

In the  
Supreme Court of the United States

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BRANDI GREER,

*Petitioner,*

v.

BENTON SCHOOL DISTRICT,

*Respondent.*

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**On Petition for a Writ of Certiorari to the  
Supreme Court of Arkansas**

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether independent contractors have the same right as employees to sue for discrimination under section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

## **PARTIES TO THE PROCEEDINGS BELOW**

Petitioner Brandi Greer was the plaintiff-appellee below. Respondent Benton School District was the defendant-appellant below. Lori Bacon and Lita Gattis were also defendants-appellants below, but they are not parties to this certiorari petition.

## **RELATED PROCEEDINGS**

Supreme Court of Arkansas: *Benton School Dist. v. Greer*, No. CV-25-11 (Mar. 12, 2026); *Benton School Dist. v. Greer*, No. CV-25-285 (Mar. 12, 2026); *Benton School Dist. v. Greer*, No. CV-22-143 (Nov. 9, 2023)

Saline County Circuit Court: *Greer v. Benton School Dist.*, No. 63CV-20-522 (Sept. 26, 2024)

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**PETITION FOR A WRIT OF CERTIORARI**

Brandi Greer respectfully petitions for a writ of certiorari to review the judgment of the Arkansas Supreme Court.

**OPINIONS BELOW**

The opinion of the Arkansas Supreme Court will be published at --- S.W.3d ---. It is available at 2026 WL 692991.

**JURISDICTION**

The Arkansas Supreme Court entered its judgment on March 12, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

**STATUTORY PROVISIONS INVOLVED**

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

**(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. ...

...

**(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 to 12204 and 12210), as such sections relate to employment.

### STATEMENT

This case gives the Court its first real opportunity to resolve a longstanding conflict among the lower courts over whether independent contractors have the same right as employees to sue for discrimination under section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

On one side of the conflict, the Fifth, Ninth, and D.C. Circuits hold that independent contractors may sue under section 504, just like employees. *Flynn v. Distinctive Home Care, Inc.*, 812 F.3d 422, 425-32 (5th Cir. 2016); *Fleming v. Yuma Reg'l Med. Ctr.*, 587 F.3d 938, 940-46 (9th Cir. 2009); *Redd v. Summers*, 232 F.3d 933, 941 (D.C. Cir. 2000). The Tenth Circuit has strongly implied that it would reach the same conclusion. *Schrader v. Fred A. Ray, M.D., P.C.*, 296 F.3d 968, 971-75 (10th Cir. 2002).

On the other side of the conflict, the Eighth Circuit and the Arkansas Supreme Court (in the decision below) hold that section 504 is limited to employees and affords no remedy for independent contractors. *Wojewski v. Rapid City Reg'l Hosp., Inc.*, 450 F.3d 338, 344-45 (8th Cir. 2006); App. 1a-23a. The Sixth Circuit has strongly implied that it would reach the same conclusion. *Hiler v. Brown*, 177 F.3d 542, 545-47 (6th Cir. 1999).

This issue has reached the Court only once before, when the Court denied certiorari in the Ninth Circuit's *Fleming* case. *Yuma Anesthesia Med. Servs. LLC v. Fleming*, No. 09-1146, 561 U.S. 1006 (2010). That was sixteen years ago, when the conflict was only just emerging. Moreover, *Fleming* was in an interlocutory posture, so it was a poor candidate for certiorari. The district court had granted summary judgment for the defendant, and the Ninth Circuit reversed and remanded so the plaintiff's suit could proceed. *Fleming*, 587 F.3d at 940, 946.

Today, by contrast, the conflict among the lower courts has fully matured. And there has been a final judgment in our case, unlike in *Fleming*. Our case is thus a perfect opportunity to resolve the conflict.

Granting certiorari will also allow the Court to correct an egregious mistake on the part of the Arkansas Supreme Court and the Eighth Circuit. The text and the history of the Rehabilitation Act make plain that section 504 protects independent contractors as well as employees. The Court should grant certiorari and reverse.

