No.

In the Supreme Court of the United States

PORTER SMITH, PETITIONER

v.

MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents a square and acknowledged conflict over an exceptionally important question under the Rehabilitation Act of 1973.

In the proceedings below, a divided panel of the Sixth Circuit held that the Rehabilitation Act does not authorize retaliation claims, despite the Act's direct incorporation of the ADA's express anti-retaliation provision. In so holding, the 2-1 majority expressly departed from the contrary national consensus that has existed in every other circuit for decades. This novel statutory holding was the sole basis of the majority's decision, and it leaves the Act's essential protections in disarray: anti-retaliation safeguards are a common and essential component of federal anti-discrimination schemes, and the decision below disrupts the Act's uniform operation across hundreds (if not thousands) of cases.

The question presented is:

Whether Section 504 of the Rehabilitation Act, 29 U.S.C. 794, authorizes a private right of action for retaliation.

PARTIES TO THE PROCEEDING BELOW

Petitioner is Porter Smith, the appellant below and plaintiff in the district court.

Respondents are the Michigan Department of Corrections and the State of Michigan, the appellees below and defendants in the district court.

RELATED PROCEEDINGS

United States District Court (E.D. Mich.):

Porter Smith v. *Michigan Department of Corrections, et al.*, No. 20-cv-10421 (Mar. 31, 2022) (summary-judgment order)

Porter Smith v. *Michigan Department of Corrections, et al.*, No. 20-cv-10421 (Apr. 12, 2024) (final judgment)

United States Court of Appeals (6th Cir.):

Porter Smith v. *Michigan Department of Corrections, et al.*, No. 24-1439 (Nov. 21, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Porter Smith respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-52a) is reported at 159 F.4th 1067. The relevant opinion and order of the district court (App., *infra*, 53a-79a) is unreported but available at 2022 WL 989338.

JURISDICTION

The judgment of the court of appeals was entered on November 21, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, provides in relevant part:

> **Nondiscrimination under Federal grants and programs**
>
> **(a) Promulgation of rules and regulations**
>
> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.
>
> * * * * *
>
> **(d) Standards used in determining violation of section**
>
> The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and

> the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

Section 503 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12203, provides in relevant part:

> **Prohibition against retaliation and coercion**
>
> **(a) Retaliation**
>
> No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

* * * * *

INTRODUCTION

This case presents an exceptionally important question of federal anti-discrimination law: whether the Rehabilitation Act authorizes a private right of action for retaliation. In the proceedings below, the Sixth Circuit departed from a uniform national consensus on this issue—becoming the first circuit, anywhere, to declare the Act does not cover retaliation. The 2-1 majority readily admitted that it was upsetting a "widespread" and "longstanding" practice, and it understood it was standing alone on the wrong side of a lopsided split (with literally every other regional court of appeals rejecting its position). This pure legal issue was the sole basis of the panel's decision, and there are no conceivable obstacles to resolving it in this Court.

This case easily satisfies the traditional criteria for granting review. The conflict is both obvious and indisputable: the majority and dissent each acknowledged the extreme nature of the majority's decision and its aggressive departure from established law nationwide. Further percolation is pointless: other circuits have steadily adhered to the contrary position for decades; there is zero realistic prospect that all *eleven* circuits will back down and jettison longstanding circuit authority. The competing positions are clear, and the conflicting views were exhaustively debated by the majority and dissent below. This Court alone can eliminate the disuniformity the Sixth Circuit wrongly injected into an important federal statutory scheme.

The question presented also raises legal and practical issues of surpassing importance. Anti-retaliation safeguards are long recognized as essential to promoting anti-discrimination regimes. The decision below eliminates that safeguard despite Congress's inclusion of an express cross-reference to the ADA's anti-retaliation provision—in a section defining the "standards" for "violations" under the Rehabilitation Act. That atextual holding undermines the Act's proper administration and Congress's design, and it generates confusion and disarray for thousands of employees covered by the Act's protections. This Court has repeatedly granted review to decide whether retaliation claims are covered under parallel federal schemes (like the ADEA and Title IX); it is equally imperative to have a definitive and uniform answer here.

Because this case presents an optimal vehicle for resolving this important question of federal law, the petition should be granted.

