23-145

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ALEKSANDRA SHKLYAR,

Petitioner,

v.

CARBOLINE COMPANY,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit
Appeal No. 22-2618

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

Did the Court abuse its discretion in dismissing the amended complaint for disability discrimination and retaliation?

Did the Court abuse its discretion and demonstrate bias and prejudice by adopting and implementing the same, nearly identical policies as those of defendant which gave rise to the complaint?

Did the amended complaint state a cause of action for disability discrimination in violation of the Americans with Disabilities Act[1]?

Did the amended complaint state a cause of action for disability retaliation in violation of the ADA?

Did the Court abuse its discretion by failing to consider the Congressional intent and standard of review for ADA pleadings by failing to review defendant's response to determine if it expressed any ADA defense?

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[1] Henceforth, "ADA".

II. PARTIES TO THE PROCEEDINGS

Petitioner, Aleksandra Shklyar, was the plaintiff in the District Court and the appellant in the Court of Appeals.

Respondent, Carboline Company, was the defendant in the District Court and the appellee in the Court of Appeals.

III. RELATED CASES

Aleksandra Shklyar v. Carboline Company, No. 4:22 CV 391 RWS, U.S. District Court for the Eastern District of Missouri. Judgment entered July 21, 2022.

Aleksandra Shklyar v. Carboline Company, No. 22-618, U.S. Court of Appeals Order. Judgment entered on February 3, 2023.

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Petitioner Aleksandra Shklyar respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

VII. DECISIONS BELOW

The Eighth Circuit's February 3, 2023, decision denying Ms. Shklyar's appeal No. 22-2618 (8th Cir. Feb. 3, 2023) is attached as Appendix 2. The U.S. District Court for the Eastern District of Missouri – St. Louis 4:22 CV 391 RWS (E.D. Mo. Jul. 21, 2022), entered on July 21, 2022, is attached as Appendix 3.

VIII. JURISDICTION

The Eighth Circuit entered judgment on February 3, 2023. *See* Appendix 2. Ms. Shklyar filed a petition for rehearing by a panel on February 14, 2023, which was denied on March 16, 2023. *See* Appendix 4. Ms. Shklyar invokes this Court's jurisdiction under *28 USC §2101(e)*, having timely filed this petition for a writ of certiorari within ninety days of the order denying the petition for rehearing.

IX. STATUTORY PROVISIONS INVOLVED

This case involves the definition of "disability" under the "regarded as" and "record of prongs" (*42 USC § 12102(1)* as implemented by *29 CFR Part 1630.2(g)*) after the ADA was amended in 2008 by Congress to expand the definition of the protected class under the ADA-AA: who is disabled? What does it mean to be "regarded as having an impairment"? What does it mean to have "a record of such impairment"?

The intent of Congress related to the "regarded as" prong definition in paragraph (3) was to reject the Supreme Court's reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973.

Additionally, there is considerable overlap between the "record of" and "regarded as" prongs in terms of addressing irrational discrimination, such as the one experienced in the context of the so-called "Covid-19 pandemic". Protection from irrational discrimination based upon the fears and stigmas associated with certain conditions is most frequently described as being the purpose of the "regarded as" prong. Indeed, the ADA's legislative history specifically mentions that individuals with stigmatic conditions are covered under the perceived disability prong but makes no explicit mention of coverage for these individuals under the "record of" prong. In this case, an employer incurred in irrational discrimination by regarding an employee as having an on-going and indefinite condition of impairment, making a record of this perception, and taking adverse employment actions against the employee.

The text these provisions is contained in Appendix 1.

X. STATEMENT OF THE CASE

Carboline is a covered entity under Title I of the ADA of 1990. Shklyar was employed by Carboline as an Organic Fireproofing Lab Manager from December 2005 to September 2021. In her complaint and affidavit, Shklyar sufficiently alleged that, in May 2021, she was perceived by Carboline's "Covid-19" policy as if she had a disability and was subjected to adverse employment actions based upon disability which is prohibited under the ADA. Specifically, Shklyar sufficiently alleged that she was misclassified as having an impairment of immune system and an impaired respiratory system and was being required to use mitigation measures[2] and was not allowed to work because of the perceptions that she was disabled.

Shklyar notified Carboline that she was a qualified individual with a disability under the ADA because she was regarded as having the disability and asked the Carboline to allow her to do her job without harassment, discrimination, and retaliation.

Shklyar alleged that the policies harassed, isolated, segregated, classified, denied equal access, and imposed non-job-related medical examinations and inquiries upon her. Shklyar alleged that the policies limited her right to invoke ADA protections and instead only gave her the option to claim a medical or religious exemption. Shklyar also alleged that the "Covid-19" policies classified her in such a way that her employment opportunities were adversely affected and limited because Carboline would not permit her to do her job without first submitting to the offered non-job-related medical treatments outlined in Carboline's "Covid-19" policy.