1. Petitioner Brandi Greer was a substitute teacher at the Angie Grant Elementary School in Benton, Arkansas. App. 2a. Greer was an employee of Kelly Services, Inc., which contracted with the Benton School District for the placement of substitute teachers. *Id.*

Greer's young son was a student at the same elementary school. *Id.* He suffered from migraines, a stomach ailment, and either ADD or ADHD. *Id.* at 37a. After multiple incidents in which her son's teacher, Holly Fite, made what Greer believed to be

cruel and sarcastic remarks about her son's disabilities, Greer filed an ethics complaint against Fite with the state licensing board that governs teachers. *Id.* at 2a. In retaliation, the Benton School District barred Greer from working as a substitute teacher at any school within the district. *Id.* at 3a. (The state licensing board later determined that Greer's ethics complaint against Fite was unfounded. *Id.*).

Greer then filed this lawsuit. *Id.* She alleged that the Benton School District violated section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by retaliating against her for requesting accommodations for her son and for complaining that her son had been discriminated against. *Id.* She also alleged that Lori Bacon, the former principal at the elementary school, and Lita Gattis, the former assistant superintendent of the school district, violated 42 U.S.C. § 1983 and the Arkansas Civil Rights Act by retaliating against her for the exercise of her First Amendment rights. *Id.*

The trial court granted Greer's motion for partial summary judgment on the issue of liability as to all three defendants. *Id.* at 4a, 36a-49a.<sup>1</sup> After a jury trial on damages, the jury awarded Greer \$3,500 in compensatory damages and \$3,500 in punitive damages. *Id.* at 5a. The trial court also enjoined the

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<sup>1</sup> In proceedings with no bearing on this certiorari petition, the trial court also granted in part and denied in part Bacon and Gattis's motion for summary judgment on the ground that a state statute entitled them to qualified immunity. App. 4a, 48a-49a. On an interlocutory appeal limited to qualified immunity, the Arkansas Supreme Court affirmed in part and reversed in part. *Id.* at 24a-35a.

school district from barring Greer from serving as a substitute teacher in the district. *Id.* at 6a.

2. The Arkansas Supreme Court reversed and remanded for entry of judgment for the defendants. *Id.* at 1a-23a.

The state supreme court held that Greer could not bring a Rehabilitation Act claim against the school district because she was an independent contractor, not an employee. *Id.* at 7a-10a.

“Greer’s § 504 retaliation theory fails at the threshold,” the court reasoned. *Id.* at 7a. “The claim she presses is an employment-retaliation claim, and Congress has made plain that such claims under § 504 are governed by the standards applicable to Title I of the Americans with Disabilities Act. Those standards presuppose an employer–employee relationship. Because no such relationship existed here between Greer and the District, the claim cannot proceed.” *Id.* (footnote omitted).

The court noted that section 504(d) of the Rehabilitation Act “provides that [t]he standards used to determine whether this section has been violated in a complaint alleging employment discrimination ... shall be the standards applied under title I of the Americans with Disabilities Act.” *Id.* at 8a (quoting 29 U.S.C. § 794(d)). Title I of the ADA, the court continued, “regulates discrimination by employers against employees.” *Id.* The court concluded: “By expressly incorporating Title I’s standards, Congress tethered § 504 employment claims—including retaliation claims arising from employment—to the same threshold requirement: an employment relationship between the plaintiff and the defendant.” *Id.*

The Arkansas Supreme Court acknowledged that while its interpretation of the Rehabilitation Act was consistent with the Eighth Circuit's view in *Wojewski v. Rapid City Reg'l Hospital, Inc.*, 450 F.3d 338 (8th Cir. 2006), it was inconsistent with the contrary view taken by the Fifth Circuit in *Flynn v. Distinctive Home Care, Inc.*, 812 F.3d 422 (5th Cir. 2016). App. 9a & n.16. The Fifth Circuit's "approach cannot be squared with the statute's text," the court declared. *Id.* at 9a. Congress "made a deliberate choice to channel § 504 employment claims through the ADA's employment framework. And that framework regulates discrimination by employers against employees." *Id.* at 10a.

The court accordingly "reverse[d] and enter[ed] judgment for the appellants." *Id.*

The court also reversed the trial court's grant of summary judgment on Greer's claims under section 1983 and the Arkansas Civil Rights Act, vacated the trial court's injunction, and remanded for entry of judgment for the defendants on all claims. *Id.* at 11a-17a.

Justice Hudson, joined by Chief Justice Baker, concurred in part and dissented in part. *Id.* at 17a-23a.

