

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT JOSEPH KING,

Petitioner

vs.

ROBERT R. NEALL^{1&2}, *et. al.*,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Robert Joseph King
Clifton T. Perkins Hospital Center
8450 Dorsey Run Road
Jessup, Maryland 20794
410-724-3182
Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Did the United States Court of Appeals for the Fourth Circuit issue an Order that conflicts with 28 U.S.C. § 1292 by denying Petitioner's appeal?
2. Did the Maryland Department of Treasury's Division of Insurance by denying Petitioner's claims therein give the State of Maryland's consent to be sued in Federal Court for violations of Title I of the Americans with Disabilities Act even though Congress had not abrogated states' immunity for claims brought under Title I?

LIST OF PARTIES

1. Robert Joseph King is the Petitioner, and resides at The Clifton T. Perkins Hospital Center located at 8450 Dorsey Run Road, Jessup, Maryland 20794.
2. Robert R. Neall is the Respondent, and is the current Secretary of The Maryland Department of Health located 201 West Preston Street, Baltimore, Maryland 21202.¹
3. Christopher J. Irwin, is the Respondent, and is the current Chief Executive Officer, The Clifton T. Perkins Hospital Center located at 8450 Dorsey Run Road, Jessup, Maryland 20794.
4. Miriam Fogan, is the Respondent, and is the current Chief Operating Officer, The Clifton T. Perkins Hospital Center, 8450 Dorsey Run Road, Jessup, Maryland 20794.
5. Inna Taller, M.D. is the Respondent and is the current Clinical Director of The Clifton T. Perkins Hospital Center located at 8450 Dorsey Run Road, Jessup, Maryland 20794.
6. Aram Faramarz Mokhtari Aria, M.D., is the Respondent and is currently a Psychiatrist at The Clifton T. Perkins Hospital Center located at 8450 Dorsey Run Road, Jessup, Maryland 20794.
7. Chandra Wiggins is the Respondent and is currently employed at The Clifton T. Perkins Hospital Center located at 8450 Dorsey Run Road, Jessup, Maryland 20794.
8. Thomas Lewis, is the Respondent and is no longer employed at The Clifton T. Perkins Hospital Center and his location is unknown at this time to the Petitioner.
9. Wayne Noble is the Respondent and is no longer employed at The Clifton T. Perkins Hospital Center and his location is unknown at this time to the Petitioner.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	18
CONCLUSION	19

INDEX TO APPENDICES

APPENDIX A: Decision of the United States Court of Appeals for the Fourth Circuit-Denial of Appeal.

APPENDIX B: Decision of the United States Court of Appeals for the Fourth Circuit-Denial of Petition for Panel Rehearing and/or Petition for Rehearing En Banc.

APPENDIX C: United States Court of Appeals for the Fourth Circuit-Mandate.

APPENDIX D: Petition for Panel Rehearing and/or Petition for Rehearing En Banc.

APPENDIX E: Opinion of the United States District Court for the Southern District of Maryland.

APPENDIX F: The Equal Employment Opportunity Commission Letter.

APPENDIX G: The Maryland Department of Treasury's Division of Insurance acknowledgement of claim.

APPENDIX H: The Maryland Department of Treasury's Division of Insurance denial of claim.