Shklyar alleged that she objected to Carboline's "Covid-19" policies and that Carboline nevertheless "continued to impose accommodations" upon her completely disregarding her disability claim under the "record of" and "regarded as" prongs of the ADA. Shklyar alleged that, despite her objections, Carboline continued to harass her by sending her numerous communications coercing her to accept various accommodations or suffer adverse employment actions. Shklyar also alleged that Carboline began retaliating against her in September 2021 by interfering with her rights, imposing punitive measures including isolation and medical examinations, withholding her pay, and ultimately terminating her employment.

Shklyar filed this lawsuit against Carboline on April 4, 2022, then filed an amended complaint about a month later. In her amended complaint, Shklyar brought two claims under the ADA: one for discrimination, and another for retaliation. After filing her amended complaint, Shklyar also filed a motion to appoint a special master, arguing that a special master was necessary in this case because an exceptional condition existed whereby the Court sought to impose the same illegal policies as the defendant, was also receiving disaster relief compensation and subsidies for practicing these illegal policies, and could not be expected to act impartially. Carboline filed its motion to dismiss shortly thereafter.

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[2] Mitigation measures include masking, testing, taking an experimental vaccine.

The court of first instance had original and exclusive jurisdiction over plaintiff's claims pursuant to *28 USC. §1331*, in that the matters in controversy are brought pursuant to Title I of the ADA and ADA-AA of 2008.

XI. SUMMARY OF THE ARGUMENT

The District Court abused its discretion: (1) when it ruled that Shklyar failed to state a claim for either discrimination or retaliation under the ADA and dismissed it with prejudice; (2) by making the contradictory finding that Shklyar did not plausibly state a cause of action; (3) by ignoring the facts alleged in the complaint in which Shklyar established: (i) the elements of Carboline having made a record of her disability; and (ii) that Carboline made a record of such disability by mis-classifying her as having an impairment, the treatment for which Carboline determined was its "Covid-19" policy; (4) by ignoring the allegations which clearly demonstrated: (i) retaliation and the causal relationship between Carboline's actions and the wrongful termination of Shklyar's employment; and (ii) that Shklyar had adequately noticed Carboline that not only was she regarded as having a disability, and that she was a qualified individual with a disability, but that Carboline's policy demonstrated that it regarded her as having a disability and in spite of its disingenuous denials, Carboline did in fact regard Shklyar as having a disability.

The District Court further abused its discretion by: (5) ignoring the fact that Shklyar established herself as being within a protected class and engaged in a protected activity and therefore, that Carboline's policy was disproportionately applied to her; and (6) mis-characterizing Shklyar's efforts to exercise her rights under the ADA as "continued insubordination" when the law afforded her a path to follow, by acting in good faith opposition to the policy, being respectful, attempting to engage in open and constructive communication with her hostile employer, and rightfully refusing to waive her medical privacy rights, and rightfully refusing to waive her rights to informed consent which were squarely rooted in the ADA, *29 CFR Part 1630.9(d)*.

Finally, the District Court abused its discretion by (7) adopting the same policies as defendant which gave rise to the complaint.

XII. REASONS FOR GRANTING THE WRIT

Petitioner Aleksandra Shklyar petitions the United States Supreme Court for a writ of certiorari to the United States District Court of Appeals for the Eastern District of Missouri, Case No. 4:22-cv-00391-RWS, under the following criteria. **This petition and the proceedings below involve a matter of great public importance and raise one or more significant federal questions that are in the public's interest.**

A. Court's History of Countermanding Congress

The United States District Court and its Appellate Court have a history of overruling federal law and legislating from the bench. The federal court's practice of

countermanding federal law specifically includes whittling down the effectiveness or purpose intended by the United States Congress to protect people with disabilities from discrimination. Eighteen years after the enactment of the ADA, the United States Congress had to intervene and amend the law to further state what its intent was, and to overcome some of the case law established in the federal appeals circuits and this very court, the United States Supreme Court, that had countermanded or effectively repealed the congressional intent expressed in the 1990 version of the ADA.

Additionally, both the trial and appeals courts have imposed a greater standard upon the appellant than it would for a party represented by an attorney, or a party proceeding only under the "actual or diagnosed prong" of the ADA. The courts have become the gatekeepers or owners of the law that Congress intended to be very accessible for those with disabilities, with an intentionally low standard or threshold to invoke the court's jurisdiction and not the gauntlet of unfair conditions once again fabricated by federal courts. This is nothing new as federal courts have a long history of countermanding the United States Congress, which is demonstrated by the congressional intent for amending the ADA in 2008.

People have a private property right to access the law and use it to protect other rights they have, and the federal courts have taken this right, intruded upon, and trespassed upon it by impeding and frustrating access to justice, the sole means by which people can reach a remedy for damages to their property rights. The federal courts have no property rights over the law–their role is to provide access to the law and facilitate justice, not own the law, and deny access to the law and justice. The law cannot be owned any more than mathematics can be owned, or any more than one person can own the thoughts of another. However, this describes very closely the manner in which the federal judges have conducted themselves, as if they own the law and as if they can ration it as they desire in the expression of their own passions and prejudice. This is far from the very least that can be expected of the courts, giving the appearance of justice. This conduct is insolent and defiant for the reason that the federal courts obtained their authority to function solely from the very people they are intended to serve.