Justice Hudson explained that in her view, relief under the Rehabilitation Act is available to independent contractors as well as employees. *Id.* at 18a. She pointed out that the text of the statute protects any "qualified individual with a disability." *Id.* (quoting 29 U.S.C. § 794(a)). She noted that "[n]othing in this provision limits relief to the employment context." *Id.* She explained that subsection (d) of the statute, which "provides that the standards of cer-

tain parts of the Americans with Disabilities Act” are applicable to Rehabilitation Act claims, “is far from a wholesale incorporation of the ADA for all purposes.” *Id.* at 18a-19a.

Justice Hudson observed that the majority’s interpretation of the Rehabilitation Act was contrary to that of three federal courts of appeals. *Id.* at 19a. “I would follow the well-reasoned decisions of the Courts of Appeal for the Fifth, Ninth, and Tenth Circuits,” she explained, “and hold that the Rehabilitation Act does not incorporate Title I’s requirement that the defendant be the plaintiff’s ‘employer’ as that term is defined in the ADA.” *Id.* (citing *Flynn v. Distinctive Home Care, Inc.*, 812 F.3d 422 (5th Cir. 2016); *Fleming v. Yuma Reg’l Med. Ctr.*, 587 F.3d 938 (9th Cir. 2009); and *Schrader v. Fred A. Ray, M.D., P.C.*, 296 F.3d 968 (10th Cir. 2002)). *Id.* She explained that she agreed with the reasoning of the Ninth Circuit that “to reduce the express scope of the Rehabilitation Act by wholesale adoption of the ADA, ‘we would have to conclude that Congress narrowed the Rehabilitation Act by adopting the ADA. That conclusion contradicts the plain import of those acts, and we decline to go down that road without a clearer indication that Congress wanted us to.’” *Id.* (quoting *Fleming*, 587 F.3d at 944). Justice Hudson concluded: “I would reject appellants’ argument that an employment relationship is required to state a claim under the Rehabilitation Act.” *Id.*

### REASONS FOR GRANTING THE WRIT

The Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, established “a comprehensive federal program aimed at improving the lot of the hand-

icapped.” *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 626 (1984). Section 504 of the Act, the provision at issue here, “prohibits discrimination against the handicapped by federal grant recipients.” *Id.*

Section 504(a) is worded broadly to accomplish this broad goal. It provides: “No otherwise qualified individual with a disability in the United States, ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). This provision is not limited to discrimination in employment. It bars all kinds of discrimination against the disabled under any program that receives federal funds.

In the 1970s and 1980s, support began to grow for also protecting the disabled from discrimination by employers who do not receive federal grants. Congress therefore enacted the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327. Title I of the ADA prohibits discrimination against the disabled by employers with more than 15 employees. 42 U.S.C. §§ 12111(5), 12112(a). Unlike section 504 of the Rehabilitation Act, Title I of the ADA deals exclusively with employment. It prohibits only discrimination by employers against employees.

When enacting the ADA, Congress was careful to specify that the new statute was not intended to weaken the protection of the Rehabilitation Act. Congress mandated that “nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973,” the title that includes section

504. 42 U.S.C. § 12201(a). Congress also specified that “[n]othing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law ... that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter.” *Id.* § 12201(b). The ADA was thus intended to enhance legal protections for the disabled, not to diminish the protections that already existed.

Ever since, section 504 of the Rehabilitation Act and Title I of the ADA have intersected like two circles in a Venn diagram. Section 504 of the Rehabilitation Act prohibits all kinds of discrimination against the disabled, including employment discrimination, but only in programs receiving federal funds. Title I of the ADA covers all kinds of employers, even those who don’t receive federal funds, but it prohibits only employment discrimination, not any other kind. The two circles overlap in cases involving employment discrimination by recipients of federal funds. These cases are governed by both statutes.

In 1992, to harmonize the two statutes in the cases governed by both, Congress added subsection (d) to section 504 of the Rehabilitation Act. It provides: “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.” 29 U.S.C. § 794(d). The purpose of this provision was “to ensure uniformity and consistency of interpretations” as to what conduct would constitute discrimination under the two statutes. S. Rep. No. 102-357, at 71 (1992). As Senator Harkin, the bill’s principal sponsor, explained:

Now those who are covered by title V of the Rehabilitation Act will know that these are the definitions of reasonable accommodation and discrimination that apply. They will also know that the standards governing preemployment inquiries and examinations, and inquiries of current employees apply. Incorporating the ADA standards into the Rehabilitation Act will assure that there will be consistent, equitable treatment for both individuals with disabilities and businesses under the two laws.