APPENDIX I: The Maryland Department of Treasury's Division of Insurance conclusive denial of claim.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. <i>Atascadero State Hospital v. Scanlon</i> , 473 U.S. 234 (1985)	15
2. <i>Baker v. McNeil Island Correctional Center</i> , 859 F. 2d 124(9 th Cir. 1988).....	12
3. <i>Board of Trustees of University of Alabama v. Garrett</i> 531 U.S. 356, 360 (2001)	12, 14
4. <i>Cohen v. Beneficial Indus. Loan Corp.</i> , 337 U.S. 541, 545-46 1949)	10
5. <i>Davenport v. Maryland</i> 38 F. Supp. 3d 679 (D. Md. 2014)	14, 15
6. <i>Edelman v. Jordan</i> 415 U.S. 651 (1974)	17
7. <i>Evans v. B.F. Perkins Co.</i> , 166 F. 3d 642 (4 th Cir. 1999)	14
8. <i>Goode v. Central Virginia Legal Aid Society, Inc.</i> , 807 F. 3d 619 (4 th Cir. 2015)	9
9. <i>Louisiana v. Board of Education of Baker</i> 339 F.2d 911 (5 th Cir. 1964)	16
10. <i>McCray v. Md. Dep’t of Transp., Md. Transit Admin.</i> 741 F.3d 480, 483 (4 th Cir. 2014).....	11, 15
11. <i>Port Auth. Trans-Hudson Corp. v. Feeny</i> 495 U.S. 299, 304 (1990)	11
12. <i>Reynolds v. American National Red Cross</i> , 701 F. 3d 143 (4 th Cir. 2012).....	13
13. <i>Reyazuddin v. Montgomery County</i> 789 F.3d 407 (4 th Cir. 2015)	12
14. <i>Seminole Tribe of Florida v. Florida</i> 517 U.S. 44 (1996)	14

<i>15.Skokomish Indian Tribe v. France</i> 269 F.2d 555 (10 th Cir. 1959)	16
<i>16.Tennessee v. Lane</i> 541 U.S. 509 (2004)	12
<i>17.Weller v. Department of Social Services for City of Baltimore,</i> 901 F.2d 387 (4 th Cir. 1990)	14, 15
<i>18.Will v. Mich. Dep’t of State Police</i> 491 U.S. 58, 71 (1989)	11

STATUTES AND RULES

1.28 USC §1254 (1)	2
2.28 USC §1291	9, 10
3.28 USC § 1292	10
4.42 U.S.C. 1983	17
5.42 U.S.C. § 12101 et. seq. (Title I of the Americans with Disabilities Act as amended).....	6,11, 12, 13, 14, 15, 16,17,18,19
6.42 US C §12132 et. seq.(Tile II of the Americans with Disabilities Act as amended)	12, 13, 17, 18
7.42 USC § 12142 (Title III of the Americans with Disabilities Act as amended)	13, 17
8.Title VII of the Civil Rights Act of 1964 as amended	13, 17
9.Age Discrimination in Employment Act (ADEA),.....	13
10.Equal Employment Opportunity Commission (EEOC)	5, 15, 18
11.Fair Labor Standards Act (FLSA)	16
12.State Government Article, Title 1 through Title 5, Maryland Code Annotated	15

13.State Government Article §12-104 (a) (1), Maryland Code Annotated	15
14.Federal Rules of Civil Procedure 25 (d)	4
15.Federal Rules of Civil Procedure 54 (b),.....	10

OTHER

1.2017 Maryland Laws, Chapter 214 (S.B. 82)	4
2.The Eleventh Amendment to the Constitution of the United States	11, 12, 13, 14, 15, 16, 17
3.The Maryland Department of Treasury	6, 7, 11, 13, 14, 15, 16, 17
4. http://msa.maryland.gov/msa/mdmanual/16dhmh/mha/html/mha.html	15

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

1. The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix A and B to the petition and is unpublished.
2. The Mandate of the United States Court of Appeals for the Fourth Circuit appears at Appendix C to the petition and is unpublished.
3. The opinion of the United States District Court for the Southern District of Maryland appears at Appendix E to the petition and is unpublished.

JURISDICTION

The date on which The United States Court of Appeals for the Fourth Circuit decided this case was May 23, 2018 and appears at Appendix A.

A Petition for Panel Rehearing and/or Petition for Rehearing En Banc was timely filed in this case on May 30, 2018 and appears at Appendix D.

The United States Court of Appeals for the Fourth Circuit issued its Mandate on August 8, 2018 and appears at Appendix C.