Regarding defendant's "standard of review", Congress stated in 2008 that the main focus of the courts should be whether the employer is satisfying its obligations under the ADA. "...[I]t is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." (*emphasis added*). The standards in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937 (2009) cannot be applied without consideration of Congressional intent for the ADA, especially since Congress had to amend the law in 2008 because this very Court had made decisions that countermanded the original intent of Congress and the law. It

appears we are here once again, where the federal courts are attempting to create a higher threshold by their use of the legal fiction known as "implausible allegations".

The use of this term is intended to create a higher threshold for those seeking relief and protection under the ADA than was intended by Congress. This is the same despicable conduct demonstrated by this Supreme Court in *Tennessee v. Lane*, 541 U.S. 509 (2004). Here, the District Court was not only participating in the same illegal policies as Carboline; it denied Shklyar access to the court and the law and justice by simply denying the very acts of discrimination and retaliation.

Furthermore, claims of improper disability-related inquiries or medical examinations, improper disclosure of confidential medical information, or retaliation may be brought by any applicant or employee, not just individuals with disabilities. See, e.g., *Cossette v. Minnesota Power & Light*, 188 F.3d 964, 969-70 (8th Cir. 1999); *Fredenburg v. Contra Costa County Dep't of Health Servs.*, 172 F.3d 1176, 1182 (9th Cir. 1999); *Griffin v. Steeltek, Inc.*, 160 F.3d 591, 594 (10th Cir. 1998).

Likewise, a non-disabled applicant or employee may challenge an employment action that is based on the disability of an individual with whom the applicant or employee is known to have a relationship or association. See *42 USC §12112(b)(4).*

Instead of reviewing the defendant's response to determine if it had expressed any defense that was cognizable under the ADA, the trial court reviewed the complaint under standard pleading practice criteria alone. The trial court should have first reviewed the defendant's response to determine if it included any legally cognizable defense under the ADA, such as having conducted an individualized assessment and determined that plaintiff was a direct threat, or that it had suffered an undue financial burden because of plaintiff's exercise of her rights under the ADA, or that her exercise of such rights would have fundamentally altered normal operations. The court never considered the fact that the defendant's policy which gave rise to the complaint was not even related to plaintiff's essential job function.

Defendant's simple denial that plaintiff had a disability is not a legal defense. Defendant's claim, although erroneous and hypothetical, that it was "preventing the spread of Covid-19" is also not a legal defense to violating the ADA. Claiming there is a pandemic or an epidemic, is also not a legal defense under the ADA.

B. This Is a Case of First Impression

Many of the facts and circumstances in the pending appeal are unprecedented and are enumerated by the following:

1. The appellant is proceeding under both the "regarded as" and "record of" prongs of the 1990 ADA as amended by the Americans with Disabilities Act Amendments Act of 2008 (ADA-AA). The appellee has adopted a policy that instigated and provoked disability discrimination and retaliation and it is the appellant's sincere belief that this is unprecedented.

The appeals court has applied trial court opinions as precedents when they are not binding on other trial courts and has applied holdings from decisions resulting

from ADA complaints that are dated before the 2008 amendments and that are based solely upon the "actual disability" prong of the ADA. Included with this is the fact that (1) appellant never required or requested any accommodation; (2) appellant was not required to request any accommodation, as no provision of the appellee's "Covid-19" policy was related to appellant's essential job function; and (3) appellee offered no accommodations which were cognizable under the ADA-AA. Again, these facts are unprecedented.

2. Moreover, the facts giving rise to the complaint include the unprecedented situation where the government has declared a public health emergency in which every single American is regarded as having the same disability known as a contagious disease by the name "Covid-19". This outrageous presumption is made without any evidence that anyone has any such disability (contagious disease) and without any physical evidence of the existence of such a public health emergency. In fact, even the government's official records from the medical examiner to the coroner to the Department of Health, have no evidence of the existence of such a public health emergency and no evidence of any commensurate change in the mortality or morbidity rates in any jurisdiction. We have only a declaration of it, without any evidence. Nevertheless, it is not relevant as to whether or not there is a public health emergency because no public health emergency declaration created any new legal duty or legal authority for any of these so-called "Covid-19" policies in the first place. Again, this is unprecedented.

3. The ADA-AA made important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes was to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

By its enactment of the ADA-AA, Congress made it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute. Congress overturned several Supreme Court decisions that Congress believed had interpreted the definition of "disability" too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes, and epilepsy. The ADA-AA states that the definition of disability should be interpreted in favor of broad coverage of individuals.

As required by the ADA-AA, the amended provisions also make it easier for individuals to establish coverage under the "regarded as" prong of the definition of "disability." As a result of the Supreme Court's interpretations, it had become difficult for individuals to establish coverage under the "regarded as" prong. Under the ADA-AA, the focus for establishing coverage is on how a person has been treated because of a physical or mental impairment rather than what an employer may have believed about the nature of the person's impairment.

