No. 21-____

IN THE

Supreme Court of the United States

MONTGOMERY COUNTY, MARYLAND,

Petitioner,

v.

YASMIN REYAZUDDIN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

MARC P. HANSEN
County Attorney

JOHN P. MARKOVS
Deputy County Attorney

EDWARD B. LATTNER
Chief Division of Government Operations

PATRICIA LISEHORA KANE
Chief Division of Litigation

ERIN J. ASHBARRY
Associate County Attorney
Counsel of Record

OFFICE OF THE COUNTY ATTORNEY FOR MONTGOMERY COUNTY, MARYLAND
Executive Office Building
101 Monroe Street, Third Floor
Rockville, Maryland 20850
(240) 777-6700
erin.ashbarry@montgomerycountymd.gov

August 26, 2021

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTION PRESENTED

Whether a plaintiff who obtains no judicial relief is a "prevailing party" entitled to attorney's fees.

RULE 29.6 DISCLOSURE STATEMENT

Montgomery County, Maryland, is a Charter county and a political subdivision of the State of Maryland. As a governmental entity, it has no parent corporation and does not issue stock.

DIRECTLY RELATED PROCEEDINGS

United States District Courts (District of Maryland):

A) *Yasmin Reyazuddin v. Montgomery County, Maryland*, No. DKC 11-0951, September 9, 2019

B) *Yasmin Reyazuddin v. Montgomery County, Maryland,* No. DKC 11-0951, August 21, 2017

C) *Yasmin Reyazuddin v. Montgomery County, Maryland,* No. DKC 11-0951, March 20, 2014

United States Courts of Appeals (Fourth Circuit):

A) Yasmin *Reyazuddin v. Montgomery County, Maryland,* No. 19-2144, February 24, 2021

B) Yasmin *Reyazuddin v. Montgomery County, Maryland,* No. 17-2013, November 21, 2018

C) Yasmin *Reyazuddin v. Montgomery County, Maryland*, No. 14-1299, June 15, 2015

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES Page(s)

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

PETITION FOR A WRIT OF CERTIORARI

Montgomery County, Maryland, respectfully petitions for a writ of certiorari to review an important judgment of the United States Court of Appeals for the Fourth Circuit which redefined "prevailing party" in a manner that creates a circuit split and conflicts with decisions of this Court.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at 988 F.3d 794. App. 1a-9a. The decision of the United States District Court for the District of Maryland is reported at 2019 U.S. Dist. LEXIS 161174, 2019 WL 4536505 (D. Md. Sept. 19, 2019). App. 12a-17a.

JURISDICTION

The Fourth Circuit entered judgment on February 24, 2021, and denied a timely petition for panel rehearing en banc on March 29, 2021.[*] App. 10a; 71a. On March 19, 2020, this Court extended the deadline to file petitions for writs of certiorari to 150 days from the date of the lower court judgment or order denying rehearing. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

---

[*] The case captions for the Fourth Circuit's opinion, judgment, and order denying rehearing en banc omitted the fact that the International Municipal Lawyers Association (IMLA) filed an amicus brief in support of the County. Upon notice of the omission, the Fourth Circuit amended the captions of those documents to include IMLA as an amicus in support of the County on August 5, 2021, and August 9, 2021. (ECF Nos. 419-422). As the Fourth Circuit's revisions changed only the case caption, the operative dates for jurisdictional analysis remain the judgment entered by the Fourth Circuit on February 24, 2021, and the order denying the petition for rehearing en banc on March 29, 2021.

STATUTORY PROVISIONS INVOLVED

The fee-shifting provision of the Rehabilitation Act provides, "In any action or proceeding to enforce or charge a violation of a provision of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 29 U.S.C. § 794a(b).

INTRODUCTION

Respondent Yasmin Reyazuddin, the plaintiff in this Rehabilitation Act case, obtained none of the judicial relief she sought against the petitioner and defendant below, Montgomery County. The jury awarded her no monetary damages; the trial court denied her requests for a preliminary and permanent injunction; and the trial court denied her request for a declaratory judgment. When the trial court entered judgment, the County was not ordered to do anything at all.

Despite respondent's lack of any enforceable judgment, the Fourth Circuit held she is a "prevailing party" for purposes of seeking reimbursement of her attorney's fees. "Prevailing party" is a legal term of art in numerous federal statutes that allows for departure from the "American Rule" (where each side must pay its own attorney fees) and permits a "prevailing party" to seek recovery of its attorney's fees. Ignoring respondent's lack of any enforceable judgment, the Fourth Circuit focused erroneously on two factors that are not relevant in the prevailing party analysis, thereby redefining the term and creating a circuit split.

First, the Fourth Circuit relied on the fact that the jury found the County had discriminated, even though the jury awarded Reyazuddin no damages. This Court, however, has made clear that a judicial finding that

a defendant violated the law, with no enforceable relief, does not render a plaintiff a prevailing party. To that end, all other federal appellate courts presented with a jury finding of liability, but no damages or other judicial relief, found the plaintiff was *not* a prevailing party. The Fourth Circuit's holding that respondent "prevailed" despite obtaining no damages or other judicial relief departs from this Court's jurisprudence and creates a circuit split.

Second, the Fourth Circuit relied on the fact that the County, in its continuing efforts to accommodate, voluntarily changed respondent's employment circumstances while this litigation was pending. The Fourth Circuit cited this voluntary accommodation to comply with the law as a "capitulation" that effected the relief respondent sought and provided grounds to award her prevailing-party status. The Fourth Circuit's holding conflicts with this Court's clear mandate in *Buckhannon*, which held that a defendant's voluntary, extra-judicial change – even if it effects the relief sought in plaintiff's complaint – lacks the necessary judicial *imprimatur* to crown plaintiff a prevailing party. In so holding, *Buckhannon* resolved a circuit split and rejected the then-prevalent "catalyst theory" of recovery, under which a plaintiff could be deemed a prevailing party if her complaint was the catalyst for the defendant's extra-judicial change and effectively provided plaintiff the relief she sought in her complaint. *Buckhannon* expressly rejected the catalyst theory, making clear that a plaintiff must have an enforceable judgment against the defendant to attain prevailing-party status and that a voluntary, extra-judicial change by a defendant does not render a plaintiff a prevailing party.

This Court should grant certiorari and reverse the decision of the Fourth Circuit because the decision is inconsistent with other federal appellate decisions, is contrary to *Buckhannon*, and would resuscitate the rejected catalyst theory for recovery of attorney fees, thereby re-opening the circuit split resolved by *Buckhannon*.

This decision should also not be allowed to stand because of the chilling effect it will have upon defendants' good-faith efforts to comply with the law to monitor and modify a plaintiff's accommodation while litigation is pending. Defendants nationwide will be deterred from implementing accommodations or otherwise taking steps in good faith to comply with the law for fear of conceding the plaintiff's prevailing-party status.

This Court should grant certiorari to reverse the Fourth Circuit's decision and re-affirm that an enforceable judgment is necessary for a plaintiff to become a "prevailing party."

STATEMENT

A. Reyazuddin's Rehabilitation Act Claim And Failed Request For Damages

Respondent Reyazuddin is a visually impaired County employee. App. 3a; App. 12a. For years, Reyazuddin answered the phones for a County department, fielding calls from County residents. App. 3a; App. 12a. The County provided her with assistive technology to interact with County information systems so she could do her work. App. 20a.

In 2008, the County decided to consolidate all call takers from its various executive branch departments into one customer service location, known as

"MC 311." App. 3a; App. 20a. The County implemented Oracle's Siebel software for MC 311 call takers to input data about calls received, route them to departments for resolution, and track their status. App. 3a; App. 39a. Although the consolidation swept up Reyazuddin's department, the County did not transfer Reyazuddin to MC 311 because Siebel was not compatible with the assistive technology used by Reyazuddin. App. 3a; App. 12a-13a. The County viewed the cost to customize Siebel to communicate with Reyazuddin's assistive technology as unreasonably high, so the County instead made two attempts to accommodate Reyazuddin by offering her two different, alternative positions within her existing department. App. 20a-21a; App. 33a-34a.

Reyazuddin accepted one of the offered positions. App. 20a-21a. She nevertheless later filed this action in April 2011 against the County, alleging discrimination under the Rehabilitation Act.[1] App. 4a; App. 13a; App. 33a-34a; The complaint sought compensatory damages, a declaratory judgment that the County violated the law, and an injunction ordering the County to transfer her to MC 311 as a call taker, or "Customer Service Representative," and to make Siebel accessible to her. App. 5a; App. 27a; App. 30a; App. 34a; App. 36a; App. 46a.

The District Court set the case for a jury trial in February 2016. App. 68a. Meanwhile, the County

---

[1] Plaintiff amended her complaint to include a claim under the Americans with Disabilities Act. App. 68a. The District Court granted the County summary judgment on both counts. App. 68a; *Reyazuddin v. Montgomery Cnty., Md.,* 7 F. Supp. 3d 526 (D. Md. 2014). The Fourth Circuit reversed as to the Rehabilitation Act count only. App. 68a; *Reyazuddin v. Montgomery Cnty., Md.*, 789 F. 3d 407 (4th Cir. 2015). The ADA claim is not at issue here.

continued its attempts to accommodate Reyazuddin. In October 2015, approximately five months before the jury trial, the County offered her a collaborative position with a non-profit, the Columbia Lighthouse for the Blind, which the County would fund. App. 4a; App. 21a; App. 34a-35a; (ECF No. 300-2). Reyazuddin declined that proposed accommodation, and her case proceeded to trial. App. 4a; App. 21a; App. 35a-36a.

The jury was asked to consider whether the County violated the Rehabilitation Act, and if so, what compensatory damages to award. App. 34a; App. 68a-69a. Reyazuddin asked the jury to award her damages for emotional distress only. App. 5a n.2. She argued an appropriate amount would be $129,000, which she claimed was the cost to the County to make Siebel accessible to her. (ECF No. 404). She did not ask for nominal damages. App. 5a n.2. The parties agreed if the jury found that the County did not discriminate or that the County proved its affirmative defense of undue hardship with respect to plaintiff's requested modifications to the Siebel software, the case would be over. (ECF No. 143). If the jury found merit to the plaintiff's discrimination claim, then the matter would proceed to a second hearing so the court could determine whether plaintiff was entitled to any declaratory or injunctive relief. (ECF No. 143).

At trial, the jury never heard about the County's third attempt in October 2015 to accommodate Reyazuddin because she limited her claim for compensatory damages to the time period ending the month before the County offered this accommodation. App. 34a-35a. With evidence of only two accommodation attempts, the jury found that the County discriminated against Reyazuddin. App. 21a; App. 34a-35a, 72a-74a. But the jury rejected Reyazuddin's request

for damages, awarding $0 in compensatory damages. App. 74a.

B. Reyazuddin's Failed Requests For Equitable Relief

After the $0 jury verdict, Reyazuddin moved for entry of a declaratory judgment, a preliminary injunction, and permanent injunction. App. 5; App. 34a; App. 36a. After a May 2016 hearing, the District Court denied preliminary injunctive relief due to the lack of evidence as to whether the County's third accommodation attempt was reasonable and as to the current state of Reyazuddin's employment. App. 5a; App. 35a. Reyazuddin requested and the District Court agreed that discovery was necessary before the court could schedule an evidentiary hearing to consider Reyazuddin's request for a declaratory judgment and a permanent injunction. (ECF Nos. 228, 241).

In October 2016, during the discovery period for the pending evidentiary hearing, the County made a fourth attempt to accommodate Reyazuddin. App. 5a; App. 21a; App. 34a-35a. The County voluntarily transferred Reyazuddin to MC 311 to answer calls for services administered by her former department and created and incorporated a new piece of assistive technology – an internet-based software program known as the Internal Web Accessibility Accommodation (IWAA). App. 22a; App. 35a; App. 41a-46a. Reyazuddin was able to perform her position at MC 311 in full with this new accommodation, but Reyazuddin was still dissatisfied: she wanted the County to modify the Siebel software so she could access it directly. App. 36a. Further, because other MC 311 Customer Service Representatives answered calls for all departments instead of just one, she claimed the accommodation to answer calls as a Cus-

tomer Service Representative only for her former department was an insufficient accommodation. App. 36a; App. 53a. She chose to pursue her requests for injunctive and declaratory relief. App. 35a-36a.

After a seven-day evidentiary hearing in April 2017, the District Court in August 2017 issued a Memorandum Opinion that found the County's fourth and last accommodation sufficient. App.32a-67a. The District Court found the jury verdict of discrimination in February 2016 did not establish any ongoing harm because the jury had not considered the County's third and fourth accommodations or Reyazuddin's new position and duties at MC 311. App. 47a-48a. Further, the District Court found that the County's various accommodation attempts over the years reflected an ongoing, "bona fide" attempt by the County to abide by the law, App. 63a, and that the County's fourth accommodation was reasonable and provided her with meaningful work. App. 56a-64a. Concluding that the County had accommodated Reyazuddin fully as required by law, the District Court entered an Order of Judgment on August 21, 2017, that denied Reyazuddin's requests for declaratory and injunctive relief, and entered judgment in favor of Reyazuddin and against the County for $0. App. 68a-70a.

On Reyazuddin's appeal, a three-judge panel of the Fourth Circuit unanimously affirmed the District Court's opinion and order denying Reyazuddin's request for equitable relief. App. 18a-31a. The Fourth Circuit held that the jury verdict did not mandate an award of injunctive relief, that the District Court did not abuse its discretion in denying an injunction, and that the District Court did not abuse its discretion in denying declaratory relief, stating expressly that the jury verdict was of "limited relevance" in light of

Reyazuddin's new position. App. 28a-29a; App. 27a-30a; App. 30a. As the Fourth Circuit affirmed in full, its decision did not direct the District Court or the parties to take any further action. App. 31a.

C. Reyazuddin's Request For Attorney's Fees

Although the judgment gave Reyazuddin no enforceable relief against the County, she sought attorney's fees before the District Court. App. 12a. Under the "American Rule," parties in civil actions are not normally entitled to attorney's fees, but a court may award attorney's fees if a statute authorizes the court to do so. *See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001). Here, Reyazuddin sought attorney's fees under the Rehabilitation Act, which provides that a court may in its discretion allow the "prevailing party" a reasonable attorney's fee along with other costs. *See* 29 U.S.C. § 794a(b). The parties by consent briefed only the question of whether Reyazuddin was a "prevailing party" under the law. App. 6a. Consistent with *Buckhannon*, the District Court found Reyazuddin's judgment "cannot be characterized as an enforceable one sufficient to make her a prevailing party," App. 14a, as there was "no 'court-ordered change in the legal relationship between the plaintiff and the defendant.'" App. 16a (quoting *Buckhannon*, 532 U.S. at 604).

Reyazuddin appealed the District Court's finding that she is not a prevailing party. App. 3a. On February 24, 2021, a three-judge panel of the Fourth Circuit reversed and remanded. App. 1a-9a. Abandoning completely its prior stance that the jury verdict was of limited relevance with respect to her claim for equitable relief, the Fourth Circuit found that Reyazuddin is a prevailing party "because she *proved*

her claim to a jury before the County capitulated by transferring her to MC 311." App. 9a. The Fourth Circuit wrote that refusing Reyazuddin attorney's fees would be "unjust" because the County's "timely *capitulation* rendered unnecessary equitable relief that Reyazuddin would otherwise have been *entitled* to." App. 9a (emphasis added).

The Fourth Circuit denied rehearing en banc, App. 71a, and this petition followed.

REASONS FOR GRANTING THE PETITION

I. THE FOURTH CIRCUIT'S HOLDING CREATES A CIRCUIT SPLIT.

The Fourth Circuit's decision creates a circuit split on the question of whether a plaintiff who obtains a jury finding that the defendant violated the law, but obtains no judicially enforceable relief, is a "prevailing party" for purposes of fee-shifting statutes. In particular, the Fourth Circuit's decision conflicts with eight other Circuits that have held a plaintiff who obtains no judicial relief – even where a jury found a violation of the law – is not a prevailing party.[2] These other Circuits correctly applied this Court's prevailing-party analysis, and the Fourth Circuit should be reversed.