A timely Petition for Panel Rehearing and/or Petition for Rehearing En Banc was denied by the United States Court of Appeals for the Fourth Circuit on the following date: July 31, 2018, and a copy of the Order denying rehearing appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Eleventh Amendment to the Constitution of the United States.
2. 42 U.S.C. § 12101 et. seq. (Title I of the Americans with Disabilities Act as amended.)
3. 42 U.S.C. § 12132 et. seq. (Title II of the Americans with Disabilities Act as amended.)
4. 42 U.S.C. § 12145 et. seq. (Title III of the Americans with Disabilities Act as amended.)
5. Title VII of the Civil Rights Act of 1964 as amended. (Citation not available to the Petitioner.)
6. Age Discrimination in Employment Act (ADEA) [Citation not available to the Petitioner.]
7. Equal Employment Opportunity Commission (EEOC) [Citation not available to the Petitioner.]
8. Fair Labor Standards Act (FLSA) [Citation not available to the Petitioner.]
9. Title 1 through Title 5, State Government Article, Maryland Code Annotated.

STATEMENT OF THE CASE

A. Factual Background

Petitioner is a patient at Clifton T. Perkins Hospital Center (“Perkins”), a psychiatric hospital operated by the Maryland Department of Health². Perkins operates a work adjustment program (WAP) which places patients at jobs and pays them the current minimum wage of \$10.10 per hour (\$8.75 per hour at the time of Petitioner’s complaint).

On March 18, 2016 Petitioner filed a grievance with Perkins stating that he “had waited for seven or eight months” without receiving a job from WAP and alleging that he “was, for some reason, being discriminated against.”

On March 29, 2016 The Respondents responded to the grievance.

On April 5, 2016 Respondent Wiggins, an employee of WAP, told Petitioner he had been placed in a job with the horticulture program. The Petitioner and

¹ That at the beginning of this action Van T. Mitchell was the then Secretary of The Maryland Department of Health and Mental Hygiene. On July 1, 2017, Dennis Schrader became the Acting Secretary of The Maryland Department of Health and the Petitioner sought substitution of parties pursuant to Fed. R.Civ. P. 25 (d) as he was the proper Respondent. On December 21, 2017 The Honorable Lawrence Hogan, Governor of the State of Maryland, announced the appointment of Robert R. Neall to be Secretary of The Maryland Department of Health. On January 9, 2018 the appointment of Robert R. Neall became effective. On January 29, 2018 the Maryland Senate Committee unanimously recommended confirmation of Robert R. Neall to be Secretary of The Maryland Department of Health. On February 2, 2018 the Maryland Senate confirmed the appointment of Robert R. Neall as Secretary of The Maryland Department of Health by vote and the Petitioner sought substitution of parties pursuant to Fed. R.Civ. P. 25 (d) as he is now the proper Respondent at this time.

² The Maryland Legislature changed the name of the Department of Health and Mental Hygiene to the Department of Health, “Department of Health and Mental Hygiene-Renaming,” 2017 Maryland Laws Ch. 214 (S.B. 82).

Respondent Wiggins discussed Petitioner's schedule and when he would be available to work. Respondent Wiggins informed Petitioner that he would also need to speak with Carol Adams, horticulture program supervisor. The next day Ms. Carol Adams and the Petitioner met, and Ms. Adams informed Petitioner that he would need a doctor's note to participate in the program due to his urinary incontinence.

On April 7, 2016 Petitioner met with his treatment team, and they informed him that he would be limited to five hours of work per week and that if his disabilities interfered with the job, then he would not be allowed to work.

On April 12, however, Respondent Wiggins told Petitioner that he would "not be working in horticulture." She explained that the treatment team did not believe the horticulture program was an appropriate placement for Petitioner. Respondent Wiggins offered the Petitioner a job in Perkins' canteen. The Petitioner being caught in a dilemma decided to accept the job in the Perkins' canteen even though this position also offered no reasonable access to restrooms.

B. Procedural History

In mid-April 2016 Petitioner filed a grievance alleging that he was being denied an opportunity to work because of his disability. Perkins denied the grievance.

On August 7, 2016 the Petitioner filed a complaint with the Equal Employment Opportunity Commission ("EEOC").

On August 31, 2016 the EEOC dismissed his complaint and issued a right to sue notice. See Appendix F.

