No. 22-6495

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

WEBSTER DOUGLAS WILLIAMS, III
Plaintiff-Appellant,

v.

MICHAEL CARVAJAL
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of North Carolina
No. 5:20-ct-3189 (Hon. Louise Wood Flanagan, U.S. District Judge)

BRIEF OF *AMICI CURIAE* THE ARC OF THE UNITED STATES, MENTAL HEALTH AMERICA, AND THE NATIONAL DISABILITY RIGHTS NETWORK IN SUPPORT OF APPELLANT

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June 21, 2022

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/s/ Samuel Weiss
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Dated: June 21, 2022

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The Arc of the United States (The Arc), founded in 1950, is the nation's largest community-based organization of and for people with intellectual and developmental disabilities (IDD). Through its legal advocacy and public policy work, The Arc promotes and protects the human and civil rights of people with IDD and actively supports their full inclusion and participation in the community throughout their lifetimes.

Mental Health America, founded in 1909, is the nation's leading community-based non-profit dedicated to addressing the needs of those living with mental illness and promoting the overall mental health of all Americans. Its work is driven by its commitment to promote mental health as a critical part of overall wellness, including prevention services for all, early identification and intervention for those at risk, and community-based care, services, and support for those who need it, with recovery as the goal.

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with

[1] Pursuant to Fed. R. App. P. 29(a)(4), no party's counsel authored this brief in whole or in part. No party or party's counsel, or any other person, other than the *amici curiae* or their counsel, contributed money that was intended to fund the preparation or submission of this brief. The parties consented to the filing of this brief.

disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

INTRODUCTION

Congress passed the Rehabilitation Act and Americans with Disabilities Act (ADA) to ensure that when reasonable accommodations exist, people with disabilities have the same access to the institutions of American life that those without them do. The district court's holding here did the opposite—in the context of prison grievances, it created burdens specific to those with disabilities. The result is particularly unjustifiable given the struggles that those with disabilities already face in precisely this context. The holding cannot be squared with American disability law and should be reversed.

ARGUMENT

I. The Rehabilitation Act, like its Sister Statute the Americans with Disabilities Act, Is Meant to Be Read Broadly in Order to Remedy Persistent and Pervasive Discrimination Against People with Disabilities.

In a wide variety of contexts, this Court and others have interpreted the Rehabilitation Act and its sister statute, the ADA,[2] to resolve ambiguities in favor of people with disabilities. *See, e.g.*, *Rosen v. Montgomery Cty. Maryland*, 121 F.3d 154, 157 n.3 (4th Cir. 1997) (holding that disability law holds government entities

[2] This Court analyzes claims under Title II of the ADA and the Rehabilitation Act in concert because the analysis is "substantially the same." *Doe v. Univ. of Md. Med. Sys. Corp.,* 50 F.3d 1261, 1265 n. 9 (4th Cir. 1995); *Rogers v. Dep't of Health & Environmental Control,* 174 F.3d 431, 433–34 (4th Cir. 1999) (stating that courts may apply Rehabilitation Act precedent in interpreting the ADA, and vice versa).

vicariously liable for the illegal actions of their employees). Courts have done so because such a conclusion is most consistent with the express goal of the Rehabilitation Act and the ADA in eradicating the rampant discrimination that exists against people with disabilities. *Delano-Pyle v. Victoria Cty., Tex.*, 302 F.3d 567, 575 (5th Cir. 2002) (holding that the historical justification for exempting employers from liability for the actions of their employees would be inconsistent with the purpose of disability law, which was eliminating discrimination against people with disabilities); *Duvall v. Cty. of Kitsap*, 260 F.3d 1124, 1141 (9th Cir. 2001) (explaining that holding entities liable for the actions of individual employees is "entirely consistent with the policy of [disability law], which is to eliminate discrimination against the handicapped.").

