NO. 20-1224

In the Supreme Court of the United States

O'REILLY AUTO ENTERPRISES, LLC,
D/B/A O'REILLY AUTO PARTS,

Petitioner,

v.

BRIAN BELL,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the First Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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SUMMARY

In its Petition, O'REILLY AUTO ENTERPRISES, LLC, DBA O'REILLY AUTO PARTS ("O'Reilly") explained that the decision of the First Circuit Court of Appeals—holding that an employee can assert a claim for disability discrimination based on a theory of failure to accommodate even when that individual does not require the desired accommodation—is contrary to authority from this Court and all other Circuit Courts of Appeals. App.5a-6a. The decision opens a Pandora's Box of unjustified failure-to-accommodate claims by employees seeking unnecessary "accommodations" simply to make their jobs easier, more convenient, or more comfortable.

In opposition, Respondent BRIAN BELL ("Bell") argues the Petition should be denied because the decision "properly applies the ADA," because there "is no conflict among the circuits," and because the contrary authority cited by O'Reilly is "either irrelevant or factually distinct." Opposition ("Oppo."), 6-20.

Bell is mistaken. First, the cases he cites as support for the First Circuit's ruling are either inapposite (because the plaintiffs in those cases introduced evidence that, unlike Bell, they were unable to perform the essential functions of their job without accommodation) or are irrelevant (because they fail to adequately distinguish between discrimination cases based on disparate treatment and those based on a failure to accommodate). Second, Bell's critique of the cases cited in O'Reilly's Petition is unjustified as they indeed support the proposition that disabled employees are only entitled to accommodations they actually need.

THE CRITICAL FACTS REPRISED

O'Reilly's Petition ("Pet.") and Bell's Opposition include a largely identical recitation of the background facts and procedural history that gave rise to this lawsuit. Pet.3-9; Oppo.1-6.

For purposes of the narrow legal issue presented here, there are only two critical facts (neither disputed by Bell, but lost somewhat in the full chronology of the case). First, Bell was a "qualified individual" under the Americans with Disabilities Act ("ADA") (because he is disabled with Tourette's Syndrome but could perform the essential functions of his job "with or without accommodations"). Second, despite his malady, Bell admitted he could do his job—work 50 scheduled hours per week and be available for overtime—without an accommodation. App.72a-76a; *see* App.4a.

DISCUSSION

I. THE CASES CITED BY BELL IN SUPPORT OF THE FIRST CIRCUIT ARE EITHER IRRELEVANT OR INAPPOSITE HERE.

Bell's Opposition highlights cases from this Court and six regional circuits it suggests support the First Circuit's ruling. O'Reilly replies to those cases as they were grouped in Bell's Opposition. In sum, those cases actually support O'Reilly's Petition.

A. Authority from This Court Supports O'Reilly.

O'Reilly's Petition cited to *Alexander v. Choate*, 469 U.S. 287 (1985) and *School Board of Nassau County, Florida v. Arline*, 480 U.S. 273 (1987), both arising in different contexts under the predecessor statute to the ADA, but both focusing, in general, on the needs of the disabled. Pet.11-12. Bell's proffered distinctions of those two cases do not detract from O'Reilly's point. *See* Oppo.9 n.4.

Otherwise, Bell cites to *United Airways, Inc. v. Barnett*, 535 U.S. 391 (2002) for the proposition that the ADA is intended to "clear[] away obstacles from a person's disability" in order that employees with disabilities can enjoy the same workplace opportunities as those without disabilities." Oppo.9, citing *id.* at 417. The reference to Justice Scalia's dissenting opinion—that the ADA "clears away obstacles arising from a person's disability"—is not particularly germane to the specific issue presented here; but what is germane (and what Bell failed to relate) was Justice Scalia's further explanations that "the ADA eliminates work-

place barriers only if a disability prevents an employee from overcoming them," *id.* at 413 (emphasis added); that the duty to accommodate does not include practices that "bear no more heavily upon the disabled employee than upon others" (since "[t]hat would be 'accommodating' the disabled employee, but it would not be 'making . . . accommodatio[n] to the known physical or mental limitations" of the employee, *id.*; and that the ADA only envisions elimination of obstacles "that the employee cannot tolerate." *Id.* at 416.