138 Cong. Rec. 31,523 (1992).

Subsection (d) thus ensures that when *employees* allege discrimination under section 504(a) of the Rehabilitation Act, the substantive standards defining discrimination are the same as under the ADA. Subsection (d) was not meant to have any impact on section 504(a) claims filed by people who are not employees.

The interplay of subsections (a) and (d) has nevertheless given rise to a lower court conflict over whether independent contractors have the same right as employees to sue for discrimination under section 504. Some courts have recognized, correctly, that subsection (d) only says that when *employees* sue for discrimination, the suit is governed by the same substantive standards as suits under Title I of the ADA, and that subsection (d) has no bearing on suits by people other than employees, such as independent contractors. But other courts have erroneously concluded that subsection (d) imports *everything* about Title I of the ADA into the Rehabilitation Act, including the fact that the ADA provides a

cause of action for employees but not independent contractors.

This case is a perfect opportunity to resolve the conflict.

**I. The lower courts are divided as to whether independent contractors have the same right as employees to sue for discrimination under section 504 of the Rehabilitation Act.**

There is now a 3-2 split on the specific question of whether independent contractors may sue for discrimination under section 504 of the Rehabilitation Act, and a 4-3 split on the broader question of whether section 504(d) incorporates all the requirements of Title I of the ADA or merely the substantive standard for determining what conduct constitutes unlawful discrimination.

**A. Some courts correctly hold that independent contractors may sue for discrimination under section 504 of the Rehabilitation Act.**

The Fifth, Ninth, and D.C. Circuits hold that independent contractors have the same right as employees to sue for discrimination under section 504(a) of the Rehabilitation Act. The Tenth Circuit would agree, because it holds that section 504(d) governs only the question of what conduct constitutes unlawful employment discrimination under section 504(a), not the question of who may bring suit under section 504(a).

In *Flynn v. Distinctive Home Care, Inc.*, 812 F.3d 422 (5th Cir. 2016), the Fifth Circuit considered

“whether Section 504 of the Rehabilitation Act authorizes employment discrimination suits by independent contractors. We conclude that it does.” *Id.* at 423. The court began by noting that “our sister Circuits have split on that issue, and the Supreme Court has not resolved the split.” *Id.* at 425 (footnote omitted).

The Fifth Circuit held:

We agree with the Ninth and Tenth Circuits that the Rehabilitation Act does not incorporate Title I’s requirement that the defendant be the plaintiff’s “employer” as that term is defined in the ADA. Unlike Title I of the ADA, Section 504 of the Rehabilitation Act is not limited to the employment context. To reiterate, Title I prohibits discrimination “in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” Section 504 of the Rehabilitation Act, by contrast, is far broader. It prohibits discrimination “under *any program or activity* receiving Federal financial assistance,” and “program or activity” is defined to include “*all of the operations* of ... an entire corporation, partnership, or other private organization, or an entire sole proprietorship.”

*Id.* at 427-28 (footnotes omitted).

The Fifth Circuit added that “[i]mporting Title I’s requirement that the plaintiff and the defendant have an employee-employer relationship would therefore conflict with the plain language of the Rehabilitation Act, which broadly authorizes discrimination suits against a wide variety of entities, in-

cluding non-employers.” *Id.* at 428. The court concluded: “We therefore agree with the Ninth and Tenth Circuits that the Rehabilitation Act adopts only the substantive standards for determining *what* conduct violates the Rehabilitation Act, not the definition of *who* is covered under the Rehabilitation Act.” *Id.* at 429 (citation and internal quotation marks omitted).

The Fifth Circuit rejected the reasoning of the Eighth Circuit in *Wojewski v. Rapid City Reg’l Hosp., Inc.*, 450 F.3d 338 (8th Cir. 2006). “[W]ith respect to our colleagues on the Eighth Circuit,” the court observed, “we find the *Wojewski* decision unpersuasive.” *Flynn*, 812 F.3d at 429.

The Ninth Circuit reached the same holding in *Fleming v. Yuma Reg’l Med. Ctr.*, 587 F.3d 938 (9th Cir. 2009). The court concluded that “§ 504 incorporates the ‘standards’ of Title I of the ADA for proving when discrimination in the workplace is actionable, but not Title I *in toto*, and therefore the Rehabilitation Act covers discrimination claims by an independent contractor.” *Id.* at 939.