STATEMENT

1. Petitioner worked as a corrections officer at the Michigan Department of Corrections for nearly two decades. App., *infra*, 3a. In July 2017, he was injured on duty while breaking up an inmate fight. *Ibid.* He went on medical leave the following day, and was told by his physicians that he might need hip-replacement surgery. Petitioner initially opted for "less-invasive treatments," including "plasma injections and physical therapy." *Ibid.* He ultimately returned to work with "medical restrictions," and eventually submitted "a formal ADA accommodation request"—which would remain in place until petitioner could have a hip replacement. *Id.* at 3a-4a.

Although respondents accommodated petitioner at first, they ultimately instructed him to choose among options of "medical layoff, waived rights leave of absence, retirement, or resignation." App., *infra*, 4a. Petitioner chose the leave of absence, had successful hip surgery, underwent several months of rehabilitation, and later requested reinstatement as a corrections officer. *Id.* at 6a. But respondents denied petitioner's request—due to "pending disciplinary action" initiated while petitioner was receiving accommodations at work. *Id.* at 5a-6a.

Respondents' allegations were deemed unfounded by official investigators. App., *infra*, 5a. One allegation involved accusations of sexual harassment that uncovered "no evidence of misconduct." *Ibid.* Another involved a claim of "computer misuse" (based primarily on an e-mail to a "housing realtor" from a work account) that was likewise deemed unsubstantiated. *Ibid.* But respondents still tried again, this time accusing petitioner of failing to timely return a "questionnaire" related to the unfounded investigations—even though respondents sent the questionnaire two months after the start of the investigation, mailed it on October 6, demanded a response by October

9, and faulted petitioner for missing the deadline (despite his receiving the questionnaire on October 10). *Id.* at 6a.

After petitioner established he returned the questionnaire, respondents eventually relented and "extended two unconditional offers of reinstatement." App., *infra*, 6a. Petitioner declined those offers and instead filed suit.

2. Petitioner asserted both discrimination and retaliation claims "under § 504 of the Rehabilitation Act." App., *infra*, 6a. The parties cross-moved for summary judgment. The district court initially confirmed that the Rehabilitation Act provided a right of action for retaliation: the Act "'specifically incorporates the standards applied under the ADA to determine violations,' and those ADA standards "include[] 42 U.S.C. § 12203, the ADA's anti-retaliation provision." *Id.* at 64a (citing 29 U.S.C. 794(d) and 42 U.S.C. 12203).

The court then granted summary judgment for respondents on petitioner's failure to accommodate claim, but denied summary judgment on petitioner's retaliation claim. App., *infra*, 53a-79a. As relevant here, the court explained petitioner's retaliation claim targeted respondents' "allegedly 'baseless disciplinary investigations and conduct' that followed his placement on waived rights leave." *Id.* at 72a. The court found, "in light of all the available evidence," petitioner had alleged a viable retaliation claim, and it sent the case to trial. *Id.* at 78a.

At trial, the parties disagreed over critical jury instructions. The district court adopted a "sole" causation standard instead of petitioner's proposed "but-for" causation standard. App., *infra*, 7a. The jury returned a verdict under that higher standard for respondents (*id.* at 6a-7a, 80a), and petitioner appealed.

3. The Sixth Circuit affirmed in a divided opinion. App., *infra*, 1a-52a.

a. Although petitioner's appeal challenged the causation standard for his retaliation claim, the majority reframed the appeal as whether the Rehabilitation Act authorizes retaliation rights of action in the first place. The majority explained that, "[f]or at least the last 25 years," the Sixth Circuit had "assumed" retaliation claims were allowed. App., *infra*, 2a. But it opted to revisit the issue anew, and it "h[e]ld that § 504 of the Rehabilitation Act does not provide a cause of action for retaliation." *Id.* at 2a-3a.

The majority initially acknowledged the circuit's "longstanding practice" and "shared judicial assumption" that "a cause of action for retaliation exists under § 504." App., *infra*, 14a. And it further conceded petitioner was correct that "our sister circuits routinely accept retaliation claims under the Rehabilitation Act." *Id.* at 15a. But the majority declared those courts had acted "without rigorous statutory analysis," and it felt their positions "relie[d] on varying, inconsistent rationales—some citing the Rehabilitation Act's cross-reference to the ADA, others pointing to ancillary provisions of the Act." *Id.* at 15a-16a (citations omitted). But "confront[ing] directly" the question, the majority rejected the uniform consensus view. *Id.* at 16a, 27a.