This Court's prevailing-party analysis instructs that a plaintiff prevails if "actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992); *see also Lefemine*

[2] The term "prevailing party" is a legal term of art and interpreted consistently by courts regardless of the statute in which it appears. *See Buckhannon*, 532 U.S. at 603 n.4.

v. Wideman, 568 U.S. 1, 4 (2015). The degree of alteration is not significant: an award of nominal damages – even just one dollar – is sufficient to effectuate the required alteration between the parties. *See Farrar*, 506 U.S. at 113 (a judgment for any amount, even nominal, "modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay"). In addition to a monetary damages award, a permanent injunction alters the parties' relationship and affords a plaintiff prevailing-party status. *Lefemine v. Wideman*, 568 U.S. 1, 4 (2015). *Cf. Sole v. Wyner*, 551 U.S. 74, 78 (2007) (holding a plaintiff is not a prevailing party if she obtains a preliminary injunction but later loses her claim for permanent injunctive relief).

The material alteration must directly benefit plaintiff at the time of judgment; otherwise, the judgment cannot be said to modify the defendant's behavior. *See Farrar*, 506 U.S. at 111. A judicial pronouncement of a violation of the law – absent some favorable award for the plaintiff to *enforce* – is not a material alteration and is insufficient to render a plaintiff a prevailing party. *See Farrar*, 506 U.S. at 113 ("[a] judicial pronouncement that the defendant has violated the Constitution, unaccompanied by an enforceable judgment on the merits, does not render the plaintiff a prevailing party" (citing *Hewitt v. Helms*, 482 U.S. 755, 762 (1987)). To that end, a declaratory judgment constitutes relief for purposes of prevailing-party status "[i]f, and only if, it affects the behavior of the defendant toward the plaintiff." *Rhodes v. Stewart*, 488 U.S. 1, 4 (1998).

Federal circuit courts applying these tenets have held — in direct contrast with the Fourth Circuit's decision in this case — that a plaintiff who does not

obtain enforceable judicial relief is not a prevailing party, even if the jury finds that the defendant violated the law.

For example, a plaintiff with a jury finding of discrimination but no judicial relief was not a prevailing party in *Caruthers v. P&G Mfg. Co.*, Nos. 99-3318 & 98-3035, 1998 U.S. App. LEXIS 24847 (10th Cir. Oct. 6, 1998). In *Caruthers*, a jury found that the defendant discriminated under the ADA, but awarded the plaintiff no damages, and the trial court denied equitable relief. *See Caruthers*, 1998 U.S. App. LEXIS 24847, at *2, *9. The Tenth Circuit held that a pronouncement that the law was violated, but with no enforceable judgment, does not render plaintiff a prevailing party. *Id.* at *8. The court observed the plaintiff could show no alteration in the parties' legal relationship, and that "[m]oral satisfaction . . . cannot bestow prevailing party status." *Id.* at *8.

Similarly, in *Tunison v. Continental Airlines Corp.*, 162 F.3d 1187 (D.C. Cir. 1998), the court held a jury finding of a violation of Air Carrier Access Act, but awarding no damages, did not render plaintiff a prevailing party. *See Tunison*, 162 F.3d at 1190. The court stated that a declaration of a violation of the law with no damages award is an "empty judgment . . . [which] carries no real relief and thus does not entitle the judgment winner to be treated as a prevailing party." *Id.* at 1190. As "a judgment with no damages at all is not an 'enforceable judgment,'" plaintiff was not a prevailing party. *Id.* at 1190.

These courts are in the majority with other circuit courts who hold that a jury verdict that the law was violated, with no other judicial relief, is not sufficient to render the plaintiff a prevailing party. *See Mounson v. Moore*, 117 Fed. Appx. 461, 462 (7th Cir. 2004)

(vacating attorney's fee award where plaintiff received "only a jury determination" that defendants violated his constitutional rights but awarded him no damages; plaintiff was not a prevailing party as he had nothing to enforce); *Salvatori v. Westinghouse Electric Corp.*, 190 F.3d 1244, 1245 (11th Cir. 1999) (plaintiff not a prevailing party on Age Discrimination in Employment Act (ADEA) claim where jury found defendant discriminated but awarded plaintiff no damages); *Nance v. Maxwell Fed. Credit Union*, 186 F.3d 1338, 1342-43 (11th Cir. 1999) (after court vacated jury's damages award on appeal, ADEA plaintiff was not a prevailing party as plaintiff had no judgment to enforce despite jury finding of discrimination against plaintiff); *Bonner v. Guccione*, 178 F.3d 581, 594 (2nd Cir. 1999) (plaintiff was not a prevailing party under Title VII where jury found sexual harassment but awarded no damages); *Canup v. Chipman-Union, Inc.*, 123 F. 3d 1440, 1442-43 (11th Cir. 1997) (despite jury finding in Title VII mixed-motive case that race was a factor in plaintiff's termination, jury also found defendant employer would have terminated plaintiff even had it not taken race into account, and plaintiff was not a prevailing party as he failed to obtain any damages or relief); *Harvey-Williams v. Peters*, Nos. 95-4272 & 95-4354, 1997 U.S. App. LEXIS 17735, *9 (6th Cir. July 10, 1997) (affirming denial of attorney's fees to plaintiff under Title VII following a zero-damages jury verdict as legal relationship between parties did not change and there was no judgment to enforce); *Robinson v. City of St. Charles, Mo.*, 972 F.2d 974, 976 (8th Cir. 1992) (plaintiff was not a prevailing party under 42 U.S.C. § 1983 where jury found excessive use of force by police but awarded zero damages as the verdict did not change legal relationship between parties and was only a "technical victory"); *Warren v.*

Fanning, 950 F.2d 1370, 1374-75 (8th Cir. 1991) (a jury finding of Eighth Amendment violation but refusing to award plaintiff any damages was a "Pyrrhic victory" that did not entitle plaintiff to prevailing party status); *Walker v. Anderson Elec. Contractors*, 944 F.2d 841, 847 (11th Cir. 1991) (plaintiff was not a prevailing party under Title VII despite jury finding of sexual harassment because jury awarded no damages and jury verdict did not affect the behavior of defendant toward the plaintiff); *Carbalan v. Vaughn*, 760 F.2d 662, 666 (5th Cir. 1985) (plaintiff was not a prevailing party where jury found violation of Constitutional prohibition against unreasonable bail but awarded plaintiff no damages).[3]

Reyazuddin's jury verdict entitled her to enforce nothing, and she obtained no equitable relief. Under other circuits' precedent, she would not have been deemed a "prevailing party" entitled to attorney's fees. The Fourth Circuit's decision is not consistent

---

[3] Although not involving a jury verdict, the D.C. Circuit recently considered a "close" question as to whether a plaintiff was a prevailing party in *Initiative and Referendum Institute v. U.S. Postal Service*, 794 F.3d 21, 22 (D.C. Cir. 2015). In that case, the Court held a party may achieve "prevailing party" status by winning a remand that makes a substantive victory inevitable, thereby effecting the required court-ordered change in the parties' legal relationship. *Id.* at 25. Here, in contrast, Reyazuddin never obtained an appellate court remand for relief akin to a decision on the question of injunctive relief. Rather, the district court's denial of injunctive relief was affirmed. Moreover, unlike *Initiative*, the verdict did not mandate any equitable relief. To the contrary, Reyazuddin agreed after the verdict that discovery and a separate proceeding were necessary on her request for equitable relief, and a bench trial was held for 7 days to determine what if any equitable relief was appropriate. The Fourth Circuit affirmed in full the denial of that relief, and there was no remand upon which Reyazuddin could expect a substantive victory.

with other federal appellate courts or this Court's precedent. This Court should grant certiorari to resolve this circuit split.

II. THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH *BUCKHANNON* AND RESUSCITATES THE CATALYST THEORY.

In addition to creating a circuit court split as to whether an enforceable judgment is a necessary prerequisite to prevailing party status, the Fourth Circuit's decision conflicts with *Buckhannon* and resuscitates the catalyst theory that *Buckhannon* rejected.

In *Buckhannon*, a plaintiff nursing home corporation challenged a West Virginia state law that required residents to be capable of "self-preservation," or to self-evacuate, in the event of an emergency. *See Buckhannon*, 532 U.S. at 600. In response to cease-and-desist orders requiring closure of its nursing home facilities, plaintiff challenged the law under the ADA and the Fair Housing Act. *See id.* at 600-01. After plaintiff filed suit, West Virginia eliminated the "self-preservation" requirement and successfully moved for dismissal of the case as moot. *See id.* at 601. As plaintiff obtained no judicial relief, the trial court and the Fourth Circuit found the plaintiff was not a prevailing party entitled to attorney's fees. *See id.* at 601-02. This holding departed from the majority of other federal circuits at the time, which then followed the "catalyst theory," under which a plaintiff could be a prevailing party if a defendant voluntarily changed its conduct to effectuate the relief plaintiff sought in the litigation. *See id.* at 602 n.3, 605.

The *Buckhannon* court rejected the catalyst theory, affirming the denial of attorney's fees and holding that a defendant's voluntary, extra-judicial change in conduct could not render a plaintiff a prevailing party. "[A] defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change." *Id*. at 605. *Buckhannon* listed "enforceable judgments on the merits" or "settlement agreements enforced through a consent decree" as having that necessary judicial *imprimatur*. *Id*. at 604-05. In contrast, *Buckhannon* made clear that a private settlement agreement lacking the judicial approval and oversight provided by a consent decree does not make plaintiff a prevailing party. *See id.* at 604 n.7; *see also Farrar*, 506 U.S. at 113.[4] The Court emphasized that it had never "awarded attorney's fees for a nonjudicial alteration of actual circumstances." *Buckhannon*, 532 U.S. at 606 (quotation marks omitted). Thus, the appropriate test to determine whether a plaintiff is a prevailing party is whether there has been a "material alteration of the legal relationship of the parties" and there is a "judicial imprimatur on the change." *Id*. at 603-05; *see also Sole v. Wyner*, 551 U.S. 74, 81 (2007) (material alteration is the "touchstone" of prevailing party status).

---

[4] As Chief Justice Rehnquist noted in his opinion for the Court, "[f]ederal jurisdiction to enforce a private contractual settlement will often be lacking unless the terms of the agreement are incorporated into the order of dismissal." *Buckhannon*, 532 U.S. at 604 n.7. This limited the *Farrar* Court's broader declaration that, "[n]o material alteration of the legal relationship between the parties occurs until the plaintiff becomes entitled to enforce a judgment, consent decree, or *settlement* against the defendant." *Farrar*, 506 U.S. at 113 (emphasis added).

The Fourth Circuit's decision in this case resuscitates the catalyst theory: it relies erroneously upon the County's voluntary, extra-judicial accommodation of Reyazuddin as proof that she obtained "relief." This is not the correct standard enunciated in *Buckhannon,* which requires an enforceable judgment.

After ten years of litigation, Reyazuddin has no enforceable judgment. The jury trial resulted in nothing for Reyazuddin to enforce. The evidentiary hearing for declaratory and injunctive relief resulted in nothing for Reyazuddin to enforce. The District Court combined the $0 jury verdict and the denial of declaratory and equitable relief into one Order of Judgment that required the County to take no action whatsoever and affected no change in the legal relationship between Reyazuddin and the County. App. 68a-70a. The District Court's decision was affirmed in full by the Fourth Circuit and contained no directive for the County to change its behavior towards the plaintiff in any way. App. 31a; App. 68a-70a. With no enforceable judgment, Reyazuddin is not a prevailing party.

Rather than following *Buckhannon,* the Fourth Circuit relied on *Parham v. Southwestern Bell Telephone Company*, 433 F.2d 421 (8th Cir. 1970). *See* App. 7a-9a. But *Parham* does not support conferring prevailing party status to Reyazuddin.

The trial court in *Parham* denied a class action request for injunctive relief against the defendant employer, finding that any discriminatory hiring practices in violation of Title VII were mitigated by the employer's new affirmative-action hiring policy. *See Parham*, 433 F.2d at 422, 425. The Eighth Circuit disagreed, finding a violation proven by statistical evidence of discriminatory hiring practices. *See id.* at

426. On remand, the Eighth Circuit did not order entry of injunctive relief, but did instruct the district court to retain jurisdiction of the case to continue to judicially supervise the defendant's compliance with its new policies. *See id.* at 429 ("[w]e remand the case to the district court with directions to retain jurisdiction over the matter for a reasonable period of time to insure the continued implementation of the appellee's [affirmative action policy]").

Contrary to the Fourth Circuit's analysis, the *Buckhannon* Court specifically held that *Parham* "does not support a theory of fee shifting untethered to a material alteration in the legal relationship of the parties." *Buckhannon*, 532 U.S. at 607 n.9. Rather, the Court explained that the trial court's retention of jurisdiction in *Parham* to monitor defendant's compliance meant the case was not over: if the defendant failed to continue to implement its EEO policies, injunctive relief could be entered by the trial court. *See id.* As Justice Scalia's separate opinion explained, the court's retention of jurisdiction in *Parham* was significant for prevailing-party purposes because it meant that the "finding [of discrimination] could be given effect, in the form of injunctive relief, should the defendant ever backslide in its voluntary provision of relief to the plaintiffs." *Id.* at 616-17 n.3 (Scalia, J., concurring).

Here, in contrast, the Fourth Circuit affirmed the District Court's denial of injunctive relief. App. 31a. The Fourth Circuit did not reverse denial of injunctive relief or remand with instructions to retain jurisdiction over the County to monitor its elimination of discrimination. App. 31a. To address this discrepancy with *Parham*, the Fourth Circuit stated that Reyazuddin could "[r]einvoke the district court's

jurisdiction simply by filing a new lawsuit." App. 8a n.4. But Reyazuddin's ability to file a future lawsuit does not represent success in *this* suit — i.e., the suit for which Reyazuddin seeks fees — by any objective measure. Any litigant who fails to obtain relief can try again, to the extent principles of res judicata allow. But the "prevailing party" exception to the American Rule applies only to that limited group of plaintiffs who obtain a "material alteration in the legal relationship of the parties." *Buckhannon*, 532 U.S. at 604 (quotation marks omitted). The Fourth Circuit's analysis upends the American Rule by finding that Reyazuddin's mere ability to try again, after all her requests for judicial relief were rejected, entitles her to prevailing party status. A new lawsuit — even if not precluded, and even if successful on the merits — would not give Reyazuddin any judicially enforceable relief in *this* case.

Reyazuddin obtained no monetary, declaratory, or equitable relief at *any* phase of this litigation. The jury's finding of discrimination completed just one phase of this case, and it was a pyrrhic victory that yielded no relief. *Buckhannon* dictates that Reyazuddin's lack of any judicial relief by the end of her litigation means she is not a prevailing party. The County's ongoing, good-faith efforts to accommodate her visual impairment do not alter that analysis. This Court should grant certiorari to prevent the Fourth Circuit's decision from sowing confusion as to whether the catalyst theory is an acceptable basis to award prevailing party status.

III. THE FOURTH CIRCUIT'S DECISION WILL CHILL ATTEMPTS TO COMPLY WITH THE LAW WHILE LITIGATION IS PENDING AND WILL INVITE A "SECOND LITIGATION" INTO THE SUBJECTIVE REASONS FOR A DEFENDANT'S EXTRA-JUDICIAL CHANGE IN BEHAVIOR.

The question presented in this petition is important and recurring. Numerous federal statutes use the phrase "prevailing party" as the standard by which attorney's fees may be awarded. *See Buckhannon*, 532 U.S. at 600; *Marek v. Chesny*, 473 U.S. 1, 43-51 (1985) (appendix to opinion of Brennan, J., dissenting) (listing over 100 federal statutes that authorize courts to award attorney's fees, including various civil rights laws, the Voting Rights Act, the Lanham Act, the Copyright Act, and the Equal Access to Justice Act); *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 684 (1983) (observing more than 150 federal statutory fee-shifting provisions, applying "prevailing party," "substantially prevailing party," or "successful" as standard to award). The Fourth Circuit's decision will impact application of the prevailing party standard beyond this Rehabilitation Act case.