The Ninth Circuit gave four reasons for its conclusion.

First, “the scope of the Rehabilitation Act is broader than the ADA.” *Id.* at 941. “[T]he Rehabilitation Act covers all of the operations of covered entities, not only those related to employment.” *Id.* at 942 (internal quotation marks omitted). “By contrast, Title I of the ADA prohibits” only employment discrimination. *Id.*

Second, “Congress did not use language of incorporation when it referred to the ADA in § 504. In-

stead, Congress referred to the ‘standards used to determine whether [§ 504] has been violated in a complaint alleging employment discrimination.’ 29 U.S.C. § 794(d) (emphasis added). We think the choice of words is significant.” *Id.* “When Congress said that the Rehabilitation Act should use the ‘standards’ applicable to employment discrimination claims brought under Title I, we think Congress meant for us to refer to Title I for guidance in determining whether the Rehabilitation Act was violated, but we do not think that Congress meant to restrict the coverage of the Rehabilitation Act.” *Id.* at 943.

Third, “jot-for-jot incorporation would substantially narrow the scope of the Rehabilitation Act.” *Id.* To adopt that position, “we would have to conclude that Congress narrowed the Rehabilitation Act by adopting the ADA. That conclusion contradicts the plain import of those acts.” *Id.* at 944.

Fourth, if subsection (d) imported the entirety of Title I of the ADA, not merely the ADA’s standards for defining discrimination, “there would be substantial duplication between the Rehabilitation Act and the ADA—perhaps inconsistent duplication—in the definitions of key terms.” *Id.* at 945.

The Ninth Circuit acknowledged that “that our decision puts us in conflict with the Sixth and Eighth Circuits. With all due respect, we do not find their analysis of the Rehabilitation Act persuasive.” *Id.*

The D.C. Circuit reached the same conclusion in *Redd v. Summers*, 232 F.3d 933 (D.C. Cir. 2000). *Redd* was a suit by an independent contractor against the Bureau of Printing and Engraving under section 504 of the Rehabilitation Act. *Id.* at 936. The

D.C. Circuit briskly brushed aside the relevance of her status as an independent contractor to the question of the Bureau's liability under section 504. "That the Bureau was not her employer," the court observed, "sheds no light on that question. The Bureau's tour guide contract may constitute a federal program or activity, in which case Redd is entitled to show that she was unlawfully denied participation in the contract or retaliated against for protesting such denial." *Id.* at 941.

In *Schrader v. Fred A. Ray, M.D., P.C.*, 296 F.3d 968 (10th Cir. 2002), the Tenth Circuit considered an analogous question, whether section 504(d) of the Rehabilitation Act incorporates the ADA's definition of an "employer" as an entity with at least fifteen employees. The court concluded that section 504(d) does not incorporate the ADA's definition of "employer." "We believe that § 504(d) addresses only the substantive standards for determining *what* conduct violates the Rehabilitation Act," the court explained, "not the definition of *who* is covered under the Rehabilitation Act." *Id.* at 972. This reasoning implies that section 504(d) does not bar suits by independent contractors either, because this too is a question of *who* is covered by the Rehabilitation Act, not *what conduct* is prohibited by the Rehabilitation Act.

The Tenth Circuit recognized "that the Sixth Circuit reached the opposite conclusion in *Hiler v. Brown.*" *Id.* at 974. "The *Hiler* court appears to have assumed that the Rehabilitation Act's incorporation of the ADA's 'standards' extends to the definition of 'employer.' For the reasons outlined above, we disagree." *Id.* at 975.

**B. Other courts hold that independent contractors may not sue for discrimination under section 504.**

In the decision below, the Arkansas Supreme Court joined the Eighth Circuit on the other side of the split. These courts hold that independent contractors may not sue for discrimination under section 504 of the Rehabilitation Act. The Sixth Circuit would agree, because it has diverged from the Tenth Circuit on the question of whether section 504(d) of the Rehabilitation Act incorporates the ADA's definition of "employer."

