

ORIGINAL

18-9689  
No.                   

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IN THE

FILED  
JUN 10 2019

OFFICE OF THE CLERK  
SUPREME COURT U.S.

SUPREME COURT OF THE UNITED STATES

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ROBERT JOSEPH KING,

Petitioner

vs.

ROBERT R. NEALL<sup>1 & 2</sup>, *et. al.*,

Respondents

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ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH  
CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

Robert Joseph King  
8450 Dorsey Run Road  
Jessup, Maryland 20794  
410-724-3228  
Petitioner

## **QUESTIONS PRESENTED FOR REVIEW**

1. Must State and Federal Buildings be required to provide readily and reasonable access to restroom facilities to those who have a physical disability?

## **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.<sup>1</sup>
3. Marian Fogan is the Respondent, and is the current Chief Executive Officer, and Chief Operating Officer, The Clifton T. Perkins Hospital Center located at 8450 Dorsey Run Road, Jessup, Maryland 20794.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.

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APPENDIX D: Order and Opinion of the United States District Court for the Southern Division of Maryland dated August 30, 2017.

APPENDIX E: Order and Opinion of the United States District Court for the Southern Division of Maryland dated August 10, 2018.

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 opinion of the United States District Court for the Southern Division of Maryland appears at Appendix D to the petition and is unpublished dated August 30, 2017.
3. The opinion of the United States District Court for the Southern Division of Maryland appears at Appendix E to the petition and is unpublished dated August 10, 2018.

## **JURISDICTION**

The date on which The United States Court of Appeals for the Fourth Circuit decided this case was January 25, 2019 and appears at Appendix A.

A Petition for Panel Rehearing and/or Petition for Rehearing En Banc was timely filed in this case on February 4, 2019 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: March 11, 2019, 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. Title 1 through Title 5, State Government Article, Maryland Code Annotated.

## STATEMENT OF THE CASE

### **A. Factual Background and Procedural History**

The Appellant, Robert Joseph King, was committed to the Maryland Department of Health (the “Department”) as not criminally responsible in 1999 and is currently an involuntary patient at The Clifton T. Perkins Hospital Center (“Perkins”). On November 25, 2016 he filed a complaint in federal court (Civil Action No. 16-cv-3804) alleging violations of the Americans with Disabilities Act, as amended (the “ADA”) and sought money damages as well as injunctive and declaratory relief and simultaneously filed a claim with the Maryland Treasurer on that same date. The federal court dismissed his complaint with respect to his monetary and declaratory relief but allowed the Appellant to amend his complaint with respect to the injunctive relief. During the interim the Appellant filed an appeal to the United States Court of Appeals for the Fourth Circuit (No. 17-7242) the dismissal of the monetary and declaratory relief. The United States

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<sup>1</sup> 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.

<sup>2</sup> 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

Court of Appeals for the Fourth Circuit denied Appellant's appeal and Appellant filed a Petition for Rehearing and Petition for Rehearing En Banc. The Court of Appeals for the Fourth Circuit denied the Petition for Rehearing and Petition for Rehearing En Banc and the Appellant filed an appeal to the Supreme Court of the United States (No. 18-5827).

The Appellant filed his amended complaint which was also dismissed (Civil Action No. 16-cv-3804). The Appellant filed an appeal to the United States Court of Appeals for the Fourth Circuit (No.18-7073) from the dismissal of his amended complaint. The United States Court of Appeals for the Fourth Circuit denied his appeal and the Appellant filed a Petition for Rehearing and Petition for Rehearing En Banc which was denied. The Petitioner now appeals that Order to the Supreme Court of the United States with the following question:

### **ISSUE I**

1. Must State and Federal Buildings be required to provide readily and reasonable access to restroom facilities to those who have a physical disability?

### **ARGUMENT I**

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

This Writ of Certiorari seeks this Honorable Court take up the issue of whether State and Federal Buildings must be required to provide readily and reasonable access to restroom facilities to those who have a physical disability. Unlike the

former decisions relating to the Americans with Disabilities Act (ADA) as amended, the question before this Court has more to do with State and Federal Governmental Buildings than with the private sector requirement to provide specific equipment and access entitlements. Currently, if a State or Federal Building wishes not to admit a person with a physical disability for use of its restroom facilities then that State or Federal Building is not required to admit said person. In all private sector buildings it is not necessary to be a patron of the particular establishment in order to use the restroom facilities. All one need do is request to use the restroom facilities. The Respondents responded that the ADA does not prescribe the number of restrooms that a hospital or other facility must have it only “requires that restrooms be architecturally accessible.” (ECF No. 33-1, at 5). The lower court enunciated that the petitioner did not show that he was “be[ing] excluded from participation in or be[ing] denied the benefits” of Perkins citing 42 U.S.C. § 12132 (a) and that the Petitioner failed to identify how the lack of restrooms has resulted in an injury. For these reasons the lower court found that the Petitioner did not state a claim entitling him to relief. In mathematics and elsewhere there are certain axiomatic truths which the Petitioner has attempted to explain to the United States Court of Appeals for the Fourth Circuit.