The federal court has once again sought to countermand the intent of Congress by imposing more conditions on pleadings and inventing new legal concepts that are

not even legal defenses available under the ADA-AA, such as "fails to plausibly allege", and mere website commentary as some sort of new legal authority, thereby and once again attempting to defeat the intent of Congress.

4. Attorneys lack the training and willingness to represent plaintiffs in these types of cases; specifically, no attorney would agree to represent the appellant in this matter. Appellant was unable to find an attorney who was even competent in this area of law; and yet, she is being held to a higher standard than any attorney or even any law firm and once again, the court has frustrated appellant's access to the law by acting as its gatekeeper or owner.

5. There has never been a situation where the court has adopted and implemented the same illegal policies as the defendant, the same so-called "Covid-19" policies, which have given rise to the complaint. Both the District and Appellate Courts refused to explain themselves or acknowledge this conflict. The conflict has expressed itself in several ways, one of which involves federal judges who have been intervening, intruding upon, and frustrating access to the court by plaintiffs attempting to sue their employers for ADA violations, including the appellant in the above-captioned matter.

6. The policies and practices of the appellee which have given rise to the complaint specifically exclude and ignore any provisions for those employees with disabilities yet regard every employee as having the same exact disability. However, the employer simultaneously and disingenuously denies regarding any employee as having a disability (contagious disease). This is the set of facts in the face of the employer's policy which seeks to involuntarily impose medical treatments upon each employee as if they have been infected, or will become infected, with the announced "Covid-19 contagious disease", again, while disingenuously denying that it regards every employee as having any disability.

While it is not relevant whether or not any specific person, including the employer, regards an employee as having a disability, the courts and the defendant ignore the fact that, by virtue of the government's announcement of a public health emergency, every employee was regarded as having a disability. The employee's claim did not rest upon the employer admitting that it regarded any employee as having a disability, even though its "Covid-19" policy was clearly based upon this premise.

Moreover, the policies and practices of the appellee fail to identify any designated representative or employee who can competently and impartially respond to disability discrimination and retaliation complaints. In fact, the employees of the appellee who would normally have this designation, are the very ones perpetuating the discriminatory violations (e.g., human resources). Again, this is unprecedented.

7. We are still within an "Emergency Use Authorization" or EUA period, which establishes that any medical treatment, such as "mask-wearing" or the so-called "vaccines" are clinical trials and epidemiological experiments, none of which have been approved by the Food and Drug Administration and are therefore, not *bona fide* "vaccines" or medical treatments. Moreover, the pharmaceutical companies disclaim

all liability for their experimental "vaccines" and the United States has indemnified the same pharmaceutical companies from having any liability for the manufacture, sale, or distribution of these experimental "vaccines". These so-called "vaccines" are nothing of the sort but are in fact weapon prototypes of the Department of Defense (DOD prototypes) as it functions through the Department of Health and Human Services and every other government agency to the local county and city.

8. The published and intended function of the Department of Health has been unlawfully circumvented and replaced by the association of private businesses and employers, thereby denying employees the protections normally afforded by public health policy, which places the burden of proof on the Department of Health. In the case of an employer circumventing this authority, the burden of proof is unfairly shifted to the employee, and they are made to suffer the adverse employment action of having their employment terminated and then face having to incur the unfair burden of trying to find a replacement for their income while seeking a remedy in the courts against their employer. In the process, their former employer then begins paying a law firm and attorneys hundreds of dollars an hour to oppose their claim in the corrupted court system.

9. While the appellant alleges the provisions of the appellee's "Covid-19" policy, and while appellee admits having such a policy, and the District Court itself acknowledges the same, the policy describes in great detail the medical treatments sought to be involuntarily imposed; the adverse employment actions imposed as a consequence for refusing to participate; and the causal relationship between the provisions. However, the Court is refusing to acknowledge the adverse employment actions imposed upon the appellant as an unlawful and unfair penalty upon the appellant; and yet, the court and the defendant disingenuously claim that the pleading fails to describe any adverse employment action or any causal relationship.

10. Moreover, the appellee's policy deceptively offers what it refers to or describes as "accommodations" for which it advised the appellant to request, namely, an exemption to the policy, as if the policy was already legally binding when it was not, for reasons that are either religious or medical. However, the appellee never explains the criteria for such "exemptions" and has reason to know or should have known that neither of these types of "exemptions" were legal rights available to the appellant, and that neither of these "exemptions" are "accommodations" that are cognizable or recognized as legal or legitimate accommodations under *29 CFR Part 1630.2(o)* of the ADA-AA. Appellee's purpose in offering these was to give the appearance of fairness while misleading employees and the appellant into a dead-end path where he has no legally enforceable rights.

11. The court and employers (defendant) are receiving compensation for participating in the so-called "pandemic" scheme and have an ulterior motive beyond the noble-sounding claim of "preventing the spread of Covid-19". None of them have any concern about protecting anyone, especially in view of the fact that no one has any financial responsibility for "preventing the spread of Covid-19", nor does anyone have any financial responsibility for any adverse health consequences suffered by any

employee who complies with the experimental medical treatments, nor can any employee state a cause of action against an employer for having contracted the so-called "Covid-19" because it would be impossible to establish proximate cause.