Moreover, the Fourth Circuit's analysis will deter defendants from engaging in the interactive process required to accommodate plaintiffs with disabilities under the Rehabilitation Act.[5] Employers will be

[5] The Rehabilitation Act requires an interactive process between an employer and an individual with a disability to identify potential reasonable accommodations that could overcome the precise limitations of the disability. *See Hannah P. v. Coats,* 916 F.3d 327, 337 (4th Cir. 2019); 29 C.F.R. § 1630.2(o)(3) ("to determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal,

concerned that any such accommodation or change in a plaintiff's employment circumstances could be grounds for a court to label the change a "capitulation," declare plaintiff a prevailing party, and award attorney's fees. Indeed, this disincentive for defendants to change conduct during litigation to avoid threat of assessment of attorney's fees was a significant reason for *Buckhannon*'s rejection of the catalyst theory in the first place.[6]

Here, the Fourth Circuit's decision that the fourth accommodation was a "capitulation," is particularly troubling and chilling as the fourth accommodation provided only a part of the relief Reyazuddin sought. It did not provide her with direct access to Siebel or the ability to answer calls for multiple departments. Reyazuddin was so dissatisfied with the fourth accommodation that she continued to pursue her claims for declaratory and injunctive relief. If an employer's willingness to provide an accommodation which includes a part of what an employee seeks during litigation is construed as a capitulation, employers will be wary of offering any accommodations remotely or potentially related to a plaintiff's request for fear of having to pay her attorney fees.

In addition to the deterrent effect of the Fourth Circuit's analysis, *Buckhannon* also warned against the possibility of a "second litigation" into a defendant's subjective motivation for its change in conduct

---

interactive process with the individual with a disability in need of the accommodation").

[6] *See Buckhannon*, 532 U.S. at 608 (observing that the catalyst theory creates disincentive for defendant to change conduct, which may not be illegal, during litigation to avoid threat of assessment of attorney's fees).

as "not a formula for 'ready administrability' by district courts." *Buckhannon*, 532 U.S. at 609 (quoting *Burlington v. Dague,* 505 U.S. 557, 566 (1992)). The Fourth Circuit's analysis in this case does precisely that for future litigants. It invites a second investigation, through discovery and fact-finding hearings, as to the nature of and motivations for a defendant's extra-judicial change, to determine whether the change should be considered a "capitulation" caused by the lawsuit, even if that change was made in good faith to comply with the law. *See Buckhannon*, 505 U.S. at 609.

In this case, for example, even if the County's subjective motivation was appropriate for the Court to review, and based upon *Buckhannon* it is not, the record is clear that the County made three prior attempts to accommodate Reyazuddin before the successful fourth accommodation. Both the District Court and the Fourth Circuit found that these prior attempts to accommodate demonstrated the County's ongoing, "bona fide" and "good faith" efforts to comply with the law, remedy any past discrimination, and prevent its recurrence. App. 29a; App. 63a. Yet the Fourth Circuit's prevailing party analysis determined – inconsistently with its own prior ruling – that the last accommodation was a "capitulation" because of this litigation. If the Fourth Circuit's "capitulation" standard is permitted to stand, it will spawn countless, similar proceedings to investigate the purpose, timing, and scope of a defendant's change in conduct.

The specter of the chilling effect upon defendants' compliance with the law to accommodate while litigation is pending, and the potential for ongoing "second litigations" clogging the courts, justifies this

Court's review and reversal of the Fourth Circuit's opinion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARC P. HANSEN
County Attorney

JOHN P. MARKOVS
Deputy County Attorney

EDWARD B. LATTNER
Chief Division of Government Operations

PATRICIA LISEHORA KANE
Chief Division of Litigation

ERIN J. ASHBARRY
Associate County Attorney
Counsel of Record

OFFICE OF THE COUNTY ATTORNEY FOR
MONTGOMERY COUNTY, MARYLAND
Executive Office Building
101 Monroe Street, Third Floor
Rockville, Maryland 20850
(240) 777-6700
erin.ashbarry@montgomerycountymd.gov

August 26, 2021

APPENDIX

APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

———

No. 19-2144

———

YASMIN REYAZUDDIN

Plaintiff-Appellant,

v.

MONTGOMERY COUNTY, MARYLAND,

Defendant-Appellee.

THE DISABILITY LAW CENTER OF VIRGINIA; DISABILITY RIGHTS MARYLAND; DISABILITY RIGHTS OF WEST VIRGINIA; PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC. OF SOUTH CAROLINA; DISABILITY RIGHTS NORTH CAROLINA,

Amici Supporting Appellant.

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION,

Amici Supporting Appellee.

———

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
Deborah K. Chasanow, Senior District Judge.
(8:11-cv-00951-DKC)

———

Argued: December 8, 2020
Decided: February 24, 2021

Before DIAZ, THACKER, and HARRIS, Circuit Judges.

Vacated and remanded by published opinion. Judge Diaz wrote the opinion, in which Judge Thacker and Judge Harris joined.

ARGUED: Kevin Douglas Docherty, BROWN GOLDSTEIN & LEVY, LLP, Baltimore, Maryland, for Appellant. Patricia Lisehora Kane, OFFICE OF THE COUNTY ATTORNEY, Rockville, Maryland, for Appellee. ON BRIEF: Joseph B. Espo, BROWN GOLDSTEIN & LEVY, LLP, Baltimore, Maryland; Timothy Elder, Albert Elia, TRE LEGAL PRACTICE, Fremont, California, for Appellant. Marc P. Hansen, County Attorney, John P. Markovs, Deputy County Attorney, Edward B. Lattner, Chief, Division of Human Resources and Appeals, Patricia Victoria Haggerty, Associate County Attorney, Erin J. Ashbarry, Associate County Attorney, OFFICE OF THE COUNTY ATTORNEY, Rockville, Maryland, for Appellee. Steven M. Traubert, Zachary Devore, Kalena C. M. Ek, disABILITY LAW CENTER OF VIRGINIA, Richmond, Virginia, for Amici The disAbility Law Center of Virginia, Disability Rights Maryland, Disability Rights of West Virginia, Protection and Advocacy for People with Disabilities, Inc. of South Carolina, and Disability Rights North Carolina.

DIAZ, Circuit Judge:

Yasmin Reyazuddin appeals the district court's order denying her motion seeking to recover reasonable attorney's fees, costs, and expenses from Montgomery County, Maryland. The district court held that Reyazuddin isn't eligible for such an award because she's not a "prevailing party" under 29 U.S.C. § 794a(b). Because we disagree, we vacate the order and remand for further proceedings.

I.

A.

This case stems from Montgomery County's failure to reasonably accommodate Reyazuddin's disability (she is blind).[1] In 2009, the County consolidated its customer service employees into a single county-wide call center, referred to as "MC 311." At the time, Reyazuddin worked as a customer service representative in the County's health and human services department. When the new call center opened, the County didn't transfer Reyazuddin along with her colleagues because the software the County used at the center wasn't accessible to blind people. Instead, Reyazuddin was offered (and worked) several alternate jobs for the County. But she wanted to resume her customer service position at MC 311.

---

[1] For additional background, see this court's opinions in Reyazuddin's first and second appeals. *Reyazuddin v. Montgomery Cnty.*, 789 F.3d 407, 410–13 (4th Cir. 2015) ("*Reyazuddin I*"); *Reyazuddin v. Montgomery Cnty.*, 754 Fed. Appx. 186, 188–89 (4th Cir. 2018) ("*Reyazuddin II*").

B.

Reyazuddin sued the County, alleging that it failed to provide a reasonable accommodation for her disability. She brought claims under the Rehabilitation Act and the Americans with Disabilities Act (the "ADA"), seeking declaratory and injunctive relief as well as compensatory damages. The district court granted summary judgment to the County. In *Reyazuddin I*, we affirmed the district court's judgment with respect to Reyazuddin's ADA claim but remanded her Rehabilitation Act claim for trial.

A few months before trial, the County offered Reyazuddin a job at the Columbia Lighthouse for the Blind. Reyazuddin declined. The jury didn't hear about this job offer, as discovery closed before the County made the offer and Reyazuddin opted to confine her evidence at trial to events that occurred prior to receiving it.

The jury found that the County discriminated against Reyazuddin in violation of the Rehabilitation Act. Specifically, the jury found that (1) Reyazuddin is an individual with a disability; (2) the County had notice of Reyazuddin's disability; (3) Reyazuddin could perform the essential functions of a customer service representative with a reasonable accommodation either within or outside of MC 311; (4) the County failed to provide a reasonable accommodation; (5) the County's failure to transfer Reyazuddin to MC 311 was an adverse employment action; and (6) it wasn't an undue hardship for the County to make

MC 311 accessible for Reyazuddin. However, the jury awarded Reyazuddin $0 in compensatory damages.[2]

After trial, Reyazuddin moved for an order requiring the County to make MC 311 accessible and to transfer her there. The district court determined that it needed more information regarding what it would take for the County to upgrade MC 311's software and whether the Columbia Lighthouse for the Blind job offer constituted a reasonable accommodation such that the County wouldn't be required to transfer Reyazuddin to MC 311. Thus, the court denied Reyazuddin preliminary injunctive relief and ordered discovery on her equitable claims.

While discovery was ongoing, the County finally transferred Reyazuddin to MC 311. Reyazuddin modified her request for injunctive relief and, after a two-week evidentiary hearing, the district court found that the County had reasonably accommodated Reyazuddin and that its past discrimination was isolated and unlikely to recur. Thus, the district court denied Reyazuddin injunctive relief. It also declined to issue a declaratory judgment because doing so would have been superfluous to the jury's verdict. Finally, the court entered judgment in favor of Reyazuddin and against the County for her Rehabilitation Act claim "in the amount of $0.00 in compensatory damages." J.A. 131. We affirmed the district court's judgment in *Reyazuddin II*.

Shortly thereafter, Reyazuddin moved for an award of reasonable attorney's fees, costs, and expenses. The district court subsequently granted a joint motion by the parties to bifurcate briefing for the court

---

[2] Reyazuddin sought damages only for emotional distress. She didn't request economic or nominal damages.

to determine two relevant questions separately: (1) whether Reyazuddin is a "prevailing party" (making her eligible for such an award) and, if she is, (2) how much the court should award Reyazuddin.

After the parties briefed the first question, the district court held that Reyazuddin isn't a "prevailing party" and denied Reyazuddin's motion on that basis. Reyazuddin timely appealed.

II.

The sole issue before us is whether Reyazuddin is a "prevailing party" under the Rehabilitation Act. The Act provides that "[i]n any action or proceeding to enforce or charge a violation" of a relevant provision, the district court, "in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 29 U.S.C. § 794a(b).

The term "prevailing party" is a legal term of art that we interpret consistently across all federal fee-shifting statutes. *Smyth ex rel. Smyth v. Rivero*, 282 F.3d 268, 274 (4th Cir. 2002). We review de novo a district court's determination of whether someone is a "prevailing party." *McAfee v. Boczar*, 738 F.3d 81, 87–88 (4th Cir. 2013), *as amended* (Jan. 23, 2014).

Here, Reyazuddin won a jury verdict that found the County liable for discrimination and entitled Reyazuddin to equitable relief—at least until the County capitulated by transferring her to MC 311. The district court nonetheless concluded that Reyazuddin isn't a prevailing party because she didn't obtain an "enforceable judgment" that materially altered the legal relationship between herself and the County. J.A. 139–143 (citing *Farrar v. Hobby*, 506 U.S. 103

(1992); *Hewitt v. Helms*, 482 U.S. 755 (1987)). Thus, the court reasoned that Reyazuddin is simply advancing the "catalyst theory" that the Supreme Court expressly rejected in *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598 (2001). We disagree.

To begin, *Farrar*, *Hewitt*, and *Buckhannon* each involved very different facts than those at issue here. In *Farrar*, the Supreme Court considered "whether a civil rights plaintiff who receives a nominal damages award is a 'prevailing party' eligible to receive attorney's fees" and answered in the affirmative. 506 U.S. at 105. The *Hewitt* Court considered "whether a party who litigates to judgment and loses on all of his claims can nonetheless be a 'prevailing party' for purposes of an award of attorney's fees" and answered in the negative. 482 U.S. at 757, 759–60. And the *Buckhannon* Court considered "whether th[e] term ['prevailing party'] includes a party that has failed to secure a judgment on the merits or a court-ordered consent decree, but has nonetheless achieved the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." 532 U.S. at 600. The Court again answered in the negative.[3] *Id.*

We think this case is more like *Parham v. Southwestern Bell Telephone Co.*, 433 F.2d 421 (8th Cir. 1970). In fact, we think Reyazuddin is even more of a "prevailing party" than the *Parham* plaintiff was.

There, the plaintiff didn't prove his claim at trial; rather, in reversing the district court's dismissal in

[3] The County also cites our decision in *McAfee*. But there, neither party disputed that the plaintiff was a prevailing party, as he had obtained both a jury verdict and a damages award. *McAfee*, 738 F.3d at 88.

part, the Eighth Circuit "h[e]ld as a matter of law" that the defendant company had discriminated against black Americans in violation of Title VII. *Parham*, 433 F.2d at 427. But the court also affirmed the district court's denial of injunctive relief due to changes the company made to its hiring practices after the plaintiff sued. *Id.* at 429. Nonetheless, our sister circuit reasoned that the plaintiff's "lawsuit acted as a catalyst which prompted" the company to change its behavior and determined that the plaintiff had "prevailed in his contentions of racial discrimination against blacks generally" such that he was entitled to reasonable attorney's fees.[4] *Id.* at 429–30.

Despite this language, the *Buckhannon* majority expressly approved of the *Parham* decision, distinguishing it from the "catalyst theory" cases that *Buckhannon* overruled. 532 U.S. at 607 n.9. And Justice Scalia elaborated on that approval in disputing the dissent's suggestion that the majority's opinion "approves the practice of denying attorney's fees to a plaintiff with a proven claim of discrimination, simply because the very *merit* of his claim led the defendant to capitulate before judgment." *Id.* at 616 (Scalia, J., concurring). "To the contrary," Justice Scalia clarified, "the Court *approves* the result in [*Parham*], where

[4] The *Parham* court also ordered the district court to "retain jurisdiction over the matter for a reasonable period of time to insure the continued implementation of the [defendant company's] policy of equal employment opportunities." *Id.* at 429. But we don't think the mere threat of future injunctive relief (via retained jurisdiction) was any more of an "enforceable judgment" than Reyazuddin's jury verdict and subsequent judgment in her favor. If the County were to return to its discriminatory ways, Reyazuddin could reinvoke the district court's jurisdiction simply by filing a new lawsuit.

attorney's fees were awarded after a finding that the defendant had acted unlawfully." *Id.* (cleaned up).

This reasoning supports our holding here. Reyazuddin isn't a prevailing party because she catalyzed the County to change its behavior by filing a lawsuit; rather, she's a prevailing party because she *proved* her claim to a jury before the County capitulated by transferring her to MC 311. And that transfer was key to the district court's subsequent finding that the County reasonably accommodated Reyazuddin and, thus, the court's ultimate denial of Reyazuddin's request for equitable relief.

We note that our holding today is narrow. Had the County transferred Reyazuddin to MC 311 before she proved that its refusal to do so amounted to discrimination, this would be a classic catalyst theory case. Likewise, had Reyazuddin sought only damages against the County, her failure to obtain any would mean she wasn't a prevailing party. But it would be unjust to hold that Reyazuddin didn't prevail simply because the County's timely capitulation rendered unnecessary equitable relief that Reyazuddin would have otherwise been entitled to.[5]

* * *

Accordingly, we vacate the district court's order denying Reyazuddin's motion and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED

---

[5] We express no opinion on what amount (if any) Reyazuddin is entitled to in attorney's fees. That question is for the district court to determine in the first instance.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed: August 5, 2021]

No. 19-2144
(8:11-cv-00951-DKC)

YASMIN REYAZUDDIN
Plaintiff-Appellant

v.

MONTGOMERY COUNTY, MARYLAND
Defendant-Appellee

THE DISABILITY LAW CENTER OF VIRGINIA; DISABILITY RIGHTS MARYLAND; DISABILITY RIGHTS OF WEST VIRGINIA; PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC. OF SOUTH CAROLINA; DISABILITY RIGHTS NORTH CAROLINA
Amici Supporting Appellant

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
Amicus Supporting Appellee

JUDGMENT

In accordance with the decision of this court, the district court order entered September 19, 2019, is vacated. This case is remanded to the district court for further proceedings consistent with the court's decision.