According to the majority, a first strike against a right of action was Congress's supposed failure to include such an action "explicitly." App., *infra*, 18a. The majority acknowledged that "retaliation claims are a common feature in federal anti-discrimination law." *Id.* at 18a-19a. But it viewed that commonality as a reason to doubt retaliation is covered here—since Congress apparently "omit[ted] a retaliation provision from the Retaliation Act." *Id.* at 20a. And although Congress explicitly incorporated the ADA's anti-retaliation provision in Section

794(d), the majority deemed that insufficient: "'Standards' are not synonymous with 'cause of action' in legal parlance." *Ibid.* Instead, the majority felt, those cross-references merely established "substantive rules or burdens—e.g., the *standard* of causation at issue here"—and did not incorporate the ADA's anti-retaliation mandate. *Id.* at 20a-21a.[1]

The majority finally rejected petitioner's arguments that this Court's decision in *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167 (2005), controlled, or that a federal regulation filled any gaps left in the statute. App., *infra*, 23a-27a. It accordingly held "§ 504 of the Rehabilitation Act does not provide a private right of action for retaliation." *Id.* at 27a. And because respondents "cannot be liable for a cause of action that does not exist," it affirmed the judgment. *Ibid.*

b. Judge Bloomekatz dissented in relevant part. App., *infra*, 32a-52a. She explained that the majority's position "upends decades of established precedent in this court and our sister circuits," recognizing "individuals can sue under the Rehabilitation Act if any employer retaliates against them." *Id.* at 33a. She would have instead "follow[ed] the statutory text and h[e]ld that § 504 of the Rehabilitation Act—by directly cross-referencing the Americans with Disabilities Act's retaliation provision—provides a cause of action for [petitioner's] retaliation claim."

---

[1] When confronted with the dissent's observation that the majority's understanding rendered the cross-referenced ADA provision surplusage, the majority insisted "we need not address what all the ADA standards are," and suggested "standards that govern ADA causes of action are equally applicable to Rehabilitation Act claims." App., *infra*, 23a n.3. But the majority never explained, concretely, how the ADA's anti-retaliation provision retained any meaning under its view.

Ibid.; see also *id.* at 41a-48a (tracing her statutory arguments).

Judge Bloomekatz began with a recap of the statutory backdrop. She detailed how the Rehabilitation Act and the ADA work together to protect disabled individuals in both the private sector and in working with "recipients of federal funds," and how Congress ultimately "amended the Rehabilitation Act to bring the statutes 'in line' with each other, given their shared purpose." App., *infra*, 33a-35a (further explaining how Congress added "subsection (d) to § 504" to "align[]" the Act's anti-discrimination provision "more closely to how the ADA deals with private employment").

Judge Bloomekatz then noted the longstanding finding that the Act covered retaliation: "Reflecting this alignment between the statutes in the employment context, we have consistently treated § 504 of the Rehabilitation Act as providing a cause of action for retaliation." App., *infra*, 35a. And she again noted the national consensus on this point: "Every one of our sister circuits has done the same." *Id.* at 36a (citing authority from every circuit). Judge Bloomekatz reasoned that this "consensus" was "grounded in statutory text" and "the reality of employment discrimination claims"—where "[p]rotection against retaliation is essential to effective enforcement of anti-discrimination statutes." *Ibid.* She accordingly concluded "Congress supplied a critical enforcement mechanism when it incorporated the ADA's anti-retaliation provision to employment discrimination claims brought under the Rehabilitation Act." *Id.* at 36a-37a.

Judge Bloomekatz finally marched through the statutory provisions, recounted how Section 794(d) explicitly incorporates the ADA's anti-retaliation provision, and confirmed how this express textual directive necessarily answers the question here: "by incorporating § 12203 of

the ADA," "subsection (d) of § 504 of the Rehabilitation Act likewise prohibits retaliation and provides a cause of action for employees who experience such retaliation." App., *infra*, 43a-44a. Because she concluded a right of action exists, she also reached the causation question—and concluded the district court erred by requiring "sole" causation. *Id.* at 49a-52a. She accordingly would have upheld the Act's retaliation claim and reversed. *Id.* at 52a.