The anti-discriminatory remedial purpose of the Rehabilitation Act and the ADA is intended to aggressively remedy the persistent and acute discrimination faced by people with disabilities. While choosing to engage in legal action is a complex decision, research indicates that "it is a powerful way for people with disabilities to respond to discrimination." Sarah Parker Harris & Rob Gould, ADA Nat'l Network, *Experience of Discrimination and the ADA*, at 6 (2019), https://adata.org/sites/adata.org/files/files/ADA%20Research%20Brief_Discrimination%20and%20the%20ADA_FINAL.pdf. As the U.S. Supreme Court has recognized, "civil rights statutes vindicate public policies of the highest priority, yet

depend heavily upon private enforcement. Persons who bring meritorious civil rights claims, in this light, serve as private attorneys general." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 635–36 (2001). The remedies offered by disability law, including the award of compensatory damages and fee-shifting statutes, deter discrimination by encouraging covered entities to comply with legislatively mandated requirements. *See, e.g.*, *Barnes v. Gorman*, 536 U.S. 181, 184–88 (2002) (explaining the availability of compensatory, but not punitive, damages under disability law).

The disability statutes were enacted out of recognition that individuals with disabilities continually encounter various forms of discrimination, including "outright intentional exclusion, the discriminatory effects of architectural, transportation and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities." 42 U.S.C. § 12101(a)(5). To address this discrimination, the statutes evince a clear national purpose—to provide "a clear comprehensive national mandate" with "clear, strong, consistent, enforceable standards addressing discrimination." 42 U.S.C. §§ 12101(b)(1), (2).

Congress, the U.S. Supreme Court, and the Executive Branch have all enforced a capacious understanding of disability law. In 2008, after the Supreme

Court had interpreted the definition of the term "disability" narrowly in a series of cases, Congress explicitly overturned this precedent to expand the categories of individuals protected by disability law. *See* ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008). The Department of Justice has enforced the this expansion through aggressive regulations, such as requiring that "[t]he definition of 'disability' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by" disability law. 28 C.F.R. § 35.108. Similarly, the extent to which a disability "substantially limits" major life activities "was not intended to be a 'demanding standard'" but instead should be interpreted "broadly in favor of expansive coverage, to the maximum extent permitted." 28 C.F.R. § 35.108(d). And the Supreme Court and others have noted that the broad application of the protection of disability law is "consistent with the statutory purpose of ridding the Nation of discrimination." *Clackamas Gastroenterology Assoc., P.C. v. Wells*, 538 U.S. 440, 446 (2003); *see also Flynn v. Distinctive Home Care, Inc.*, 812 F.3d 422, 425–26 (5th Cir. 2016) (noting that the Rehabilitation Act broadly prohibits disability discrimination).

It is a "familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes." *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967). Courts have therefore been extremely deferential in giving effect to the broad remedial purpose of the ADA and the Rehabilitation Act. *See,*

e.g., *Henrietta D. v. Bloomberg*, 331 F.3d 261, 279 (2d Cir. 2003) (holding that a narrow construction of disability statutes should be avoided given that they are remedial); *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 307 (1st Cir. 2003) ("Given the remedial purpose underlying the ADA, courts should resolve doubts about such questions [about whether plaintiffs have shown a real and immediate threat of ongoing discriminatory harm] in favor of disabled individuals."); *Steger v. Franco, Inc.*, 228 F.3d 889, 894 (8th Cir. 2000) ("[T]he ADA is a remedial statute and should be broadly construed to effectuate its purpose"); *Disabled in Action of Pennsylvania v. Se. Pennsylvania Transp. Auth.*, 539 F.3d 199, 208 (3d Cir. 2008) (noting that disability law is remedial and must be broadly construed to effectuate its purpose of "eliminat[ing] discrimination against the disabled in all facets of society") (quotations omitted); *Hason v. Med. Bd. of California*, 279 F.3d 1167, 1172 (9th Cir. 2002) (concluding that courts must construe the language of disability law broadly in order to effectively implement its fundamental purpose of "provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."); *Schmitt v. Kaiser Found. Health Plan of Washington*, 965 F.3d 945, 954 (9th Cir. 2020) (interpreting a provision of the Rehabilitation Act "more broadly" because of its purpose).