The clear implication of those observations align with O'Reilly's central premise that, if a disabled employee is not "prevented from" performing essential job functions—that is, like Bell, does not need an accommodation—there is no duty to provide one, certainly not simply (as Justice Scalia put it) to "make up for the employee's disability." *Id.* at 413.

B. The D.C. and Sixth Circuits

Bell first says that, in *Hill v. Associates for Renewal in Education, Inc.*, 897 F.3d 232 (D.C. Cir. 2018) ("*Hill*"), the D.C. Circuit held that a teacher with an amputated leg could maintain a failure to accommodate claim "even though he could perform the essential functions of [his job] without accommodation." Oppo.10-11. That is not accurate. Yes, there was some evidence the plaintiff could perform his job without accommodations; but the Court of Appeals reversed summary judgment in favor of the defendant based on a statement from the plaintiff detailing his inability to meet the walking and standing requirements of his job, as well as the "grave hardships" he encountered supervising kids on the playground and monitoring

bathroom breaks in the basement. *Hill*, 897 F.3d at 236, 240. Thus understood, Bell's lead case actually supports O'Reilly's position.

Similarly, Bell's citation to *Talley v. Family Dollar Stores of Ohio, Inc.*, 542 F.3d 1099 (6th Cir. 2008) is unavailing. *Talley* indeed recites the statutory definition that a "qualified individual with a disability" is one who "with or without accommodation can perform the essential functions of the employment position" (a point O'Reilly does not dispute). But the critical point of the case is that, as in *Hill*, the Court of Appeals reversed summary judgment for the defendant because the plaintiff provided evidence that, "without the use of a stool to sit upon while working the register, she was unable to perform her position." *Id.* at 1103.

Bell next cites to *EEOC v. Dolgencorp, LLC*, 899 F.3d 428 (6th Cir. 2018), where an employer was obliged to accommodate an employee by allowing her to keep orange juice at her workstation to avoid hypoglycemic episodes even though the employee could, supposedly, perform the essential functions of her job without accommodations. Oppo.11. However, again, the Sixth Circuit upheld the verdict for the plaintiff only because "ample evidence supported [the] conclusion" that the plaintiff could not safely perform the essential functions of her job without orange juice immediately at hand (and because the alternative accommodations suggested by her employer, like keeping candy in her pocket, "though medically equivalent in the abstract, were not practically equivalent in the concrete." *Id.* at 434.

Finally, Bell's citation to *Gleed v. AT&T Mobility Services, LLC*, 613 Fed. Appx. 535 (6th Cir. 2015) is also unavailing because, there, the Court of Appeals

reversed a summary judgment for the defendant on a failure to accommodate claim only because, "taking the evidence in the light most favorable to Gleed, he needed a chair to work . . . ." *Id.* at 539.

C. The Third, Fifth, and Ninth Circuits

Bell asserts the Third, Fifth, and Ninth Circuits "have also held that employers must accommodate employees whose disabilities negatively affect their work life, even if the individuals are able to perform essential job functions without accommodation." Oppo. 12. That is not the case.

First, Bell cites *Feist v. Louisiana*, 730 F.3d 450 (5th Cir. 2013) for the proposition that "reasonable accommodations are not restricted to modifications that enable performance of essential job functions." Oppo.12. In *Feist*, however, "the sole question on appeal [was] whether the district court applied the correct legal standard in determining whether Feist's proposed accommodation was reasonable." *Id.* at 453 (emphasis added). Thus, the ultimate ruling—that the district court erred in "requiring a nexus between the requested accommodation and the essential functions of Feist's position," *id.* at 454 (emphasis added)—has no bearing here.

Next, Bell cites *Colwell v. Rite Aid Corp.*, 602 F.3d 495 (3d Cir. 2010) for the proposition that an employee may be "entitled to a scheduling modification" regardless of whether they can perform the essential functions of their job. Oppo.12. There, the plaintiff requested day shifts only because her visual impairment made it dangerous for her to drive at night. *Id.* at 498. The defendant refused, claiming it had "no duty" to even consider changing the plaintiff's shift because "her

difficulties amounted to a commuting problem unrelated to the workplace." *Id.* at 504. The Third Circuit disagreed, holding that changing the plaintiff's working schedule to day shifts is a type of accommodation the ADA contemplates." *Id.* at 504. Again, the decision does not concern whether an employer is obligated to provide accommodations employees admit they do not need.