REASONS FOR GRANTING THE PETITION

A. The Decision Below Creates A Direct, Lopsided, And Intolerable Conflict Over A Significant Question Under The Rehabilitation Act

According to a split panel of the Sixth Circuit, the Rehabilitation Act does not cover retaliation, despite the Act's direct incorporation of the ADA's express anti-retaliation provision. App., *infra*, 26a-27a, 32a. That holding conflicts with the "long-established consensus" adopted nationwide in every other circuit. *Id.* at 36a-37a (Bloomekatz, J., dissenting) (outlining conflict with "[e]very one of our sister circuits").

Indeed, this is the exceedingly rare case where a lopsided conflict is beyond dispute. The 2-1 majority acknowledged it was rejecting the "routine," "longstanding," and "widespread" "acceptance of retaliation claims." App., *infra*, 15a-16a. The dissent readily confirmed (without contradiction) that the majority "upend[ed] decades of established precedent in this court and our sister circuits." *Id.* at 33a (Bloomekatz, J., dissenting). And, in fact, every other circuit has long recognized the Rehabilitation Act provides a cause of action for retaliation—unremarkably aligning the Act with virtually every other parallel federal scheme. App., *infra*, 18a-19a (admitting "retaliation claims are a common feature in federal anti-discrimination law").

As it now stands, for the first time in decades, the Rehabilitation Act's core protections vary dramatically based on the happenstance of where a dispute arises. If retaliation occurs in Michigan or Ohio, the employee loses; if retaliation occurs in California, New York, Texas, Virginia, Illinois, Arkansas, Wisconsin, Colorado, Massachusetts, Maine—or just about anywhere else—the employee wins. The stark division over such a fundamental question is untenable. The Sixth Circuit's decision leaves parties guessing about their basic rights under the Act. This promises chaos and confusion at best, and unequal treatment of indistinguishable stakeholders at worst. The Sixth Circuit unilaterally upset a stable and established national consensus, and this lopsided conflict will not dissipate on its own.

Until this Court intervenes, the proper administration of a prominent federal law will turn entirely on geography. Immediate review is warranted.

1. The decision below upsets decades of practice and departs from a uniform nationwide consensus adopted in every other circuit. See, *e.g.*, *Hwang* v. *Kansas State Univ.*, 753 F.3d 1159, 1165 (10th Cir. 2014) (Gorsuch, then-J.) ("We've long explained that the Rehabilitation Act prohibits * * * retaliation against those who report disability discrimination."). Unlike the 2-1 decision below, these other circuits have had no trouble understanding the Act—by simply reading its plain language to mean what it says.

In short, the consensus view is this: Retaliation claims are covered because the Rehabilitation Act explicitly incorporates the ADA's anti-retaliation prohibition. See 29 U.S.C. 794(d) (incorporating 42 U.S.C. 12203). Congress identified specific ADA provisions (by enumerated sections) to supply the "standards used to determine whether this [Rehabilitation Act] section has been violated." 29

U.S.C. 794(d). There is no need to infer anything or read between the lines. Congress textually singled out specific provisions of the ADA, including a section that (on its face) bars retaliation—as its sole function. See 42 U.S.C. 12203(a). The text itself (via an explicit cross-reference) contains the necessary prohibition.

These express references to the ADA "by specific title or section number in effect cuts and pastes the referenced statute." *Jam* v. *International Fin. Corp.*, 586 U.S. 199, 209 (2019). Accordingly, the ADA cross-reference incorporates the ADA anti-retaliation "standard" directly into the Rehabilitation Act itself. See, *e.g.*, *January* v. *City of Huntsville*, 74 F.4th 646, 652-653 (5th Cir. 2023) (tracking this logic in affirming the broad circuit view); *Kersey* v. *Washington Metro. Area Transit Auth.*, 586 F.3d 13, 16 (D.C. Cir. 2009) (same); *Jarvis* v. *Potter*, 500 F.3d 1113, 1125 (10th Cir. 2007) (same); *Myers* v. *Hose*, 50 F.3d 278, 281 (4th Cir. 1995) (same); contra App., *infra*, 18a-23a, 27a (alone reaching opposite conclusion).[2]