While the U.S. Supreme Court, federal appellate courts, Congress, and the Executive Branch have all united to insist that the Rehabilitation Act be interpreted

aggressively to stamp out disability discrimination, the district court below followed the opposite tack—it actively facilitated disability discrimination by singling out people with disabilities for additional and onerous administrative burdens. And these burdens are ones that, as discussed *infra*, people with disabilities uniquely struggle to bear.

II. Stacking Additional Requirements onto Prisoners with Disabilities Only Exacerbates the Challenges They Face in Exhausting Administrative Remedies.

Prison grievance procedures are often sufficiently complex to prevent even the most capable prisoners from exhausting their administrative remedies. This is often intentional—several state corrections agencies' grievance procedures "have been updated in ways that cannot be understood as anything but attempts at blocking lawsuits." Derek Borchardt, *The Iron Curtain Redrawn Between Prisoners and the Constitution*, 43 Colum. Hum. Rts. L. Rev. 469, 473 (2012). And many incarcerated people face additional barriers that diminish or eviscerate their chances of successful administrative exhaustion, ranging from low rates of educational attainment to poor English proficiency to illiteracy. *See, e.g.*, U.S. Dep't. of Justice, Bureau of Justice Statistics, *Federal Prisoner Statistics Collected Under the First Step Act* (Nov. 2021) Table 1, https://bjs.ojp.gov/library/publications/federal-prisoner-statisticscollected-under-first-step-act-2021 (finding that in 2020, 28.3% of federal prisoners did not have a high school diploma, general equivalency degree, or other

equivalent certificate); *id.* (finding that in 2020, 11.4% of federal prisoners reported English as a second language); Bobby D. Rampey, et al., U.S. Dep't. of Edu., *Highlights from the U.S. PIAAC Survey of Incarcerated Adults: Their Skills, Work Experience, Education, and Training* (Nov. 2016) Table 1.2, https://nces.ed.gov/pubs2016/2016040.pdf (finding 29% of state and federal prisoners fell into the two lowest levels of a six-level literacy scale, compared to 19% of persons in the general population).

The most common challenge for incarcerated grievants attempting to comply with exhaustion requirements, however, is particularly relevant to this case and demonstrates the district court's error: their disabilities. 38% of prisoners surveyed in 2016 reported having a disability. Laura M. Maruschak, et al., Bureau of Justice Statistics, *Disabilities Reported by Prisoners* 1–2 (Mar. 2021), https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf. While physical disabilities can inhibit the completion of the grievance process, the most commonly reported disability among those surveyed was "cognitive disability," nearly one in four, the effect of which is plainer still. Patients with serious mental illness are likewise overrepresented in prison populations. Nearly fifty percent of prisoners housed in a state prison presented with symptoms of either, major depression, mania, or psychotic disorders, with 15.4% falling into the final category. Doris J. James and Lauren E. Glaze, Bureau of Justice Statistics, *Mental Health Problems of Prison and*

Jail Inmates (Sep. 2006), https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf. Prisoners exhibiting significant thought disorders are often far less capable of navigating the complexities of arcane grievance procedures, much less divining one that the Bureau of Prisons grievance procedures fails to even mention.