Finally, Bell cites *United States EEOC. v. UPS Supply Chain Solutions*, 620 F.3d 1103 (9th Cir. 2010) for the same proposition. Oppo.12. There, a district court granted summary judgment against a deaf accounting clerk who requested the presence of an American Sign Language ("ASL") interpreter at weekly meetings and job training sessions so he could enjoy "certain benefits and privileges of employment." *Id.* at 1106. On appeal, the question was whether there was a genuine issue of material fact regarding whether the defendant's agendas, contemporaneous notes, and written summaries of those meetings were sufficient to enable a deaf employee "to enjoy the same benefits and privileges of attending and participating in the weekly meetings as other employees" and whether the defendant "acted in good faith in the interactive process." *Id.* at 1110-15. The issue presented by O'Reilly was not addressed.

D. The Tenth Circuit

Bell asserts the Tenth Circuit "has also repeatedly upheld accommodations for workers who were able to perform essential job functions without accommodation." Oppo.12.

In support, Bell first cites to *Sanchez v. Vilsack*, 695 F.3d 1174 (10th Cir. 2012), where the district court ruled as a matter of law that an employee who

requested a transfer to be closer to medical treatment was not disabled due to the loss of half her field of vision. *Id.* at 1176. The Court of Appeals reversed based on the settled principle (always acknowledged by O'Reilly) that employees can qualify as disabled so long as they can perform the essential functions of their job with or without accommodations. *Id.* at 1181. But the Court of Appeals expressly declined to "opine as to whether reassignment was necessary for the plaintiff to access treatment" and did not resolve the reasonableness of the proposed accommodation. *Id.* at 1182. The case has no bearing on the issue O'Reilly presents.

Bell also cites to *Bartee v. Michelin North America, Inc.*, 374 F.3d 906 (10th Cir. 2004), where a jury returned a verdict in favor of a former factory foreman with necrosis in both hips who was terminated after requesting a golf cart for transportation or transfer to a job he could physically perform. *Id.* at 909-10. But there, the Court of Appeal affirmed the judgment for the plaintiff only because, "[r]eading the evidence in the light most favorable to [the plaintiff], [the defendant] did not inquire about [the plaintiff's] restrictions or about the accommodations that he needed to perform [his job]." *Id.* at 916 (emphasis added).

E. Conclusion

Bell asserts "[t]hese courts have all recognized that individuals who in some sense do not 'need' an accommodation to perform essential job functions are nevertheless entitled to seek one . . . ." Oppo.13. On the contrary, the cases cited all involve employees who prevailed only because they testified they could

not perform the essential functions of their jobs without accommodation. That was not the case here, where Bell admitted he could perform the essential functions of his job without accommodations.

Review of this important issue is necessary as it has already created a rift between the Circuit Courts of Appeals and is poised to entirely disrupt the employer-employee relationship and open the floodgates to meritless lawsuits based on an endless wish-list of fanciful employee desires. That is not the "balance" between securing equal advantage for disabled employees and establishing manageable standards for employers envisioned by the ADA. *See* Pet.11-12.

II. THE CASES CITED BY O'REILLY SUPPORT ITS CONCLUSION THAT THE FIRST CIRCUIT'S DECISION IS AN ANOMALY.

Bell's Opposition asserts the case law cited by O'Reilly "rel[ies] on mischaracterizations of quotations" and is otherwise "factually inapposite." Oppo.13. Bell is mistaken.

First, Bell takes issue with six cases cited by O'Reilly, and asserts that a court's "colloquial use of [the word] 'need'" in the context of a supposedly "irrelevant or tangential legal question" does not create a "circuit conflict." Oppo.14. But Bell provides only a parenthetical, sentence-fragment synopsis of each case that distorts O'Reilly's point and misdirects this Court. For instance, Bell dismisses the statement in *Conneen v. MBNA America Bank, N.A.*, 334 F.3d 318 (3d Cir. 2003), that a bank manager with depression "had an obligation to truthfully communicate any need for an accommodation" to her employer as having "no bearing on this case." Oppo.14. That statement actually

supports O'Reilly's position, particularly when considered alongside the reference to plaintiff's attempt "to justify her need for an accommodation," the reference to 42 U.S.C. section 12112(b)(5)(A) (which requires employers to initiate an interactive process "with the [employee] in need of accommodation"), and the statement that "an employer is liable for discriminating against [employees] in need of accommodation." *Conneen*, 334 F.3d at 322, 329, 331 (emphasis added). Similar observations apply to the other cases fragmented in Bell's superficial footnote. Oppo.14.