Likewise, an employee who participates in the experimental medical treatments of the "Covid-19" policy is not able to state a cause of action against his employer for suffering any adverse health consequences thereby, for the simple reason that there was no legal duty to impose such a policy, there was no legal authority to impose such a policy and the policy was not legally binding upon either the employer or the employee. It is not even possible to "prevent the spread of Covid-19", even assuming that such a disease actually existed, because no one can ever establish proximate cause and there are no controlled environments by which such a task could be managed, and even then, employers such as the appellee have no competence or qualifications for such an undertaking.

12. The employer's policy, along with the government's, is disproportionately applied to different groups of employees. First, the so-called "Covid-19" policy of the appellee fails to even recognize employees with disabilities. On its face, by excluding this group of people, it demonstrates discrimination. Second, the policy fails to: (1) include any provision for those with disabilities; (2) identify any designated representative or employee who can assist those with disabilities and any grievances they have; (3) provide any means of appeal or review of the employer's actions; (4) offer any legitimate accommodations that are recognized or cognizable under the ADA-AA; and (5) provide conspicuous notice, or the means by which such notice should be provided, to any employee, describing the manner in which the policy relates to their essential job function.

The "Covid-19" policy is applied disproportionately to those who participate by disclosing their medical records, vital statistics and submitting to the so-called "Covid-19 tests". The policy is then applied differently to those who refuse to participate, keeping in mind that the premise behind the policy is that everyone has a disability, a contagious disease, and that the policy is intended to treat or cure everyone of such disability.

The "Covid-19" policy is again applied disproportionately to those employees who request an exemption for religious or medical reasons, the criteria for which are not disclosed to anyone. These two groups of employees are treated differently than the employees who object to the policy and in good faith refuse to participate unless the employer satisfies its legal duty to obtain an individualized assessment that determines the employee to be a direct threat. The policy is applied differently and prejudicially to a myriad of different groups of employees and even some employees are segregated from the other groups of employees based upon the purely hypothetical and speculative belief that the segregated employee has a disability (contagious disease).

This of course is unprecedented and imposed on such a large scale that many people are unable to see or comprehend or accept the circumstances for what they are.

C. Everyone Is Implausibly Regarded as Being Infected with "Covid-19"

The moment that the President announced the existence of a public health emergency on January 31, 2020, specifically, the so-called "SarsCov2" and "Covid-19", everyone in the entire nation was and is now regarded as having been infected or having the likelihood of becoming infected, with such a disease. A contagious disease is defined by the ADA as one type of disability. Therefore, since the date that the United States government declared the public health emergency, all of the states, counties, cities, towns, and government agencies began making the same proclamation. It was based on the premise that everyone suddenly incurred or became infected with the same disability, or that everyone was likely and imminently to incur the same disability. It is exceedingly implausible that three-hundred thirty million people could suddenly become infected with or be at risk of incurring the same exact illness or disability within a short period of time. However, once the appellant restated the appellee's "Covid-19" policy for its stated purpose of "preventing the spread of Covid-19", and the fact that it necessarily is based upon the same implausible presumption, the District Court invented the legal fiction that because such conclusion, when made by the appellant, is implausible, therefore, the plaintiff's complaint failed to state a cause of action.

This completely ignores the fact that every government agency, in fact, every government in the entire world, made the same conclusion by the announcement of such a public health emergency; and yet, plaintiff's restatement of the same premise, false or not, somehow is implausible only when she makes the allegation, but not when every government and every employer implement a policy based upon the same premise?

This is not even a legal defense to disability discrimination. The appellee never made any defense that is cognizable under the ADA, but the court invented the legal fiction that plaintiff's complaint did not state a case of action because it is "not plausible" that everyone in the community is regarded as having a disability, when in fact, this is the very premise of all government proclamations and every single employer's so-called "Covid-19" policy, including the court's.

The entire "pandemic" artifice rests upon the ridiculous and implausible presumption that everyone has incurred in the same exact disability, or will imminently incur in such a disability, and that it should be treated with a corporate policy published as a "guideline" by the Center for Disease Control and Prevention (CDC). A corporate policy is not a *bona fide* medical diagnosis. It is a policy intended to be imposed without any *bona fide* medical diagnosis and by circumventing the legislative process and the authority of the Departments of Health, at the federal, state and county levels and thereby, circumventing judicial oversight and denying everyone his right to due process based upon evidence. The appellant's due process

rights (including but not limited to medical privacy and informed consent) are squarely rooted in *29 CFR Part 1630.9(d)* and when she exercised them, she was penalized by appellee. Since when is it not negligent for laymen with no financial responsibility or professional accountability to impose involuntary medical treatments that are not the result of a competent and qualified medical examination, but merely the policy of a corporation?

D. The Policy Contravenes a Century of Public Health Policy

Since when in human history, or modern medical science, has it been necessary for one person to undertake a medical treatment in order to prevent illness in another person? This is the ridiculous, asinine, and illogical premise behind the entire "CDC protocols" and "Covid-19" policies adopted and imposed by nearly every employer in the country, including this very Court along with the appellee.