2. As its primary excuse for discarding the settled national consensus, the 2-1 majority faults other courts for lack of "meaningful statutory analysis." App., *infra*, 16a. But while the majority may disapprove of (every) other circuits' analytical "rigor[]" (*id.* at 15a), these courts were

[2] Although more relevant for the merits, Section 794(d)'s specific cross-reference of Section 12203 is meaningless under the majority's view. App., *infra*, 47a-48a (Bloomekatz, J., dissenting) (so explaining). As the majority understands it, Congress singled out this specific provision of the ADA—as one of only a handful of explicit cross-references—to accomplish nothing. The majority baldly resists this characterization (in a single footnote), but despite insisting the cross-reference (somehow) retains meaning, it never says what work it possibly does. App., *infra*, 23a. The better conclusion is the same reached by every other circuit: Congress explicitly cross-referenced the ADA's anti-retaliation provision to prohibit retaliation under the Act.

not engaged in some "informal" or drive-by statutory construction (contra *id.* at 16a). These holdings were *holdings*—and they were presumably concise because the statute itself is remarkably clear.

These circuits simply recognized Congress meant what it said: Congress instructed courts to look to the ADA's cross-references to set the "standards" for determining Rehabilitation Act "violations." 29 U.S.C. 794(d). And one explicit ADA cross-reference had a sole function: prohibiting retaliation. This is not difficult. And the length of the average circuit's statutory analysis is perfectly commensurate with the provision's clarity—which likely explains why every circuit, until now, has answered the question the same way.

The majority also says other circuits have relied on "varying, inconsistent rationales" (App., *infra*, 16a), but it overstates the variance and otherwise misses the point. Not a single circuit, until now, has rejected the straightforward textual argument (based on "the Rehabilitation Act's cross-reference to the ADA," *ibid.*). A small handful of other circuits have simply offered *additional* ways to reach the same result. See, *e.g.*, *Baker* v. *Riverside Cty. Office of Educ.*, 584 F.3d 821, 825 (9th Cir. 2009) (citing neighboring provisions). That hardly diminishes the strength of the national consensus.

But in all events, this much is clear: the Sixth Circuit is now a self-confessed outlier. It stands alone on this issue, and retaliation claims under the Rehabilitation Act are now barred solely in that single circuit. Indeed, by the panel's own admission, petitioner would have prevailed on this "foundational" question had this dispute arisen in (literally) any other circuit (App., *infra*, 10a, 15a-16a):

**First Circuit: "The Rehabilitation Act 'prohibits retaliation against employees for complaining about violations of the Act.'" *Rivera-Velazquez* v. *Regan*, 102 F.4th 1,

12 (1st Cir. 2024) (quoting *Quiles-Quiles* v. *Henderson*, 439 F.3d 1, 8 (1st Cir. 2006)).

**Second Circuit: "The Rehabilitation Act" prohibits "retaliation and [is] governed in this respect by the same standards as the ADA." *Treglia* v. *Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002) (citing 29 U.S.C. 794(d)).

**Third Circuit: "Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(d), incorporates by reference the substantive standards of the Americans with Disabilities Act," and "Section 503(a) of the ADA prohibits retaliation * * * ." *Kendall* v. *Postmaster Gen. of the U.S.*, 543 F. App'x 141, 144 (3d Cir. 2013) (citing 42 U.S.C. 12203(a)); see also *Lanza* v. *Postmaster Gen. of the U.S.*, 570 F. App'x 236, 240 (3d Cir. 2014) ("[b]oth Title VII and the Rehabilitation Act forbid an employer from retaliating against an employee for opposing conduct otherwise prohibited by those anti-discrimination statutes") (citing 42 U.S.C. 12203 and 29 U.S.C. 791(g) as "incorporating anti-retaliation provision of the ADA into the Rehabilitation Act"); *Shiring* v. *Runyon*, 90 F.3d 827, 830-832 (3d Cir. 1996).[3]

**Fourth Circuit: "[R]etaliation claims under § 504 are subject to the same standard as ADA retaliation claims." *S.B. ex rel. A.L.* v. *Board of Educ. of Harford Cty.*, 819 F.3d 69, 78 n.6 (4th Cir. 2016); see also *Herkert* v. *Bisignano*, 151 F.4th 157, 164 n.3 (4th Cir. 2025) (Rehabilitation Act "incorporat[es] ADA's anti-retaliation provision") (citing 29 U.S.C. 794(d) and 42 U.S.C. 12203(a)); *Hooven-Lewis* v. *Caldera*, 249 F.3d 259, 268, 272 (4th Cir.