Next, Bell takes issue with five other cases where O'Reilly supposedly "misconstrues" the court's "basic failure-to-accommodate elements and standard." Oppo. 15. For example, Bell asserts the ruling in *Mitchell v. Washingtonville Central School District*, 190 F.3d 1 (2d Cir. 1999) is "inapposite" because the Court of Appeals "held that [the plaintiff] was not 'otherwise qualified' for his job." Oppo.15. But that fact does not detract from the plaintiff's need for a sedentary job due to his use of a prosthesis. *See Mitchell*, 190 F.3d at 4. Similarly Bell's footnote dismissal of *Williams v. Philadelphia Housing Authority Police Department*, 380 F.3d 751 (3d Cir. 2004) fails to address the clear statement by the Court of Appeals that, "with respect to what consists of a 'reasonable accommodation,' employers need only "initiate an informal, interactive process with [qualified individuals] with a disability in need of the accommodation." *Id.* at 771 (emphasis added).

Bell then criticizes O'Reilly for supposedly "selectively quot[ing] a court's discussion of the failure-to accommodate test" in three other cases. Oppo.15. Bell

claims those case "resolved on the quite different ground that no accommodation would have allowed the employees in question to perform the essential functions of their jobs." Oppo.16. But Bell's response fails to consider the implications of the observations in *Chandler v. City of Dallas*, 2 F.3d 1385 (5th Cir. 1993) that impairments "can vary widely from individual to individual," where one person "may simply need to wear glasses, while another may need a guide dog." *Id.* at 1396. Similarly, Bell's response fails to account for the statement in *Chiari v. City of League City*, 920 F.2d 311 (5th Cir. 1991) that employers need only determine "whether any 'reasonable accommodation'" would be necessary if the employee is not able to perform the essential functions of their job without accommodation. *Id.* at 315. Thus, each case, far from supporting Bell's position, confirms O'Reilly's point that, in order to qualify for an accommodation, the employee must actually need it.

Next, Bell claims "[f]our of [O'Reilly's] cases turn on other points not at issue here." Oppo.16. But Bell does not even attempt to address language in each of those cases—like *Lyons v. Legal Aid Society*, 68 F.3d 1512 (2d Cir. 1995)—that the ADA "does not require the employer to make accommodations that are 'primarily for the [individual's] personal benefit' . . . or to provide 'any amenity or convenience that is not job-related.'" *Id.* at 1516.

Finally, Bell dismisses the ruling in *Brumfield v. City of Chicago*, 735 F.3d 619 (7th Cir. 2013) because, there, the plaintiff's disability supposedly "had no bearing whatsoever on her job." Oppo.17. However, Bell neglects altogether the clear direction of that case that "an employer's accommodation duty

is triggered only in situations where an individual who is qualified on paper requires an accommodation in order to be able to perform the essential functions of the job," and its statement—dispositive of O'Reilly's ultimate point—that, if an employee is fully qualified for the job without accommodation, the employee "therefore is not entitled to an accommodation in the first place." *Id.* at 632 (emphasis added).

In sum, O'Reilly stands by the cases analyzed in its Petition. Each one either directly or indirectly supports the conclusion that there is a difference between disparate treatment cases and failure to accommodate cases, and that, in failure to accommodate cases, the plaintiff must prove a need for the accommodation requested. Bell did not do that here.

CONCLUSION

Bell's Opposition does not dispute this Petition presents an important question of federal law with broad application throughout the United States; or that the decision imposes an onerous duty on employers, obliging them to engage in a cumbersome and expensive interactive process and defend litigation in response to employee requests for what are actually just "wants" and desires. Bell's Opposition also fails to refute O'Reilly's principal point that the decision is an anomaly that stands in stark contrast to all other Courts of Appeal. Finally, Bell's Opposition does not dispute that the decision fails to balance the statutory objectives of equal access for disabled persons against the burdens imposed on employers to

provide additional accommodations for disabled employees who can already do their jobs.

For those and all the reasons stated in its Petition, O'Reilly respectfully requests that this Court issue a Writ of Certiorari to review the ruling of the First Circuit Court of Appeals.

Respectfully submitted,

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