On November 21, 2016 the Petitioner brought an action simultaneously with The United States District Court for the Southern District of Maryland and The Maryland Department of Treasurer's Division of Insurance against the Respondents, a variety of Perkins' officials and the then-Secretary of the Maryland Department of Health and Mental Hygiene in their individual and official capacities. Petitioner alleged they violated his rights under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et. seq.*, because: (1) they terminated his job in the horticulture program due to his urinary incontinence; (2) they refused to offer a reasonable accommodation (access to restroom facilities) that would allow him to work in the horticulture program; and (3) they refused to hire him to work elsewhere in Perkins (other than horticulture or the canteen) because of his disability.

On November 30, 2016 Mark A. Clabaugh, Casualty Claims Adjuster, The Maryland Department of Treasurer's Division of Insurance. acknowledged receipt of the Petitioner's Complaint. See Appendix G.

On January 31, 2017 the Respondents filed their Motion to Dismiss in The United States District Court for the Southern District of Maryland citing Eleventh Amendment bar against suits against State officials unless the State has consented or Congress has abrogated the State's immunity, further stating that the State of Maryland had not given its consent to be sued.

Petitioner filed his Response to the Motion to Dismiss with three Supplements and Exhibits.

On February 13, 2017 Mark A. Clabaugh, Casualty Claims Adjuster, The Maryland Department of Treasurer's Division of Insurance denied the

Petitioner's claims. See Appendix H.

On February 17, 2017 Mark A. Clabaugh, Casualty Claims Adjuster, The Maryland Department of Treasurer's Division of Insurance conclusively denied Petitioner's claims. See Appendix I.

On August 30, 2017 The Honorable Deborah K. Chasanow, Senior District Judge, United States District Court for the Southern District of Maryland in her Order and Memorandum Opinion denying in part and granting in part Petitioner's suit for damages. See Appendix E.

On September 13, 2017 the Petitioner filed his timely Amended Complaint.

On September 20, 2017 the Petitioner filed his timely Notice of Appeal with the United States District Court for the Southern District of Maryland.

On September 29, 2017 the United States Court of Appeals for the Fourth Circuit Ordered the Petitioner to Respond to the Respondents' Motion to Dismiss.

On October 3, 2017 the Petitioner filed his timely Response to the Respondents' Motion to Dismiss.

On October 9, 2017 the Petitioner filed in the United States Court of Appeals for the Fourth Circuit his Informal Brief.

The Respondents filed their Response Brief to the Informal Brief.

On November 8, 2017 the Petitioner filed his Reply Brief.

On May 23, 2018 The United States Court of Appeals for the Fourth Circuit denied the Petitioner's Appeal.

On May 30, 2018 the Petitioner filed a timely Petition for Panel Rehearing and/or Petition for Rehearing En Banc.

On June 5, 2018 The United States Court of Appeals for the Fourth Circuit

issued its Stay of Mandate.

On July 31, 2018 Petitioner's timely Petition for Panel Rehearing and/or Petition for Rehearing En Banc was denied by the United States Court of Appeals for the Fourth Circuit.

On August 8, 2018 the United States Court of Appeals for the Fourth Circuit issued its Mandate.

ISSUE I

1. Did the United States Court of Appeals for the Fourth Circuit issue an Order that conflicts with 28 U.S.C. 1292 by denying Petitioner's appeal?

ARGUMENT I

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT HAS OVERLOOKED OR MISAPPREHENDED A MATERIAL FACTUAL OR LEGAL APPEALABLE MATTER

The United States Court of Appeals for the Fourth Circuit asserted that there was no appealable Order in its May 23, 2018 Unpublished Per Curiam Opinion (See Appendix A attached hereto and herewith.)

The Order of August 30, 2017 by the Honorable Deborah K. Chasanow, Senior District Judge, United States District Court for the Southern District of Maryland is quite clear as to its purpose which first states in item 4:

“Plaintiff's complaint BE, and the same hereby IS, DISMISSED with prejudice as to his claims for damages and declaratory relief,”

Emphasis added and supplied.

And continues to secondly state:

“but without prejudice as to his claim for injunctive relief ;”

Emphasis added and supplied.

And further states in item 5:

“Plaintiff may file an amended complaint within 21 days;”

That Court in its Order granted leave without prejudice with respect to only file an amended complaint to correct the deficiencies as to injunctive relief and not as to the complaint in its entirety.

Emphasis added and supplied.

See Appendix E attached hereto and herewith.