[3] Section 791(g) has been renumbered as Section 791(f); that section applies to certain federal employees, but Section 791(f) and Section 794(d) otherwise track each other and incorporate the same ADA provisions. See 29 U.S.C. 791(f).

2001) ("[a]dopting provisions of the ADA, the [Rehabilitation Act] provides that no person shall retaliate against an individual because that individual engages in activity challenging an employer's alleged discrimination") (citing 42 U.S.C. 12203(a)); *Myers* v. *Hose*, 50 F.3d 278, 281 (4th Cir. 1995) ("in 1992, in order to clarify the standards governing federally-funded entities, Congress amended § 504 to expressly incorporate the *liability standards* of the ADA"; "whether suit is filed against a federally-funded entity under the Rehabilitation Act or against a private employer under the ADA, the *substantive standards for determining liability* are the same") (emphases added).

**Fifth Circuit: "January asserts claims of retaliation under the ADA, the Rehabilitation Act, and the ADEA. All three prohibit an employer from 'discriminat[ing] against any individual because such individual has opposed any act or practice made unlawful by [the Acts] * * * .'" *January* v. *City of Huntsville*, 74 F.4th 646, 652-653 (5th Cir. 2023) (quoting 42 U.S.C. 12203 and citing 29 U.S.C. 794(d) as "incorporating the ADA's standard for Rehabilitation Act claims") (footnote omitted).

**Seventh Circuit: "Both the Rehabilitation Act and the ADA make it unlawful to retaliate for the exercise of rights conferred by those statutes." *Stanek* v. *St. Charles Cmty. Unit Sch. Dist. No. 303*, 783 F.3d 634, 641 (7th Cir. 2015); see also *Reed* v. *Columbia St. Mary's Hosp.*, 782 F.3d 331, 337 (7th Cir. 2015) ("Reed may also seek compensatory damages under the Rehabilitation Act for retaliation"; confirming that Section 794(d) requires the Act's "retaliation" claims to be "analyzed" under the ADA's "prohibition against retaliation"); *Serino* v. *Potter*, 178 F. App'x 552, 555 (7th Cir. 2006) ("[t]he [Rehabilitation] Act also incorporates the ADA's proscription of retaliation") (citing 29 U.S.C. 794(d) and 42 U.S.C. 12203(a)).

**Eighth Circuit: "This circuit also has recognized a cause of action for retaliation under the Rehabilitation Act, although the textual basis for the claim is not well explained in our cases. In any event, our precedent says that we treat retaliation claims under the two statutes [the Act and ADA] interchangeably." *Hill* v. *Walker*, 737 F.3d 1209, 1218 (8th Cir. 2013) (citing circuit authority dating back decades).

**Ninth Circuit: "Section 504(d) of the Rehabilitation Act adopts the anti-retaliation provision of the Americans with Disabilities Act." *Sweet* v. *Tigard-Tualatin Sch. Dist., No. 23J*, 124 F. App'x 482, 485 n.1 (9th Cir. 2005) (citing 29 U.S.C. 794(d) and 42 U.S.C. 12203(a)); see also *Coons* v. *Secretary of the U.S. Dep't of Treasury*, 383 F.3d 879, 884, 887 (9th Cir. 2004) ("The standards used to determine whether an act of discrimination violated the Rehabilitation Act are the same standards applied under the [ADA]."") (citing 29 U.S.C. 794(d); applying legal rule to "Coons's retaliation claim").