Incarcerated people with cognitive or intellectual disabilities are particularly likely to struggle to comply with grievance processes. People with cognitive or intellectual disabilities experience limitations in cognition and adaptive functioning. *See* Am. Ass'n on Intellectual & Developmental Disabilities, Frequently Asked Questions on Intellectual Disability, https://www.aaidd.org/intellectualdisability/faqs-on-intellectual-disability. They often experience difficulty in abstract thinking, problem-solving, planning, and judgment, as well as difficulty in "adaptive behavior," including communication, literacy, participation in social life, and independent living. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 33 (5th Ed. 2013). Intellectual and cognitive disabilities vary widely in impact and significance, and can be "invisible" or unrecognizable to an outsider. Tammy Smith, et al., *Individuals with Intellectual and Developmental Disabilities in the Criminal Justice System and Implications for Transition Planning*, 43 Educ. & Training in Developmental Disabilities 421, 424–25 (2008), available at https://www.jstor.org/stable/23879673?read-now=1&seq=5. Those with cognitive

disabilities may be able to participate in casual interactions and conversations, and read and write simple forms, but nonetheless struggle to follow complex, multi-step instructions. These prisoners may be unable to fully comprehend and comply with aspects of the grievance process including proper procedure, strict timelines, content requirements, and many other potentially challenging features. The irony of Defendants' argument here is that these problems will only get worse when people with such disabilities are not receiving adequate accommodations for their disabilities, which is precisely when a cause of action under the Rehabilitation Act is needed.[3]

In *Weiss v. Barribeau*, an incarcerated plaintiff alleging a failure to protect from assault and inadequate medical care in its aftermath suffered a "mental breakdown" while in the middle of completing the grievance process, leading the Wisconsin correctional facility where he was incarcerated to involuntarily commit him. 853 F.3d 873, 874 (7th Cir. 2017). Although he introduced evidence that both his serious mental health problems and the powerful psychotropic medication that he was administered against his will hampered his "ability to write, or get the proper information on the grievance forms," the Eastern District of Wisconsin granted summary judgment to defendants before the Seventh Circuit reversed. *Id.*

[3] The same is true when entire prison mental health systems are systematically and constitutionally inadequate. *See, e.g.*, *Brown v. Plata*, 563 U.S. 493, 502 (2011).

Physical disabilities can inhibit the completion of the grievance process just as mental disabilities can. In *Lanaghan v. Koch*, an incarcerated person in a wheelchair attempted to draft a grievance but was denied access to a table during the window for filing the grievance and lacked the dexterity with his hands necessary to fill out the form without one. 902 F.3d 683, 689 (7th Cir. 2018). The Seventh Circuit reversed a district court that had granted summary judgment to defendants because the plaintiff had failed to exhaust, explaining that he was physically incapable of pursuing any of the remedies nominally available to him. *Id.*; *see also Goubeaux v. Davis*, No. 2-19-cv-205, 2020 WL 2396008, at *4 (S.D. Ind. May 12, 2020) (explaining that prison defendants moved for summary judgment on grounds of failure to exhaust when the prisoner was in the hospital heavily medicated with painkillers for the duration of the grievance filing period for the same injury he was attempting to grieve).

The purpose of the Rehabilitation Act and the ADA in this context is to ensure that individuals with disabilities are not required to navigate draconian systems just to access to the same program as similarly situated people without a disability, based solely on their disability status. The decision of the district court represents a classic example of a person with a disability being forced to jump through more hoops to than is required of their non-disabled brethren. As the Appellant notes, these burdens are significant. Op. Br. 10–11. Only prisoners with disabilities are required to

"exhaust" the additional procedure; prisoners without disabilities are not. Rather than ensuring that the barriers faced are no greater for a person with a disability, the decision of the Court below ignores the purpose behind the Rehabilitation Act and the ADA by erecting additional barriers for individuals with disabilities.

While complying with complex administrative grievance processes can be challenging for anyone, prisoners with disabilities face unique challenges. Failing to provide reasonable accommodations to those prisoners only exacerbates those challenges. Singling out this exact population for additional complex grievance requirements will undermine the enforcement of disability law in prisons without any countervailing benefit in screening out meritorious claims.

CONCLUSION

This Court should reverse the district court and remand for further proceedings.

Date: June 21, 2022

Respectfully submitted,

/s/ Samuel Weiss
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *amici curiae* brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the CM/ECF system on June 21, 2022. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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