It is axiomatic that if a person holds their urine for a certain length of time it

would cause a person to start to feel uncomfortable unless that person finds some type of relief in the form of relieving oneself. If a person held their urine for a further extended time than that previously stated it would cause a person to start to feel physical pain and suffering unless that person finds some type of relief in the form of relieving oneself. If a person were to hold their urine for an even further extended time than the two previously stated lengths of time that person would feel excruciating pain and suffering unless that person finds some type of relief in the form of relieving oneself. It is customary and humane to be able to relieve oneself in a proper manner such as being able to use a restroom. It is against human dignity and custom not be able to use a restroom to relieve oneself. To have to urinate on oneself is humiliating, dehumanizing and contrary to customary and humane conduct.

In the case of someone with Urinary Incontinence (frequency) these conditions are exacerbated by the immediate need to relieve oneself. The Plaintiff has suffered cruel and unusual punishment in being subjected to the pain and suffering of his disability-Urinary Incontinence (Frequency) by having to withhold his urinary urges for an extremely length of time causing him excruciating pain and suffering. Thus, the Respondents have committed and continue to commit violations of the State and Federal prohibition on cruel and unusual punishment as well violation of the Americans with Disabilities Act (ADA) by keeping the existing restrooms locked where no staff members are available to unlock such restrooms. In addition, there is a lack of the appropriate placement of restrooms within Perkins itself therefore the need to build the appropriate amount of restroom

facilities so that patients may have readily and accessibility to the restroom facilities.

The Petitioner need not have made such a specific declaratory statement in his Amended Complaint as the axiomatic connotation is always present in such claims as urinary incontinence (frequency). Name this Petitioner one justice of this Honorable Court (man or woman) who, if needed to urinate, would not abandon their seat to use the restroom. Furthermore, name this Petitioner one justice of this Honorable Court who, if needed to urinate, would find it indignant to have to urinate on one's self because such readily and accessible restroom facilities were not available. There is not one justice of this Honorable Court whom, if mother nature called, would not stop[ in the middle of traffic and immediately attempt to find the nearest restroom facility.

As the baby-boomer generation ages there will be more call for readily and reasonable access to restroom facilities.

Title I of the ADA prohibits employment discrimination whereas Title II prohibits discrimination in provision of public services. 42 U.S.C. §§ 12112, 12132.<sup>3</sup> Title III provides for accommodations only in the private sector.

There are no provisions of the ADA for restroom accommodations in public services. Although restroom facilities for both the Judges and Staff of the Court and for the general public exist and, although this is an assumption of access to

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<sup>3</sup> 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 (4<sup>th</sup> Cir. 2012).

restroom facilities in all Federal and State buildings, there is no specific enforcement for such readily and reasonable accessible restroom facilities in either of these, Federal or State, buildings. If a Federal or State building chooses, for no specific reason other than to do so, to not provide readily and reasonable accessible restroom facilities for the general public then there is no provision of the ADA that mandates that such Federal or State building provide readily and reasonable accessible facilities for the general public.

For these reasons not only do the actions of the administrators of Perkins and The Maryland Department of Health affect not only the patients of Perkins but also the general public as well in that the administrators of each and every Federal and State building that has restroom facilities for the general public could prevent and even discriminate against a particular person, sex, group, disability or ethnicity from those readily and reasonable accessible restroom facilities.

The United States Court of Appeals for the Fourth Circuit asserted that there was no reversible error in its January 25, 2019 Unpublished Per Curiam Opinion (See Appendix A attached hereto and herewith.)

The Lower Court's Opinion, pg.6, states that the plaintiff had not alleged his inability to access restrooms "has resulted in his...or be[ing] denied the benefits" of Perkins. The benefits are also axiomatic in that his urinary relief is a vital function of the human body and that the ability to not relieve oneself again causes excruciating pain. These axiomatic truths are well established and should be cause for reversible error.

## **REASONS FOR GRANTING THE WRIT**

This Honorable Court should take up this case as it is of great national importance in that it does not only effect the Petitioner but the general public- at-large for readily and reasonable accessibility to restroom facilities in State and Federal Buildings. This Honorable Court should also take up this case as the issue is likely to reoccur and has precedential value. Finally, this Honorable Court should take up this case as it is a novel issue.

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 15<sup>th</sup> day of May 2019. Respectfully submitted.

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