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

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[Filed September 19, 2019]

Civil Action No. DKC 11-0951

YASMIN REYAZUDDIN

v.

MONTGOMERY COUNTY, MARYLAND

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 19th day of September, 2019, by the United States District Court for the District of Maryland, ORDERED that:

1. Plaintiff's motion for a finding that she is entitled to an award of reasonable attorneys' fees, costs, and expenses (ECF No. 403) BE, and the same hereby IS, DENIED; and

2. The clerk will transmit copies of the Memorandum Opinion and this Order to counsel for the parties.

/s/
DEBORAH K. CHASANOW
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[Filed September 9, 2019]

Civil Action No. DKC 11-0951

YASMIN REYAZUDDIN

v.

MONTGOMERY COUNTY, MARYLAND

MEMORANDUM OPINION

Presently pending and ready for resolution in this disability discrimination case is Plaintiff Yasmin Reyazuddin's motion for a finding that she is entitled to an award of reasonable attorneys' fees, costs, and expenses. (ECF No. 403). The issues have been fully briefed, and the court now rules, no hearing being deemed necessary. Local Rule 105.6. For the following reasons, the motion will be denied.

I. Background

In April of 2011, Ms. Reyazuddin sued Defendant Montgomery County ("Defendant" or the "County") for violation of § 504 of the Rehabilitation Act, 29 U.S.C. § 794. (ECF No. 1). Ms. Reyazuddin's claim stemmed from the County's failure to accommodate her disability: Ms. Reyazuddin is blind. As alleged in the complaint, as of 2009, the County employed Ms. Reyazuddin as a customer service representative at a County call center. When the County moved to a new

call center ("MC311"), Ms. Reyazuddin was denied the opportunity to make the move. The County's new call center came with new software, which was not then accessible to the blind. (*Id*.) Instead, Ms. Reyazuddin was placed in a series of alternate positions.

Ms. Reyazuddin sought declaratory and injunctive relief from the County, as well as compensatory damages, based on the Rehabilitation Act and the Americans with Disabilities Act. In 2014, this court granted summary judgment in favor of Montgomery County. (ECF No. 108). Ms. Reyazuddin successfully appealed with regard to the Rehabilitation Act claim, (ECF No. 113), and, in 2016, the remaining issues went to trial. The jury found that the County had failed to provide a reasonable accommodation but awarded $0 in damages. (ECF No. 221). Several months later, the County finally transferred Ms. Reyazuddin to MC311. (ECF No. 403, at 4). In August 2017, this court denied Ms. Reyazuddin's request for injunctive relief on the ground that she was no longer employed in inadequate alternate positions and was now employed at MC311. (ECF No. 353). The court also declined to issue a declaratory judgment because "[t]he jury made clear that Defendant's earlier accommodation was insufficient[]" and "[f]urther expounding on the jury's verdict would be superfluous[.]" (*Id*. at 41-42). Ms. Reyazuddin again appealed and the Fourth Circuit affirmed this court's judgment. (ECF No. 398-1).

On January 18, 2019, Ms. Reyazuddin filed a motion for attorneys' fees claiming she is a "prevailing party" under the Rehabilitation Act. (ECF No. 403).

II. Analysis

Under the Rehabilitation Act, "[i]n any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs." 29 U.S.C. § 794a. "The term 'prevailing party'. . . is a 'legal term of art,' . . . and is 'interpreted. . . consistently' – that is, without distinctions based on the particular statutory context in which it appears." *Smyth ex rel. Smyth v. Rivero*, 282 F.3d 268, 274 (4th Cir. 2002) (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health and Human Resources*, 532 U.S. 598, 603 n. 4 (2001))(internal citations omitted).

To be considered a "prevailing party," a plaintiff must obtain "an enforceable judgment . . . or comparable relief through a consent decree or settlement." *Farrar v. Hobby*, 506 U.S. 103, 111 (1992) (internal citations omitted). There is no consent decree or settlement in this case. Thus, the only avenue open to Ms. Reyazuddin is the first of the *Farrar* options: an enforceable judgment. As will be discussed, while Ms. Reyazuddin has won a judgment, it cannot be characterized as an enforceable one sufficient to make her a prevailing party.

Plaintiff relies on a case from the United States Court of Appeals for the District of Columbia, *Select Milk Producers, Inc. v. Johanns*, 400 F.3d 939, 947 (D.C. Cir. 2005), as well as a Fourth Circuit case, *Dennis v. Columbia Colleton Med. Ctr. Inc.*, 290 F.3d 639, 652-53 (4th Cir. 2002), for the proposition the *amount* of damages is irrelevant. (ECF No. 406, at 3). Justice O'Connor's much-cited concurrence in *Farrar*, which plaintiff relies on – and which forms the basis of both *Select Milk Producers* and *Dennis* – makes

clear that there is a difference between nominal damages and *no* damages: there, the plaintiff "obtained an enforceable judgment for one dollar in nominal damages. One dollar is not exactly a bonanza, but it constitutes relief on the merits. And it affects the defendant's behavior toward the plaintiff, if only by forcing him to pay one dollar – something he would not otherwise have done." *Farrar*, 506 U.S. 103, 116–17 (O'Connor, J., concurring). In sum, to claim "prevailing party" status, the judgment must "materially alter[] the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Id*. at 111-12 (majority opinion). One dollar technically accomplishes that (even if it does not ultimately warrant an award of attorneys' fees), but zero dollars does not.

Put another way, "a judicial pronouncement that the defendant has violated the [law]," standing alone, "does not render the plaintiff a prevailing party." *Id.* at 112; *see also Hewitt v. Helms*, 482 U.S. 755, 762 (1987) ("the moral satisfaction of knowing that a federal court concluded that [a plaintiff's] rights ha[ve] been violated" is insufficient to render plaintiff a prevailing party"). There has been no material alteration of the legal relationship between the parties by virtue of a judgment in this case.

Plaintiff argues that her claim "is even stronger than that of many other plaintiffs who have recovered fees. For example, plaintiffs are routinely found to be prevailing parties when a defendant settles[.]" (ECF No. 403, at 5). Ms. Reyazuddin, however, can point to no case in this circuit or out where a settlement *alone* was found to have the necessary "judicial imprimatur" to render a plaintiff the "prevailing

party." All of Ms. Reyazuddin's cited cases involve a judicial grant of equitable relief.

The court has found, of course, that the County has now reasonably accommodated Ms. Reyazuddin and thus that Ms. Reyazuddin has achieved a measure of success. That success, however, lacks the requisite "judicial imprimatur." Ms. Reyazuddin ultimately *did* "prevail[] on the most significant issue in this litigation (her request to be transferred to the MC311 Call Center with accommodations[.])" (ECF No. 403, at 11). Plaintiff may even be correct that "[t]he jury's verdict was the *predicate* for the relief that Ms. Reyazuddin obtained." (ECF No. 406, at 2) (emphasis added). This, however, is just another way of saying that "the jury's verdict was the *catalyst* for the relief that Ms. Reyazuddin obtained."

In other words, Plaintiff is simply advancing the "catalyst theory," which "posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." *Buckhannon*, 532 U.S. at 601. The Supreme Court has expressly held that "the 'catalyst theory' is not a permissible basis for the award of attorney[s'] fees[.]" *Id*. at 610.

It bears repeating that "prevailing party" is a legal term of art, and is not met even if Ms. Reyazuddin has "prevailed" in the everyday meaning of the word. Ms. Reyazuddin does not meet the legal definition of a "prevailing party," as there has been no "court-ordered change in the legal relationship between the plaintiff and the defendant." *Id.* at 604 (internal citations and quotations omitted).

III. Conclusion

For the foregoing reasons, the motion for a finding that Plaintiff is entitled to an award of reasonable attorneys' fees will be denied. A separate order will follow.

/s/
DEBORAH K. CHASANOW
United States District Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2103

YASMIN REYAZUDDIN,

Plaintiff-Appellant,

v.

MONTGOMERY COUNTY, MARYLAND,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
(8:11-cv-00951-DKC).

Deborah K. Chasanow,
Senior District Judge.

September 27, 2018, Argued;
November 21, 2018, Decided

Counsel:

ARGUED: Joseph B. Espo,
BROWN, GOLDSTEIN & LEVY, LLP,
Baltimore, Maryland, for Appellant.

Patricia Lisehora Kane,
OFFICE OF THE COUNTY ATTORNEY,
Rockville, Maryland, for Appellee.

ON BRIEF: Anthony J. May,
Jean M. Zachariasiewicz,
BROWN, GOLDSTEIN & LEVY, LLP,
Baltimore, Maryland; Albert Elia,
TRE LEGAL PRACTICE,
Fremont, California, for Appellant.

Marc P. Hansen, County Attorney,
John P. Markovs, Deputy County
Attorney, Patricia Victoria Haggerty,
Associate County Attorney, Erin J.
Ashbarry, Associate County Attorney,
Edward B. Lattner, Chief, Division
of Human Resources and Appeals,
OFFICE OF THE COUNTY ATTORNEY,
Rockville, Maryland, for Appellee.

Judges: Before DIAZ, THACKER, and HARRIS, Circuit Judges. Judge Diaz wrote the opinion, in which Judge Thacker and Judge Harris joined.

Opinion by: DIAZ

OPINION

DIAZ, Circuit Judge:

Yasmin Reyazuddin appeals from a ruling that her employer reasonably accommodated her for purposes of the *Rehabilitation Act*. We hold that the district court did not err in finding reasonable accommodation and in denying Reyazuddin equitable relief. Accordingly, we affirm.

I.

Yasmin Reyazuddin, who is completely blind, answered calls at a call center for a Montgomery County, Maryland, government department.[1] She used an audio program to access computer software. In 2008, Reyazuddin's supervisor told her the County was consolidating its call centers into one location called MC311. The supervisor noted Reyazuddin's accessibility concerns and assured her the County would move her to MC311. But when the County finally opened MC311, a manager put an indefinite delay on Reyazuddin's transfer because her audio program was incompatible with MC311's customer service program, Siebel.

Reyazuddin then worked several jobs for the County that several County officials described as insufficient or not meaningful. At first, she answered intermittent calls and processed food assistance referrals. Then the department let her choose between a full-time job in childcare resources and referral or a part-time job in aging and disability. Reyazuddin chose the part-

[1] For further background, see this court's opinion in Reyazuddin's first appeal. *Reyazuddin v. Montgomery County* (*Reyazuddin I*), 789 F.3d 407, 410-13 (4th Cir. 2015).

time job. But she still wanted to work at MC311 as a Customer Service Representative II ("CSR II"). CSR IIs typically answer both ordinary customer service calls ("Tier I calls") and calls that require specialized knowledge or databases ("Tier II calls").

Believing the County discriminated against her based on disability when it refused to transfer her to MC311 as a CSR II, Reyazuddin sued the County under the *Rehabilitation Act* and *Title II of the Americans with Disabilities Act ("ADA")*. The district court granted the County summary judgment on all claims. This court affirmed on the ADA Title II claim but remanded the Rehabilitation Act claims for trial. A few months before trial, the County offered Reyazuddin a job at the Columbia Lighthouse for the Blind, which she declined.

When the trial concluded, the jury found that the County failed to accommodate Reyazuddin's disability, rejecting the County's undue burden defense. The jury found that Reyazuddin could perform all essential functions of a CSR II at MC311. But it awarded Reyazuddin $0 in damages. After the jury verdict, the district court considered Reyazuddin's demands for equitable relief.

Before the district court heard evidence, the County transferred Reyazuddin to MC311 as a CSR II. She maintained her salary and benefits and got seniority at MC311 dating back to 2009. She received extensive training, but Siebel remained inaccessible.

At MC311, Reyazuddin answered calls through a landline instead of through Siebel's interface. She couldn't check or set her "aux" code, which displayed her availability for calls. She accessed internal articles on a spreadsheet instead of on Siebel. And she had to

use the external portal on MC311's public site instead of the internal portal on Siebel. On the public site she had to pass a test (which gave her trouble) to prove she was a human user. And she couldn't use digital maps maintained on Siebel.

But the County worked to improve the accessibility problems. Before the bench trial, the County developed the Internal Web Accommodation Application ("IWAA"), an alternative to Siebel. Reyazuddin can access it without having to pass a test. Through IWAA, Reyazuddin can now access all internal articles and instructions. During the bench trial, the County discovered and fixed the problem with Reyazuddin's aux code.

Some differences remain. CSR IIs normally take both Tier I and Tier II calls. While Reyazuddin temporarily handled Tier I calls, she found the volume of calls overwhelming and now she only takes Tier II calls. Because she can't access Siebel, Reyazuddin doesn't receive partially completed service requests when a CSR I forwards her a call. Instead, she must start a new service request. Unlike other CSR IIs, Reyazuddin must submit her service requests before hanging up, so she can't edit them after the call. Nor can she directly do quality review on her requests. Instead, she must email suggestions to her supervisor, who can enter corrections. Reyazuddin can access only two of about twelve digital maps. And without access to Siebel, she can't work remotely during inclement weather. The County could solve many of these problems by upgrading Siebel. But while the County has a contract with Siebel's developer to upgrade the system, it hasn't identified when it will complete it.

Nonetheless, the district court held that the County had reasonably accommodated Reyazuddin. It found that she could perform to the same level as her coworkers and faced no barriers to advancement. The court denied Reyazuddin all equitable relief because it considered the discrimination isolated and unlikely to recur.

Reyazuddin now appeals, contending that the district court erred in finding reasonable accommodation and erred by denying injunctive and declaratory relief.

II.

Reyazuddin first contends that the district court erred in finding that the County reasonably accommodated her at MC311. The Rehabilitation Act requires the County to accommodate Reyazuddin if she can perform a job's essential functions. *See* 29 U.S.C. § 794; *Reyazuddin I*, 789 F.3d at 409. When the district court determined the essential functions of a CSR II and found reasonable accommodation, it made findings of fact. *See Pandazides v. Va. Bd. of Educ.*, 13 F.3d 823, 833 (4th Cir. 1994). We review these findings of fact for clear error and will not reverse a finding if it "is plausible in light of the record viewed in its entirety." *TFWS, Inc. v. Franchot*, 572 F.3d 186, 196 (4th Cir. 2009) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985)).

The Rehabilitation Act requires reasonable accommodations unless it would be an undue burden. *See* 42 U.S.C. § 12112; 29 C.F.R. § 1630.9.[2] Reasonable

[2] We cite authorities for both the Rehabilitation Act and the ADA, which contain identical standards regarding the issues in

accommodations must enable an employee with a disability to perform essential job functions and to enjoy equal job privileges. *See* 29 C.F.R. § 1630.2(o). Essential functions are "the fundamental job duties" of a position. *Id. § 1630.2(n)(1)*. To determine whether a function is essential, we consider the employer's judgment, written job descriptions, and other defined factors. 29 C.F.R. § 1630.2(n)(3); 42 U.S.C. § 12111(8); *see also Jacobs v. N.C. Admin.* Office of the Courts, 780 F.3d 562, 579 (4th Cir. 2015).

Reasonable accommodations can include reallocating marginal functions to another employee. *See* 42 U.S.C. § 12111(9)(B); 29 C.F.R. § 1630.2(o)(2)(ii); *Benson v. Nw. Airlines, Inc.*, 62 F.3d 1108, 1112-13 (8th Cir. 1995). And while an "employer never has to reallocate essential functions," it may "do so if it wishes." U.S. Equal Emp. Opportunity Comm'n, No. 915.002, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2002), https://www.eeoc.gov/policy/docs/accommodation.html#job (last visited Nov. 9, 2018) (saved as ECF opinion attachment). Beyond reallocation, an employer may change how and when an employee performs an essential function. *See* 29 C.F.R. § 1630 app. Courts should not discourage employers from going beyond the Rehabilitation Act's requirements and restructuring essential functions as accommodation. *See Phelps v. Optima Health, Inc.*, 251 F.3d 21, 26-27 (1st Cir. 2001); *Holbrook v. City of Alpharetta*, 112 F.3d 1522, 1528 (11th Cir. 1977).

