

20-8301

No. _____

Supreme Court, U.S.
FILED

MAR 17 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL J. HEFFLEY – *PRO SE* PETITIONER

vs.

KIMBERLY STEELE et. al. – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Daniel J. Heffley
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ORIGINAL

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Does the Federal court have an obligation to follow the spirit and letter of the ADA and § 504 of the Rehabilitation Act?
2. Does the failure of the lower courts, to accommodate the disabled Petitioner, raise to the level of deliberate indifference and discriminatory intent?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Kimberly Steele

Elisabeth Bennington, Esq.

Represented by E. Bennington

Deborah Witchel

Represented by Raymond Swan

Katherine Gibson

Represented by John DeMarco

Neil Rosenblum PhD

Represented by Anthony Willott

James Bozigar

Elizabeth Molnar, Esq.

Represented by David Haber & Amy Coco

Stephanie Muick, Esq.

Represented by Jessica Lucas & S. Jegasothy

Arnold Caplan, Esq.

Represented by James Schadel & Scott Eberle

William Clifford, Esq.

Represented by Charlene Seibert & Dennis Roman

RELATED CASES

Heffley v. Steele, et al. 17-1624

USCA Case: Heffley v. Steele, et al. 19-3446

Heffley v. Commonwealth, et al. 18-1150

USCA Case Heffley v. Commonwealth, et al. 20-1804

TABLE OF CONTENTS

OPINIONS BELOW.....	6
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	8
STATEMENT OF CASE.....	10
REASONS FOR GRANTING THE WRIT.....	11
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A Opinion – Third Circuit of Appeals	
APPENDIX B Opinion – Western District Court	
APPENDIX C Motion – Appointment of Advisory Counsel	
APPENDIX D Motion – Judicial Notice of Aphasia	

TABLE OF AUTHORITIES CITED

CASES
NUMBER

PAGE

It is not reasonable for the court to demand the disabled litigant to sherardize and reference that information being requested here.

Neither can the Petitioners duly appointed facilitator be expected to execute a search for citations.

STATUTES AND RULES

Americans with Disabilities Act (ADA)

Sec. 504 of the 1973 Rehabilitation Act

Civil Rights Act of 1961

Parental Rights and Civil Rights as defined in the First, Fifth, Ninth and Fourteenth Amendments

OTHER

United Nations Convention on the Rights of Persons with Disabilities Resolution Adopted by the General Assembly

Various other International Treaties the United States is signatory to (yet to be defined)

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 judgement below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at **Appendix A** to the petition.

The opinion of the United States District Court appears at **Appendix B** to the petition.

Both Opinions speak to an academic review of the Petitioners Pleadings. This, notwithstanding that the Petitioner has clearly defined, tht he is not capable of execution pleadings and understanding communications from the court unless provide with the accommodation of an interpreter

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 17, 2020

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 19, 2020

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC §12132

The Americans with Disability Act (ADA)

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.

42 USC § 12133

The remedies, procedures, and rights set forth in § 505 of the Rehabilitation Act of 1973 (29 USC § 794a) shall be the remedies, Procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of § 202 (USC 12132).

29 U.S.C. § 794

The Rehabilitation Act, (§ 504)

No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

29 U.S.C. § 794a(a)(2)

The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964. . . shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

28 C.F.R. § 35.160(a)(1)

(1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

28 C.F.R. § 35.160(b)

(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in

which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities.

28 C.F.R. § 35.164

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or in undue financial and administrative burdens. . . .

28 C.F.R. § 35.104

Auxiliary aids and services includes – (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes. . . .

STATEMENT OF THE CASE

Please Note: The Petitioner is communicating with the help of a facilitator. The facilitator is not pro se but rather one who has domain knowledge of the Petitioner and those issues that are important to him. While the Petitioner is self-represented, he is disabled and incapable of reading, writing and executing this and other documents in his hand. Fully intelligent the Petitioner can reason when provided the opportunity and sufficient information on which to base his decisions. In this the Petitioner is a disabled dependent.

This case is arguable in that the Western District failed to give any consideration whatsoever to the National Rehabilitation Act and its prodigy the Americans with Disability Act.

Absent the protections provided in those statues, this Petitioner did not have a voice. The Petitioner was denied Due Process.

Additionally, best practices recommended in case law with respect to indigent *pro se* litigants have been completely ignored.

The Western District, rather applied academic standards and criteria to a pleading initiated by a disabled man and executed with the help of his uncredentialed facilitator.

Appendix A is a careful, albeit undaunted by RA and ADA consideration.

Exhibit B is the 3rd Circuits endorsement of the Western District dismissal. However, there does seem to be a hesitancy in the 3rd Circuits writing.

The petitioner's singular goal was to see his children.

REASONS FOR GRANTING THE PETITION

The Petitioner, Daniel J. Heffley, is disabled and as such is due certain considerations and accommodation as outlined by the ADA and 504 of the Rehabilitation Act. The only accommodation requested was labled Advisory Counsel. The Petitioner defined that term as being anything from a clerk to a law school student.

Both lower courts applied professional standards to the various pleadings and did so exclusive of the best practices generally recommended by other courts when dealing with indigent, *pro se* litigants. Add to this mix the fact that the Petitioner is disabled.

We have reasoned that the lower courts may have considered that they have "allowed" the Petitioner to utilize his Facilitator and that that is an accommodation. It is not an accommodation as the Facilitator is provided by the statute not the authority of the court. Further, the Facilitator is primarily the care giver and father of the Petitioner and not lettered in the law.

CONCLUSION

The complaint filed in District Court cited violations of Civil, Parental and Disability Rights and outlined the role that each defendant played in those infringements. However, due to ineptness and inexperience the complaint did not survive the pleading stage.

A failure to communicate for sure but not on the part of the Petitioner and his Facilitator but rather on the part of the court. The Petitioner simply needed a translator to accommodate his disability of aphasia.

The court denied a *pro bono* attorney and opined at the expense that such an attorney would represent. Readings have defined that if such an attorney was offered and refused the litigant would not be given any quarter by the court therefore, we would have accepted such an appointment. However, we did not request nor did we want a *pro bono* attorney.

Nowhere above can the Petitioner and his Facilitator see where he is to place a "Prayer of Relief."

The desired outcome is:

- That this court recognize that the lower court could have and should have provided the smallest of accommodations in terms of an advisor/interpreter.
- That this case be sent back down the line and allow deficiencies to be corrected.
- That the case begins anew.

The Petitioner has been denied the relationship and love of his two children since February 5, 2014. The Petitioner is desperately seeking a path back to his children. That is all and filing the complaint in the district court was the first step.

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

May 20, 2021