In *Wojewski v. Rapid City Reg'l Hosp., Inc.*, 450 F.3d 338 (8th Cir. 2006), the Eighth Circuit held that section 504 of the Rehabilitation Act authorizes suits only by employees, not by independent contractors. "Given the similarity between Title I [of the ADA] and the Rehabilitation Act," the court reasoned, "we construe both to apply to an employee-employer relationship and decline appellant's invitation to extend coverage of the Rehabilitation Act to independent contractors." *Id.* at 345. "The ADA requires an employee-employer relationship, and the Rehabilitation Act contemplates the same." *Id.*

Below, the Arkansas Supreme Court followed *Wojewski* in holding that independent contractors may not sue under section 504 of the Rehabilitation Act. App. 9a. "The Eighth Circuit's decision in *Wojewski v. Rapid City Regional Hospital, Inc.*, 450 F.3d 338 (8th Cir. 2006) is directly on point," the court explained. *Id.* The Arkansas Supreme Court agreed with the Eighth Circuit that "§ 504's incorporation of ADA employment standards necessarily imports Title I's employee-status requirement." *Id.*

The Sixth Circuit reached an analogous result in *Hiler v. Brown*, 177 F.3d 542 (6th Cir. 1999). The issue in *Hiler* was whether a defendant must be an “employer” to be liable under the Rehabilitation Act. The Sixth Circuit held that “individuals who do not otherwise meet the statutory definition of ‘employer’ cannot be held liable under the Rehabilitation Act’s anti-retaliation provision.” *Id.* at 547. By this reasoning, an independent contractor would be unable to sue under the Rehabilitation Act, because the defendant would not be the contractor’s employer.

Several other courts have discussed this conflict. When the issue reached the First Circuit, for instance, the court noted:

This court has not addressed whether 29 U.S.C. § 794(d) requires that plaintiffs alleging employment discrimination under § 504 meet the ADA’s definition of employee. The four circuits that have considered this issue are split. The Sixth and Eighth circuits have held that 29 U.S.C. § 794(d) does require that plaintiffs alleging employment discrimination under § 504 meet the ADA’s definition of employee. *Wojewski v. Rapid City Reg’l Hosp., Inc.*, 450 F.3d 338, 345 (8th Cir.2006); *Hiler v. Brown*, 177 F.3d 542, 544-45 & n. 5 (6th Cir.1999). The Ninth and Tenth circuits have held that 29 U.S.C. § 794(d) only requires that plaintiffs alleging employment discrimination under § 504 meet the definitions of workplace discrimination set out in the ADA. *Fleming v. Yuma Reg’l Med. Ctr.*, 587 F.3d 938, 941-46 (9th Cir.2009); *Schrader v. Fred A. Ray M.D., P.C.*, 296 F.3d 968, 972–75 (10th Cir.2002).

*Cortes-Rivera v. Department of Corrections*, 626 F.3d 21, 26 (1st Cir. 2010). See also *Adam v. Price*, 2017 WL 6460247, \*5 n.7 (N.D. Ga. 2017) (describing the split); *Tubre v. Clark McCarthy Healthcare Partners*, 2014 WL 6469414, \*2 (E.D. La. 2014) (siding with the Eighth Circuit’s view in *Wojewski* over the Ninth Circuit’s view in *Fleming*).

The conflict has also been a frequent topic of analysis in the law reviews. See Orla O’Callaghan, *Independent Contractor Injustice: The Case for Amending Discriminatory Discrimination Laws*, 55 Hous. L. Rev. 1187, 1193 (2018) (observing that “circuit courts are split as to whether the ADA’s exclusion of independent contractors extends to Section 504 [of] the Rehabilitation Act”); Michael Carlin, *Discrimination Against Disabled Contractors Under the Rehabilitation Act*, 34 Whittier L. Rev. 283, 304-05 (2013) (noting that “the Sixth and Eighth Circuits are at odds with the Ninth and Tenth Circuits”); Caitlin Petry, *Do Not Depend on the Rehabilitation Act: Why Independent Contractors are Independent of Section 504*, 8 Seton Hall Circuit Rev. 443, 449 (2012) (“Within the past six years, the Eighth and Ninth Circuits have taken differing approaches to independent contractors’ claims under the Rehabilitation Act.”); Richard Bales & Lindsay Mongenas, *Defining Independent Contractor Protection Under the Rehabilitation Act*, 34 Hamline L. Rev. 435, 436 (2011) (“The federal circuits currently are split over whether the Rehabilitation Act protects independent contractors from discrimination.”); Thomas B. Heywood, *State-Funded Discrimination: Section 504 of the Rehabilitation Act and its Uneven Application to Independent*

*Contractors and Other Workers*, 60 Cath. U.L. Rev. 1143, 1155-59 (2011) (describing the split).