Reyazuddin gives three reasons why the County has not reasonably accommodated her. First, it has

---

this case. *See Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 498 & n.17 (4th Cir. 2005).

eliminated essential functions of her job. Second, it has limited her job performance. And third, it has denied her opportunities for advancement. All three arguments are unavailing.

First, the County's restructuring of Reyazuddin's job was a reasonable accommodation. It is true that Reyazuddin doesn't answer Tier I calls, must reenter some information after receiving a forwarded service request, and can't use most digital maps or do direct quality review. But to the extent these functions are essential,[3] the district court correctly observed that the Rehabilitation Act doesn't require that Reyazuddin perform them the same way as her coworkers.[4] Because the County's accommodations do not change her job, they are acceptable alterations to when and how Reyazuddin performs an essential function. *See* 29 C.F.R. § 1630 app.

The County restricted Reyazuddin to Tier II calls to keep her from getting overwhelmed and to focus her work on calls she is best equipped to handle. As part of an accommodation, employers may shift an employee's duties to fit their skills and capabilities. *See, e.g., Bunn v. Khory Enters., Inc.,* 753 F.3d 676, 680 (7th Cir. 2014) (deploying employee to single duty station instead of rotating him between stations); *Basith v. Cook County*, 241 F.3d 919, 930, 932 (7th Cir.

---

[3] The district court was somewhat unclear on this point. *See Reyazuddin v. Montgomery County*, 276 F. Supp. 3d 462, 475-77 (D. Md. 2017).

[4] The district court relied in part on interpretive guidance regarding supported employment. *See Reyazuddin, 279 F. Supp. 3d at 476*. That guidance is inapplicable to this case, but it doesn't affect the outcome. *See* 29 C.F.R. § 1630 app. (defining supported employment); 42 U.S.C. § 15002(30) (defining supported employment services).

2001) (moving employee to alternative shift with different duties). Moreover, the written job description doesn't require CSR IIs to answer Tier II calls from all departments or any Tier I calls at all.

The Ninth Circuit case Reyazuddin cites in support is inapposite. *See Cripe v. City of San Jose*, 261 F.3d 877 (9th Cir. 2001). First, it concerned different issues: whether the plaintiffs could perform essential job functions and whether the employer unlawfully segregated them. *Id.* at 888-90. And second, the *Cripe* employer forced disabled employees into a distinct job with no meaningful employment opportunities. *See id. at 882-83*. In contrast, Reyazuddin performs the same job as her peers—answering customer service calls. She just performs it differently.

Second, the County hasn't limited Reyazuddin's job performance. Her employment opportunities are meaningfully equal to those of her peers. All CSR IIs receive Tier II calls from some departments and not others. And the fact that (at least for now) Reyazuddin doesn't receive Tier I calls hardly limits her performance: she still has many Tier II calls to answer. The technical alterations made by the County, such as not receiving forwarded service requests, do not change her overall performance. And the accommodations haven't affected Reyazuddin's salary or benefits. True, Reyazuddin can't telework during inclement weather. But teleworking is at the County's discretion: no employee has a right to it.[5] And when an employee can't reach the office, teleworking is for the County's

[5] The fact that Reyazuddin can't currently telework because she is on a Work Improvement Plan is irrelevant. The question is whether the County would have to provide teleworking accommodations if she were otherwise eligible.

benefit, not the employee's. So the inability to telework doesn't limit Reyazuddin's employment opportunities.

Third, the County has not denied Reyazuddin any opportunity for advancement. The requirements to advance are minimal. To advance to CSR Supervisor, an employee only needs four years of customer service experience with the County (at least two as a CSR II) and familiarity with the systems in MC311. Reyazuddin can be promoted if she does well in her duties and develops supervisory skills. Unlike in *Cripe*, the County hasn't imposed a functional bar on advancement for disabled employees. *See* 261 F.3d at 882, 894. And while Reyazuddin contends that the County requires a vision test for promotion to CSR II, County regulations say otherwise. *See* Montgomery County, Md., Reg. § 33.07.01.08-6(b)(2)(B)(i)—(ii).

The district court did not err in finding reasonable accommodation.[6]

III.

Reyazuddin next contends that the district court erred by denying her injunctive relief. Reyazuddin asked for two injunctions. First, she requested a mandatory injunction requiring the County to assign her Tier I calls and make Siebel and the digital maps accessible. Second, she requested a prohibitory injunction forbidding the County from discriminating against her again.

---

[6] The County also argues that it made a reasonable accommodation when it offered to move Reyazuddin to Columbia Lighthouse for the Blind. Given our disposition, we (like the district court) need not address this argument. *See Reyazuddin*, 279 F. Supp. 3d at 477 n.5.

We review a district court's denial of an injunction for abuse of discretion. *See Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 502 (4th Cir. 2016). Reyazuddin contends that the district court erred in two ways. First, Reyazuddin says the district court lacked discretion to deny injunctive relief because the jury found that the County had discriminated against her. Second, even if the district court had discretion, it abused it here because the County systematically discriminated against Reyazuddin and would not accommodate her without litigation. We reject both arguments.

Regarding the first argument, a district court generally has broad discretion to fashion a remedy that will "eliminate past discrimination and bar discrimination in the future." *United States v. County of Fairfax*, 629 F.2d 932, 941 (4th Cir. 1980); *see also Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975). Seeking to cabin that discretion, Reyazuddin relies on a statement from this court that "when a plaintiff has prevailed and established the defendant's liability under Title VII, there is no discretion to deny injunctive relief completely." *United States v. Gregory*, 871 F.2d 1239, 1246 (4th Cir. 1989).

While phrased in absolute terms, we do not believe *Gregory* intended to eliminate a district court's discretion in granting equitable relief.[7] We note that our decision cited Supreme Court and circuit precedents that don't require injunctions in all civil rights cases. *See id.* (citing *Albemarle Paper*, 422 U.S. at 418;

[7] Reyazuddin also relies on *King v. McMillan*, 594 F.3d 301, 310 (4th Cir. 2010). But *King* cites *Gregory* for an unrelated proposition, and *King's* holding has no bearing on this case.

County of Fairfax, 629 F.2d at 941-42). Moreover, this court has affirmed the denial of injunctions in other civil rights cases. *See Spencer v. Gen. Elec. Co.*, 894 F.2d 651, 660 (4th Cir. 1990), *abrogated on other grounds by Farrar v. Hobby*, 506 U.S. 103, 108 n.2, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992). In short, we've not limited district courts' discretion to fashion remedies in civil rights cases, and we decline to do so now.[8]

Nor do we believe that the district court abused its discretion here. An injunction is proper if "there exists some cognizable danger of recurrent violation." *United States v. W.T. Grant Co.*, 345 U.S. 629, 633, 73 S. Ct. 894, 97 L. Ed. 1303 (1953). In a discrimination case, an injunction is most appropriate when the employer has failed to adequately remedy the discrimination and prevent its recurrence. *See Gregory*, 871 F.2d at 1247; *County of Fairfax*, 629 F.2d at 941. If the discrimination is unlikely to recur, we "should defer to the lower court's choice in crafting appropriate relief." *Spencer*, 894 F.2d at 660.

In this case, the County has acted in good faith to remedy past discrimination and prevent its recurrence. As a result, a mandatory injunction requiring further accommodation is unnecessary.[9] And a prohibitory injunction would serve little purpose. The County never denied that it had to accommodate Reyazuddin; it only disputed the method. The County made several accommodations without a court order. It offered Reyazuddin a new job before the jury trial,

---

[8] Given our holding, the parties' dispute over whether Reyazuddin "prevailed" in the district court is irrelevant.

[9] Of course, the County can voluntarily make further accommodations, such as upgrading Siebel to make it accessible. But on this record, the County's current accommodations are sufficient.

moved her to MC311 and spent money and time on accommodations before the bench trial, and fixed the aux code problem during the bench trial. And the discrimination related to a one-time event—the organization of MC311. It is unlikely to recur. Finally, while the problem was less isolated than in *Spencer*, it lacked the systematic and persistent quality found in *Gregory* and *County of Fairfax*.

The district court acted well within its discretion in declining to enter an injunction.

IV.

Reyazuddin contends last that the district court erred by denying her declaratory relief. She sought a declaration—based on the jury verdict—that the County discriminated against her. A district court should issue a declaration when it will help in "clarifying and settling" legal relationships and will "terminate and afford relief from the uncertainty, insecurity, and controversy" driving the suit. *Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co.*, 139 F.3d 419, 423 (4th Cir. 1998) (quoting *Aetna Cas. & Sur. Co. v. Quarles*, 92 F.2d 321, 325 (4th Cir. 1937)). We review the denial of a declaration for abuse of discretion. *See id*. at 421.

The jury found that the County discriminated by refusing to transfer Reyazuddin to MC311. That verdict now has limited relevance because the County has accommodated Reyazuddin. Expounding on it would be superfluous as it would "neither clarify any issue of law . . . nor provide relief from uncertainty." *Pitrolo v. County of Buncombe*, 589 F. App'x 619, 621 (4th Cir. 2014). The district court thus did not abuse its discretion in denying this form of equitable relief.

V.

The district court did not err in finding that Montgomery County reasonably accommodated Reyazuddin. Nor did it abuse its discretion by denying her injunctive and declaratory relief. Accordingly, the district court's judgment is affirmed.

AFFIRMED

APPENDIX F

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. DKC 11-0951

YASMIN REYAZUDDIN

v.

MONTGOMERY COUNTY, MARYLAND

August 21, 2017, Filed

Counsel: For Yasmin Reyazuddin, Plaintiff: Albert Elia, Daniel Frank Goldstein, Joseph B Espo, Brown Goldstein and Levy, LLP, Baltimore, MD; Timothy R Elder, TRE Legal Practice, Fremont, CA.

For Montgomery County, Maryland, Defendant: Patricia Victoria Haggerty, Office of the County Attorney for Montgomery County, Marylan, Rockville, MD; Patricia Lisehora Kane, Office of the Montgomery County Attorney, Rockville, MD.

For Array Information Technology, Inc., Movant: Russell James Gaspar, Cohen Mohr LLP, Washington, DC.

Judges: DEBORAH K. CHASANOW, United States District Judge.

Opinion by: DEBORAH K. CHASANOW

MEMORANDUM OPINION

After more than six years of litigation in this employment discrimination case, the remaining issues of declaratory and injunctive relief are ready for resolution.

I. Background

In April 2011, Plaintiff Yasmin Reyazuddin ("Plaintiff"), a Montgomery County employee since 2002, brought the instant suit in which she has brought claims under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq. (ECF No. 1). In early 2008, Defendant Montgomery County, Maryland ("Defendant" or "the County") began a reorganization of the County's customer service employees from various executive departments to a single county-wide call center, referred to as "MC 311." At that time, Plaintiff worked as an Information and Referral Specialist in the County's Health and Human Services Department ("HHS"). Although her colleagues in the same or similar positions were transferred to MC 311 as Customer Service Representatives ("CSRs") when the call center finally opened in the fall of 2009, Plaintiff, who is blind, was not transferred to the call center because the County thought it would be too burdensome to make the tools and software used by CSRs accessible to her. Instead, Plaintiff was transferred to two positions within the Aging and Disabilities Services ("ADS") section of HHS. Her discrimination claims faulted the County for failing to provide a reasonable accommodation for her disability that would allow her to transfer to MC 311 as a CSR with her non-disabled peers.

During a February 2016 jury trial, Plaintiff presented evidence that her ADS positions failed to provide her with consistent, meaningful work and that she could have performed the job duties of a CSR with a reasonable accommodation. The court instructed the jury to consider, *inter alia*, whether Plaintiff could perform "[t]he essential job functions . . . routinely performed by individuals in the MC 311 call center." (ECF No. 212, at 11). The jury found that Plaintiff could perform the essential functions of a CSR with a reasonable accommodation and that Defendant had failed to provide a reasonable accommodation for her disability. (ECF No. 221). The jury also reviewed and rejected Defendant's affirmative defense that it would have been an undue hardship "to implement the software accommodations Plaintiff had requested." (*Id.*; ECF No. 212, at 13-14). It determined, however, that Plaintiff had sustained zero dollars in damages. (ECF No. 221).

Plaintiff's complaint also sought injunctive and declaratory relief. (ECF Nos. 1, at 8-9; 58, at 10). After the jury trial, Plaintiff moved for an order requiring Defendant to make MC 311 accessible and to give Plaintiff a job as a CSR, consistent with the position she would have been in had the discrimination not occurred. (ECF No. 228, at 7). Defendant argued, first, that injunctive relief was inappropriate and, second, that Plaintiff's entitlement to a reasonable accommodation had been satisfied when the County offered Plaintiff a position at the Columbia Lighthouse for the Blind ("CLB") in October 2015. (ECF No. 229). This offer, which Plaintiff rejected, was made during the litigation. Rather than incorporate that offer into the then-upcoming jury trial, Plaintiff limited her claims at that trial to the County's conduct and her damages up until the October 2015

offer of a position at CLB. (*See id.* at 7-8). Whether the CLB position was a reasonable accommodation was therefore not considered by the jury. Thus, notwithstanding the jury's verdict that the ADS positions were not a reasonable accommodation, Plaintiff's initial motion for injunctive relief was denied because she had not demonstrated that the CLB offer had not extinguished any entitlement she might have had to injunctive relief. (ECF Nos. 235, at 1; 246, at 61-63). The parties proceeded to discovery to litigate Plaintiff's equitable claims in May 2016. (ECF Nos. 236; 238; 241).

While discovery related to the CLB offer was ongoing, Defendant notified Plaintiff that she would be transferred to MC 311. (ECF No. 258-1, at 1). This transfer occurred on October 26, 2016, and Plaintiff is now employed as a CSR II at MC 311. Defendant then moved to stay discovery to brief whether Plaintiff's claims had been mooted by her transfer. (ECF No. 258). The court granted the stay temporarily and ultimately determined that an evidentiary hearing was necessary to resolve Plaintiff's request for injunctive relief in light of her new position. (ECF Nos. 262; 266). In advance of that hearing, Plaintiff filed a new motion for injunctive relief and a motion for partial summary judgment as to the CLB job offer. (ECF Nos. 295; 296). Defendant filed a motion to dismiss or for summary judgment. (ECF No. 300). Each of these motions was briefed in full by the parties, and the court deferred consideration of the motions. (ECF Nos. 304; 310; 311; 315; 316; 319; 322).

In light of Plaintiff's current placement, she has modified her request for injunctive relief. Although she is working at MC 311, Plaintiff argues that Defendant continues to discriminate against her.

Specifically, Plaintiff contends that differences between her job duties as a CSR and the duties of other CSRs constitute an ongoing failure to provide a reasonable accommodation. Plaintiff currently seeks: (1) a declaration that Defendant discriminated against her because of her blindness and (2) a permanent injunction ordering the County to make certain technology systems accessible to her and prohibiting it from allowing the accessibility of currently accessible systems to lapse. (*See* ECF Nos. 295; 351). The issues were briefed in dispositive motions on injunctive relief and mootness, and an evidentiary hearing was held from April 19 to April 28, 2017. (*See* ECF Nos. 295; 300; 310; 311; 316; 319; 328; 329; 330; 331; 332; 346; 348). Upon consideration of the evidence adduced at the jury trial and the evidentiary hearing, as well as the parties' arguments with respect thereto, the court now issues findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a).[1]

II. Mootness

Defendant contends that the Plaintiff's claim is now moot because she has been placed at MC 311 as a CSR as she originally requested. The mootness doctrine applies "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Simmons v. United Mortg. & Loan Inv., LLC*, 634 F.3d 754, 763 (4th Cir. 2011) (citing *United States v. Hardy*, 545 F.3d 280, 283 (4th Cir. 2008)). Mootness deprives a court of jurisdiction over a case.

---

[1] *Rule 52(a)* provides, in relevant part, that "[i]n an action tried on the facts without a jury . . . , the court must find the facts specially and state its conclusions of law separately. The findings and conclusions . . . may appear in an opinion or a memorandum of decision filed by the court."

"If intervening factual or legal events effectively dispel the case or controversy during the pendency of the suit, the federal courts are powerless to decide the questions presented." *Ross v. Reed*, 719 F.2d 689, 693-94 (4th Cir. 1983).