**Tenth Circuit: "We've long explained that the Rehabilitation Act prohibits not just discrimination on the basis of disability but retaliation against those who report disability discrimination." *Hwang* v. *Kansas State Univ.*, 753 F.3d 1159, 1165 (10th Cir. 2014) (Gorsuch, then-J.); *Reinhardt* v. *Albuquerque Pub. Sch. Bd. of Educ.*, 595 F.3d 1126, 1131-1132 (10th Cir. 2010) ("[t]he standard for retaliation claims under the Rehabilitation Act is the same as the standard for retaliation claims under the [ADA]"; 42 U.S.C. 12203(a) is "incorporated by reference by 29 U.S.C. § 794(d)"); *Jarvis* v. *Potter*, 500 F.3d 1113, 1125 (10th Cir. 2007) ("[t]he Rehabilitation Act's prohibition on discrimination does not explicitly mention retaliation," "[b]ut § 794(d)" instructs courts to adopt specific ADA standards, and "[o]ne of the cross-referenced sections

from the ADA" prohibits "'[r]etaliation'"; "[t]hus, the Rehabilitation Act, like the ADA, prohibits retaliation for protected conduct") (citing 42 U.S.C. 12203(a)).

**Eleventh Circuit: "[T]he Rehabilitation Act also prohibits retaliating against an employee for engaging in protected activity." *Owens* v. *Governor's Office of Student Achievement*, 52 F.4th 1327, 1333-1334, 1337 (11th Cir. 2022) (establishing this "'standard[]'" via 29 U.S.C. 794(d)); see also *Mullin* v. *Secretary, U.S. Dep't of Veterans Affairs*, 162 F.4th 1296, 1303, 1315 (11th Cir. 2025) (citing 29 U.S.C. 794(d) and incorporating the ADA's anti-retaliation provision).

**D.C. Circuit: The Rehabilitation Act "states that '[t]he standards used to determine whether this section has been violated * * * under this section shall be the standards applied under [provisions of] the [ADA]"; "[t]he ADA, in turn, * * * bars retaliation against an individual for making a charge under or opposing any practice made unlawful by that Act." *Kersey* v. *Washington Metro. Area Transit Auth.*, 586 F.3d 13, 16 (D.C. Cir. 2009) (citing 49 U.S.C. 12203(a)); accord *Mogenhan* v. *Napolitano*, 613 F.3d 1162, 1165 (D.C. Cir. 2010); see also *Solomon* v. *Vilsack*, 763 F.3d 1, 5 (2014) (same for 29 U.S.C. 791(g)); *Duncan* v. *Washington Metro. Area Transit Auth.*, 214 F.R.D. 43, 49-50 (D.D.C. 2003) (expressly rejecting "conten[tion] that the Rehabilitation Act does not provide a cause of action for retaliation"; "the text of the Rehabilitation Act is clear that Congress did create a cause of action for retaliation"; the Act "incorporates the standards of the ADA, one of which—Section 503—specifically prohibits retaliation").

In sum, there has been a uniform national consensus on this issue going back decades, with every other circuit recognizing retaliation claims under the Rehabilitation

Act. The Sixth Circuit has now injected chaos and uncertainty into the area for no reason. An immediate course-correction is warranted, and this Court alone can provide the necessary guidance.

3. The conflict over this fundamental statutory question is as clear as it gets. The Sixth Circuit alone has veered badly off course. The debate has been fully exhausted, and additional percolation is pointless. The settled circuit consensus is premised on the plain-text reading of the statute; the majority and dissent below exhaustively ventilated the competing views, with each confronting, and rejecting, the opposing analysis. And there is no prospect that *all eleven circuits* will suddenly abandon their own precedent—especially when these circuits have adhered to their "longstanding" views for decades. App., *infra*, 14a.

This question is binary: one view of the Rehabilitation Act is correct and the other is wrong, and a retaliation claim is either authorized or not. If petitioner is right, employees in the Sixth Circuit alone will be unduly stripped of the Act's essential protections. If respondents are right, plaintiffs have been filing thousands of retaliation lawsuits that Congress never authorized—and courts and parties alike are wasting substantial time and resources litigating claims that should not exist. And all sides are now left in the dark how to proceed: Should employees in the Sixth Circuit abandon their claims despite the contrary national consensus? Should defendants in every other circuit challenge settled circuit authority in light of the Sixth Circuit's novel take? The decision below invites disarray over an issue that arises constantly in courts nationwide; it is imperative to restore the certainty and uniformity that persisted for decades until the Sixth Circuit parted ways.

Until this Court intervenes, rampant confusion over this important threshold question will only get worse. This Court's review is urgently warranted.