Respondent conceded in its briefing below that “there is a split among the circuits as to the applicability of § 504 to independent contractors and other non-employees.” Appellants’ Ark. Sup. Ct. Br. 22. Respondent urged the state supreme court to follow the Eighth Circuit’s decision in *Wojewski* rather than the Fifth Circuit’s decision in *Flynn*, which it criticized as extending “§ 504 beyond its plain language.” *Id.*

The conflict is very unlikely to be resolved without this Court’s intervention.

## **II. The issue is important, and this case is a perfect vehicle.**

Whether the Rehabilitation Act protects independent contractors and other non-employees from discrimination is an important question. The Rehabilitation Act and the ADA are the two federal statutes that prohibit discrimination on the basis of disability. But independent contractors are not protected by the ADA. If they are to have any redress, independent contractors must rely on the Rehabilitation Act.

The conflict among the lower courts has lingered for so long because no certiorari petitions were filed in any of these cases, except in *Fleming*, the Ninth Circuit case. As explained above, *Fleming* was a poor vehicle because it was in an interlocutory posture and the split was still emerging. There is no reason to let the conflict fester any longer.

Our case is a perfect vehicle. The facts are undisputed. Indeed, Brandi Greer was awarded summary

judgment on her Rehabilitation Act claim, only to see that judgment whisked away because she was not an employee of the school district. There are no other issues cluttering up the case. If the Court is ever to resolve this conflict, our case is the ideal opportunity.

### **III. The decision below is wrong.**

Certiorari is also warranted because the decision below is badly wrong. Section 504 of the Rehabilitation Act protects all individuals in federally funded programs, not just employees, from discrimination on the basis of disability.

The text of section 504 makes this plain. Subsection (a) provides that “[n]o otherwise qualified individual with a disability” shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any” federally funded program. 29 U.S.C. § 794(a). One need not be an employee to be covered by this broad language. One need only be an “otherwise qualified individual.” If subsection (d) had never been enacted, there could be no argument that independent contractors are excluded.

Subsection (d) merely says that “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.” *Id.* § 794(d). That is, whatever conduct constitutes employment discrimination under the ADA also constitutes employment discrimination under the Rehabilitation Act. Subsection (d) says nothing about suits for *other* kinds of discrimination under

the Rehabilitation Act. Suits filed by people who are *not* employees are still governed by subsection (a), just like they were before subsection (d) was enacted.

The statutory history of subsection (d) also makes this clear. Subsection (d) was enacted to harmonize the two statutes' standard of liability, not to implicitly repeal part of subsection (a) by reducing the scope of the Rehabilitation Act's coverage. The Fifth, Ninth, and Tenth Circuits got it right when they held that subsection (d) "adopts 'only the substantive standards for determining *what* conduct violates the Rehabilitation Act, not the definition of *who* is covered' under the Rehabilitation Act." *Flynn*, 812 F.3d at 429 (quoting *Fleming*, 587 F.3d at 944 (quoting *Schrader*, 296 F.3d at 972)).

Moreover, the view adopted below by the Arkansas Supreme Court cannot be reconciled with the ADA, which specifically provides that "nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law ... that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter." 42 U.S.C. § 12201(b). By interpreting the ADA to reduce the scope of the Rehabilitation Act's coverage, the decision below runs afoul of this provision.

Finally, the decision below is also contrary to the purpose of the Rehabilitation Act. Under the view of the court below, recipients of federal funds could discriminate with impunity against disabled independent contractors, but they could not discriminate against other people with disabilities, such as students, *A.J.T. v. Osseo Area Schools*, 605 U.S. 335 (2025), arrestees, *Barnes v. Gorman*, 536 U.S. 181

(2002), customers, *Ellison v. U.S. Postal Serv.*, 84 F.4th 750 (7th Cir. 2023), and employees. This would be a nonsensical way to interpret the Rehabilitation Act, which Congress intended to be “a comprehensive federal program aimed at improving the lot of the handicapped.” *Consolidated Rail Corp. v. Darro-ne*, 465 U.S. 624, 626 (1984).

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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