In its motion papers, the County argues that there is no "ongoing case or controversy [] involving her requested injunctive relief — to be instated as a CSR II at MC 311." (ECF No. 300-2, at 24). The County claims that it has remedied the injury that Plaintiff had previously suffered. (*Id.* at 26-27). It contends that the County provided the relief Plaintiff sought when it "voluntarily transferred Plaintiff to MC 311 and [] invested hundreds of hours of employee and contractor time to facilitate Plaintiff's transition into working as a CSR II at MC 311." (*Id.* at 26).

It is undisputed that Plaintiff is working at MC 311 and her job title is CSR II, but these facts alone are insufficient to moot Plaintiff's claims for injunctive relief without review of the merits. Defendant's argument relies on the factual and legal determinations presently before the court, specifically, whether her current role provides her with a meaningful equal employment opportunity as required by the ADA. Here, if Plaintiff could prove her claim that, in spite of her change in location and job title, Defendant's refusal to make certain technological tools fully accessible to her constituted a failure to provide her with a reasonable accommodation, she would have a "live" claim for injunctive relief. Only if Defendant is correct that it is now complying with its legal requirements under the ADA would the controversy cease to exist. Mootness occurs when the resolution of the issues presented in the case would not effectuate a remedy, even if the claims were resolved in the

plaintiff's favor. Because Defendant's mootness argument hinges on the merits of whether Plaintiff's current placement satisfies the requirements of the ADA, the case clearly is not moot.

III. Facts from Evidence Presented at the Jury Trial and the Evidentiary Hearing[2]

At the evidentiary hearing, Plaintiff presented fact testimony from Dieter Klinger, Katherine Johnson, Chris Daniel, Stephen Heissner, and Jay Kenney. These witnesses and others at the evidentiary hearing testified primarily as to the workings of MC 311 and differences between Plaintiff's CSR II role and that of other CSR IIs. Defendant presented fact testimony from Plaintiff, Mr. Klinger, Mr. Daniel, Mr. Heissner, Mr. Kenney, Chris Turner, Robert Sinkler, William Potter, Kim Alfonso, Vivian Green, and Leslie Hamm. Most of Defendant's fact witnesses are either employees of MC 311 who supervised or trained Plaintiff or other County employees, primarily in the Department of Technology Services ("DTS"), who helped provide technology accommodations for Plaintiff. They testified as to the variety of ways that Defendant has already accommodated Plaintiff in her new position. The parties' experts testified as to whether it was

[2] These findings are based on the evidence presented at the jury trial and the evidentiary hearing. At the latter, the parties presented limited live testimony and submitted deposition testimony from numerous witnesses. Most evidentiary objections were raised during the hearing and resolved. A few objections were noted for later resolution and remained at the conclusion of the hearing. None of those remaining objections pertain to evidence that is germane to the rulings announced in this opinion, and, accordingly, to the extent any pending objections remain, they are denied as moot.

possible and at what costs, in terms of time and money, to make certain systems accessible to Plaintiff.

a. The MC 311 Call Center

MC 311 uses a software system produced by Oracle Corporation called Seibel to track and respond to incoming calls. The County currently uses version 8.2.2.4 of Siebel, a newer version than the one considered in the jury trial. Version 8.2.2.4 is not the newest version of Seibel, however. At least two updated versions, referred to as Innovation Pack 15 and Innovation Pack 16 ("IP 16"), exist and would increase the accessibility of the system to blind users. The County has a contract in place to upgrade to IP 16 and expects to implement it by the end of 2017.

Seibel has two interfaces: a public portal, through which County residents can submit requests online, and an internal portal, through which CSRs submit service requests on behalf of the people who call MC 311. The internal portal is more comprehensive than the public portal. While using the internal portal, for example, CSRs read through Knowledge-Based Articles ("KBAs"), pre-written instructions, based on a caller's request type, for how appropriately to answer the caller's question and submit the service request. The internal portal is also integrated with the County's phone system, which provides CSRs with a series of tools, referred to as the CTI Toolbar, that help manage calls, transfer caller information, and monitor CSR status. After a request is submitted, it goes to the appropriate County department to be resolved. Seibel assigns each service request a reference number that can be tracked by the resident or other CSRs to check progress on the request.

The call center divides calls into two "Tiers" based on the types of knowledge and software necessary to respond to them. Tier 1 calls are calls related to any department that can be answered easily by most CSRs. These calls include many of the most common requests and are generally resolved using only the Seibel system, KBAs, and a series of interactive maps. Certain other calls require the CSR to use supplementary software and databases related to several departments including HHS (CARES), the Permitting Services Department (Hansen), the Finance Department (Munis), as well as Human Resources for County employees. Some of those systems are created and maintained by other entities, separate from Montgomery County. In addition to creating service requests in Seibel, CSRs answering these calls must provide specialized information as to the types of services available and must know how to use these department-specific databases. MC 311 refers to these more complicated calls as Tier 2 calls. All calls enter the system as Tier 1 calls because the call center does not know why a resident is calling before answering the call; calls are then reassigned as Tier 2 if necessary.

MC 311 employs two corresponding types of CSRs. A CSR I can assist with Tier 1 requests but not Tier 2 requests. They answer all calls as they come in and directly respond to any Tier 1 inquiries. If answering a caller's question requires the specialized training and database access for one of the Tier 2 departments, the CSR I will place the call into the Tier 2 queue specific to the appropriate Tier 2 department. The caller will then be transferred to a line that will be answered by someone trained to assist with that type of Tier 2 call.

Those CSRs who can answer Tier 2 calls are called CSR IIs. Most CSR IIs are trained in more than one, but not usually all four, of the departments. Thus, a single CSR II might answer calls from, for example, both the HHS and Permitting Departments. CSR IIs generally are also able to answer Tier 1 calls. The call center's phone system will first route any Tier 2 calls to a CSR II trained in that queue. If there are no callers waiting in a CSR II's Tier 2 queues, the system will instead send Tier 1 calls to that CSR II.

b. Plaintiff's Current Position

Plaintiff now works at MC 311 as a CSR II. She is assigned only one of the Tier 2 queues, HHS calls. Unlike other CSR IIs, Plaintiff does not receive Tier 1 calls because she cannot currently access the internal portal of the Seibel system or the interactive maps. Because she can only answer Tier 2 HHS calls, Defendant has set the phone system to make Plaintiff the primary recipient in the queue of these calls; no other CSR II will receive a Tier 2 HHS call unless Plaintiff is occupied. In addition to the Tier 2 HHS calls she is currently receiving, Plaintiff has the capability to receive Tier 1 calls for the HHS department. Plaintiff has not been trained to take other types of calls.

Plaintiff looks up information and submits service requests using a screen reader called JAWS, an acronym for Job Access With Speech, which reads aloud to a blind user the information that is displayed on a screen for sighted users. JAWS also allows a blind user to set shortcuts for navigating a page using specific key combinations, which helps users bypass the default navigation of the page that sometimes leads through cumbersome paths or to dead-ends. The process of setting up JAWS to read and navigate a

page effectively is called "scripting." Plaintiff uses a customized JAWS-scripted public portal on a non-public County application designed for her. The parties refer to this system as the Internal Web Accommodation Application ("IWAA").

Plaintiff's CSR II role differs from that of other CSR IIs in a variety of ways. Most importantly, Plaintiff does not have access to the Seibel system's internal portal, the CTI Toolbar, or the specialized maps, and, therefore, Plaintiff is not assigned to answer any general Tier 1 calls. Additionally, there are several differences between the tools Plaintiff uses to respond to her Tier 2 HHS inquiries and the tools that other CSR IIs answering the same calls use. CSR IIs using the CTI Toolbar receive the caller's name and zip code from the Tier 1 CSR who transferred the caller into the HHS Tier 2 queue, but Plaintiff does not receive this information and must ask the caller for it herself. While the internal portal creates a service request number for other CSRs at the beginning of the request creation process, the IWAA does not produce a service request number until the request has been submitted. As a result, Plaintiff must fully submit the request before ending the call in order to provide the caller with the service request number for future reference. To review and correct her requests after hanging up the call, a process referred to as "quality review," Plaintiff must ask her supervisor to process any changes. Other CSRs also have the capability to telework, but Plaintiff does not. Finally, the CTI Toolbar interfaces with the County's phone system to notify sighted CSRs of their status in the queue — that is, whether they are ready to receive calls — using what the County calls AUX codes. Plaintiff did not have a method of accurately checking her AUX code status until the County

implemented a new system for her during the evidentiary hearing.

Defendant's fact witnesses testified as to the numerous ways that Defendant has already accommodated Plaintiff in her role as a CSR II. First, to facilitate Plaintiff's new role, the County moved from HHS to MC 311 her computer, JAWS screen reader software, and other equipment, including a braille display and printer. The County hired a contractor to script the HHS Tier 2 software database, CARES, for a JAWS user. It also hired Thomas Logan, Defendant's accessibility expert witness, to educate several employees, including Mr. Turner and Mr. Sinkler, about JAWS usage so that they could train and manage Plaintiff. Second, Defendant has customized a series of applications to enable Plaintiff to enter service requests. When Plaintiff was initially transferred to MC 311, she was given an Excel spreadsheet with the KBAs and instructed to submit service requests on behalf of callers through the public portal of Seibel. This workflow design proved to be difficult for Plaintiff because she had to answer a CAPTCHA with each request. CAPTCHA, the robot-preventing software that typically shows a picture of a number or word and asks the user to type that number or word into a blank field, has an accessible solution for blind users, but, for reasons not discussed by the parties, Plaintiff was unable to answer the CAPTCHA correctly on a consistent basis. In order to resolve the CAPTCHA issue, Defendant's DTS employees developed and implemented the IWAA, which allowed Plaintiff to submit requests through a similar, but non-public, portal without answering a CAPTCHA. Because the IWAA was a custom solution tailored especially to Plaintiff, it was designed to allow her to access the

content necessary to respond to incoming HHS requests using fewer keystrokes and JAWS shortcuts.

Third, the County has spent extensive time training Plaintiff for her current role. During the customary ten-week training period for a CSR, Plaintiff received one-on-one training whereas other employees are typically trained in groups of around eight. For reasons disputed by the parties, Plaintiff's job performance at MC 311 has not met the call center's standards, and the County has continued to provide her with further training after the initial classes. Mr. Sinkler testified that Plaintiff has had difficulty with identifying the caller's issue, providing accurate information to the caller, documenting calls and requests appropriately, exercising proper tone and demeanor, and efficiently managing her calls and workload. (*See* DTX 50).[3] He and Mr. Daniel testified that Plaintiff has generally refused to take notes during training and has frequently relied on her own memory, as opposed to the KBAs, leading to her providing information to callers that is incorrect or outdated. She remains on a work improvement plan because of these issues.

Mr. Sinkler also testified that, in addition to the Tier 2 HHS calls she is currently receiving, Plaintiff has been trained to use the IWAA to respond to Tier 1 calls for the HHS department. In order to limit the Tier 1 calls routed to Plaintiff to calls for HHS inquiries, the County set up the "press four option," allowing a caller to press the four button to be routed directly into an HHS queue that was sent to Plaintiff first. When the County implemented the press four

[3] The designation "DTX" refers to exhibits offered by Defendant.

option, however, Plaintiff was overwhelmed by the number of calls she received. The County therefore withdrew the press four option, although the technical capability still exists.

The parties' experts testified as to whether, how, and at what costs certain MC 311 systems could be made accessible to Plaintiff. Defendant's expert Mr. Logan testified that he identified the thirteen accessibility issues with Seibel. He recommended implementing a native solution — a solution incorporated into a newer version of the software made by the manufacturer — such as IP 16, as opposed to JAWS scripting, which he considered more "fragile." Plaintiff's expert Daniel Buchness testified that he tested the Seibel system currently in use at MC 311 for the thirteen accessibility errors identified by Mr. Logan and for any unidentified errors. He estimated that it would cost a total of $63,050.43 to use JAWS scripting to remediate the errors he found, that the scripting could be implemented in 3-5 weeks, and that the scripting changes would "most likely" be compatible with upgrades from Oracle like IP 16. Mr. Buchness acknowledged that one of the issues, the application or browser "hanging" and "crashing" — that is, lagging behind the user, freezing, or closing unexpectedly — would likely be improved, but not entirely resolved by his proposed repairs.

Plaintiff's experts Shiri Azenkot and Charles LaPierre testified that the data used in the maps identified as necessary to answering Tier 1 calls could likely be made accessible to a blind user. Based on Mr. LaPierre's estimates, it would cost somewhere between $258,300 and $447,300 to makes these maps accessible.

Mr. Logan also demonstrated the difference between using Seibel and using the IWAA to submit a hypothetical HHS request pertaining to an eviction notice. He concluded that the IWAA was better sequenced, required fewer steps, and took less time. Plaintiff herself acknowledged that the IWAA makes it easier for her to access KBAs and submit requests. Mr. Klinger testified that adding more KBAs to the IWAA would not cost the County any additional money.

IV. Findings of Fact and Conclusions of Law

a. Injunctive Relief

Plaintiff seeks a permanent injunction requiring the County to make the Seibel system's internal portal and the data from the commonly used maps accessible to her so that she can answer Tier 1 calls like all other CSR IIs do. Specifically, she asks for an order requiring the County to: (1) use JAWS scripting as necessary to make the Seibel system fully accessible to her within 60 days; (2) upgrade to IP 16, which Oracle suggests should fix most or all of the accessibility issues Plaintiff complains of, by the end of the 2017 calendar year; (3) make accessible the maps she would need most often within 18 months; and (4) assign Plaintiff all of the duties of a CSR II, including Tier 1 calls. She also seeks an order requiring the County to replace Munis and Hansen, programs used by CSR IIs in other Tier 2 queues, with accessible versions when they become available. Finally, she asks that the court order Defendant to maintain the accessibility of all software that is currently accessible.

i. The Effect of the Jury Verdict

Plaintiff first argues that the County must make the changes she has requested because the jury made its determination based on the proposed duties of a CSR that she posited in the jury trial. She contends that, after the jury verdict, it is "indisputable that had Defendant met its obligations under Section 504, the software at MC311 would be accessible and Plaintiff would be working at MC311 as a CSR II also answering [Tier 1] calls." (ECF No. 295-1, at 8). Plaintiff acknowledges that she is not automatically entitled to equitable relief based on the jury's findings, but contends nevertheless that, "because she proved that she is the victim of discrimination[,] she is entitled to an injunction to prevent the ongoing harm she is suffering." (ECF No. 316, at 5).

Here, the jury verdict was based on whether Plaintiff's role at ADS was an equal employment opportunity to that of her peers who had been transferred to CSR positions at MC 311. Making the accessibility changes Plaintiff now seeks would be one way for Defendant to comply with the ADA requirements, but the law is clear that the employer has the ultimate discretion to choose between effective accommodations. *Reyazuddin v. Montgomery Cty. Md.*, 789 F.3d 407, 415-16 (4th Cir. 2015) (citing *Hankins v. The Gap, Inc.*, 84 F.3d 797, 800 (6th Cir. 1996); EEOC Interpretive Guidance on Title I of the ADA, 29 C.F.R. § 1630 app. (2014)). If Defendant had failed to offer Plaintiff any accommodations since those considered by the jury, Plaintiff's request for injunctive relief based on the verdict would have force. In light of the CLB job offer and, more importantly, Plaintiff's current position as a CSR at MC 311, neither of which were considered by the jury, the

verdict no longer provides any insight as to the "ongoing harm she is suffering." Thus, that verdict is insufficient to dictate the outcome of Plaintiff's pending claim for injunctive relief.

ii. Applicable Legal Standard

The statutory provisions governing injunctive relief under the ADA come from Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"). *See* 42 U.S.C. § 12133 (referring to 29 U.S.C. § 794a, which in turn refers to 42 U.S.C. § 2000e-5, the enforcement and remedies provisions of Title VII). The Supreme Court has held that the primary objective of Title VII was the prophylactic aim "to achieve equality of employment opportunities and remove barriers that have operated in the past." *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975) (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30, 91 S. Ct. 849, 28 L. Ed. 2d 158 (1971)). Another purpose of the statute is "to make persons whole for injuries suffered on account of unlawful employment discrimination." *Id.* at 418. Therefore, after finding that an employer discriminated against an employee, a court generally has a duty to "render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Id.* (quoting *Louisiana v. United States*, 380 U.S. 145, 154, 85 S. Ct. 817, 13 L. Ed. 2d 709 (1965)).[4] Injunctive relief thus serves two

[4] In *Albemarle Paper Co.*, the Court was considering whether backpay money damages were an appropriate remedy in addition to injunctive relief. Because employers "would have little incentive to shun practices of dubious legality" without the prospect of money damages, the Court found that those damages were necessary to effectuate Title VII's prophylactic goal. 422 U.S. at 418, 421-22. Although this case conversely considers whether injunc-

distinct purposes: to stop ongoing discrimination and to prevent future discrimination.