The "Covid-19" policy imposed by the appellee contravenes long-standing public health policy and ironically, the CDC publishes a list of bench books advising judges on the correct public health policy. These bench books establish that it is only the state legislature which can establish a legal duty to impose medical interventions, and even that is subject to judicial oversight based upon medical evidence. This power cannot be delegated but can only be exercised through the Department of Health, not private businesses and certainly not by the appellee, a private employer.

It is long-standing public health policy, that the only way to involuntarily or unilaterally impose any medical intervention or mitigation measure on people is by judicial review and approval based upon the affidavit of a physician who conducted a *bona fide* medical examination of an individual; and with their informed consent, having diagnosed the contagious disease and then provided an affidavit to the local public health officer. The public health officer could then petition the court to impose isolation or quarantine measures against the individual. Appellee's policy fails to comply with this public health policy; in fact, it is clearly intended to violate, circumvent, and abolish these long-standing public health policies. As it pertains specifically to Shklyar, the "Covid-19" policy of her employer, Carboline, contravenes long-standing public health policy expressed under *19 CSR 20-20.040*.

Since when did the mere announcement of a contagious disease create any new legal duties and new legal authorities to violate the rights of people and create new and negligent public health risks? The mere proclamation of a "deadly contagious disease" did not suddenly change hundreds of years of public health policy or the intangible private property rights of anyone, or suddenly create any new legal duty or legal authority for anyone to implement or impose the so-called "Covid-19" policies.

E. The Policy Is Negligent and Has Created a Public Health Disaster

Which is more dangerous: an implausible contagious disease or layman administering experimental medical treatments based upon the same speculation without any professional oversight or financial responsibility?

The policy excludes any provision for those with disabilities yet is based upon the implausible premise that everyone in the community suddenly has acquired the same exact disability (contagious disease) and then intends to involuntarily treat everyone with the same exact medical treatment without any *bona fide* medical examination or diagnosis.

The policy is so negligent that it is admittedly administered by laymen or untrained employees, not physicians, and is not subject to judicial oversight or approval, nor is it based upon any law. Moreover, the policy is intended to ignore and violate the medical privacy rights and rights to informed consent of everyone in the community. Appellee's policy also fails to include any provisions for those with disabilities by failing to identify any ADA coordinator to assist those with disabilities as it relates to the implementation of the illegal policy.

Carboline's implementation of its "Covid-19" policy created the dangerous condition involving the involuntary imposition of experimental medical treatments without any judicial oversight or approval, without any physician's oversight, without any financial responsibility and in violation of each employee's medical privacy rights and rights to informed consent.

The policy is arbitrary, irrational, and unreasonable because it was based purely upon some Hollywood-style "pandemic" movie such as "Outbreak", and the implausible scenario that every employee suddenly had become infected with the same exact deadly contagious disease within the same time period.
The appellee's "Covid-19" policy was adopted and implemented by Carboline employees, specifically those employed in management and human resources, who were each suffering from one or more un-diagnosed mental illnesses, such as those known as factitious disorder, and/or narcissistic personality disorder as each is defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Ed. (DSM-5).

Carboline's policy neglects to consider the fact that, if there were such a deadly contagious disease, why would it be permitted to involuntarily impose medical treatments in the manner alleged? Which is more dangerous: an implausible contagious disease or layman administering experimental medical treatments based upon the same speculation without any professional oversight or financial responsibility? If it really did exist and if it were really so dangerous, why was the responsive policy so carelessly and negligently implemented?

Just like shouting "fire" in a crowded theater, Carboline's "Covid-19" policy instilled fear, anxiety, and apprehension in every employee such that every time an employee had a cough or a symptom of the common cold, they believed they were not only going to die a horrible death but that they would infect other employees with the same demise. This created a very hostile and antagonistic working environment, especially between those who believed that there was such a disease and those who either did not or did not agree with Carboline's policy.

Carboline's "Covid-19" policy fails to address the screaming reality that neither Carboline, nor any scientific principles known to mankind at this time in history, has the ability to establish the proximate cause behind any employee becoming infected with the fictitious "Covid-19" disease. Carboline's negligent "Covid-19" policy fails to address the very obvious situation where each employee ends their shift and leaves the premises and is free to roam about the town or travel to faraway lands and engage with unknown and unidentifiable "risks" or "infected people", and then return to their job to begin their next shift. It is by this fact alone that Carboline, no matter what its policies are, is wholly unable to "prevent the spread of Covid-19" by any stretch of the imagination, even if such a risk did exist. How then is it reasonable or equitable to punish any employee for refusing to participate in this policy? The policy, even if based upon correct and actual scientific findings, is completely useless simply because Carboline cannot control any employee's environment every moment of the day, whether at work or away.

This is deliberately redundant but bears repeating: since when is it not negligent to impose involuntary medical treatments that are not the result of a competent and qualified medical examination of any one individual, but merely the policy of a corporation that acts as if every person in the entire nation can be treated or cured with the same treatment, regardless of contraindications or medical history?

