

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* MENTAL HEALTH AMERICA AND RIGHTS
BEHIND BARS IN SUPPORT OF PETITION FOR REHEARING EN BANC**

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May 19, 2023

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), the undersigned counsel certifies that none of the *amici curiae* are subsidiaries of any other corporation and no publicly held corporation owns ten percent or more of any *amici curiae* organization's stock.

/s/ Samuel Weiss

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Counsel for *Amici curiae*

Dated: March 19, 2023

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

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.

Rights Behind Bars (RBB) legally advocates for people in prison to live in humane conditions and contributes to a legal ecosystem in which such advocacy is more effective. In the last several years, RBB has won over a dozen cases in the federal appellate courts on behalf of incarcerated people bringing disability law claims.

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.

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 panel decision did the opposite—in the context of prison grievances, it created burdens specific to those with disabilities. The holding cannot be squared with American disability law and should be reversed.

ARGUMENT

I. The Rehabilitation Act, like its Sister Statute the ADA, 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 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,

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).

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. 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. The disability 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 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 panel decision followed the opposite tack—it actively facilitated disability discrimination by singling out people with disabilities for additional and onerous administrative burdens.

II. The Courts Must Interpret the PLRA in Concert with Federal Disability Law.

This Court must attempt to harmonize its interpretation of the PLRA with other potentially conflicting federal law, including federal disability statutes. *See Morton v. Mancari*, 417 U.S. 535, 551 (1974) (“[W]hen two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.”); *Anderson v. Fed. Deposit Ins. Corp.*, 918 F.2d 1139, 1143 (4th Cir. 1990) (“[A] court should, if possible, construe statutes harmoniously.” (citation omitted)).

The Rehabilitation Act prohibits agencies from providing services to people with disabilities that are “not equal,” “different or separate,” or “not as effective” as services for those without disabilities. *See* 28 C.F.R. § 39.130(b)(1)(ii)-(iv). Yet the panel decision interprets the PLRA to not only permit but to mandate exactly that. For “most claims, federal inmates need only follow the rules of the ARP,” but for “Rehabilitation Act claims, however, inmates must also follow the procedures laid out in in 28 C.F.R. § 39.170.” Panel Op. 4.

As the panel concedes, this additional procedural hurdle requires incarcerated plaintiffs with disabilities to wait significantly longer than those without disabilities to bring suit. A federal prisoner without a disability can seek judicial relief for a civil rights violation as soon as 90 days after the violation occurs. *See* 28 C.F.R. §§ 542.15, 542.18. Meanwhile, a federal prisoner with a disability—who must exhaust the BOP grievance process and the disability-specific EEO process—will likely need to wait at least an additional year before seeking relief for violations of the Rehabilitation Act. *See* Panel Op. 5. This express holding that people with disabilities must navigate additional processes cannot be squared with the Rehabilitation Act.

III. 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. The most common challenge for incarcerated grievants attempting to comply with exhaustion requirements, however, further demonstrates the panel decision’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>. The most commonly reported disability among those surveyed was “cognitive disability,”

nearly one in four. 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.aaid.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). 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.

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).

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 grant Petitioner's Petition for Rehearing En Banc, vacate the panel decision, and reverse the district court.

Date: May 19, 2023

Respectfully submitted,

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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 May 19, 2023. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Samuel Weiss

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