The Respondents argued in their Motion to Dismiss that an order dismissing a complaint without prejudice is not an appealable final order under 28 USC§ 1291 if “the Plaintiff could save his action by merely amending his complaint.” citing *Goode v. Central Virginia Legal Aid Society, Inc.* 807 F. 3d 619, 623 (4th Cir. 2015) (internal quotation marks omitted). This Honorable Court concurred with this argument citing *Goode Id.* in its Unpublished Per Curiam Opinion of May 23, 2018.

The Petitioner in his Response to the Respondents Motion to Dismiss and in Petitioner’s Reply Brief before the United States Court of Appeals for the Fourth Circuit argues that he “cannot save his action by merely amending his complaint” because the Order of August 30, 2017 by the Honorable Deborah K. Chasanow,

Senior District Judge, United States District Court for the Southern District of Maryland dismissed with prejudice Petitioner's claims for damages and declaratory relief and therefore bars the Petitioner from re-filing his complaint with respect to damages and declaratory relief.

The Order of August 30, 2017 by the Honorable Deborah K. Chasanow, Senior District Judge, United States District Court for the Southern District of Maryland therefore is an appealable interlocutory or collateral order.

The United States Court of Appeals for the Fourth Circuit court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54 (b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949).

Therefore, The United States Court of Appeals for the Fourth Circuit issued an Order that conflicts with 28 U.S.C. 1292 by denying Petitioner's appeal because the Petitioner's appeal was a material or factual appealable matter that was, in fact, an Order that was denied with prejudice his claims for damages and declaratory relief.

The Petitioner seeks remand of this case to the United States Court of Appeals for the Fourth Circuit to consider the Petitioner's Appeal.

ISSUE II

Did the Maryland Department of Treasury's Division of Insurance by denying Petitioner's claims therein give the State of Maryland's consent to be sued in Federal Court for violations of Title I of the Americans with Disabilities Act even though Congress had not abrogated states' immunity for claims brought under Title I?

ARGUMENT I

**THE STATE OF MARYLAND HAS GIVEN ITS CONSENT TO BE
SUED IN FEDERAL COURT FOR VIOLATIONS OF TITLE I OF THE
AMERICANS WITH DISABILITIES ACT BY DENYING PETITIONER'S
CLAIMS THEREIN.**

On August 30, 2017 the Honorable Deborah K. Chasanow, Senior District Judge, United States District Court for the Southern District of Maryland issued her Order and Memorandum Opinion (See Appendix E attached hereto and herewith) states inter alia at III (B) (2) :

"Plaintiff's complaint seeks compensatory and punitive damages against Defendants in their official capacities. Official capacity claims are properly construed as 'a suit against the official's office' and as such are 'no different from a suit against the State itself.' *Will v. Mich. Dep't of State Police* 491 U.S. 58, 71 (1989). For a suit to proceed against a state, either the state must have consented to being sued or Congress must have validly abrogated the states' Eleventh Amendment immunity. *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 304 (1990). Maryland did not consent to suits under the ADA. *McCray v. Md. Dep't of Transp., Md. Transit Admin.*, 741 F.3d 480, 483 (4th Cir. 2014).

In enacting the ADA, Congress validly abrogated states' immunity for claims brought under Title II of the ADA but not for claims brought under Title I. *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004); *Bd. of Trs. of Univ. of Al. v. Garrett*, 531 U.S. 356,360 (2001). Title I of the ADA prohibits employment discrimination whereas Title II prohibits discrimination in provision of public services. 42 U.S.C. §§ 12112, 12132. Plaintiff does not identify explicitly the Title of the ADA he claims was violated, but he and Defendants refer exclusively to employment issues. If the claim is employment based, Plaintiff cannot rely on Title II. See *Reyazuddin v. Montgomery Cty.*, 789 F.3d 407, 420-21 (4th Cir. 2015)."

