defendant claims that a 4th party removed hearsay witness can validate the "reconstructed spreadsheet" despite the fact that he has no evidence to base his validation upon.

k) The reconstructed spreadsheet cannot be validated as the person or persons who created it cannot be identified. There are no cancelled checks or bank statements to prove acceptance of any cash assistance by the Petitioner. Furthermore, the

defendants cannot produce any signed papers, contracts or applications by the Plaintiff from this time period. Nor are there any direct first or second party witnesses from the time period in question.

l) The Defendants have failed repeatedly, despite numerous FOIA requests and allowing them 8 months, to produce reasonable exculpatory evidence based on Federal and State rules to substantiate their claims for a lien on the Plaintiff's property, despite numerous Freedom of Information requests.

m) The Defendant's also filed the lien beyond the Federal and State statute time period of 15 years from the date of the supposed incident.

n) In addition, under federal administrative taxation law, if a claim or lien dates to older than 10 years, it must be removed. This claim was placed at minimum 15 years after the supposed time frame in question.

o) The Defendant also failed to provide a proper intent to lien before placing the lien and provide for a chance for the Plaintiff to contest the state's claims.

p) Furthermore, once the lien was placed, the Plaintiff's ability to remove it was impeded with by the defendants during her DSS Informal Fair Hearing, where she was held to a higher standard than all other recipients contesting a DSS decision at a fair hearing.

q) Furthermore, the Plaintiff's evidence was ignored and denied merit, yet the state's lack of evidence and proof was allowed. This is a violation of Federal and State statutes and thus a Writ of Mandamus and Writ of Prohibition need to be enacted.

r) And lastly, the Plaintiff's ADA rights were repeatedly ignored and denied throughout the entire process.

**COURTS CLAIM OF SOVEREIGN IMMUNITY**

18) The plaintiff now addresses the State's claim of Sovereign Immunity. The plaintiff feels this is moot based on the following case precedents and Plaintiff, Kloth-Zanard's ADA Rights.

    a) Our founding fathers did not mean the Eleventh Amendment to allow states to be immune from prosecution because it opened up a door that would allow the states to do as they please. From the Article by Mark Strasser: "*Chishom, The Eleventh Amendment, and Sovereign Immunity: On Alden's Return to Confederation Principles*". In this article it is cited that Alexander Hamilton, James Madison as well as many other argued that the Interpretation of the Eleventh Amendment has been taken out of context and can be too easily abused by the states.

19) John Marshall argued that federal courts would have to have jurisdiction over issues involving the Constitution and federal laws. He suggested this both in Cohen's and also in the ratification debates. He, like the other Framers, understood that the consequences of allowing states to plead sovereign immunity when violating federal law or abridging individual rights under the Constitution would be too "mischievous" to be tolerated.

20) The current Court claims to base its robust state sovereign immunity view on the intentions of the Framers. Yet, the Framers had just experienced the consequences of having a weak central government where states might put their own perceived interests over the interests of the nation as a whole. The Framers understood what the Court apparently does not: unless states can be forced to appear in federal court, they will violate federal law and subvert national interests with impunity, whether directly

or indirectly. The Courts current interpretation of state sovereign immunity does not comport with the language of the Constitution, the Framers' intentions, or a policy likely to promote the interests of the nation as a whole, and must be corrected at the first opportunity.

a) As to the Eleventh Amendment, it speaks specifically that non-citizens of a state cannot sue that state. As the Plaintiff is a citizens of the state of CT, they are not barred according to the Eleventh Amendment.

b) It is widely felt by the Supreme Court, Judges and attorneys that the Eleventh Amendment is unconstitutional and poorly written. *Harvard Law Review, The Eleventh Amendment and the Nature of the Union by Bradford Clark, Volume123, une 2010, Number 8.*

c) In fact, the Abrogation doctrine, which the Eleventh Amendment is based around, is a constitutional law doctrine expounding when and how the Congress may waive a state's sovereign immunity and subject it to lawsuits to which the state has not consented (i.e., to "abrogate" their immunity to such suits). *In *Seminole Tribe v. Florida*, 517 U.S. 44 (1996) the Supreme Court ruled that the Congress's authority, under Article One of the United States Constitution, could not be used to abrogate state sovereign immunity.[1] However, the Congress *can* authorize lawsuits seeking monetary damages against individual U.S. states when it acts pursuant to powers delegated to it by amendments subsequent to the Eleventh Amendment. This is most frequently done pursuant to Section 5 of the Fourteenth Amendment, which explicitly allows the Congress to enforce its guarantees on the states and thus overrides states' Eleventh Amendment immunity. *The doctrine

was first announced by the Supreme Court in a unanimous decision written by then-Associate Justice William Rehnquist, *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). *Bitzer* "continued the line of reasoning that Rehnquist had acknowledged in *Fry v. United States* ... that cases involving Congress' authority under Section 5 present different problems than cases involving the Congress's Commerce Clause authority."[2] The doctrine has since developed a number of nuances and limitations. In particular, later cases explained that the Court would not infer Congressional intent to abrogate sovereign immunity, but would only uphold arrogations where the Congress has "unequivocally express[ed] its intention to abrogate the Eleventh Amendment bar to suits against states in federal court." In order to do this, the Congress must "mak[e] its intention unmistakably clear in the language of the statute." *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985).

d) Another limitation that the courts have read into Congressional power to abrogate is the "congruence and proportionality" test, first discussed in *City of Boerne v. Flores*, 521 U.S. 507 (1997). Because the Fourteenth Amendment allows Congress to take "appropriate" action to enforce rights, the Court has determined that such action must be congruent and proportional to the deprivation of the right that the Congress is seeking to remedy. An example of a case where an act of the Congress failed the *Boerne* test is *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000). An example where an act passed the *Boerne* test is *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003).*Alexander Chisholm v. Georgia*, 2 U.S. 419 (1793), is considered the first United States Supreme Court case of

significance and with impact related to the Eleventh Amendment. Given its date, there was little available legal precedent (particularly in American law).[1] It was almost immediately superseded by the Eleventh Amendment.

21) Article III, Section 2's grant of federal jurisdiction over suits "between a State and Citizens of another State" abrogated the States' sovereign immunity and granted federal courts the affirmative power to hear disputes between private citizens and States.

22) Citizens of one state or of foreign countries can still use the federal courts if the state consents to be sued, or if Congress, pursuant to a valid exercise of Fourteenth Amendment remedial powers, abrogates the states' immunity from suit. See *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976).

   a) The Court ruled that Congress has the power under the Fourteenth Amendment to abrogate sovereign immunity of states, because the Fourteenth Amendment was enacted specifically to limit the power of the states, with the purpose of enforcing civil rights guarantees against them.

   b) Furthermore, a federal judge in Tallahassee, Florida, Judge Maurice Paul granted the motion for opening the following case against FL state agencies. This case opens the door to impede the state’s claims of sovereign immunity.

      i) The ruling resulted from a lawsuit by the Florida Teaching Profession-National Education Association (FTP-NEA) on behalf of three educators and the entire class of 211,000 persons listed on the "indicated" category of the abuse registry computer. Judge Paul's October, 1990 ruling opened the door for 211,000 lawsuits against the Florida Department of Health and

Rehabilitative Services (H.R.S.). The Florida Legislature, during the spring, 1991 session, removed the "indicated-perpetrator unknown" classification from state law books in order to avoid substantial litigation costs.

c) Furthermore, under the Rehabilitation Act and involved in several of the cases listed below, if a state's agency receives Federal Funding, they forfeit sovereign immunity. DSS receives Federal Funding. "Court invalidated the abrogation of sovereign immunity in several civil rights statutes. Nevertheless, as explained below, the Court upheld the abrogation of sovereign immunity in later cases involving other statutory provisions. Moreover, an alternative approach authorizing damages which is utilized in the Rehabilitation Act -- tying the waiver of sovereign immunity to the receipt of federal funds -- has to date been very successful in many federal courts of appeals" in other words accepted. Rochelle Bobroff & Harper Jean Tobin, *Strings Attached: The Power of the Federal Purse Waives State Sovereign Immunity for the Rehabilitation Act*, 42 Clearinghouse Review 16 (May-June 2008).

d) State law gives state officials and employees immunity from liability when discharging their duties and acting within the scope of their employment. But they are not immune from liability for wanton, reckless, or malicious acts such as deliberately withholding pertinent information as to the Plaintiff's educational rights.

e) By statute, state employees and officers are not liable for damage or injury that is caused within the scope of their employment or by the discharge of their DUTIES AS LONG AS THEY ARE NOT WANTON, RECKLESS, OR

MALICIOUS(CGS § 4-165). The DCF workers actions were deliberate done on purpose as they were clearly told by the Judge on November 18, 1997 and in subsequent follow-ups with this judge, that charges were dismissed and that they were the ones in neglect.

23) Per § 2000d–7. Civil rights remedies equalization (a) General provision (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance. (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State. (b) Effective date The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986. (Pub. L. 99–506, title X, §1003, Oct. 21, 1986, 100 Stat. 1845.)

24) There is no immunity for the state or it agencies under federal civil rights law for Defamation, Slander, Perjury, Due Process rights or any other acts that cause undue harm to another.

