

No. 25-180

IN THE
Supreme Court of the United States

JOHN DOE,
Petitioner,

v.

DYNAMIC PHYSICAL THERAPY, LLC, ET. AL.,
Respondents.

**On Petition for a Writ of Certiorari to the
Louisiana Court of Appeal,
First Circuit**

**BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI**

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STATEMENT

Dynamic Physical Therapy, LLC and Scott Newton, PT, through their undersigned counsel, respectfully submit this brief in Opposition to the Petition for a Writ of Certiorari seeking review of the judgment of the Louisiana Court of Appeal, First Circuit.

I. SUMMARY OF OPPOSITION

John Doe (the “Petitioner Patient”) was not denied “the corresponding remedy” authorized by Title III of the Americans with Disabilities Act¹ (“ADA” or “Title III”) and § 504 of the Rehabilitation Act² (“RA” or “§ 504”). Pet. at i. Petitioner never had any remedy in damages under the ADA or RA to begin with. Emotional distress damages are not recoverable under § 504. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 230 (2022). And federal courts around the country “have made clear that injunctive relief is the only private relief available in a Title III case.” *Hillesheim v. Holiday Stationstores, Inc.*, 953 F.3d 1059, 1062 (8th Cir. 2020) (collecting cases). The Petitioner Patient seeks only emotional distress damages in his state court Petition. This Opposition is being filed to highlight that the Petition contests state application of a state law limiting money damages when the Petitioner Patient has no damages remedy under his federal claims.

The Petitioner also makes the claim that this is a “Reverse-*Erie*” case. Pet. at 11. It is not. The only federal laws that Petitioner argues should have been applied in state court are Title III and § 504, which again do not provide a damages remedy for his

¹ 42 U.S.C. § 12181 *et seq.*

² 29 U.S.C. § 794.

emotional distress claims. The result of these allegations would have been the same in any forum.³

Moreover, this Court should not review Louisiana’s dismissal of a petition for damages available only under state law and based on a state law limiting the availability of civil damages during declared emergencies. As part of its reserved police power under the 10th Amendment, Louisiana can regulate liability for health care providers during a declared public health emergency. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 35 (1905). Louisiana’s exercise of that police power in a manner that is not inconsistent with Title III or § 504 does not merit the granting of certiorari.

II. FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

This Petition concerns claims for emotional distress damages based on the alleged refusal of Dynamic Physical Therapy, LLC (“Dynamic”) and one of its physical therapists, Scott Newton, PT, (“Newton”) (collectively, the “Respondent Health Care Providers”), to provide the Petitioner Patient with aquatic physical therapy (“aquatherapy”).⁴ Petitioner alleged that he suffers from “ongoing chronic pain” and that on December 30, 2020, he met with Mr. Newton for a consultation and tour of Dynamic.⁵ During that consultation, Petitioner admits Mr. Newton “worked on [his] back” to gauge his pain

³ See FED. R. CIV. P. 8(a)(1)–(2) (providing that the pleading commencing the case must provide “a short and plain statement of the claim showing that the pleader is entitled to relief” and that the demand “may include relief in the alternative”). Here, the Petitioner requested only damages and did not articulate any other bases of relief.

⁴ Verified Pet. for Damages at 2, ¶ 6.

⁵ Verified Pet. for Damages at 1, ¶ 4; *id.* at 2 ¶ 6.

levels.⁶ At the conclusion of the tour, Petitioner filled out paperwork and made two follow-up appointments for aquatherapy—one for the very next day (which was New Year’s Eve) at 2:00 p.m. and another for the following Monday at 2:00 p.m.⁷

The Petitioner alleged that before his appointment on New Year’s Eve at 10 a.m., he received a phone call from Mr. Newton advising that his HIV status was a contraindication for aquatherapy but that Petitioner was still “more than welcome to come in for regular physical therapy.”⁸ Petitioner admits he declined to attend regular physical therapy.⁹

A Verified Petition for Damages against the Respondent Health Care providers was filed nearly one year later in a Louisiana trial court, asserting claims for emotional distress damages under the Louisiana Civil Rights Act for Persons with Disabilities,¹⁰ the Americans with Disabilities Act of 1990,¹¹ and the Rehabilitation Act of 1973.¹² The Respondent Health Care Providers sought dismissal by filing a Peremptory Exception of No Cause of Action, asserting that civil liability for damages was limited in this case by the Louisiana Health Emergency Powers Act (“LHEPA”).¹³

⁶ Verified Pet. for Damages at 2, ¶ 6.

⁷ *Id.*

⁸ Verified Pet. for Damages at 2, ¶ 9.

⁹ *Id.*

¹⁰ La. R.S. 46:2251 *et seq.*

¹¹ 42 U.S.C. § 12101 *et seq.*

¹² 29 U.S.C. § 701 *et seq.*

¹³ La. R.S. 29:760 *set seq.*

During a declared emergency, the LHEPA protects health care providers such as the Respondents from civil liability absent a showing of “gross negligence” or “willful misconduct.”¹⁴ The Respondent Health Care Providers provided care to the Petitioner Patient in December 2020 during a declared state of public health emergency for the COVID-19 pandemic. Respondents argued that the Petition failed to state a claim for damages because it did not plead facts showing “gross negligence” or “willful misconduct.” The Louisiana trial court sustained the exception and dismissed the verified petition, but granted the Petitioner Patient leave to amend.

The Petitioner Patient amended his filing to include additional allegations concerning the Respondent Health Care Providers’ alleged intent in denying the Petitioner Patient his preferred treatment. On the Amended Petition, too, the trial court sustained Respondents’ renewed Exception of No Cause of Action and dismissed the case.

On appeal, the trial court’s dismissal was affirmed. *Doe v. Dynamic Physical Therapy, LLC*, 404 So. 3d 1008, 1016 (La. App. 1 Cir. 2024) (reasoning the amendment did not add anything “more than a conclusory allegation of intentional conduct”). Pet. App.19a.

Petitioner’s brief focuses on Title III and § 504 purportedly preempting the LHEPA, but he did not include most of that argument in his appeal to the Louisiana First Circuit. Rather, he “only ma[de]

¹⁴ Under La. R.S. 29:771(B)(2)(c)(i), “no health care provider shall be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct” when the alleged conduct occurred “[d]uring a state of public health emergency.”

conclusory allegations” of preemption “without supporting facts and cite[d] no legal authority supporting [that] argument.” *Id.* at 1017–18. Pet. App.22a.

The Louisiana Supreme Court denied Petitioner’s application for writs of certiorari or review on April 29, 2025. In the one brief written dissent from writ denial, Justice Griffin still noted that “the United States Supreme Court has held that general emotional distress damages are not recoverable under § 504” and that “Title III of the ADA does not allow” for “private party damages.” *Doe v. Dynamic Physical Therapy, LLC*, 407 So. 3d 623, 624 (La. 2025).¹⁵ The instant Petition for a Writ of Certiorari followed.

III. ARGUMENT IN OPPOSITION

A. Emotional distress damages under Title III of the ADA or § 504 of the RA are unavailable to Petitioner in this private enforcement action.

The Petition begins with a false premise: that if only his claims had arisen in another state or at a different time, the Petitioner Patient could have pursued compensatory emotional distress damages under Title III and § 504. This premise is incorrect. Monetary damages are unavailable in a private suit

¹⁵ Pet. App.4a–5a. Justice Griffin also noted in dissent that *Cummings*, 596 U.S. 212 (2022) “has been the subject of major criticism,” but the dissent cites only a single law review note that has been cited by no other court: *Without Remedies: The Effect of Cummings and the Contract-Law Analogy on Antidiscrimination Spending Clause Plaintiffs*, 138 HARV. L. REV. 1407 (2025). *Doe*, 62197. Pet. App.4a. In any event, the legislature has not altered § 504 in response to *Cummings* or this Note’s criticism.

brought under Title III,¹⁶ and this Court recently made clear that emotional distress damages are not recoverable by private parties under § 504. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 230 (2022). The Petitioner Patient’s claims for monetary damages under these federal statutes, therefore, would not have survived in *any* forum at *any* time. Even if this Court were to consider the Petition, any potential reversal or remand would be futile in the light of the Petitioner Patient’s facially defective federal claims. For this reason alone, the Petition is not worthy of this Court’s review.

B. Petitioner lacks standing to pursue *any* claims under Title III of the ADA.

The Petition’s flaws run deeper. The Petitioner Patient’s only available remedy under Title III is prospective injunctive relief. *Fay School*, 931 F.3d at 9 (holding that “damages for past harms are not available” under Title III and “[t]he only relief that is available is ‘preventive’ injunctive relief”) (cleaned up). However, the Petitioner Patient did not request prospective injunctive relief in his Original or First Amended Verified Petition for Damages (emphasis added). Even if the Petitioner Patient had sought injunctive relief, he also failed to allege any facts

¹⁶ *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007) (“[M]onetary damages are not available in private suits under Title III of the ADA”); *G. v. Fay School*, 931 F.3d 1, 9 (1st Cir. 2019) (stating that “damages for past harms are not available” under Title III and “[t]he only relief that is available is ‘preventive’ injunctive relief”) (cleaned up); *Hillesheim v. Holiday Stationstores, Inc.*, 953 F.3d 1059, 1062 (8th Cir. 2020) (“This court and other circuits have made clear that injunctive relief is the only private relief available in a Title III case”) (collecting cases). See also 42 U.S.C. § 12188(a)(2) (limiting remedies for private enforcement of Title III to prospective injunctive relief).

supporting that he would have standing to seek that remedy.¹⁷

Petitioner alleged instead that he first visited the Respondent Health Care Providers during his initial consultation,¹⁸ and he declined their offer to return for his appointment the next day to take advantage of an alternative modality of therapy that he was “more than welcome” to receive.¹⁹ Thus, even if the Petitioner Patient had raised prospective injunctive relief as a remedy at any stage in these proceedings (and he did not), he alleged no facts establishing that he would have standing to seek that remedy.

C. Patient preferences for medical treatment cannot form the basis of a claim under Title III of the ADA.

The Petitioner Patient was not denied treatment. He alleged he was more than welcome to receive physical therapy. Petitioner complains instead that he did not receive his medical treatment of choice. Health care providers, however, must be free to recommend the best form of treatment for each patient based on their individual assessment of each case. A health care provider’s choice of the best form of therapy for a given patient may be criticized as incorrect, but that would be the basis for a claim in medical malpractice—not federal anti-discrimination law. *See Costin v. Glens Falls Hospital*, 103 F.4th 946, 954 (2d Cir. 2024) (finding that “[e]ven if” a health

¹⁷ See, e.g., *Scherr v. Marriott Int’l, Inc.*, 703 F.3d 1069, 1075 (7th Cir. 2013) (holding that a plaintiff must allege “an intent to return to the particular place (or places) where the violations are alleged to be occurring to satisfy standing requirements under Title III).

¹⁸ Verified Pet. for Damages at 2, ¶ 6.

¹⁹ Verified Pet. for Damages at 2, ¶ 9.

care provider’s “decision-making was faulty or constituted malpractice, it cannot support a claim under the RA or ADA”).

The Petitioner Patient’s allegations reveal that he was not denied *access* to the Respondent Health Care Providers’ medical services based on his HIV status.²⁰ The Petitioner concedes that during his consultation Mr. Newton “worked on [his] back”²¹ and he was offered future physical therapy that he declined.²² Had he requested injunctive relief (he did not), Petitioner’s Title III claims still would not have survived in any forum because “the purpose of the ADA’s public accommodations requirement is to ensure accessibility to the goods” and services offered, “not to alter the goods” and services themselves. *Parker*, 121 F.3d at 1012 (quotations omitted). While Title II of the ADA *may* support a claim for appropriate and desired services for public entities, the Petitioner Patient brought only claims under Title III against a public accommodation. The Petitioner Patient’s reliance on *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 592 (1999) is, therefore, misplaced, as *Olmstead* pertained only to discrimination under Title II. Respondent Health Care Providers’ treatment decisions on the best form of therapy for

²⁰ See *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006, 1012 (6th Cir. 1997) (finding that Title III governs access to and availability of goods and services—not the contents of those goods and services); *Powell v. Bartlett Medical Clinic and Wellness Ctr.*, No. 20-cv-2118, 2021 WL 243194, at *10 (S.D. Ohio Jan. 25, 2021) (“[A]s noted, the very basis of his Complaint is that he *had* access to Defendants’ medical services—he was an established patient—but, over time, he came to disagree with his course of treatment.”).

²¹ Verified Pet. for Damages at 2, ¶ 6.

²² Verified Pet. for Damages at 2, ¶ 9.

the Petitioner Patient do not give rise to a federal discrimination claim under Title III.

D. This case does not present a “reverse-*Erie*” issue.

The Petitioner’s reliance on the so-called “reverse-*Erie*” doctrine also is misplaced. This Court has held that a “state law that immunizes” conduct “otherwise subject to” federal claims “is preempted...because the application of the state immunity law would thwart the congressional remedy.” *Felder v. Casey*, 487 U.S. 131, 139 (1988) (cited in Pet. at 16–17). However, the LHEPA does not immunize a health care provider from injunctive relief based on federal antidiscrimination laws; rather, it immunizes a health care provider from “civil liability” based on alleged conduct absent “gross negligence” or “willful misconduct” during the pendency of a State-declared public health emergency La. R.S. 29:771(B)(2)(c)(i).

The discussion of reverse-*Erie* is a forced attempt to create writ grant considerations when there are none. Pet. at 33. Application of the LHEPA is not—and cannot be—“incompatible with the compensatory goals”²³ of Title III or § 504 because monetary damages are unavailable to the Petitioner Patient under Title III, and emotional distress damages are unavailable under § 504. *See* 5–6, *supra*. And to the extent the Petitioner Patient attacks the LHEPA on the basis that it *might* thwart other federal antidiscrimination laws in which compensatory damages are available, *see* Pet. at 36–37, he impermissibly seeks an advisory opinion on federal statutes that are not at issue.

²³ *Felder*, 487 U.S. at 143.

E. Louisiana may regulate state law damages remedies during a public health emergency.

Petitioner contends this case still is worthy of consideration because “state courts apply emergency immunity laws inconsistently,” but even if this premise were correct (it is not), this Petition is not the vehicle to address such an alleged inconsistency in state application of state laws. Pet. at 33. The LHEPA provides health care providers relief from certain actions for money damages during an emergency. As previously discussed, damages are available only for the Petitioner’s state law claims. Because there is no federal damages remedy, the Louisiana courts’ decision to apply the LHEPA provides an adequate and independent state law ground to support the dismissal of this Petition for damages. *See Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) (“If the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.”).

As part of their reserved police power under the 10th Amendment, states can regulate liability for health care providers during a declared public health emergency. *See Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 35 (1905). The LHEPA’s limitation of civil money damages only to intentional and willful misconduct during the COVID-19 pandemic is a valid exercise of those police powers. There is no conflict with the LHEPA and federal law here when private enforcement actions against public accommodations or commercial entities under Title III or § 504 also do not allow for money damages. Louisiana’s regulation of state law remedies is not grounds for this Court’s review.

CONCLUSION

Petitioner did not allege a federal claim for injunctive relief, and he has no federal claim for emotional distress damages under Title III of the ADA or § 504 of the RA in this private enforcement action. When the Petitioner has no right to damages under federal law or state law for his claims, there is no conflict of laws for this Court to resolve.

The Petition should be denied.

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