The United States Courts of Appeals are divided as to the correct approach — which party has the burden of proving what — that governs a claim for injunctive relief after a plaintiff has proven discrimination. The Fifth and Ninth Circuits have held that, "absent clear and convincing proof of no reasonable probability of further noncompliance with the law[,] a grant of injunctive relief is mandatory." *James v. Stockham Valves & Fittings Co*., 559 F.2d 310, 354 (5th Cir. 1977); *accord EEOC v. Goodyear Aerospace Corp*., 813 F.2d 1539, 1544 (9th Cir. 1987) ("Generally, a person subjected to employment discrimination is entitled to an injunction against future discrimination unless the employer proves it is unlikely to repeat the practice." (citations omitted)). The Second, Eighth, and Tenth Circuits have held that "[t]here is no presumption that broad injunctive relief . . . should issue upon a finding of intentional discrimination." *EEOC v. Siouxland Oral Maxillofacial Surgery Assocs., LLP*, 578 F.3d 921, 928 (8th Cir. 2009); *accord Bridgeport Guardians Inc. v. City of Bridgeport*, 933 F.2d 1140, 1149 (2d Cir. 1991) (holding that a court has broad power "to fashion the relief it believes appropriate" after establishing a Title VII violation); *EEOC v. Gen. Lines, Inc*., 865 F.2d 1555, 1565 (10th Cir. 1989).

The case of *Spencer v. General Electric Co*., 894 F.2d 651 (4th Cir. 1990), *abrogated on other grounds by Farrar v. Hobby*, 506 U.S. 103, 113 S. Ct. 566, 121 L.

---

tive relief is necessary after a damages determination, the Court's focus on "the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination" still guides the instant case. *Id*. at 421.

Ed. 2d 494 (1992), guides the analysis of cases like these in the Fourth Circuit. In *Spencer*, the plaintiff in a sexual harassment case proved her hostile work environment claim and was awarded nominal damages. *Spencer v. Gen. Elec. Co.*, 703 F.Supp. 466, 469 (E.D.Va. 1989). On the plaintiff's motion for injunctive relief, the district court found that an injunction was not mandatory and articulated the following governing principles:

> Injunctive relief is uniquely designed to prevent illegal conduct. Such relief, however, is not mandatory in all Title VII cases. Only where there are lingering effects or a not insubstantial risk of recurring violations is such relief necessary. At the same time, injunctive relief is not automatically precluded simply because the offending party has ceased the illegal conduct, demonstrated its good faith intent to comply with the law, or even implemented an affirmative plan to remedy past discrimination. Rather, the court must carefully examine the circumstances of each case, taking into account "the bona fides of [defendant's] expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." *United States v. W.T. Grant*, 345 U.S. 629, 633, 73 S. Ct. 894, 97 L. Ed. 1303 (1953). Before granting injunctive relief, the court must then conclude that a "cognizable danger of recurrent violation" exists. *United States v. Hunter*, 459 F.2d 205, 210 (4th Cir. 1972) [citing W.T. Grant Co., 345 U.S. at 633].

703 F.Supp. at 469-70 (alterations in original). The district court also emphasized the difference between

cases where there was "abundant evidence of past discrimination," "widespread misconduct or lingering effects," or "a systematic pattern of harassment" and cases like Spencer's sexual harassment claim where the "illegal conduct was precipitated by a single individual within a relatively small and isolated working group." 703 F.Supp. at 469 nn.4, 9.

In evaluating these claims, the court also noted:

> Plaintiff relies on *W.T. Grant Co.* for the proposition that defendant bears a heavy burden to defeat injunctive relief by demonstrating "there is no reasonable expectation that the wrong will be repeated." *United States v. W.T. Grant Co.*, 345 U.S. at 633. That reliance, however, is misplaced and the quotation taken out of context. In *W.T. Grant Co.*, the Supreme Court did place a heavy burden on defendant, but only to prove that [the] case was mooted by the cessation of the alleged illegal activity, thereby depriving the court of jurisdiction. Here, the issue is not subject matter jurisdiction, but rather the appropriate remedy after a finding of liability. *Id.* Once Title VII liability has been established, it is reasonable to shift to defendant the burden to come forward with evidence of remedial measures, as well as evidence to show that the violations will not recur. After all, defendant is in the best position to provide such evidence. The ultimate burden of persuasion may equally reasonably remain with plaintiff.

703 F.Supp. at 469 n.10. Because the defendant in *Spencer* had shown "a genuine, not transitory, commitment to banning sexual harassment in the workplace"

by instituting a new sexual harassment policy, the court found that an injunction was unnecessary. 703 F.Supp. at 471, 473.

On appeal, the Fourth Circuit affirmed as to the plaintiff's motion for injunctive relief. *Spencer*, 894 F.2d at 661. It agreed that, "[a]lthough injunctions are by no means mandatory in a Title VII case, a district court must, of course, exercise its discretion in light of the prophylactic purposes of the Act to ensure that discrimination does not recur." 894 F.2d at 660. Like the district court, the Fourth Circuit underscored the difference between "systematic company-wide discrimination" and "isolated incident[s]." 894 F.2d at 661. It affirmed the district court's determination that "once Title VII liability was established, the onus to produce evidence that [discrimination] will not recur lies with the defendant[.] However, the ultimate burden of proof that an injunction is necessary always remains with the plaintiff." 894 F.2d at 660 n.13.

Accordingly, the two questions from *Albemarle Paper Co.* must be answered in this case: first, whether, by placing Plaintiff in her current position at MC 311, Defendant has provided her a reasonable accommodation for her disability, ceased its discrimination, and "eliminate[d] the discriminatory effects of the past;" and second, whether an injunction is necessary to prevent further discrimination in the future. Defendant has the burden of providing evidence both that the County has ceased discriminating against Plaintiff and that further discrimination against Plaintiff is unlikely to recur. Plaintiff, however, bears the ultimate burden of showing entitlement to injunctive relief in light of Defendant's evidence.

iii. Injunctive Relief for Ongoing Discrimination

In her proposed injunctive order, Plaintiff seeks further changes to accommodate her in her current position. Essentially, Plaintiff's request for injunctive relief is a claim that the County still has not provided her with a reasonable accommodation despite her current placement. Plaintiff suggests that the County has provided only a "partial accommodation" and that she continues to suffer from discrimination because Defendant has assigned her limited duties and provided her insufficient technological tools compared to her CSR II peers at MC 311. (*See* ECF No. 316, at 6-7). To accommodate her completely, she argues, the County must enable her to answer Tier 1 calls. Defendant argues that [*474] no further action is needed to accommodate Plaintiff, although the County notes that it has contracted to implement IP 16 for Seibel, which it expects will make the system accessible to Plaintiff, and that it intends to make maps accessible on a yet-to-be-determined schedule.

Unlike typical ADA cases, in which plaintiffs seek to limit the scope of their work to avoid tasks made difficult or impossible due to their disabilities, Plaintiff is seeking to expand her job duties. Defendant, on the other hand, is arguing that the County has reasonably accommodated Plaintiff by putting her at MC 311 as a CSR II answering HHS Tier 2 calls even if her job responsibilities are limited compared to her peers. In some instances, the parties have even changed course from their positions during the jury trial earlier in this case. For example, where Defendant sought at trial to show that reading maps was an essential CSR function of which Plaintiff was incapable, it now argues that it has accommodated her

without the need for her to read maps, and therefore it should not be ordered to make its maps accessible.

Although the parties' roles may be unusual, the guideposts for accommodation remain the same. To prevent discrimination by employers, the ADA requires that employers provide a reasonable accommodation when the disabled employee is capable of performing the essential functions of the job with such an accommodation. 42 U.S.C. § 12111(8); *EEOC v. Stowe-Pharr Mills, Inc*., 216 F.3d 373, 377 (4th Cir. 2000). As the House Report on the matter states:

> [T]he reasonable accommodation requirement is best understood as a process in which barriers to a particular individual's equal employment opportunity are removed. The accommodation process focuses on the needs of a particular individual in relation to problems in performance of a particular job because of a physical or mental impairment.
>
> . . .
>
> Having identified one or more possible accommodations, the [next] step is to assess the reasonableness of each in terms of effectiveness and equal opportunity. A reasonable accommodation should be effective for the employee. Factors to be considered include the reliability of the accommodation and whether it can be provided in a timely manner.
>
> . . . [A] reasonable accommodation should provide a meaningful equal employment opportunity. Meaningful equal employment opportunity means an opportunity to attain the same level of performance as is available

> to nondisabled employees having similar skills and abilities.

H.R. Rep. 101-485(II), as quoted in *Bryant v. Better Business Bureau of Greater Md., Inc*., 923 F.Supp. 720, 736-37 (D.Md. 1996). Accordingly, "[i]n order to be reasonable, the accommodation must be effective (i.e., it must address the job-related difficulties presented by the employee's disability), and it must allow the employee to attain an 'equal' level of achievement, opportunity, and participation that a non-disabled individual in the same position would be able to achieve." *Merrill v. McCarthy*, 184 F.Supp.3d 221, 236 (E.D.N.C. 2016) (quoting *Fleetwood v. Harford Sys. Inc*., 380 F.Supp.2d 688, 699 (D.Md. 2005)); *see also Bryant*, 923 F.Supp. at 736; 29 C.F.R. pt. 1630, app. (2014) ("The reasonable accommodation that is required by this part should provide the individual with a disability with an equal employment opportunity. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability.").

On the other hand, an employer "may reasonably accommodate an employee without providing the exact accommodation that the employee requested." *Reyazuddin*, 789 F.3d at 415. Under the ADA, reasonable accommodations may include "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, [or] appropriate adjustment or modifications of examinations, training materials or policies." 42 U.S.C. § 12111. As noted above, the employer has discretion to choose between effective accommodations, *Reyazuddin*, 789 F.3d at 415-16, and

a court goes too far when the effect of an injunction "would be to give preferential treatment to people with disabilities, rather than put them on equal footing as intended by Congress," *Pathways Psychosocial Support Ctr., Inc. v. Town of Leonardtown*, 223 F. Supp. 2d 699, 717 (D.Md. 2002).

When this case began, Defendant had assigned Plaintiff, in the words of the Fourth Circuit, a "cobbled together [] assortment of 'make-work' tasks" that were of questionable value to the County and failed to fill up her day. *Reyazuddin*, 789 F.3d at 416. It was these job duties that failed to constitute a reasonable accommodation for Plaintiff because they did not provide her a meaningful equal employment opportunity. The jury's verdict was based on those limited duties.

Since then, Plaintiff has been transferred to MC 311 and classified as a CSR II. She is answering Tier II HHS calls full time. None of the work she is presently doing is "make-work." In her current position, she assists callers with an array of HHS requests that would otherwise be resolved by other CSR IIs at MC 311. Her work is related to a subject matter with which she has familiarity and the potential to capitalize on her years of HHS experience. Although Plaintiff and Defendant appear to be in an ongoing effort to find the right workload for her as a CSR — and the parties dispute her skills, training, and progress — she no longer complains that she has an insufficient workload. If her Tier II HHS calls were to become insufficient, the County has in place another accommodation, the "press four option," to increase her total number of calls to ensure that she can fill her days with meaningful work that would otherwise be done by her peers at MC 311. The issues Plaintiff now presents are considerably different from those

that were previously in front of the jury. This evidence shows that Plaintiff is now doing meaningful work.

Plaintiff argues, however, that the work assigned to her does not provide her with an equal employment opportunity because the tools she is using and tasks she is assigned differentiate her from her peers and limit her performance. She contends that using the IWAA sets her up to fail because she cannot easily do "quality review" to check her work. Plaintiff also emphasizes that the IWAA requires her to ask the caller for name and zip code information that would normally be transferred to the CSR II by the Tier 1 call-taker. She argues that this redundant request requires her to take more time on each call than her peers. Finally, Plaintiff points out that the unavailability of the Seibel system prevents her telecommuting, which at least some of her peers can do for a variety of reasons. Defendant argues that none of these differences prevent Plaintiff's current role from being a reasonable accommodation.

Although Plaintiff may not be doing the exact same work in the exact same way as her non-disabled peers, her current position at MC 311 does provide her with a meaningful equal employment opportunity. The current circumstances of this case are somewhat similar to those in *Bunn v. Khoury Enters*., 753 F.3d 676, 682-83 (7th Cir. 2014), where a legally blind employee at a Dairy Queen restaurant was assigned exclusively to one department instead of rotating through various departments as non-disabled employees in the same position were required to do. Although the plaintiff sought a different accommodation, the court found that permitting and assigning him to work exclusively in one department where he was best able to perform all the necessary duties was "exactly the

kind of accommodation envisioned by the regulations applicable to the ADA" when they reference "job restructuring" or a "modified work schedule," even if it meant that his job was structured differently from his peers. *Id.* Similarly, here, the County has restructured Plaintiff's CSR job to handle exclusively the calls that she is most capable of handling with the tools that are currently accessible.

Plaintiff largely argues that answering Tier 1 calls is an essential function of the CSR II position and that the County must provide an accommodation sufficient for her to perform all essential functions of the CSR II position in the same manner as her peers. Neither the statute nor case law imposes such a requirement. In *Basith v. Cook County*, 241 F.3d 919, 924-25 (7th Cir. 2001), for example, the plaintiff's employer restructured his job as a Pharmacy Technician II to eliminate delivery, stocking, and cleaning duties when an injury left him unable to do much walking or lifting. Although the court had found that delivery and stocking of medications were essential functions of his job, *id.* at 927, it held that the employer had provided a reasonable accommodation when it "went above and beyond the requirements of the ADA" by reallocating these essential functions to other employees, *id.* at 932; *cf. Feist v. Louisiana*, 730 F.3d 450, 453-54 (5th Cir. 2013) (emphasizing that "a modification that enables an individual to perform the essential functions of a position is only one of three categories of reasonable accommodation," along with modifications that enable an applicant to be considered for a desired position or modifications that enable a disabled employee "to enjoy equal benefits and privileges of employment" (citing 29 C.F.R. § 1630.2(o)(1))); *EEOC v. Life Techs. Corp.*, No. WMN-09-2569, 2010 U.S. Dist. LEXIS 117563, 2010 WL

4449365, at *5 (D.Md. Nov. 4, 2010) (noting in a different context that, although "the regulation certainly indicates that some reasonable accommodations are for the purpose of enabling an individual to perform the essential functions of a job, nothing in its language indicates that all reasonable accommodations must be for that purpose"); Interpretive Guidance, 29 C.F.R. § 1630 app. (2016) (explaining that restructuring essential functions to enable an individual to perform a job is one type of modification that might be required in a "supported employment" position and noting that "it would not be a violation of [the reasonable accommodation requirement] for an employer to provide any [such] personal modifications or adjustments"). This view is also supported by the ADA's inclusion of reassignment to a vacant position, which would inherently change the essential functions of the job held, as a reasonable accommodation, so long as the employee is able to perform the essential functions of the new position and the position is equivalent to the employee's previous one. Interpretive Guidance, 29 C.F.R. § 1630 app. (2016).

The evidence here does not show that using the IWAA and answering only Tier 2 HHS calls prevents Plaintiff from attaining the same level of performance as her peers. The queue of calls Plaintiff receives has no bearing on her salary, job benefits, union status, or any other privileges of her employment, with the possible exception of the opportunity to telework. Telecommuting, however, is permitted only in limited circumstances and at the discretion of a supervisor, not as of right. Plaintiff is also capable of doing quality review of her service requests and figuring out her AUX code status, just under different circumstances than her peers. As described in the job classification, the role of a CSR II focuses almost entirely on general

skills related to helping callers: identifying problems, researching written materials, providing information to the customer, and submitting service requests. (DTX 7). It makes no reference to the specific types of calls a CSR II will answer. (*Id.*). Although all other CSRs are able to answer Tier 1 calls, all CSR IIs are limited to taking only the Tier II calls for the systems on which they are trained; thus, not all CSR IIs need to answer the same types of calls in order to attain the same level of performance.

The same analysis applies to Plaintiff's promotional opportunities. Plaintiff has not presented any evidence that her lack of familiarity with Seibel's internal portal will detract from her future opportunities if she shows a strong ability to assist callers and the interpersonal skills necessary to train new CSRs, manage employees, and handle difficult calls. To the contrary, the testimony of Robert Sinkler and other managers indicated that it is common for MC 311 supervisors to be unfamiliar with the Tier 2 calls from queues in which they did not work, yet these employees are still eligible to be promoted to supervise CSR IIs who take such calls.

In sum, the differences between Plaintiff working as a CSR II using the IWAA to answer only Tier 2 HHS calls and her Seibel-using peers are within the range of modifications "to the manner or circumstances under which the position . . . is customarily performed" that regulations permit as part of a reasonable accommodation. 29 C.F.R. § 1630.2(o)(1)(ii). Plaintiff's current role allows her to attain an equal level of achievement, opportunity, and participation as her CSR II peers. The County has provided her a reasonable accommodation, and, accordingly, its discrimina-

tory conduct has ceased. Therefore, an injunction is not warranted as to Plaintiff's current position.[5]

iv. Prohibitory Injunction

Even where an employer has stopped discriminating against an employee, "the court's power to grant injunctive relief survives discontinuance of the illegal conduct." *W.T. Grant Co*., 345 U.S. at 633; *accord Reiter v. MTA N.Y. City Transit Auth*., 457 F.3d 224, 230 (2d Cir. 2006). As discussed above, "the court must carefully examine . . . 'the bona fides of [defendant's] expressed intent to comply, the effectiveness of the discontinuance and . . . the character of the past violations.'" *Spencer*, 703 F.Supp. at 469-70 (quoting *W.T. Grant*, 345 U.S. at 633) (alterations in original).

Plaintiff argues that a prohibitory injunction is necessary to prevent Defendant from letting its current accessibility lapse and returning to its former discriminatory practices. She argues that despite Defendant's ongoing efforts to accomplish Seibel accessibility through IP 16, the County has made such strides for accessibility reluctantly and only as a result of this litigation. It should not be trusted, Plaintiff maintains, to continue its accessibility efforts or to make such efforts a timely priority in the absence

[5] At the hearing, the parties also presented testimony and exhibits related to the CLB job offer. The evidence showed that the CLB position would have been isolated from other County employees and was created and offered in a manner that deviated significantly from normal County or CLB practices. It therefore seems doubtful that such a position would have provided Plaintiff with a reasonable accommodation. Because Plaintiff's current position satisfies the ADA requirements, however, there is no need for injunctive or declaratory relief based on a failure to accommodate related to the CLB offer.

of a court order.[6] In her motion papers, Plaintiff suggests that, rather than "acknowledging its failings, Montgomery County is still conducting a battle to hold onto what it regards as its management rights to do anything it wants." (ECF No. 316, at 12).

In *Spencer*, the Fourth Circuit refused to adopt the rule "that remedial measures undertaken by a defendant after the instigation of litigation will never be adequate to obviate injunctive relief" because doing so would "undercut the remedial goals of Title VII . . . by removing any incentive for an employer, once sued, to clean its own house." 894 F.2d at 660-61. Moreover, the County has never contended that it need not accommodate Plaintiff. Defendant and Plaintiff have disputed what constitutes a reasonable accommodation, and Defendant has continued to maintain, as the law makes clear, that an employer

---

[6] In her motion papers, Plaintiff does not distinguish between the analysis of mootness in this case and her entitlement to a prohibitory injunction. Put another way, Plaintiff contends that because her transfer did not moot the case, Defendant should be enjoined from transferring Plaintiff back out of MC 311 or taking actions that negate the accessibility measures it has undertaken to allow her to work as a CSR II. Without citing to any cases equating these two analyses, Plaintiff states that "[w]hat is appropriate for a mootness analysis is equally applicable to the question of whether injunctive relief is appropriate." (ECF No. 295-1, at 10). She is incorrect. The mootness analysis determines whether a court has jurisdiction to hear a case. The existence of a live controversy is not enough to entitle Plaintiff to relief. Thus, where voluntary cessation might prevent a court from mooting a case when a defendant is capable of reverting back to past practices, to warrant injunctive relief, Plaintiff must show, not that Defendant *is capable* of reverting back to past discriminatory practices, but some *likelihood* of recurrence. *See Spencer*, 703 F.Supp. at 469 ("Only where there are lingering effects or a not insubstantial risk of recurring violations is such relief necessary.").

has discretion to choose among effective accommodations. These arguments are a far cry, however, from the notion that the County may "do anything it wants." Defendant has offered Plaintiff two positions different from what it originally "wanted" to provide. Nor has the County been slow to provide the accommodations it believed were necessary. Rather, in both instances, Defendant offered Plaintiff a new position before it was necessary and while it was still litigating the sufficiency of its earlier accommodation efforts: before the jury found that Plaintiff's ADS positions were inadequate, the County helped create a new position that it thought would appeal to Plaintiff at the CLB, and while the parties were litigating the adequacy of the CLB position, Defendant transferred Plaintiff to MC 311. Defendant has also made continued efforts to improve the effectiveness of Plaintiff's placement at MC 311. The County has dedicated extensive time and personnel to training Plaintiff on the skills she needs for her position. After encountering issues with the CAPTCHA robot-prevention software, it created the IWAA, a specialized portal for Plaintiff.

All of these steps indicate a *bona fide* intent to abide by the law. Defendant's past actions do not suggest an unwillingness to provide a reasonable accommodation, but rather a repeated failure to identify one that works for both Plaintiff and the County. Defendant did not fail to recognize that an accommodation was required. Rather, it failed to provide an accommodation that met the requirements of the ADA.

There are no other reasons to conclude that a prohibitory injunction is necessary. The "character of the past violation" is delimited; the violation was isolated in the sense that it was caused by the one-time

reorganization of the call center functions. Other evidence Defendant put forth at the evidentiary hearing indicates that it has now invested significant training toward helping Plaintiff succeed in her new role, despite numerous issues. Defendant also has a contract in place to implement IP 16 and has indicated that it expects this upgrade to fix the accessibility issues that have prevented Plaintiff from using Seibel's internal portal. Thus, the County appears inclined to continue to implement further accessibility features.

Plaintiff's contention that Defendant might fail to maintain the accessibility of the systems she is presently using seems improbable. Some of the accessibility features result from software advances that serve multiple purposes. The costs and resources necessary to maintain accessibility of the systems currently in place would likely be minimal compared to the staff time and resources that the County has already invested in making the CSR II position accessible to Plaintiff. Additionally, if Defendant failed to maintain the accessibility of the CARES system or the IWAA, Plaintiff would not be able to help any customers at all. The County has never suggested that paying Plaintiff to do nothing at all would be appropriate. The County has discontinued its discrimination, which was only the failure to identify and implement a reasonable accommodation. Considering all of these circumstances, a prohibitory injunction is not warranted.

b. Declaratory Judgment

Plaintiff also seeks a declaration, based on the jury verdict, that Defendant violated her rights under the ADA. The Fourth Circuit has explained that:

> While § 2000e—5(g)(2)(B)(i) places the power to award declaratory relief in the district courts' discretion, "such discretionary choices are not left to a court's inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *Albemarle Paper Co*., 422 U.S. at 416 (internal quotation marks omitted).

Pitrolo v. Cty. of Buncombe, N.C., 589 F.App'x 619, 627 (4th Cir. 2014). The court further explained that:

> "We have . . . enumerated several factors to guide district courts in their exercise of this discretion." *Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co*., 139 F.3d 419, 421-22 (4th Cir. 1998) (*per curiam*) (internal quotation marks omitted). In *Aetna*, we held that, when deciding whether to grant declaratory relief pursuant to the *Declaratory Judgment Act*, 28 U.S.C. § 2201, a district court should consider several factors. *See Aetna*, 139 F.3d at 422-24. Among those factors relevant to this case are whether awarding declaratory relief (1) will clarify important issues of law in which the forum state has an interest; (2) will "clarify the legal relations between the parties" or afford "relief from uncertainty, insecurity, and controversy giving rise to the proceeding"; and (3) "whether the declaratory judgment action is being used merely as a device for procedural fencing." *Id.* (internal quotation marks omitted); *see also Am. Cas. Co. of Reading, Pa. v. Howard*, 173 F.2d 924, 927 (4th Cir. 1949) ("We think [judicial discretion whether to grant declaratory relief] should be liberally exercised to effectuate the

> purposes of the [*Declaratory Judgment Act*] and thereby afford relief from uncertainty and insecurity with respect to rights, status and other legal relations."); [] Edwin Bouchard, Declaratory Judgments 299 (2d ed. 1941) ("The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in clarifying . . . the legal relations at issue and (2) when it will . . . afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.").

Pitrolo, 589 F.App'x at 627-28.

In her motion papers, Plaintiff contends that a declaration from the court "will afford relief to both parties about the uncertainty, insecurity, and controversy that gives rise to this case." (ECF No. 316, at 14). A declaration is warranted, she argues, because "the parties have strong disagreements about the way in which their future relations should be organized." (*Id.*). Plaintiff contends that *Pathways Psychosocial Support Ctr., Inc. v. Town of Leonardtown*, 223 F. Supp. 2d 699, 718 (D.Md. 2002), demonstrates that a court may enter a declaratory judgment even after a jury determination of the same issue on the merits. In that zoning and land use case, the court issued a declaratory judgment because it was "not in a position to determine whether Pathways' current use [was] different from that use [upon which the jury determination relied]." *Id*. at 717. The court issued a declaration stating that, if the plaintiff's ongoing use was the same, the jury's verdict continued to control.

In the instant situation, there is no such confusion. The jury made clear that Defendant's earlier accommodation was insufficient. The County has now

provided Plaintiff with an entirely new accommodation that is compliant with the ADA. Further expounding on the jury's verdict would be superfluous and have no bearing on the current legal issues. Moreover, by addressing Plaintiff's claims for injunctive relief, the court has removed any uncertainty, insecurity, and controversy over Defendant's future obligations as Plaintiff's employer. Accordingly, declaratory relief is not appropriate here.

V. Conclusion

For the foregoing reasons, judgment will be entered in favor of Defendant Montgomery County, Maryland on Plaintiff Yasmin Reyazuddin's requests for injunctive and declaratory relief. A separate order will follow.

/s/ DEBORAH K. CHASANOW
United States District Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[Filed August 21, 2017]

———

Civil Action No. DKC 11-0951

———

YASMIN REYAZUDDIN

v.

MONTGOMERY COUNTY, MARYLAND

———

ORDER OF JUDGMENT

In April 2011, Plaintiff Yasmin Reyazuddin filed a single-count complaint against Defendant Montgomery County, alleging disparate treatment and a failure to provide a reasonable accommodation in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794. (ECF No. 1). She supplemented her complaint in October 2012 to include a claim under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (ECF No. 58). The court granted judgment in Defendant's favor on both Plaintiff's claims, but the United States Court of Appeals for the Fourth Circuit reversed as to Plaintiff's claims under the Rehabilitation Act. (ECF Nos. 108; 113). The parties proceeded to a jury trial on Plaintiffs Rehabilitation Act claims in February 2016. In the joint pretrial order, Plaintiff stipulated that she was seeking: (1) compensatory damages for emotional distress; (2) injunctive relief; and (3) attorneys' fees. (ECF No. 157, at 19). The jury returned verdicts in favor of Plaintiff on both counts. (ECF No. 221). The

jury found, however, that she had sustained zero dollars in damages.

Plaintiff then proceeded to pursue equitable relief on her claims, seeking a declaration that Defendant had discriminated against her and an injunctive order requiring Defendant to make the job she sought accessible to her and to place Plaintiff in that job, consistent with the position she would have been in had the discrimination not occurred. (ECF No. 228, at 7). The court scheduled a hearing on these issues, and Plaintiff filed a motion for a permanent injunction and declaratory judgment. (ECF Nos. 266; 295). Additionally, Plaintiff and Defendant each filed dispositive motions prior to the hearing. (ECF Nos. 296; 300). For the reasons stated in the foregoing Memorandum Opinion, Plaintiff is not entitled to injunctive relief or declaratory judgment.

Accordingly, it is this 21st day of August, 2017, by the United States District Court for the District of Maryland, ORDERED that:

1. Plaintiff's motion for partial summary judgment (ECF No. 296) and Defendant's motion to dismiss for lack of jurisdiction or for summary judgment (ECF No. 300), BE and the same hereby ARE, DENIED;

2. Plaintiff's motion for declaratory and injunctive relief (ECF No. 295) BE, and the same hereby IS, DENIED;

3. All other motions, to the extent not ruled on earlier (ECF Nos. 275, 276, 277, 292, 293, 294, 301, 303, and 305), BE and the same hereby ARE, DENIED as moot;

4. JUDGMENT BE, and the same hereby IS, ENTERED in favor of Yasmin Reyazuddin and

against Montgomery County for her claims under Section 504 of the Rehabilitation Act of 1973, in the amount of $0.00 in compensatory damages;

5. All prior rulings are incorporated herein and this judgment is final within the meaning of Fed.R.Civ.P. 58; and

6. The clerk is directed to transmit copies of this Judgment Order to counsel for the parties.

/s/ DEBORAH K. CHASANOW
United States District Judge

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed March 29, 2021]

No. 19-2144
(8:11-cv-00951-DKC)

YASMIN REYAZUDDIN

Plaintiff-Appellant

v.

MONTGOMERY COUNTY, MARYLAND

Defendant-Appellee

THE DISABILITY LAW CENTER OF VIRGINIA; DISABILITY RIGHTS MARYLAND; DISABILITY RIGHTS OF WEST VIRGINIA; PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC. OF SOUTH CAROLINA; DISABILITY RIGHTS NORTH CAROLINA

Amici Supporting Appellant

INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION,

Amicus Supporting Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[Filed: February 26, 2016]

Civil Action No. DKC 11-00951

YASMIN REYAZUDDIN

Plaintiff

v.

MONTGOMERY COUNTY, MARYLAND

Defendant

VERDICT SHEET
Preliminary Issues

1. Do you find by a preponderance of the evidence that Plaintiff is an individual with a disability?

   Yes ✓ No _____

2. Do you find by a preponderance of the evidence that the Defendant had notice of her disability?

   Yes ✓ No _____

If your answer to Question No. 1 or 2 is "no," stop here and go no further.

3. Do you find by a preponderance of the evidence that Plaintiff could perform the essential functions of a Customer Service Representative with a reasonable accommodation?

Yes ✓ No _____

If your answer to Question No. 3 is "no," stop here and go no further.

First Claim: Reasonable Accommodation

4. A. Do you find by a preponderance of the evidence that Montgomery County failed to provide a reasonable accommodation to Plaintiff in the Customer Service Center?

Yes ✓ No _____

B. Do you find by a preponderance of the evidence that Montgomery County failed to provide a reasonable accommodation to Plaintiff outside the Customer Service Center?

Yes ✓ No _____

Second Claim: Disparate Treatment

5. Do you find by a preponderance of the evidence that the failure to transfer Plaintiff to the Customer Service Center was an adverse employment action?

Yes ✓ No _____

If your answers to Question Nos. 4 A and B AND 5 are "no", stop here and go no further.

Affirmative Defense: Undue Hardship

6. Do you find by a preponderance of the evidence that it would have been an undue hardship to Montgomery County to make the Customer Service Center accessible for Plaintiff?

Yes_____ No__✓__

Regardless of your answer to Question No. 6, go on to Question no. 7.

Damages

7. What amount of non-economic damages, if any. did Plaintiff prove she sustained?

$__0__

SIGNATURE REDACTED

DATE: Feb. 26, 2016