25) When a judge does not follow the law, i.e., they are a *trespasser of the law*, the judge loses subject-matter jurisdiction and the judges orders are void, of no legal force or

effect." The U.S. Supreme Court, *in* Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687, 1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, s/he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." [Emphasis supplied in original]. "Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason." *U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980 ); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821)* Any judge or attorney who does not report a judge for treason as required by law may themselves be guilty of *misprision of treason*, 18 U.S.C. Section 2382.

26) To remedy violations of these federal laws, an aggrieved individual may seek relief from states and/or state officials. (http://federalpracticemanual.org/node/47#1, *Rochelle Bobroff*)

a) Cases have reaffirmed the availability of injunctive relief against state officials for violations of safety net and civil rights statutes. *See* Rochelle Bobroff, *Ex Parte Young as a Tool to Enforce Safety Net and Civil Rights Statutes*, 40 Univ. of Toledo L. Rev. 819 (2009).

27) The Court upheld the abrogation of sovereign immunity in later cases involving other statutory provisions. *See* Rochelle Bobroff, *Scorched Earth and Fertile Ground: The Landscape of Suits Against the States to Enforce the ADA*, 41 Clearinghouse Review

298 (Sept.–Oct. 2007). *See also* Harper Jean Tobin, *The Genetic Information Nondiscrimination Act of 2008: A Case Study of the Need for Better Congressional Responses to Federalism Jurisprudence*, 35 J. of Legis. 113 (2009).

28) Moreover, an alternative approach authorizing damages which is utilized in the Rehabilitation Act -- tying the waiver of sovereign immunity to the receipt of federal funds -- has to date accepted. Rochelle Bobroff & Harper Jean Tobin, *Strings Attached: The Power of the Federal Purse Waives State Sovereign Immunity for the Rehabilitation Act*, 42 Clearinghouse Review 16 (May-June 2008).

29) State officials may be sued for damages in their *individual capacity* for violations of federal constitutional or statutory rights committed in the course of official duties but maybe entitled to claim qualified immunity. The Fourth Circuit held in *Lizzi v. Alexander*, 255 F.3d 128, 137-38 (4th Cir. 2001), *cert. denied sub nom. Lizzi v. Washington Metropolitan Area Transit Authority*, 534 U.S. 1081, *reh'g denied,* 535 U.S. 952 (2002), that individual capacity suits against state officials arising out of official acts may be limited to suits under 42 U.S.C. § 1983, and not to liability arising under other federal statutes, even though the statute specifically makes the state official liable. Without explanation, the court held that such suits are in fact against the state. Presumably, the court expected the state to indemnify the official for any liability.

a) As DSS was well aware of our statutory rights and denial of the plaintiff's educational rights under the Family Violence Act and Welfare Reform, qualified immunity is not barred from recovery as the official's conduct did "violate clearly established statutory or constitutional rights of which a reasonable person would

have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (emphasis added). See Robert Capistrano, *Using Section 1983 to Raise Constitutional Claims in Garden-Variety Cases*, 38 Clearinghouse Review 734, 741 (March-April 2005).

b) Congress has power to abrogate state sovereign immunity when it does so unequivocally and pursuant to a grant of constitutional authority. If the abrogation is constitutionally valid, states may be sued in federal court in their own name for violations of relevant statutes to which the abrogation applies, and plaintiffs may recover damages from states if the underlying statute so provides. (*Kimel v. Florida Board of Regents*, 528 U.S. 62, 73-74 (2000) (holding that congressional intent to abrogate state sovereign immunity is clearly expressed when a statute, by its plain terms, applies to state actors). *See aslo* Bobroff, *Scorched Earth*, *supra* note 10; Tobin, *supra* note 10.

c) There are three ways that states waive their immunity: (1) by state legislation explicitly waiving immunity from suit; (2) by accepting federal funds that have been provided on the condition that sovereign immunity is waived; and (3) by removing state court litigation to federal court.

30) Many federal programs, including cash assistance, medical insurance, food stamps, and housing, are implemented through grants to the states. The states are responsible for the administration of these programs and are required to operate them in compliance with federal law. *Frew v. Hawkins*, 540 U.S. 431, 433 (2004). S*ee Dalton v. Little Rock Family Planning Services*, 516 U.S. 474, 476 (1996). Beneficiaries may have a claim in federal court if a state violates a federal directive in the administration or denial of benefits. Also, in *Rosie D. v. Swift*, 310 F.3d 230, 237

(1st Cir. 2002). *Accord Westside Mothers v. Haveman*, 289 F.3d 852, 862 (6th Cir. 2002); *Antrican v. Odom*, 290 F.3d 178, 190 (4th Cir. 2002). *See also Reynolds v. Giuliani*, 118 F. Supp. 2d 352, 382 (S.D.N.Y. 2000) (holding that remedial scheme for both Food Stamps and Medicaid does not preclude relief under *Ex parte Young*).

a) *Missouri Child Care Association v. Cross*, 294 F.3d 1034, 1038-39 (8th Cir. 2002). *Accord Joseph A. v. Ingram*, 275 F.3d 1253 (10th Cir. 2002), again he Eighth Circuit reached the same conclusion regarding the Child Welfare Act, holding that its remedial scheme was not similar to that at issue in *Seminole Tribe.*

b) *Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1188 (9th Cir. 2003). In the context of Title II of the Americans with Disabilities Act, the Ninth Circuit rejected arguments that the Eleventh Amendment prohibits prospective relief, finding that the remedial scheme of the Americans with Disabilities Act was similar to that in *Verizon*.

31) Looking at *Coeur d'Alene*, while states have argued that special sovereign interests provide prospective relief from the enforcement of safety net and civil rights statutes, this argument has been soundly rejected. In a Medicaid case, the Tenth Circuit explained that the "state's interest in administering a welfare program at least partially funded by the federal government is not such a core sovereign interest as to preclude the application of *Ex parte Young.*" *Lewis v. New Mexico Department of Health*, 261 F.3d 970, 978 (10th Cir. 2001). *Accord Antrican*, 290 F.3d at 190 (Medicaid); *Oklahoma Chapter of the American Academy of Pediatrics v. Fogarty*, 205 F. Supp. 2d 1265 (N.D. Okla. 2002) (Medicaid); *Office of the Child Advocate v. Lindgren*, 296 F. Supp. 2d 178 (D.R.I. 2004) (child welfare system).

a) In addition, in *Ex parte Young*, *see Indiana Protection and Advocacy Services v. Indiana Family and Social Services Administration*, 603 F.3d 365, 370-74 (7th Cir. 2010) (*en banc*). The Supreme Court of New Mexico, holding *Ex parte Young* applicable in state court, reached the same result, concluding that the Age Discrimination in Employment Act did not implicate special sovereignty interests akin to those found in *Coeur d'Alene*. *Gill v. Public Employees Retirement Board*, 90 P.3d 491, 500, 501 (N.M. 2004).

b) The Supreme Court confirmed, in *South Dakota v. Dole*, that "Congress may impose conditions on states in exchange for the provision of federal funds, *South Dakota v. Dole,* 483 U.S. 203 (1987) (upholding requirement that states raise the minimum drinking age to 21 as a condition on the receipt of federal highway funds); *Fullilove v. Klutznick,* 448 U.S. 448. (http://federalpracticemanual.org/node/47#1).

32) Citing *Dole*, the Court recently stated, "Congress has broad power to set the terms on which it disburses federal money to the States." *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291, 295-96 (2006).

33) Congress may require that the states waive their sovereign immunity as a condition of receiving federal funds. *Sossamon v. Texas*, 131 S. Ct. 1651, 1657-58 (2011). *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 246-47 (1985)

a) Although expressed in terms of abrogation, Section 2000d-7 applies to the states as a waiver of immunity arising from a state accepting federal funds. If sovereign immunity is waived under statutes enacted as part of the spending power, a private plaintiff may sue the state or state agency as a named defendant and may

recover damages to the extent that they are allowed by the underlying statute; the private plaintiff also may obtain injunctive and other relief.

b) Laws that waive sovereign immunity based on the acceptance of federal funds have a wide applicability. Because most state agencies receive some federal funds, it is generally not difficult to establish the state's acceptance of federal assistance. Bobroff & Tobin, *supra* note 11, at 24-25. The Rehabilitation Act, in particular, provides that if one part of a department or agency receives federal financial assistance, the entire entity is considered to receive federal assistance and must conform to the Act's requirements. Rehabilitation Act, 29 U.S.C.A. § 794(b); *see, e.g.*, *Schroeder v. City of Chicago*, 927 F.2d 957, 962 (7th Cir. 1991). *See also* the federal implementing regulations for Section 2000d-7, 70 Fed. Reg. 24314-22 (May 9, 2005) (final regulations) (amending the regulations governing nondiscrimination on the basis of race, color, national origin, handicap, sex, and age to conform to the Civil Rights Restoration Act of 1987). Even state agencies that merely distribute federal assistance are covered by the Rehabilitation Act. Rehabilitation Act, 29 U.S.C. § 794(b)(1)(B)

c) Furthermore, the following cases overrule the Eleventh Amendment:

34) Michelle Mammaro v. Department Children & Families, Division of Child Protection and Permanency (DYFS) et.al. January 2015.

