

In the
Supreme Court of the United States

BRANDI GREER,

Petitioner,

v.

BENTON SCHOOL DISTRICT,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Respondent makes three claims: first, that the lower courts did not decide the Question Presented (BIO 11-14); second, that the judgment below did not turn on the Question Presented (*id.* at 15-16); and third, that the decision below is correct (*id.* at 17-18). Respondent errs each time.

I. The lower courts *did* decide the Question Presented.

The Arkansas Supreme Court would be astonished to hear that the question this petition “presents is one that the lower courts did not decide.” *Id.* at 11. The court would be equally surprised by respondent’s assertion (*id.* at 11-14) that this case does not implicate the circuit split over whether independent contractors may sue under section 504 of the Rehabilitation Act.

The 5-2 division in the Arkansas Supreme Court was explicitly about whether the Rehabilitation Act protects independent contractors like it protects employees. The majority held that “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.” Pet. App. 7a. The majority relied on *Wojewski v. Rapid City Regional Hospital, Inc.*, 450 F.3d 338 (8th Cir. 2006) to conclude that “§ 504’s incorporation of ADA employment standards necessarily imports Title I’s employee-status requirement.” Pet. App. 9a. The majority rejected “decisions from other circuits” (the Fifth, Ninth, and Tenth) on the ground that their “approach cannot be squared with the statute’s text.” *Id.*

The dissenters, by contrast, found persuasive “the well-reasoned decisions of the Courts of Appeal for the Fifth, Ninth, and Tenth Circuits,” the same decisions rejected by the majority. *Id.* at 19a. The dissenters relied on these decisions to conclude 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.* The dissenters explained that they “would reject appellants’ argument that an employment relationship is required to state a claim under the Rehabilitation Act.” *Id.*

Respondent is thus mistaken in asserting that the Question Presented “is one that the lower courts did not decide.” BIO 11.

Respondent makes much of the distinction between suits for discrimination and suits for retaliation, *id.* at 11-14, but that distinction played no part in the decision below. The majority rejected Brandi Greer’s claim because she was an independent contractor, not because her suit was for retaliation rather than discrimination. The majority held that “[b]ecause Title I of the ADA protects employees—not independent contractors or other nonemployees—courts applying § 504(d) have required the same employment relationship.” Pet. App. 8a-9a. Nothing in the decision below turned on whether Brandi Greer sued for discrimination or retaliation.

That said, we must acknowledge that the Question Presented includes two superfluous words—“for discrimination.” The issue the Court should decide is whether independent contractors have the same right as employees to sue under section 504 of the Rehabilitation Act, whether for discrimination, retal-

iation, or anything else. This is the question that divided the Arkansas Supreme Court. It is the issue that has split the circuits. The Court's resolution of this question will determine the outcome of this case.

II. The judgment below *did* turn on the Question Presented.

Respondent erroneously suggests that the judgment below “rests on independent grounds unaffected by the question presented.” BIO 15. Respondent misunderstands the meaning of an “independent ground.”

Brandi Greer's amended complaint included three counts. Pet. App. 3a. First, she alleged that respondent, the Benton School District, violated the Rehabilitation Act. *Id.* Second, she alleged that Lori Bacon, the former school principal, and Lisa Gattis, the former assistant superintendent, violated 42 U.S.C. § 1983. *Id.* Third, she alleged that Bacon and Gattis violated the Arkansas Civil Rights Act. *Id.* The trial court granted Greer's motion for summary judgment on all three counts. *Id.* at 5a.

In the decision below, the Arkansas Supreme Court reversed on all three counts. First, the court held that Greer could not sue the school district under the Rehabilitation Act because she was an independent contractor rather than an employee. *Id.* at 7a-10a. Second, the court held that Greer could not recover on her official-capacity claims against Bacon and Gattis under section 1983 and the Arkansas Civil Rights Act because she neither pled nor proved a policy or custom amounting to a constitutional violation. *Id.* at 11a-13a. Third, the court held that Greer could not recover on her individual-capacity claims

against Bacon and Gattis under the Arkansas Civil Rights Act because her speech was unprotected by the First Amendment. *Id.* at 14a-17a.

Respondent contends that the two latter holdings are “independent grounds” for the decision below. BIO 15. They are not. The two latter holdings addressed different claims against different defendants. An “independent ground” is one that is “adequate to support the judgment.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). The decision of the Arkansas Supreme Court on counts two and three is not adequate to support its judgment, because if Greer had won on count one, the court’s judgment would have been different. The state supreme court would have affirmed the judgment of the trial court against the school district, as the dissenters urged, and Greer would have been entitled to the damages she was awarded in the trial court. The fact that she lost in the Arkansas Supreme Court on counts two and three, against Bacon and Gattis, does not constitute an independent ground for her loss on count one, against the school district.

III. The decision below is wrong.

Respondent defends the decision below, BIO 17-18, without addressing any of the arguments made by the circuits that disagree. *See 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); *Schrader v. Fred A. Ray, M.D., P.C.*, 296 F.3d 968, 971-75 (10th Cir. 2002); *Redd v. Summers*, 232 F.3d 933, 941 (D.C. Cir. 2000). As we explained in our certiorari petition, Pet. 20-22, these arguments are irrefutable.

First, the text of the statute makes clear that independent contractors are covered. Section 504(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). The statute does not limit its coverage to employees. It protects everyone who is an “otherwise qualified individual.”

Subsection (d) clarifies 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). This provision merely says that where a complaint alleges *employment* discrimination, the conduct that constitutes employment discrimination is the same under both statutes. This provision does *not* say that only employees may bring suit.

Second, the statutory history points in the same direction. 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. As the circuits on the larger side of the split have correctly concluded, 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)).

Third, the decision below is contrary to the text of the ADA, which states that “nothing in this chapter shall be construed to invalidate or limit the reme-

dies, 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). The decision below violates this provision by interpreting the ADA to reduce the scope of the Rehabilitation Act’s coverage.

Finally, the purpose of the Rehabilitation Act was to protect *all* people with disabilities, not just employees. *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 626 (1984) (noting that the Rehabilitation Act is “a comprehensive federal program aimed at improving the lot of the handicapped”). The Rehabilitation Act protects students. *A.J.T. v. Osseo Area Schools*, 605 U.S. 335 (2025). It protects arrestees. *Barnes v. Gorman*, 536 U.S. 181 (2002). It protects customers. *Ellison v. U.S. Postal Serv.*, 84 F.4th 750 (7th Cir. 2023). It would make no sense for independent contractors to be the one group of disabled people who are unprotected by the statute.

Rather than addressing these points, respondent argues that Brandi Greer should not be allowed to file suit under the Rehabilitation Act because her son is the one with a disability, not her. BIO 18. But this is a completely different issue, one that respondent could have raised below but did not. Indeed, respondent conceded below that the Rehabilitation Act prohibits retaliation against anyone who “has opposed any act or practice” the statute makes unlawful, which is precisely what Greer did when she complained about how her son was being treated in school. Brief in Support of Motion to Dismiss at 4 (Arkansas Supreme Court Record at 33).

The decision below takes the wrong side of a longstanding circuit split over whether independent contractors can sue under the Rehabilitation Act. The Court should grant certiorari and reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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