Further stating:

"Because WAP does not provide educational or rehabilitative services and instead provides an opportunity to work for patients who choose to do so, a patient performing work through WAP is an employee for purposes of Title I. See *Baker v. McNeil Island Corr. Ctr.*, 859 F.2d 124 (9th Cir. 1988) (finding an inmate could be an employee if the job was optional and not required as part of his sentence). Plaintiff's complaint thus raises a claim of disability discrimination in violation of Title I of the ADA. See § 12112 (b) (5) (B). Because Congress did not abrogate the states' Eleventh Amendment immunities for suits under Title I, Plaintiff cannot recover damages, either compensatory or punitive..." Emphasis added.

Even The Honorable Judge Chasanow in her Memorandum Opinion of August 30, 2017 agrees that the Petitioner has a viable claim under Title I of the ADA but is barred because Congress has not abrogated states' Eleventh Amendment immunities for suits under Title I of the ADA. However, if this Court rules that the State of Maryland did consent to be sued in Federal Court for violations of Title I of the ADA then the Petitioner would be able to proceed with his claims in the United States District Court for the Southern District of Maryland.

Without going further into Judge Chasanows' Memorandum the Petitioner for his purpose of the question supra argues that the State of Maryland has indeed

consented to be sued in Federal Court for violations of Title I of the Americans with Disabilities Act because when the Maryland Department of Treasurer's Division of Insurance denied Petitioner's complaint on February 13, 2017 and February 17, 2017 the State of Maryland thereby gave its consent to be sued in Federal Court for violations of Title I of the Americans with Disabilities Act even though Congress had not abrogated states' immunity for claims brought under Title I.

The operative words in Judge Chasanows' Memorandum is "either" and "or" as in³:

"For a suit to proceed against a state, either the state must have consented to being sued or Congress must have validly abrogated the states' Eleventh Amendment immunity,"³ Emphasis added.

The conjunction "and" is not used thereby giving a choice as to whether the State or Congress could waive a states' immunity for violations of Title I of the Americans with Disabilities Act.³

The Petitioner asserts and argues that the State of Maryland has indeed consented to being sued in Federal Court for violations of Title I of the Americans with Disabilities Act even though Congress had not abrogated states' immunity for claims brought under Title I when the Maryland Department of Treasury's Division of Insurance conclusively denied Petitioner's claims on February 13, 2017 and February 17, 2017.

For a lawsuit to proceed against a state in federal court, either the state must

³ Statutory definitions are sufficiently similar under the ADA, Title VII, and the ADEA that courts can rely on cases arising under any. *Reynolds v. Am. Nat'l Red Cross*, 701 F. 3d 143,155 (4th Cir. 2012).

have consented to be sued in federal court or Congress must have validly abrogated the state's Eleventh Amendment immunity. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996). Congress did not abrogate states' immunity under Title I of the ADA. *Board of Trustees of University of Alabama v. Garrett*, 53 U.S. 356, 360 (2001). Thus, for his employment discrimination claims based on his alleged disability to proceed, the Petitioner must demonstrate that Maryland has consented to this lawsuit in federal court. See *Evans v. B. F. Perkins Co.*, 166 F. 3d 642, 647 (4th Cir. 1999) (Plaintiff has burden of proving existence of subject matter jurisdiction). The Petitioner has met this burden. Under section 12-104 (a) (1) of the State Government Article, Maryland Code Annotated, Maryland has consented to suit in tort actions filed in a Maryland State Court. That consent to suit does not extend to actions filed in federal court. See *Weller v. Department of Social Services for City of Baltimore*, 901 F. 2d 387, 397 (4th Cir. 1990) and *Davenport v. Maryland* 38 F. Supp. 3d 679, 691 (D. Md. 2014).

Nevertheless, the Petitioner asserts that the State of Maryland has consented to his lawsuit when the Maryland Department of Treasury's Division of Insurance conclusively denied Petitioner's claims on February 13, 2017 and February 17, 2017 by stating that he (Petitioner) had "the right to pursue this matter through the Judicial System." (Informal Brief at 8-9, 22-23.) While the Respondents argue that a state's waiver of sovereign immunity to suit in state court is not enough to waive its Eleventh Amendment immunity to suit in federal court

citing *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 241 (1985) and while the Respondents may further argue that for a state statute to constitute a waiver of Eleventh Amendment immunity, it must specify the state's intention to subject itself to suit in federal court and further, the Respondents assert that neither section 12-104 (a) (1) of the State Government Article nor the letter attached to the Petitioner's Informal Brief mentions federal court. See also State Government Article, Title 1 through Title 5, Maryland Code Annotated.