B. The Question Presented Is Exceptionally Important And Warrants Review In This Case

1. The question presented is of obvious legal and practical importance. The need for review is self-evident. The Sixth Circuit has destroyed national uniformity over an essential statutory scheme. There is zero hope of the conflict resolving itself: few circuits will jettison longstanding precedent—especially in favor of an atextual approach that sets up the Rehabilitation Act as an outlier among federal anti-discrimination statutes. And even if a small handful of circuits switch sides, that would only increase the overall confusion—as parties are left guessing what their regional circuit might do.

The sheer numbers involved also justify review (as even a cursory Westlaw search readily confirms). Retaliation claims are litigated hundreds (if not thousands) of times each year. Now rather than focus on the merits of those claims, parties and courts will be forced to waste time and resources litigating this threshold issue—which responsible defendants will feel compelled to raise (despite the low odds of disrupting circuit precedent). No one needs to add burden and complexity to litigation. The Sixth Circuit has single-handedly upset decades of national consensus on a question that arises all the time; this Court will inevitably have to end the debate. Neither plaintiffs nor defendants would benefit from the Court postponing that decision.

The issue also has profound consequences for the proper administration of the Act. The practical stakes are palpable. This Court has recognized the critical role anti-retaliation safeguards perform in achieving anti-discrimination objectives: an act's benefits "'would be difficult, if

not impossible, to achieve if persons who complain about * * * discrimination did not have effective protection against retaliation.'" *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 180 (2005) ("if retaliation were not prohibited, Title IX's enforcement scheme would unravel").

And these concerns apply with greater force in the disability context. It is difficult to show a failure to accommodate without requesting an accommodation—and it is not possible to request an accommodation without disclosing a disability. Yet if the request itself can expose an individual to retaliation, the entire scheme would be "subverted." *Jackson*, 544 U.S. at 181; see also, *e.g.*, *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) ("it needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions"). The preexisting system has proven effective on the ground in promoting a fair and efficient workplace; the sky has not fallen in any court (read: all of them) where retaliation claims have been authorized under the Rehabilitation Act. There is no reason to impair the system in place for the past several decades.

There is an obvious reason this Court has repeatedly granted review to decide the same question (whether retaliation claims are authorized) under different statutory schemes. *E.g.*, *Gomez-Perez* v. *Potter*, 553 U.S. 474, 477 (2008) (whether ADEA's private right of action covers retaliation); *Jackson*, 544 U.S. at 173 (whether Title IX's private right of action covers retaliation); *CBOCS West, Inc.* v. *Humphries*, 553 U.S. 442, 445 (2008) (whether Section 1981 covers retaliation); *Burlington N. Santa Fe Ry. Co.* v. *White*, 548 U.S. 53, 56-57 (2006) (whether Title VII's retaliation provision covers certain claims). There is an

equally profound need for guidance, now, under the Rehabilitation Act.

2. This case is a perfect vehicle for deciding this significant question. The dispute turns on a pure question of law: whether retaliation claims are authorized under the Act. It has no factual or procedural impediments: it arises at the threshold of the case, and it was resolved at the outset before the Sixth Circuit addressed any other aspect of petitioner's claim. The Sixth Circuit squarely confronted and decided the issue: it was the subject of its own special round of briefing, and the parties "extensively" discussed the issue at oral argument. App., *infra*, 7a; see also *id.* at 16a ("we are confronted directly with the question").

And the statutory question is outcome-determinative: the majority held no right of action existed and declined to resolve any other related issue on appeal: "Because § 504 of the Rehabilitation Act does not provide a private right of action for retaliation, we need not address Smith's evidentiary challenges. The judgment in favor of MDOC must be affirmed because MDOC cannot be liable for a cause of action that does not exist." App., *infra*, 27a; accord *id.* at 32a ("Smith's issues on appeal relating to his retaliation claim are resolved by our holding that § 504 of the Rehabilitation Act does not provide a cause of action for retaliation."). The dissent, by contrast, held a right of action does exist and would have "vacated the verdict and remanded for a new trial." *Id.* at 52a (Bloomekatz, J., dissenting) ("Because, in my view, § 504(d) of the Rehabilitation Act recognizes a cause of action for retaliation and the district court erroneously instructed the jury on the causation element of this claim, I respectfully dissent.").

There is no conceivable obstacle to deciding this important legal question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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