F. The Policy Imposes Involuntary Experimental Medical Treatments without Notice, Due Process, FDA Approval, or Informed Consent

The foregoing is especially important during an EUA[3] period when every medical treatment in the policy is a clinical trial or epidemiological experiment. The appellee has not obtained FDA approval to conduct clinical trials of any kind, nor has it obtained the informed consent of anyone effected by the policy. There are no "vaccines" during an EUA[3] period as any medical intervention is a clinical trial by definition, not an FDA approved medical treatment ("authorized" is not "approved").

This atrocity, if not already bad enough, is greatly exacerbated by the fact that any medical interventions that is being recommended, imposed, or administered under the Emergency Use Authorization (EUA) scheme and the multiple series of declarations of a public health emergency, establish that each of these interventions is purely experimental and that those participating in them are doing so at their own risk. However, this has not been disclosed by the appellee or any government authority, including the department of health which is tacitly participating and overtly facilitating.[4]

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[3] The Emergency Use Authorization period announced by the Food and Drug Administration that continues to this day.

[4] Using the government's very own terms from the most recent rehearsal or table-top exercise known as "Event 201" that preceded the January 31, 2020, announcement of the now, live-action role-playing event.

Carboline has failed or refused to inform any employee, including the appellant, that its "Covid-19" policy is part of clinical trials and that each person submitting to its provisions is a test subject. This violates Title 21 of the Code of Federal Regulations, "Food and Drugs", Part 50.20. Specifically, no one including the appellant, has been given the opportunity to decide to consent or not to consent to a medical experiment free of any element of force, fraud, deceit, duress, coercion, or undue influence. No one, including the appellant, is required to participate in any clinical trials or become the subject in any epidemiological experiment. This same right, Shklyar's right to informed consent and medical privacy, her right to refuse any medical treatment, including but not limited to those sought to be unilaterally imposed by Carboline, is squarely rooted in *29 CFR Part 1630.9(d).*

G. More Nearly Identical Cases Are Moving Towards the Supreme Court

According to the Public Access to Court Electronic Records (PACER), there are more than a dozen similar or nearly identical cases making their way to the Supreme Court, and if not for the interference of the federal judges in many of the circuits, where the plaintiffs were frustrated and flatly denied access to the court simply by the quagmire of conditions created by the magistrates, judges and chief judges, there would be many more still making their way to the Supreme Court. This does not consider all those many tens of thousands of plaintiffs who could have and should have made their claims but were too intimidated by the process or unable to learn the process quickly enough or find a competent and willing attorney or simply frustrated and exhausted as was intended by the federal judges in the various circuits.

H. Budgeted for the Future and a Trillion Dollar Market Cap

There is no end in sight for this "pandemic" scheme, it will continue perpetually, and it is intended to continue perpetually because the banking system has made it profitable to engage in these policies. In its first year, the so-called "pandemic" had a market cap in the billions of dollars, and it is an aspect of the "climate change" agenda, an entirely different scheme that is beyond the scope of this brief. The "pandemic" is a profitable business enterprise for the pharmaceutical companies, lucrative for governments, and very profitable for those involved with the collection of data such as medical, biographical, biometric, and other surveillance data collected from "contact tracing", just to name a few. The repositories for this human data include the university system, specifically Johns Hopkins University.

The Global Preparedness Monitoring Board (GPMB) includes the World Bank and the World Health Organization (a military operation), and the plan is to provide funding for nations which participate in future schemes of the same kind. This is explained in hundreds of publications, but see A World at Risk, "Annual report on global preparedness for health emergencies", September 2019[5]. Please also review

[5] Available at: https://www.gpmb.org/annual-reports/annual-report-2019.

the GPMB's "six solutions for a safe world in 2022"[6], summarized by the following agenda:

> 1. Strengthen global governance; adopt an international agreement on health emergency preparedness and response and convene a Summit of Heads of State and Government, together with other stakeholders, on health emergency preparedness and response.
>
> 2. Build a strong WHO with greater resources, authority, and accountability.
>
> 3. Create an agile health emergency system that can deliver on equity through better information sharing and an end-to-end mechanism for research, development, and equitable access to common goods.
>
> 4. Establish a collective financing mechanism for preparedness to ensure more sustainable, predictable, flexible, and scalable financing.
>
> 5. Empower communities and ensure engagement of civil society and the private sector.
>
> 6. Strengthen independent monitoring and mutual accountability.

This is a banking and military operation that some very evil groups of people intend to thrust upon the entire world's population, and they do not appear to be going away any time soon. The so-called "Covid-19 pandemic" was just another test in a long series of trials that have been taking place for decades. See From Worlds Apart to a World Prepared, GPMB Report | 2021[7].