The Petitioner argues that neither *Atascadero*, *Davenport*, *McCray* nor *Weller* apply to his case because (1) the letter from the Maryland Department of Treasurer's Division of Insurance gives the State of Maryland's explicit and/or implicit consent to be sued in federal court and (2) the right to sue notice by the EEOC also gives the Petitioner an explicit and/or implicit right of consent to sue the State of Maryland in Federal court. The Petitioner argues that the filing of a claim within the Maryland Department of Treasury's Division of Insurance and the denial therein is a gateway prerequisite to obtaining the consent of the State of Maryland to file suit in federal court for ADA violations and thus the State of Maryland has given its consent to be sued in federal court by denying his claims within the Maryland Department of Treasury's Division of Insurance.

Respondents' arguments are in error as The State of Maryland has no such statutes that constitute a waiver of Eleventh Amendment immunity concerning violations of Title I of the Americans with Disabilities Act as amended, and

therefore the State of Maryland cannot specifically seek the state's intention to subject itself to suit in federal court concerning waivers for the violations of Title I of the Americans with Disabilities Act where no such statutes to waive immunity for these actions exists.

In *Skokomish Indian Tribe v. France* 269 F. 2d 555 (10th Cir. 1959) states:

“Express or implied consent by state to be sued in Federal Court or waiver of immunity from suit in such court, must be found, and is not found in state statutory provisions waiving state immunity to suit in state court.”

And in *Louisiana v. Board of Education of Baker* 339 F. 2d 911 (5th Cir. 1964) states:

“Eleventh Amendment provides no immunity for state agency when it violates federally protected constitutional rights...”

A further argument is raised concerning the Laws of Contracts in that when Respondent Wiggins , an employee of WAP, told Petitioner he had been placed in a job with the horticulture program it became a contract to employ the Petitioner and much in the same way when the Maryland Department of Treasurer's Division of Insurance denied the Petitioner's claims therein on February 13, 2017 and February 17, 2017 stating that the Petitioner had:

“The right to pursue this matter through the Judicial System,”
it became an implied consent (contract) that the Petitioner could seek remedies in either State or Federal Court. *Skokomish Id.* The Fair Labor Standards Act (FLSA) should apply to this case as well as to terminate a new employee without justification is unlawful as well.

Certainly officials of the State of Maryland cannot act blatantly under the color of state law and with impunity to violate the Americans with Disabilities Act without some form of Federal Court intervention.

State of Maryland officials should be held tortious for such violations of the Americans with Disabilities Act as amended. The expressed and/or implied consent by the Maryland Department of Treasurer's Division of Insurance by the denial of the Petitioner's claims therein was in fact the Petitioner's right to suit in Federal Court for violations of Title I of the Americans with Disabilities Act as amended.

Even *arguendo* that such intention to subject itself to suit in federal court for violations of the Title I of the Americans with Disabilities Act as amended was required the Petitioner made a threshold approach at seeking such consent by establishing a claim within the Maryland Department of Treasurer's Division of Insurance.

In *Edelman v. Jordan* 415 U.S. 651 (1974) states:

"In deciding whether state has waived its constitutional protection against private suits under the 11th Amend., U.S. Supreme Court will find waiver only where stated by most express language or by such overwhelming implications from the text as will leave no room for any other reasonable construction."

These cases interweave and are symbiotically applicable decisions consistent with case law pertaining to 42 § 1983, 42 U.S.C. § 12101 et. seq., 42 U.S.C. §12132 et. seq., 42 U.S. C. § 12142, and Title VII of the Civil Rights Act of 1964 as amended.