35) The Federal District Court in Trenton ruled that these state employees are not immune from suit for conduct in violation of the constitution rights of parents, and Mammaro has won the right to sue department heads and individual employees of the state Department of Children & Families, its Division of Child Protection and

Permanency (then the Division of Youth and Family Services, DYFS) and the Watchung Police Department, Kenneth Rosellini of Clifton said in a press release. http://www.nj.com/warrenreporter/index.ssf/2015/01/state_takes_child_from_home_ju.html

36) *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945)

37) Where relief is sought under general law from wrongful acts of state officials, the sovereign's immunity under the Eleventh Amendment does not extend to wrongful individual action, and the citizen is allowed a remedy against the wrongdoer personally. Atchison, T. & S.F. Ry. Co. v. O'Connor, 223 U.S. 280, 32 S.Ct. 216, 56 L.Ed. 436, Ann.Cas.1913C, 1050; cf. Matthews v. Rodgers, 284 U.S. 521, 528, 52 S.Ct. 217, 220, 76 L.Ed. 447.

38) *Lapides v. Board of Regents of University System of Georgia*, 535 U.S. 613 (2002)

39) *Parden v. Terminal Railroad Co. of Alabama Docks Department*, 377 U.S. 184 (1964)

40) *Welch v. Texas Department of Highways & Transportation*, 483 U.S. 468 (1987)

41) *Parden v. Terminal Railroad Co. of Alabama Docks Department*, 377 U.S. 184 (1964)

42) *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666 (1999)*Shapiro v. Thompson*, 394 U.S. 618 (1969)

43) *State Department of Health & Rehabilitation Services. v. Zarate*, 407 U.S. 918 (1972)

44) *Sterrett v. Mothers' & Children's Rights Organization*, 409 U.S. 809 (1973)

45) *Wyman v. Bowens*, 397 U.S. 49 (1970)

46) *Edelman v. Jordan*, 415 U.S. 651 (1974)?

47) *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989)

48) *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1997)

49) In addition, in Frazar *v. Gilbert*, 300 F.3d 530 ( 5th Cir.2002) it was also determined that the state of Texas's claim of sovereign immunity was not upheld.

a) A class action suit on behalf of indigent children in Texas was filed against the Texas Health and Human Services Commissioner and others claiming the children received inadequate health care under a federally mandated program. The suit was settled through a consent decree that laid out detailed procedures for Texas health officials to follow to meet federal guidelines. Later, Linda Frew and other parents complained that these obligations were not being met. The court ruled that the state must present an action plan for remedying violations of the consent decree. In response, state officials contended the health care program had improved substantially and appealed to the Fifth Circuit, claiming immunity from enforcement of the decree under the Eleventh Amendment. The Fifth Circuit agreed that the Eleventh Amendment barred enforcement of the consent decree, even though state health officials had previously agreed to it. The Supreme Court agreed to review two questions: 1) Whether states implicitly forfeit Eleventh Amendment rights when they enter into a court-approved consent decree based on federal law that requires ongoing judicial supervision, and 2) Whether in order for a district court to enforce a consent decree, the violations must also be violations of federal rights. It appears that the Supreme Court also agreed that the state and it's employees forfeited their sovereign immunity rights.

**COUNT 1: VIOLATION OF ADA RIGHTS:**

**Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, Section 28 CFR § 35 & 36 from the DOJ of the United States of America**

1) Plaintiff, Kloth-Zanard's ADA rights were violated beginning in 1995 and continue to be disregarded and ignored by the Defendants under Title II of the Americans with Disability Act. The ADA applies to State and local government entities. Subtitle A of the ADA, protects qualified individuals with disabilities from discrimination, on the basis of disability, and from services, programs, and activities that are provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, and as amended in 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance. Furthermore, Tittle II brings in the 14th Amendment Rights against discrimination. Additional to this is the DOJ's ADA effectuated 28-CFR-section 35.104-107b and section 36.104-107. that further protects the disabled. According to the ADA in Fed Court, The principles' of both Section 504 of the Rehabilitation Act and the ADA are fully applicable thru the Bill of Rights, basically via equal Protection, Due Process, rights to life, liberty, property and happiness.

   a) The plaintiff contends that Affirmative Action which is covered under the Americans with Disability Act (ADA) of 1990 was meant to break down barriers, both visible and invisible, to level the playing field, and to make sure everyone is given an equal break. They are not meant to guarantee equal results -- but instead

proceed on the common-sense notion that if equality of opportunity were a reality, African Americans, women, people with disabilities and other groups facing discrimination would be fairly represented.

b) Congress determined that "(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

c) Congress then set forth prohibitions against discrimination in employment (Title I, §§12111-12117), public services furnished by governmental entities (Title II, §§12131-12165), and public accommodations provided by private entities (Title III, §§12181-12189). The statute as a whole is intended "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." §12101(b)(1).

d) Title II's definition section states that "public entity" includes "any State or local government," and "any department, agency, [or] special purpose district." §§12131(1)(A), (B). The same section defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." §12131(2).

e) Per the UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, August Term, 2003, (Argued October 7, 2003 Decided April 7,2004),

Docket No. 02-9385, MARIE POWELL v. NATIONAL BOARD OF MEDICAL EXAMINERS, UNIVERSITY OF CONNECTICUT SCHOOL OF MEDICINE, BRUCE M. KOEPPEN, Before: WALKER, Chief Judges NEWMAN, and CARDAMONE, Circuit Judges. In order for a plaintiff to establish a prima facie violation under these Acts, she must demonstrate (1) that she is a "qualified individual" with a disability; (2) that the defendants are subject to one of the Acts; and (3) that she was "denied the opportunity to participate in or benefit from defendants' services, programs, or activities, or [was] otherwise discriminated against by defendants, by reason of [her disabilit[y]." Id. Plaintiff Kloth-Zanard intends to present and prove this to be factual.

f) On redress for violations of §12132's discrimination prohibition, Congress referred to remedies available under §505 of the Rehabilitation Act of 1973, 92 Stat. 2982, 29 U. S. C. §794a. See 42 U. S. C. §12133 ("The remedies, procedures, and rights set forth in [§505 of the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.").

g) Congress instructed the Attorney General to issue regulations implementing provisions of Title II, including §12132's discrimination proscription. See §12134(a) ("[T]he Attorney General shall promulgate regulations in an accessible format that implement this part."). [5] The Attorney General's regulations, Congress further directed, "shall be consistent with this chapter and with the coordination regulations . . . applicable to recipients of Federal financial

assistance under [§504 of the Rehabilitation Act]." 42 U. S. C. §12134(b). One of the §504 regulations requires recipients of federal funds to "administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons." 28 CFR §41.51(d) (1998), 28 CF §36.202

h) As Congress instructed, the Attorney General issued Title II regulations, see 28 CFR pt. 35 (1998) and Section 36, including one modeled on the §504 regulation just quoted; called the "integration regulation," it reads: "A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 CFR §35.130(d) (1998) and §36.203 .

i) The preamble to the Attorney General's Title II regulations defines "the most integrated setting appropriate to the needs of qualified individuals with disabilities" to mean "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." 28 CFR pt. 35, App. A, p. 450 (1998) and Section 36. Another regulation requires public entities to "make reasonable modifications" to avoid "discrimination on the basis of disability," unless those modifications would entail a "fundamenta[l] alter[ation]"; called here the "reasonable-modifications regulation," it provides:

j) "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 CFR §35.130(b)(7) (1998) and §36.302.

k) The ADA stepped up earlier measures to secure opportunities for people with developmental disabilities to enjoy the benefits of community living. The Developmentally Disabled Assistance and Bill of Rights Act (DDABRA), a 1975 measure, stated in aspirational terms that "[t]he treatment, services, and habilitation for a person with developmental disabilities . . . *should be* provided in the setting that is least restrictive of the person's personal liberty." 89 Stat. 502, 42 U. S. C. §6010(2) (1976 ed.) (emphasis added); see also *Pennhurst State School and Hospital* v. *Halderman,* 451 U. S. 1, 24 (1981) (concluding that the §6010 provisions of the DDABRA "were intended to be hortatory, not mandatory"). In a related legislative endeavor, the Rehabilitation Act of 1973, Congress used mandatory language to proscribe discrimination against persons with disabilities. See 87 Stat. 394, as amended, 29 U. S. C. §794 (1976 ed.) ("No otherwise qualified individual with a disability in the United States . . . *shall* , solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (Emphasis added)). Ultimately, in the ADA, enacted in 1990, Congress not only required all public entities to refrain from discrimination, see 42 U. S. C. §12132; additionally, in findings applicable to the entire statute, Congress explicitly identified unjustified "segregation" of persons with disabilities as a "for[m] of discrimination." See §12101(a)(2) ("historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social

problem"); §12101(a)(5) ("individuals with disabilities continually encounter various forms of discrimination, including . . . segregation").

l) 28 CFR pt. 35, App. A, p. 450 (1998) and §36.202 ("[P]ersons with disabilities must be provided the option of declining to accept a particular accommodation.")

m) Omstead v. LC backs up all of the preceding information pertaining to disability rights and regulations.

n) Viewed in light of the underlying Equal Protection principles, the ADA is appropriate preventive and remedial legislation. First, it is preventive in that it establishes a statutory scheme that attempts to detect government activities likely tainted by discrimination. For example, the ADA regulations require States to conduct self-evaluations of policies, programs, and activities in order to determine that any distinctions they make based on disability, or refusals to provide meaningful or integrated access to facilities, programs, and services are based on legitimate governmental objectives. The ADA thus attempts to ensure that inaccurate stereotypes or irrational fear are not the true cause of State decisions. See Bangerter v. Orem City Corp., 46 F.3d 1503 & n.20 (10th Cir. 1995); cf. School Bd. of Nassau County v. Arline, 480 U.S. 273, 284-285 (1987). This approach is similar to the standards articulated by the Court in Cleburne.

   i) Furthermore, the ADA is remedial in that it attempts to ensure that the interests of people with disabilities are taken into account. Not surprisingly, given their profound segregation from the rest of society, see 42 U.S.C. 12101(a)(2), the needs of persons with disabilities were not considered when

rules were promulgated, standards were set, and the built environment was designed. As a result, Congress determined that for an entity to treat persons with disabilities as it did those without disabilities was not sufficient to eliminate the effects of years of segregation and to give persons with disabilities equally meaningful access to every aspect of society. See 42 U.S.C. 12101(a)(5); see also U.S. Commission on Civil Rights, supra, at 99. When persons with disabilities have been segregated, isolated, and denied effective participation in society, Congress may conclude that affirmative measures are necessary to bring them into the mainstream. Cf. Fullilove, 448 U.S. at 477-478.

ii) The ADA thus falls neatly in line with other statutes that have been upheld as valid Section 5 legislation. For when there is evidence of a history of extensive discrimination, as here, Congress may prohibit or require modifications of rules, policies and practices that tend to have a discriminatory effect on a class or individual, regardless of the intent behind those actions. In South Carolina v. Katzenbach, 383 U.S. 301, 325-337 (1966), and again in City of Rome v. United States, 446 U.S. 156, 177 (1980), both cited with approval in City of Boerne, the Supreme Court upheld the constitutionality of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, which prohibits covered jurisdictions from implementing any electoral change that is discriminatory in effect. Similarly, the courts of appeals have unanimously upheld the application of title VII's disparate impact standard to States as a valid exercise of Congress's Section 5 authority. See Grano v.

Department of Dev., 637 F.2d 1073, 1080 n.6 (6th Cir. 1980) (collecting cases); see also City of Boerne, 117 S. Ct. at 2169 (agreeing that "Congress can prohibit laws with discriminatory effects in order to prevent racial discrimination in violation of the Equal Protection Clause").

iii) In sum, there can be no dispute that "well-cataloged instances of invidious discrimination against the handicapped do exist." Alexander v. Choate, 469 U.S. 287, 295 n.12 (1985). In exercising its broad power under Section 5 to remedy the ongoing effects of past discrimination and prevent present and future discrimination, Congress is afforded "wide latitude." City of Boerne, 117 S. Ct. at 2164. As the Supreme Court reaffirmed in City of Boerne, "[i]t is for Congress in the first instance to 'determine whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment,' and its conclusions are entitled to much deference." Id. at 2172 (quoting Katzenbach, 384 U.S. at 651).

o) Plaintiff's ADA rights were violated based on her hidden disabilities under the Americans with Disabilities Act Title II and Section 504. Refusal of the state to provide advocacy and leniency during her fair hearing, shutting down her fair hearing prematurely, not providing various other amenities and modifications as prescribed by law thus shows that the Plaintiff was not afforded her ADA rights under Federal Statutes and Remedies such as The Civil Rights Act of 1964 which prohibits discrimination in public accommodations, facilities and schools and which outlawed discrimination in federally funded projects (P.L. 88-352). Furthermore, once appraised of the Plaintiff's ADA need for

accommodation, the state was put on notice to protect her civil rights and ensure a fair hearing and trial as well as be in compliance with Americans with Disability Act and it's additional laws as of January 1992.

i) Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794. Plaintiff, Kloth-Zanard's ADA rights were also violated and continue to be. Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance.

ii) In 1995 to present, the plaintiff's hidden disabilities were quite evident and stated over and over in various documents including her DCF and DSS records. In fact, in 1995, it should have been self-evident to DSS that a Single Mother with an 11-month-old child, who had been a victim of domestic violence, 3 times during her pregnancy, and had arrived in CT after being homeless for 9 months, would have hidden disabilities associated with PTSD, Stress and anxiety. More importantly, DSS social workers are supposed to be specifically trained to address and deal with people who have had this kind of trauma in their lives. Yet, DSS took advantage of Plaintiff Kloth-Zanard's domestic violence status, duress, stress, homelessness along with impending

new homelessness and single parentage situation, when in 1995 it first denied her education and threatened to take her housing, food stamps and energy assistance way without offering any modification and thus violated began the first of the violation of her rights.

iii) The Supreme Court held in Univ. of Alabama v. Garrett, 531 U.S. 356 (2001), and determined that the states were held liable for ADA unconstitutionally discrimination and damages under the employment, educational and other provisions of the ADA that falls under Title I and Title II of the Americans with Disabilities Act (ADA).

iv) Under 28 CFR PART 35.104, 105, 106, 107a and 107b, and it's sister Section 36, DSS and DCF was and still are in non-compliance with the Federal Laws setup to protect the Disabled. According to the Department of Justice´s 1991 title II ADA regulation published July 26, 1991, and that required compliance by January 26, 1992, it "provided comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications."

v) Under Section 35.104 and it's sister section 36, "*1991 Standards* means the requirements set forth in the ADA Standards for Accessible Design, originally published on July 26, 1991," the Plaintiff qualifies and passes all of the tests then and now that qualify her as having not only a hidden disability back then but physical disabilities now plus her hidden disabilities. Plaintiff Kloth-Zanard is legally disabled on Social Security Disability.

vi) Under Section 35.105 and it's sister setion 36, which "establishes a requirement, based on the section 504 regulations for federally assisted and federally conducted programs, that a public entity evaluate its current policies and practices to identify and correct any that are not consistent with the requirements of this part", by January 26, 1992, The State and it's Agencies had/have a duty to self-evaluate their own forms and procedures to ensure compliance with Title II and 28-CFR-35 and Sister Section 36 by 1992. No where on the forms DSS claims were used in 1995-1998 to apply for assistance and placed into evidence by DSS, does it state or site anything about the rights of the disabled under the ADA, let alone even hint at it.

vii) In Section 35.106 and it's sister section 36, it further states that it "requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation." No where in any of the states evidence is this dissemination of information available or prevalent, nor was it available in 1995-1998.

viii) More importantly, under Section 35.107a and 107b and it's sister section 36,, "the final rule requires that public entities with 15 or more employees designate a responsible employee and adopt grievance procedures." There was no grievance procedure n 1995-1998 when the plaintiff, Kloth-Zanard, first began her association with CT's DSS and when she was denied her education, which violated her DV rights.

ix) In 1995, there was also no "designated responsible employee" to "ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the ADA and thus impart and communicate those requirements to other individuals in the agency who may be unaware of their responsibilities."

x) Furthermore, the fact that the Plaintiff never even received a single point of contact, DV counseling, let alone protection but was instead ordered to divulge who the father of her child was, despite a permanent restraining order, was not only a serious violation and welfare endangerment of mother and daughter but clearly shows that the employees were not properly educated or ignored the Plaintiff's DV trauma and the hidden disabilities associated to being a victim of DV. It also shows that the state and its agencies were not in compliance with Section 35.107a and it's sister section 36 to appoint a designated employee to ensure that the Entities and their employees complied with Title II and its subsequent rules and regulations.

xi) This notification applies not only to walking into any building but also to any communications including phone calls received, or made, emails or letters.

xii) There was no affective communication nor proper notification to the plaintiffs and is evidenced by the state and its agencies own submitted evidence of forms and spreadsheets created or used back in 1995-2004. Furthermore, when in 2012, Plaintiff Kloth-Zanard repeatedly wrote and called and emailed DSS to inform them that she needed assistance to present her case to have the lien removed off of her and her property, DSS repeatedly denied any

modification or accommodations or refers for assistance including never providing the plaintiff with even written information about her ADA rights. In fact, the Plaintiff was told that despite her disabilities she would NOT need an attorney at the Fair Hearing for the Lien, nor did she need any help if she could not afford an attorney. Thus DSS and DCF provided no effective communication for someone with hidden disabilities and further segregated her and treated her differently than all other clients who were NOT disabled by not leveling the playing field during the fair hearing for someone who's disabilities put her at a disadvantage.

xiii) Lack of compliance with ADA rules and regulations was clearly addressed in Raymond v. Rowland, United States District Court, 3:03cv0118 (MRK), and shows that DSS and DCF were not in compliance even back in 2004.

xiv) As well, under Olmstead vs. LC were the Supreme Court of the United States Eleventh Circuit Court of Appeals, No. 98-536, DSS and DCF were obligated to offer Modifications that a Client could reference or refer to.

xv) Moreover, Section 504 of the Federal Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA) protects parents and prospective parents with disabilities from unlawful discrimination in the administration of child welfare programs, activities, and services. The plaintiff, Kloth-Zanard was denied repeatedly and discriminated against for her hidden disabilities by DSS and DCF when her access an education in 1995 and then threatened the welfare of her daughter and herself if she attended school anyway.

xvi) The plaintiff's fundamental inalienable rights were violated and Discriminated against and thus are a violation of the 14th Amendment of the U.S. Constitution, which protects a citizen from being judged unfairly or treated unfairly because of their differences to another or group of others. In DSS's denial of the Plaintiff, Kloth-Zanard's education in 1995 despite DV polices and rules and then the false placement of Plaintiffs, Kloth-Zanard and Zanard, on the DCF Abuse and Neglect Registry falsely are prime examples of these violations as both segregated and prevented the Plaintiffs from being gainfully employed and accepted in society. (Tennessee v. Lane, in the Supreme Court of the United Stats, **No. 02-1667).**

xvii) Our laws were created to Remedy the Past, Eliminate the Current Issues and Prohibit the future damages. Clearly, while these rights and rules were set in place to do this, the State of CT and it's agencies ignored them in the case of the Plaintiffs especially in light of the fact that compliance with the ADA policies had to begin by January 26, 1992, 3-years prior to when the plaintiff's first complaint began and to this date are still out of compliance including the plaintiff Kloth-Zanard's latest issue with a bogus lien that was placed in 2012 upon her property and herself.

xviii) More poignantly, is that at any point during the plaintiff's lien fair hearing, Hearing Officer Tar could have accommodated the Plaintiff's disabilities and asked her if she needed time to compose herself. Because of this, Plaintiff did not receive equal access to the Fair Hearing/Court Process and had her hearing prematurely closed down. Popovich v. Cuyahoga County Court of Common

Please, Domestic Relations Division, 6th Circuit court of Appeals, Rule 206, Nos. 98-4100/4540, 2001-2002. Olmstead, Commissioner, Georgia Department of Human Resources, *et al. v.* L. C., No. 98-536. Argued April 21, 1999--Decided June 22, 1999,. ADA Raymond v Rowland, Civil Action No. 3:03CV0118 (MRK) United States District Court – District of Connecticut.

xix) Under the ADA laws, the Plaintiff repeatedly asked for modifications, assistance and accommodations but was repeatedly denied. Once informed of her request for ADA accommodations and modifications, the State and it's Agency were on notice and their sovereign immunity revoked.

xx) Federal/State of CT ADA Regulations § 35.130 and it's sister section 36: General prohibitions against discrimination. Supreme Court's decision in *Olmstead v. L.C.*, a ruling that *requires states to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs.* Lane, Jones vs. State of TN, 6th Circuit of Appeals, No. 98-6730; 2003. Popovich v. Cuyahoga County Court of Common Please, Domestic Relations Division, 6th Circuit court of Appeals, Rule 206, Nos. 98-4100/4540, 2001-2002. Olmstead, Commissioner, Georgia Department of Human Resources, *et al. v.* L. C., No. 98-536. Argued April 21, 1999--Decided June 22, 1999, *et al. v.* L. C., No. 98-536. Argued April 21, 1999--Decided June 22, 1999. ADA Raymond v Rowland, Civil Action No. 3:03CV0118 (MRK) United States District Court – District of Connecticut.

xxi) The following excerpts come directly from the DOJ concerning Title II and 504 of the Rehabilitation Act.

(1) Under the ADA and Section 504, programs cannot deny people with disabilities an opportunity to participate, and must provide people with disabilities with meaningful and equal access to programs, services, and activities. Programs and services must be accessible to and usable by people with disabilities. In addition, programs must provide people with disabilities with an equal opportunity to participate in and benefit from the programs, services and activities of the entity; they are also prohibited from using methods of program administration, which includes written rules as well as agency practices, that have a discriminatory effect on individuals with disabilities. Moreover, programs must provide reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination; and must take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others through the provision of auxiliary aids and services. Plaintiff, Kloth-Zanard was denied these rights starting in 1995 when she was denied her education.

(2) Congress has made clear that the definition of disability in the ADA and Section 504 is to be interpreted broadly. Even if an individual's substantially limiting impairment can be mitigated through the use of medication; medical supplies, equipment, and devices; learned behavioral

or adaptive neurological modifications; assistive technology (e.g. a person with a hearing disability who uses hearing aids that substantially restores the sense of hearing); or reasonable modifications to policies, practices, or procedures, the individual is still protected by the ADA and Section 504. The ADA and Section 504 also apply to people who have a record of having a substantial impairment (e.g., medical, military, or employment records denoting such an impairment), or are regarded as having such an impairment, regardless of actually having an impairment.

(3) Like child welfare agencies, courts must also make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination on the basis of disability. For example, it may be necessary to adjust hearing schedules to accommodate the needs of persons with disabilities, if the need for the adjustment is related to the individual's disability. Or it may be necessary to provide an aide or other assistive services in order for a person with a disability to participate fully in a court event.

(4) Examples of auxiliary aids and services include, among others, qualified interpreters, note takers, computer-aided transcription services, accessible electronic and information technology, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, qualified readers, taped texts, audio

recordings, braille materials, large print materials, and modifications to existing devices. Thus the courts denial of the e-filing on any of the plaintiffs cases is a violation of her Title II and 504 Rehabilitation Rights. 28 CFR § 36.204 Administrative methods.

(5) A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

xxii) Title II and Section 504 allow for declaratory and injunctive relief, such as an order from a court finding a violation and requiring the provision of reasonable modifications. Title II and Section 504 also allow for compensatory damages for aggrieved individuals. Individuals who prevail as parties in litigation may also obtain reasonable attorney's fees, costs, and litigation expenses.

(1) Under Section 504, remedies also include suspension and termination of Federal financial assistance, the use of cautionary language or attachment of special conditions when awarding Federal financial assistance, and bypassing recalcitrant agencies and providing Federal financial assistance directly to sub-recipients.

(2) Furthermore, Attorney General Richard Blumenthal signed off on the following:

(a) "In contrast to the overbreadth of the reasonable accommodation standard of Title I, which was a central part of the *Garrett* Court's analysis, Title II's analogue, reasonable modification, appropriately effectuates the states' constitutional responsibilities. The protection of fundamental rights often requires a state to do more than simply refrain from discriminating against its citizens. This and other courts have found that states are constitutionally required "to shoulder affirmative obligations" to ensure meaningful access to public services, as well as abolish barriers preventing such meaningful access.[if !supportFootnotes][21][endif] *Bounds v. Smith*, 430 U.S. 817, 824-25 (1977) (holding that fundamental right of access to courts required state to provide inmates with adequate law libraries or adequate assistance from persons trained in the law; while economic factors may be considered in choosing method to provide meaningful access, "the cost of protecting a constitutional right cannot justify its total denial"); *Katzenbach v. Morgan*, 384 U.S. 641 (1966) (upholding Voting Rights Act ban on voting literacy tests although literacy tests themselves do not violate the Equal Protection Clause; destruction of this barrier enabled individuals to better "obtain 'perfect equality of civil rights and the equal protection of the laws'") (citations omitted); *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F.3d 808 (6th Cir. 2002), *cert. denied*, 123 S. Ct. 72 (2002) (finding that state could be required to provide accommodation to hearing-impaired

father in child custody proceedings both under Title II and as a matter of due process); *Amadon v. Immigration & Naturalization Serv.*, 226 F.3d 724 (6th Cir. 2000) (holding that due process right to full and fair deportation hearing required government to provide competent foreign-language interpreter).

(b) "In the same fashion as the cases cited above, Title II's "reasonable modification" provision enables people with disabilities to obtain their constitutionally guaranteed rights. Therefore, this provision is consistent with states' constitutional responsibilities.

(c) "This Court recently forcefully reiterated the importance of effectuating Congress's remedial purpose when analyzing congruence. *See Hibbs*, __ U.S. __, 123 S. Ct. 1972. The *Hibbs* Court upheld the FMLA despite its inclusion of a mandatory twelve-week leave provision. The Court recognized that without the mandatory leave, an employer could treat males and females equally by providing for no leave whatsoever, a result "which would not have achieved Congress's remedial object." *Id.* at 1983. Similarly, a simple mandate of equal treatment of the disabled and non-disabled would fail to achieve Congress' remedial goals here. Thus, just as the twelve-week leave provision in the FMLA met the congruence factor in *Hibbs,* the reasonable modification requirement in Title II meets the congruence factor here."

**COUNT 2: VIOLATION OF RULES OF EVIDENCE SEC. 1-21J-37. RULES OF EVIDENCE, (B) DOCUMENTARY EVIDENCE, COPIES.**

Documentary evidence may be received at the discretion of the commission or presiding officer in the form of copies or excerpts, if the original is not found readily available. Upon request by any party an opportunity shall be granted to compare the copy with the original, which shall be subject to production by the person offering such copies, within the provisions of section 52-180 of the general statutes. (c) Cross examination. Cross examination may be conducted as the presiding officer shall find to be required for a full and true disclosure of the facts.

2) The Defendant is unable to produce any exculpatory evidence to back up their claims for cash assistance from 1995-1998.
    a) The Brady Rule, named for Brady v. Maryland, 373 U.S. 83 (1963), requires prosecutors to disclose materially exculpatory evidence in the government's possession to the defense. "Brady material" or evidence the prosecutor is required to disclose under this rule includes any evidence favorable to the accused--evidence that goes towards negating a defendant's guilt, that would reduce a defendant's potential sentence, or evidence going to the credibility of a witness.
    b) If the prosecution does not disclose material exculpatory evidence under this rule, and prejudice has ensued, the evidence will be suppressed. The evidence will be suppressed regardless of whether the prosecutor knew the evidence was in his or her possession, or whether or not the prosecutor intentionally or inadvertently withheld the evidence from the defense. The defendant bears the burden of

proving that the undisclosed evidence was material, and the defendant must show that there is a reasonable probability that there would be a difference in the outcome of the trial had the evidence been disclosed by the prosecutor.

c) The court/judges claim that the Appellant did not object to the reconstructed spreadsheet being used as evidence by the Defendant is false. In fact, the Plaintiff objected to the Statement of Financial Assistance (SOFA) which is the spreadsheet in two different letters to DSS. One dated February 7, 2012 and March 17, 2012. All of these letters were entered into evidence.

d) In the letter dated February 7, 2012, the Appellant states, "*For these reasons, I am contesting and appealing the SOFA (Statement of Financial Assistance) amounts*".

e) In the letter dated March 17, Appellant states again, "*I believe it should be voided. This letter as I write it today, is similar to the letter I sent on February 7, 2012 to Dee Stygar at Social Services stating that it was my official request for contesting the money Social Services claims I owe them.*"

f) Assistant Attorney General Gary Williams also includes these letters as evidence.

g) Furthermore, the state's lack of exculpatory evidence to back up the figures on the spreadsheet violate the Rules of Evidence to allow the spreadsheet as evidence. Despite several Freedom of Information Act Requests for the production of these documents in an email chain that concludes on August 9, 2012, Thomas Gaudette, a caseworker investigator for DSS, admits the following, "I am sorry to report that as of today your historical case record cannot be located." Appendix **

**COUNT: 3 VIOLATION OF RULE 901, AUTHENTICATING OR IDENTIFYING OF EVIDENCE**

3) As to the spreadsheet itself, it violates Rule 901. Authenticating or Identifying Evidence (a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

a) There is no sufficient evidence or exculpatory evidence to back up the spreadsheet figures

b) Caseworker Gillette cannot attest to its accuracy without backup documents or evidence to verify where the figures came from.

c) This witness was never the plaintiff's caseworker, he did not create the spreadsheet, nor does he know who created or how or from what the spreadsheet was created. His ability as a 3rd party to validate this spreadsheet that the defendant admits is "reconstructed" is suspect as the witness has no exculpatory evidence to back up the validity of where the figures in the spreadsheet arose from.

d) This falls under the realm of hearsay evidence, as no one even knows who or how this spreadsheet was created or even when.

e) No matter whether the figures are accurate or not, the burden of proof still remains with the state who could not produce the records and who's witness, Caseworker Gillette, would therefore not be able to validate without that evidence as he was not a party to this case in 1995-1998.

**COUNT 4: VIOLATION OF 6TH AMENDMENT RIGHT TO CONFRONT THE WITNESS, RIGHTS UNDER 5TH AND 14TH AMENDMENTS**

4) Appellant's due process rights under the Bill of Rights, 5th and 14h Amendments along with her 6th Amendment right to confront her accuser and/or their witnesses were violated through out the entire Fair Hearing process. Appellant was never given the opportunity to cross exam the Appellee's, witness, Caseworker Gillette, whom DSS claims could validate a "reconstructed spreadsheet" despite having no evidence, no known witnesses to the time in question, no signed applications from the time in question nor was he the creator of said "reconstructed spreadsheet". This is a civil rights violation under Section 1983 of Title 42 of the U.S. Code and, is part of the Civil Rights Act of 1871, and violates Article 10 of the Universal Declaration of Human Rights, Sixth Amendment to the United States Constitution, which protect the Appellant's right to a fair trial.

**COUNT 5: VIOLATION OF EDUCATIONAL RIGHTS**

5) As previously stated, at the time of this discovery of the Plaintiff's false placement by DCF on the Abuse and Neglect Registry, Plaintiff Kloth-Zanard also discovered that her rights to an education under the Welfare Reform act and Domestic Violence Laws were violated by DSS. Plaintiff Kloth-Zanard came to the State of CT as a domestic violence victim, single mother and homeless with an 11-month-old child. She came to CT to complete her degree in Physical Therapy so she could be self-sufficient and raise her child on her own. DSS refused to let her complete her last 18 months of

education that she came to CT to complete at Sacred Heart University, despite the following statues and laws under Welfare Reform:

a) In January 1993, a task force adopted essential guiding principles for a successful welfare-to work program and final recommendations were organized by these principles. Welfare Reform Act Recap 2006:

    i) An Act Concerning Welfare Reform and The Expenditures Of The Department of Social Services (PA 97-2, June 18 Special Session) The act exempts Temporary Family Assistance applicants and recipients who are victims of family violence from job training, work placement assistance, subsidized and unsubsidized employment, and child support enforcement requirements. It defines a domestic violence victim as someone who has been battered or subjected to extreme cruelty by (1) physical acts that resulted in, or threatened to result in, physical injury; (2) sexual abuse; (3) sexual activity involving a child in the home; (4) being forced to participate in sexual acts; (5) mental abuse; or (6) neglect or medical care deprivation. 6. Access to quality child care, quality educational opportunities, adequate health care, and decent housing are essential to supporting self-sufficiency. October 2, 2009, 2009-R-0349, SUMMARY OF FAMILY VIOLENCE LAWS, By: Sandra Norman-Eady, Chief Attorney

    ii) Furthermore, the defendant's constructively concealed evidence from the plaintiff, Kloth-Zanard, related to Welfare Reform laws and rules when they did NOT disclose Governor Rowland's circumventing of the Federal Welfare Reform laws or disclosed her rights as a Domestic Violence Victim and

obtaining an education. No explanation of benefits were ever presented, explained or otherwise. And No proof exists that the Plaintiff was informed of any of these new laws and rules. Plaintiff has now discussed this with several retired Social Services caseworkers who admit that explanation of services and the new Welfare Reform were NEVER divulged to the recipients and definitely never in writing.

(1) Due to the defendant's unconscionable actions, Plaintiff Kloth-Zanard did not even realize until 2009 the extent of how much she was suffering from anxiety and stress related to these harmful acts and the domestic violence she had been a victim of. Plaintiff Kloth-Zanard's disability actually dates back to 1993 when she became a homeless battered pregnant single parent, and then attempted to move to CT in January 1995.

(2) Furthermore, when Kloth-Zanard's education rights were violated by DSS in 1995, they actually took advantage of her duress and stress of being a homeless single mom and domestic violence victim. They told her that if she tried to go back to school, they would take away her Section 8 housing, food stamps and energy assistance.

   (a) This violated her educational rights under Welfare to Work and Welfare Reform whose sole purpose was to help parents become self-sufficient.

   (b) This action further violated her Domestic Violence rights under the Family Violence Laws: An Act Concerning Welfare Reform and The

Expenditures Of The Department of Social Services (PA 97-2, June 18 Special Session)

**COUNT 6: VIOLATION OF APPELLANT'S HOUSING RIGHTS IN FORCING HER TO FORECLOSE ON HER PROPERTY BECAUSE OF THE LIEN.**

6) Due to the Lien on Appellant's home, she is forced to foreclose as it is upside down and the lien has impeded any modification process. According to Federal and State law, if the State's placement of a lien on a home causes further adversity such as foreclosure, the lien must be removed. There must be reasonable belief that the person can repay. As the home is underwater and about to be foreclosed on, DSS has no reasonable belief in their demands for repayment.

**COUNT 7: VIOLATION OF WELFARE REFORM ACT**

7) With no production of application or evidence, this is a violation of Chapter 319s, Sec. 17b-77(b) The Commissioner of Social Services shall notify each applicant for aid …who may be liable for repayment of such aid, if known, of the provisions of sections 17b-93 to 17b-97, inclusive, … not later than thirty days after the applicant is determined to be eligible for such aid. The notice shall be (1) written in plain language, (2) in an easily readable and understandable format, and...Lien was not placed within 30 days but 15 years later.

   a) It was not until July 1, 2010, that P.A. 10-183…re notice of liability for repayment of aid, became effective, thus 12 -15 years later.

b) The point of Welfare and Welfare Reform was to assist people in becoming self-sufficient. This lien causes the reverse.

c) NY and CT are the only states that require repayment through liens or signing over of mortgages. This aggressive behavior "perpetuates an archaic practice and creates a severe impediment to the goal of self-sufficiency. By taking a lien on real estate for the value of benefits received, the law burdens public assistance recipients with debt and blocks their ability to move ahead in life due to the onerous and extremely confusing mortgage or lien on the property. "http://www.empirejustice.org/assets/pdf/publications/reports/welfare-lien-report-dec-2013/dont-lien-on-me-rev-2.pdf

d) "The Fundamental requisite of due process of law is the opportunity to be heard." Due process requires that a person who faces the possibility of serious loss be given "notice of the case against him and an opportunity to meet it." Such an opportunity to be heard must be given "at a meaningful time and in a meaningful manner." The procedure for hearing any issues raised must be tailored, in light of the decision being made, to " the capacities and circumstances of those who are to be hear: so anyone with a grievance is given a meaningful opportunity to state their case. None of the above due process requirements are met under the current statutory framework. In fact, in 1995, no explanation of assignment of property or inheritance was never explained to recipients. And nothing was in writing on any of the contracts/applications signed by a recipient. In addition, the Appellant was not given this opportunity prior to the placement of the lien based on her "capacity & circumstances".

e) Most other categories of assistance are exempt from recovery including Supplemental Nutritional Assistance Program (SNAP, formerly Food Stamps), Home Energy Assistance Program (HEAP) and childcare assistance. Medicaid is generally exempt with two exceptions noted below and cannot be included when calculating the amount of the mortgage due.

   i) As a general rule, with respect to Medicaid, no lien may be imposed against the real property of any individual on account of medical assistance paid or to be paid, except in cases of long term care (not reasonably expected to be discharged from the institution and to return home) or where a Medicaid recovery is taken against a home after the death of an individual who received Medicaid and over the age of 55 where the home is part of the individual's estate. Part of the state of CT's lien includes Medicaid reimbursement and thus is illegal.

   ii) In *Flowers v. Perales,* the New York State Appellate Division, Second Department limited the retroactive reach of SSL §106 to ten years prior to the date of the mortgage. The Court determined that the 10 year Statute of Limitations in SSL §104 applied to mortgages taken under SSL §106 and precluded the County from recovering benefits paid more than 10 years prior to the execution of the mortgage and directed Nassau County to modify the lien accordingly. Thus the State's claim for a lien on the Appellant's home which Is 18 years old, is way out Statute of Limitations as Mortgage was last refinanced in 2008.

iii) DSS's right to demand repayment is governed by the six year Statute of Limitations as set forth in Chapter 926§ 52-573-575. The law gives DSS a possible maximum of sixteen years – "ten years to discover assets (Chapter 926 §52-573) of 15 years within which to seek reimbursement of the public funds expended. The State of Connecticut did not seek reimbursement until 2012, some 18 years after they claim she received assistance.

iv) Every month, as the foreclosure crisis continues, thousands of homeowners default on their mortgages, usually due to a loss of employment or income. Federal and State programs have been developed over the last five years to assist homeowners in getting loan modifications from their lenders so that they can remain in their home. Organizations funded through the Federal Government and State Agencies, which include non-profit housing counseling and legal services organizations that work directly with homeowners in default, report that liens taken by the county/state in consideration for public assistance are jeopardizing homeowners' chances of accessing these programs.

v) Because of the state's action of placing a lien on an upside down property that the appellate was trying to modify, the Appellant is now forced to foreclose permanently on her property. This action leaves the Appellant's anything but self-sufficient. In fact, they will become wards of the state and the state will need to pay for all of their medical care, housing once homeless, nursing care and so forth with no chance of reimbursement as the Appellant's will never

have anything in their names. In addition, any inheritance has long been disposed of because of their financial devastation.

**COUNT 8: THE STATE COMMITTED REVERSIBLE ERROR BY ADMITTING THE HEARSAY "SPREAD SHEET" DOCUMENT INTO EVIDENCE AND ADMISSION OF THIS DOCUMENT INTO EVIDENCE WAS ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION.**

8) The reconstructed "Spread Sheet" that was admitted into evidence, over my objection, was a summary of additional hearsay documents, which was not in possession of D.S.S. nor were the authors of any of these original documents known to D.S.S. Moreover, failing to disclose, prior to the hearing, that this anonymous reconstructed "Spread Sheet" document would be admitted into evidence, I was unable to subpoena the author of this document at the hearing, since its author was unknown to D.S.S., though it is claimed to be a document produced by D.S.S. employees.

a) The only evidence used to ascertain that the Plaintiff owed any money under Conn. Gen Statute Sec. 17b-93 (formerly Sec. 17-83e) was this reconstructed "Spread Sheet" which the State admitted into evidence, over my objections. Though I requested this many times in writing, the State provided no documents or any proof whatsoever (cancelled checks, direct deposit receipts, receipts etc.) for the years in question (1995-1998) verifying that I actually received this aid. The State simply provided and entered into evidence an unverified, reconstructed spread sheet allegedly entered on a computer by an Unknown Person listing a summary of the amounts of alleged aid I allegedly received, (**which is disputed**)

based upon additional multiple hearsay documents which are not available, even to D.S.S.

b) Since this reconstructed "spread sheet" document was a summary of previous individual documents, which D.S.S. was not in possession of nor did D.S.S. know the author of these original documents, this reconstructed "spread sheet" is hearsay based on multiple individual hearsay documents. When D.S.S. introduced this reconstructed "Spread Sheet" at the Fair Hearing, I objected to its admission, which was overruled. Moreover, I demanded from DSS the name, address and telephone number of the person(s) who allegedly prepared this document and all of the other documents that this spread sheet was based upon, so that I could **subpoena these persons** for the Fair Hearing. I was told in writing by DSS that: *"Dear Ms. Kloth:*

*I am sorry to report that your historical case record cannot be located. Please see the copied email message below from the regional office today:*

*From: McCarthy*

*Sent: Wednesday, August 8, 2012, 2:13 PM*

*To: Lombardi, Annette R.*

*Subject: RE: Joan Kloth-CL--------- Case Record Help*

*Annette:*

*We have been unable to locate any additional information for this client. We have searched the entire filing cabinet where this record should be located, and the one before and the one after as well as in both the active and closed files. I have looked through all listings of case records that were sent to the Archives. We also checked the LTC files, and requested*

*Theo to check the Confidential filing cabinet for this record. We also checked with workers in this office that have worked on this case. Cindy will continue to look for any additional information for this client."*
*Thanks.*
*Carolyn McCarthy, Unit Supervisor*

*As you can see, significant effort was made to locate your historical case record. The best I can do is* ***reconstruct*** (emphasis added) *your case from our computer and send you annotated screen prints of your eligibility. However, I believe you desire the documents in your file rather than a computer reconstruction. If any records/documents are located, I will send copies to you.*
*I apologize for your inconvenience and the unnecessary lengthy delay.*

*Sincerely,*
*Tom Gaudette*

Thomas Gaudette
Public Assistance Consultant/HIPAA Privacy Officer
State of Connecticut, Dept. of Social Services
25 Sigourney St.
Hartford, Ct. 06106
PH (860) 424-5527
F (860) 424-5403

c) In *Morel v. Connecticut Commissioner of Public Health*, 2001 Conn. Super. LEXIS 1551, the Court held that "*if hearsay evidence is sufficiently trustworthy to*

*be considered substantial evidence and it is the only evidence probative of a plaintiff's culpability, its use to support an agency decision will be prejudicial to the plaintiff, absent a showing that the plaintiff knew it would be used and failed to ask the agency commissioner to subpoena the declarant."*

d) In this case, the Plaintiff was never informed by DSS that this hearsay "Spread Sheet" would be used in my hearing, and when it was used, the Plaintiff protested stating DSS did not even know its author so that it was impossible for me to subpoena this unknown author. I even provided many documents from DSS Supervisors stating that they were unable to ascertain the author(s) of this inadmissible hearsay reconstructed "Spread Sheet."

e) The years in question are 1995-1998 and these documents are 16 -19 years old**.** Just as in *Morel,* the reconstructed Spread Sheet in my case was admitted into evidence over my objections in the absence of any author of this document and without authentication or qualification as a business record.

f) Moreover, the *Morel* Court held that "*Proceedings before administrative agencies are not bound by strict rules of evidence and procedures but they cannot be conducted so as to violate fundamental rules of justice. Nor may the informalities that are permissible in an administrative hearing be permitted to prejudice the rights of the parties. If this should happen, the Court is available to rectify the wrong*." *Morel v. Connecticut Commissioner of Public Health*, 2001 Conn. Super. LEXIS 1551.

   i) *"Judicial Review of an administrative agency's action is governed by the Uniform Administrative Procedures Act and the scope of review is restricted. However, if the Court finds that the substantial rights of the person appealing have been prejudiced because the administrative findings, conclusions or*

*decisions are (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other errors of law; (5) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Morel v. Connecticut Commissioner of Public Health*, 2001 Conn. Super. LEXIS 1551, citing Conn. Gen. Stat. sec. 4-183.

g) In the present case, allowing the hearsay reconstructed "Spread Sheet" document, which was prepared by an unknown author, who was incapable of being subpoenaed or cross examined, into evidence was in violation of both my constitutional rights under the Due Process Clause of the United States Constitution and the Connecticut State Constitution, and in violation of the Notice Provision of the Connecticut AFDC application. Moreover, this "Spread Sheet" document is allegedly based upon a compilation of aid I allegedly received in 1995-1998, yet the State failed to provide a copy of any cashed checks, individual receipts, direct deposit receipts of any kind. Since this "Spread Sheet" was a compilation of three (3) years of more hearsay allegations and since DSS failed to produce any receipt of this aid, or produce any statement signed by me wherein I acknowledge receiving such aid, then not only is the reconstructed "spread sheet" hearsay, but that reconstructed "spread sheet" allegedly relies on additional hearsay—the documents that DSS is unable to find**.** In addition, this decision was both arbitrary and capricious.

h) The Court in *Morel* found that the substantial rights of the plaintiff **had been prejudiced** because the final decision of the agency did NOT comply with the

law. *Morel v. Connecticut Commissioner of Public Health*, 2001 Conn. Super. LEXIS 1551.

**COUNT 9: STATE FAILED TO PROVIDE APPLICANT NOTICE OF REPAYMENT, AS REQUIRED BY LAW.**

9) In *Langan v. Weeks*, 37 Conn. App. 105, 655 A.2d 771, 1995 Conn. App. LEXIS 106, the court held that "*Because the State must require the assignment of any and all support rights as a prerequisite to the receipt of AFDC benefits in order to be in compliance with federal regulations, the assignment takes effect by operation of law by virtue of the application for AFDC benefits. However, notice of such assignment shall be conspicuously placed on said application and shall be explained to the applicant at the time of application. Aid to Families with Dependent Children (AFDC) applicants must be informed about their rights and obligations under the program. Applicants SHALL be informed about the eligibility requirements and their rights and obligations under that program. Under this requirement, individuals are given information in WRITTEN FORM, AND ORALLY as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of the applicants for and recipients of assistance. 45 C.F.R. Sec. 206.10(a)(2)(i)."*

a) The *Langan* Court further held that *"the guarantee of substantive due process requires that a law be reasonable, rather than arbitrary or capricious."*

b) The Court articulated 3 factors in its analysis:

c) Whether the plaintiff was deprived of fundamental fairness by the alleged failure of the State to comply with the Notice Provisions of Conn. Gen. Stat. sec. 17-82(b).

d) Extent of the governmental interest, including its financial interest, as well as administrative burdens; and

e) The risk that the procedure used will deprive the plaintiff of a right.

f) In the present case, as an *Aid to Families with Dependent Children (AFDC) applicant, I was required to be informed about my rights and obligations under the program. Although I was required to be given information in written form, and orally, about coverage and the rights and responsibilities under that program, I was never informed of these things, either in writing or orally, nor was such notice of such rights and obligations conspicuously placed on said application nor were these rights and obligations explained to me at the time of application.*

g) It is unlawful for the State to provide aid to applicants without first disclosing the fact that this aid is required to be paid back at a future date.

h) *'A failure to disclose can be deceptive if, in light of the circumstances, there is a duty to disclose." Olson v. Accesssory Controls & Equipment Corp*., 254 Conn. 145, 180, 757 A.2d 14 (2000).

i) In *Business Lenders, LLC v. Berlin Bros. Market, Inc*. the Court held that "*whether there is a duty to disclose depends on the relationship of the parties… or, to put it another way, whether the occasion and circumstance are such as to impose a duty to speak."*

**COUNT 10: THE STATE'S FILING OF THE CERTIFICATE OF LIEN IS DEFECTIVE SINCE IT DOES NOT STATE A DOLLAR AMOUNT OF THE STATE'S LIEN.**

10) The State filed a "Certificate of Lien" on the Deed to my home without providing a dollar amount of that lien. In *Technico-Op v. Alvin Construction Company*, (1995 Conn. Super. LEXIS 1506), the Court upheld the contractor's lien since "*the lien certificate as written gave the owner adequate notice of the claim against him and the lien amount."* The Court held a "*mechanic's lien will not be valid unless the lien claimed an amount claimed as a lien thereon and stating that the amount claimed is justly due."*

a) An illegal lien upon plaintiff, Kloth-Zanard's property that not only has no legally verifiable evidence but the lien is open ended and states, "for past, present and future" cash or medical assistance. No one, not even the Federal Government can place a lien on someone's property for something that has not even happened yet. They are not mind readers and cannot predict the future.

**COUNT 11: WRIT OF MANDAMUS**

11) "When a judge does not follow the law, i.e., they are a *trespasser of the law*, the judge loses subject-matter jurisdiction and the judges orders are void, of no legal force or effect." The U.S. Supreme Court, *in* Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687, 1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, s/he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or

representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." [Emphasis supplied in original]. "Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason." *U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980 ); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821)* Any judge or attorney who does not report a judge for treason as required by law may themselves be guilty of *misprision of treason*, 18 U.S.C. Section 2382.

a) **Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828):** Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is *"without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." [Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)]*
b) **World-Wide Volkwagen Corp. v. Woodson, 444 U.S. 286 (1980)**"A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878)." [World-Wide Volkwagen Corp. v. Woodson, 444 U.S. 286 (1980)]
c) **Black's Law Dictionary, Sixth Edition, p. 1574: Void judgment**. One which has has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null,

without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.**[Black's Law Dictionary, Sixth Edition, p. 1574]**

**COUNT 12: DEPRIVATION OF RIGHTS UNDER COLOR OF LAW**

12) **Violation of TITLE 18, U.S.C., SECTION 242**

a) Plaintiffs rights were violated repeatedly when her ADA rights were ignored. When she was forced to complete 7 loan modification applications for no reason other than premature closing of her cases. When her Federally adjusted Gross Net income less the cost of doing business including cost of materials was not removed from her total income deposits and her Gross deposits used as a gross income despite federal and state law that requires deduction of business expenses first to reach a total Net Gross Income. Refusal to work in a cohesive and fair manner with the Plaintiff based on her ADA hidden disabilities. Falsifying records, filing of false land records, not properly notifying the plaintiff of any ownership of the mortgage transfers, failure to correct all land records, and other such violations that the Plaintiff may not presently be aware of.

b) Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or

protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

**COUNT 13: WHISTLEBLOWER ACT AND EMBEZZLEMENT COVERUP**

13) Plaintiffs believe that the placement of this lien was to avert attention from by state officials and an attempt to cover up the embezzlement of funds by these various officials. By the placing of this as well as other liens on other citizens who are poor, indigent. elderly and disabled, these officials discriminated against them knowing that they could not afford legal representation and that any pro-bono representation through the State Wide Legal Services Program was being blocked to them by state officials. Furthermore, they abused their powers to make patsies out of the Plaintiffs so they could replace the embezzled funds and deficits to the state coffers. The governor and many other officials are presently under investigation for funding and other financial corruptions.

a) Plaintiff also believes that this was a retaliatory act for her whistleblowing and continuous outing by written letter, article and other publications about the

corruption and problems within the family courts and use of Guardian Ad Litems. Plaintiff is one of many parents who have been retaliated against for speaking up especially in front of the legislature starting 1995 but more recently as of 2010 to present.

b) **Conn. Gen. Stat. Ann. § 4-61dd(a) part of the Whistleblower Act** Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts.

c) **Conn. Gen. Stat. Ann. § 4-61dd(b)(3)(A) Remedies for Whistleblower Act**… If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages…

**COUNT 14: ARBITRARY AND CAPRICIOUS PLACEMENT OF AN OPEN-ENDED LIEN WITH NO TERMINATION DATE.**

14) Plaintiff should have been able to know what is expected and when it would end.

a) The lien as written is illegal because it provides no possibly way to resolve it in the plaintiff's lifetime.

b) The lien as placed can never be satisfied in the plaintiffs lifetime thus making it a violation of her rights to a fair and equitable transaction that could be negotiated or resolved.

**PRO-SE LAW**

15) Pro se litigants' court submissions are to be construed liberally and held too less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. *Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999).*

a) The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires. *S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir.*

*1999) Court has special obligation to construe pro se litigants' pleadings liberally); Poling v. K.Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).*

b) "Plaintiff" has the right to submit pro se briefs on appeal, even though they may be in artfully drawn but the court can reasonably read and understand them. See*, Vega v. Johnson, 149 F.3d 354 (5th Cir. 1998). Courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result. U.S. v. Sanchez, 88 F.3d 1243 (D.C.Cir. 1996*

**WHEREFORE**, the Plaintiff respectfully request that the Court rescind the lien on her and her property permanently. Furthermore the plaintiff does not receive any assistance that requires repayment at this point in time, and has never been hospitalized for an extended period of time that would require repayment, coupled with the defendant's lack of exculpatory evidence to back up their claims of cash assistance award from 1995-1998, the lien must be removed as it violates Federal and State statutes as stated throughout this document. Add to this the Fraud Upon the Courts in the initial cases: FAIR HEARING REQUEST CASE NO. 434921, STATE CASE NO. HHB-CV: 13-5015788 AND APPELLATE CASE NO. A.C. 36729.

**WHEREFORE,** however in artfully pleaded, the Plaintiff has preserved her right of appeal up to the United States Supreme Court. She also reserves the right to amend and correct any defects. She has also used the statute in the federal practice book that allows the practice book rules to be removed if it violates her substantive rights. And more

importantly, due to all the government misconduct, it creates a situation where by the plaintiff cannot follow the rules.

**WHEREFORE,** the Plaintiff requests damages as prescribed by the law below: Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death. Damages and any other such remedies as applicable under Federal and State Laws.

And lastly, the Plaintiff further requests a **Trial by Jury**.

February 13, 2016

Respectfully submitted:

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**CERTIFICATION of MAILING**

This is to certify that a copy of the foregoing was sent via email and fax on this 13th day of February, 2016 to the Appellee's attorney as follows:

State of Connecticut

Department of Social Services

Attorney General, Rosemary McGovern

Office of Legal Counsel, Regulations and Administration

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