As of October 16, 2020, Congress has enacted four emergency supplemental funding bills to address the "Covid-19" pandemic, which collectively provide almost $3.2 billion for the global response. Of this amount, approximately $2.4 billion (75%) was designated for country, regional, and worldwide programming efforts through the State Department ($350 million), the U.S. Agency for International Development (USAID) ($1.24 billion), and the Centers for Disease Control and Prevention (CDC) ($800 million); the remainder was for operating expenses, including the evacuation of U.S. citizens and consular operations. With negotiations between Congress and the Administration over a fifth supplemental package on shaky ground, we examined the status of global "Covid-19" country, regional, and worldwide funding to assess how much has been committed to date and where it has been directed. See *U.S. Global Funding for COVID-19 by Country and Region: An Analysis of USAID Data, June 29, 2022*, published by Kaiser Family Foundation.[8]

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[6] Available at: https://www.gpmb.org/news/news/item/14-02-2022-gpmb-calls-for-a-renewed-global-commitment-to-six-solutions-for-a-safer-world-in-2022.

[7] Available at: https://www.gpmb.org/annual-reports/annual-report-2021.

[8] https://www.kff.org/global-health-policy/issue-brief/u-s-global-funding-for-covid-19-by-country-and-region-an-analysis-of-usaid-data/

Countries that have evolved or are evolving their "Covid-19" pandemic response into longer term investments to strengthen systems for health and pandemic preparedness can consider applying for C19RM Portfolio Optimization (PO) Wave 2. This is a process that allows countries to receive additional C19RM funds and align investments with revised priorities. Eligible Country Coordinating Mechanisms (CCMs) have received letters with instructions on how to apply for funding. See *The Global Fund (theglobalfund.org) February 9th, 2023*[9].

The news is endless. See, *The Pandemic Fund Announces First Round of Funding to Help Countries Build Resilience to Future Pandemics*[10].

> "Washington, Feb. 3, 2023 — The Pandemic Fund Governing Board approved $300 million in financing for its first round of funding to help developing countries better prepare for and respond to future pandemics. The Fund is also inviting interested eligible countries and Implementing Entities to submit Expressions of Interest (EOI) for potential projects to be supported by this initial funding".

This scheme is funded for many years to come, please also see *COVID-19 World Bank Emergency Response: Projects Repository.*[11]

This was published by Artemis in 2017:

> "Swedish state sector pension fund AP3 was one of the lead investors behind the recent World Bank issuance of $320 million of pandemic catastrophe bonds that support the Pandemic Emergency Financing Facility (PEF).
>
> The World Bank's International Bank for Reconstruction and Development issued $320 million of IBRD CAR 111-112 capital at risk notes, which will offer coverage to developing countries against the risk of pandemic outbreaks across the next five years."

The so-called "pandemic" is the business of the world banking system and the world military (United Nations and World Health Organization). The United States Supreme Court is in a unique position to protect employees from this diabolical scheme and set an example for the world, or to continue participating in it and go down in history just like the Nazis at Nuremberg.

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[9] Available at: https://www.theglobalfund.org/en/updates/2023/2023-02-09-additional-funding-from-c19rm-and-the-new-pandemic-fund/.

[10] Available at: https://www.worldbank.org/en/news/press-release/2023/02/03/the-pandemic-fund-announces-first-round-of-funding-to-help-countries-build-resilience-to-future-pandemics#:~:text=3%2C%202023%20%E2%80%94%20The%20Pandemic%20Fund,and%20respond%20to%20future%20pandemics.

[11] Please consult: https://docs.google.com/spreadsheets/d/1416zufQFM7IY9OvHufmOmeF0jiQTT7V7jAlPg3Iqe9Q/edit#gid=0.

I. Federal Judges Suffering Un-Diagnosed Mental Illness

Quoting from the Diagnostic and Statistical Manual of Mental Disorders, 5th Ed. (DSM-5), Factitious Disorder (also known as Munchausen Syndrome – named after Baron von Munchausen, an 18th-century German officer known for embellishing the stories of his life) involves the falsification of physical or psychological signs or symptoms with no obvious reward. Factitious disorder is different from hypochondriasis (an obsolete DSM-IV diagnosis) and somatic symptom disorder (now the DSM-5 diagnosis) in that patients are aware that they are exaggerating, whereas sufferers of hypochondriasis actually believe they have a disease. This mental illness may also be imposed upon others, as is another aspect of the same condition, where the person suffering from the illness believes others are ill. It presents as the falsification of physical or psychological signs or symptoms, or induction of injury or disease, in another, associated with identified deception. The individual presents another individual (victim) to others as ill, impaired, or injured.

Participating in the "Covid-19" policy and imposing it upon others demonstrates the symptoms of this mental illness, drawing into question the competence of federal judges presenting with these symptoms to carry out the very vital and important functions of a judge.

J. Impeachment

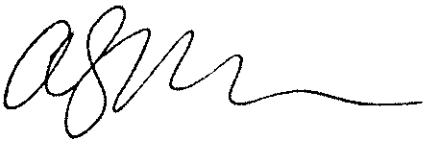
The United States Supreme Court and its Justices along with the chief judges of the United States District Courts of Appeals have implemented the same illegal policies and committed the same violations and face impeachment for each of their roles in disaster fraud and perpetrating the largest, most sinister scheme of genocide in recent history, at least since the Nazis in World War II.

XIII. CONCLUSION

This Court should grant certiorari to review the Eighth Circuit's judgment.

DATED this 12 day of June 2023

Respectfully submitted,



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