The Petitioner has supplied this Honorable Court with overwhelming implications that the text of the letters from the Maryland Department of Treasury's Division of Insurance and the United States Equal Employment Opportunity

Commission (EEOC) is evidence that the State of Maryland has given its consent to be sued in Federal Court for violations of Title I and Title II of the Americans with Disabilities Act (ADA) as amended. *Edelman Id.*

REASONS FOR GRANTING THE WRIT

This review would allow the Petitioner to proceed in the United States Court of Appeals for the Fourth Circuit an issue by that Court that denied a material factual or legal appealable matter. The Petitioner seeks remand of this case to the United States Court of Appeals for the Fourth Circuit to consider the Petitioner's Appeal.

This case is of great national importance and review of this case would settle an issue which was not addressed by the United States Congress in abrogating Title II but not Title I of the Americans with Disabilities Act as amended. This review would fill a void left by the United States Congress in not abrogating Title I of the Americans with Disabilities Act as amended.

This review would settle whether a State implicitly and/or explicitly gives its consent to be sued in a Federal Court for violations of Title I of the American with Disabilities Act as amended when such State denies a claim for damages therein.

This review would fill a void left by the United States Congress in not abrogating Title I of the Americans with Disabilities Act as amended and would set precedent as to the procedural process in making employment discrimination claims

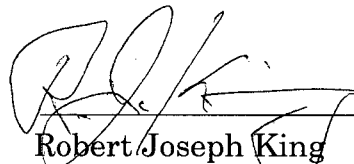
in Federal Court brought under Title I of the Americans with Disabilities Act as amended.

The United States Court of Appeals for the Fourth Circuit has decided important questions of Federal law that has not been, but should be, settled by this Court.

CONCLUSION

For all of the foregoing facts, grounds and reasons The Writ of Certiorari should be granted.

Done on this 14th day of August 2018. Respectfully submitted.

A handwritten signature in black ink, appearing to read 'R. J. King', is written over a horizontal line.

Robert Joseph King
The Clifton T. Perkins Hospital Center
8450 Dorsey Run Road
Jessup, Maryland 20794
410-724-3182
Petitioner

FILED: May 23, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7242
(8:16-cv-03804-DKC)

ROBERT JOSEPH KING

Plaintiff - Appellant

v.

ROBERT NEALL, Acting Secretary of Health; JOHN ROBISON, Chief Executive Officer, Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; THOMAS LEWIS, Chief Operating Officer, Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; INNA TALLER, M.D., Clinical Director, Clifton T. Perkins Hospital Center, In Her Individual and Official Capacity; ARAM FARAMARZ MOKHTA ARIA, M.D., Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; WAYNE NOBLE, Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; CHANDRA WIGGINS, Clifton T. Perkins Hospital Center, In Her Individual and Official Capacity

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-7242

ROBERT JOSEPH KING,

Plaintiff - Appellant,

v.

ROBERT NEALL, Acting Secretary of Health; JOHN ROBISON, Chief Executive Officer, Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; THOMAS LEWIS, Chief Operating Officer, Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; INNA TALLER, M.D., Clinical Director, Clifton T. Perkins Hospital Center, In Her Individual and Official Capacity; ARAM FARAMARZ MOKHTA ARIA, M.D., Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; WAYNE NOBLE, Clifton T. Perkins Hospital Center, In His Individual and Official Capacity; CHANDRA WIGGINS, Clifton T. Perkins Hospital Center, In Her Individual and Official Capacity,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Deborah K. Chasanow, Senior District Judge. (8:16-cv-03804-DKC)

Submitted: April 30, 2018

Decided: May 23, 2018

Before TRAXLER, KING, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Robert Joseph King, Appellant Pro Se. Kathleen A. Ellis, OFFICE OF THE ATTORNEY GENERAL, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert King seeks to appeal an order of the district court dismissing King's complaint on various grounds, in part without prejudice to King's right to file an amended complaint. King has taken advantage of the district court's invitation, and his amended complaint is now pending in the district court. Appellees have moved to dismiss this appeal for lack of jurisdiction.

This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order King seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. *See Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015) ("An order dismissing a complaint without prejudice is not an appealable final order under § 1291 if the plaintiff could save his action by merely amending his complaint." (internal quotation marks omitted)).

Accordingly, we grant Appellees' motion to dismiss the appeal, deny leave to proceed in forma pauperis, and dismiss the appeal for lack of jurisdiction. We deny as moot King's motion for appointment of counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED