No. 24-6576

United States Court of Appeals for the Ninth Circuit

JEFFREY POWERS ET AL.
Plaintiffs–Appellees

v.

DENIS RICHARD MCDONOUGH ET AL.,
Defendants–Appellants

On Appeal from the U.S. District Court
for the Central District of California
No. 2:22-cv-08357-DOC-KS

UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* SWORDS TO PLOWSHARES IN SUPPORT OF APPELLEES, OPPOSING THE MOTION TO STAY

LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL
Daniel L. Nagin**
Dana Montalto**
122 Bolyston St.
Jamaica Plain, MA 02130
Tel: (617) 522-3003
** *Admission application pending*

PERKOWSKI LEGAL, PC
Peter E. Perkowski*
515 S. Flower St. Ste. 1800
Los Angeles, CA 90071
Tel: (213) 340-5796

* *Counsel of record*

SWORDS TO PLOWSHARES
Maureen E. Siedor
1060 Howard Street
San Francisco, CA 94103
Tel: (415) 252-4788

Attorneys for *Amicus Curiae*
SWORDS TO PLOWSHARES

CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, Amicus states that it is a 501(c)(3) not-for-profit organization with no parent corporation. No publicly owned corporation holds ten percent or more of the stock of Amicus, as it does not issue stock.

Under Rules 27 and 29(b) of the Federal Rules of Appellate Procedure, movant and proposed amicus Swords to Plowshares respectfully moves for leave to file the accompanying brief as *amicus curiae* in opposition to Appellees' Motion to Stay Pending Appeal. Under Circuit Rule 27-1, counsel for Amicus notified counsel for the parties of this motion. Counsel for the parties to this appeal replied and stated that the motion is unopposed.

I.
INTEREST AND IDENTITY OF *AMICUS CURIAE*

Swords to Plowshares ("Swords" or "Amicus") is a community-based not-for-profit organization representing the interests of veterans—particularly low-income veterans and veterans experiencing housing insecurity—through advocacy, public education, and direct representation before the Department of Veterans Affairs ("VA") and other government agencies. In addition to legal work, Swords provides supportive services, including case management, counseling, and support groups, to address the basic needs of veterans and promote their overall health and wellbeing. Through its housing services, Swords helps unhoused veterans find emergency and temporary shelter and transitional housing, provides

permanent supportive housing to 400 veterans, and offers rent support and eviction prevention services.

Through this work, Swords has developed special knowledge and expertise that is relevant to the issues before the Court on Appellant's motion to say: First, veterans' access to agency processes—including VA's claims adjudication process—used to protect and vindicate veterans' rights and obtain much-needed benefits; and second, the importance of housing stability for the overall health and well-being of veterans with disabilities. Based on this knowledge and expertise, Swords concludes that the Veterans Justice Reform Act ("VJRA") does not justify a stay because it does not bar Appellees' causes of action under Section 504 of the Rehabilitation Act, and further that staying the judgment pending appeal would delay relief that is critical to disabled veterans' post-service well-being. Swords offers its unique perspectives with the hope and belief that it will assist the Court in deciding Appellants' motion to stay.

II.
DESIRABILITY AND RELEVANCE OF THE PROPOSED BRIEF

Based on their work and experience in representing the interests of veterans—particularly low-income veterans and veterans experiencing

housing insecurity, Amicus has an interest in this matter as well as information and a unique perspective that would assist the Court in its consideration of the motion to stay.

The proposed amicus brief is helpful and relevant. First, it addresses the VJRA jurisdictional issue from the perspective of advocates and practitioners who interact with VA claims processes *and* who litigate in federal district courts and who therefore are familiar with how a decision based on the VJRA will affect veterans' ability to remedy disability-based discrimination by asserting Rehabilitation Act causes of action.

Second, from a policy standpoint, it discusses the stakes at issue in the motion, namely, the importance of stable housing in the well-being of veterans', especially veterans with disabilities, and how a stay would further imperil housing-insecure veterans in Los Angeles.

Accordingly, Swords respectfully requests that the Court for leave to appear as *amicus curiae* in the above-captioned matter, and to file the brief accompanying this motion.

Dated: November 20, 2024

Respectfully submitted,

By: /s/ Peter Perkowski
Peter E. Perkowski

LEGAL SERVICES CENTER OF
HARVARD LAW SCHOOL
Daniel L. Nagin**
Dana Montalto**
122 Bolyston St.
Jamaica Plain, MA 02130
Tel: (617) 522-3003
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PERKOWSKI LEGAL, PC
Peter E. Perkowski*
515 S. Flower St. Ste. 1800
Los Angeles, CA 90071
Tel: (213) 340-5796

* *Counsel of record*

Attorneys for *Amicus Curiae*
SWORDS TO PLOWSHARES

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2024, I caused this motion to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, and that all current participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system:

Date: November 20, 2024 /s/ Peter E. Perkowski
Peter E. Perkowski (CA Bar #199491)

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LEGAL SERVICES CENTER OF
HARVARD LAW SCHOOL
Daniel L. Nagin**
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RULE 29 STATEMENT

In accordance with Federal Rule of Appellate Procedure 29, Amicus states that no counsel for a party authored this brief in whole or in part, and no person or entity, other than Amicus and its counsel, made a monetary contribution to the preparation or submission of the brief.

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IDENTITY AND INTERESTS OF AMICUS

Founded in 1974, Amicus Curiae Swords to Plowshares ("Swords") is a community-based not-for-profit in San Francisco that provides needs assessment and case management, employment and training, housing, and legal assistance to veterans—particularly veterans who are low-income, experiencing housing insecurity, or living with mental health conditions. Swords promotes and protects the rights of veterans through advocacy and public education; partnerships with local, state, and national entities; and direct representation of veterans before the Department of Veterans Affairs ("VA") and other agencies. In its legal work, Swords assists veterans at all levels of the VA adjudicatory system in obtaining benefits and healthcare. In its housing work, Swords helps veterans find emergency and temporary shelter and transitional housing, provides permanent supportive housing to 400 veterans, and offers rent support and eviction prevention services.

Through its work, Swords has found that Article III courts are an important venue for advancing veterans' interests, and that such courts are the only place where veterans and veterans' advocacy groups can bring claims that challenge systemic, non-adjudicatory VA policies and practices. Swords has an interest in preserving such access to Article III courts and

frequently files amicus briefs before the U.S. Courts of Appeals and other courts to do so.

I.
INTRODUCTION

Veterans' disability benefits reflect our nation's fundamental promise to care for those who have served. *See Noah v. McDonald*, 28 Vet. App. 120, 130 (2016). That promise is broken when VA's policy decisions and inactions cause disabled veterans to face financial hardships, homelessness, increased health problems, and other adversities that interfere with their ability to access VA benefits.

This is one of those cases: Despite their obligations to provide permanent supportive housing and other services on the West Los Angeles Medical Center & Community Living Center Grounds, Appellants have failed to do so—inactions that the district court found in violation of Section 504 of the Rehabilitation Act of 1973 ("Rehab Act"). The relief ordered will make a huge difference in the lives of thousands of veterans who, because of Appellant's adjudicated discrimination, have faced barriers to accessing VA benefits they have already earned. Delaying that relief will allow Appellants' violations of the law to continue.

Appellant's request for a stay should be denied. First, the Veterans Justice Reform Act ("VJRA"), 38 U.S.C. § 511, does not justify a stay. Congress intended the VJRA to improve the process of adjudicating veterans' benefits claims, not to displace garden-variety Rehab Act claims seeking disability accommodations. And second, for Appellees, the accommodations here are crucial: permanent supportive housing is life-changing for veterans who are disabled and housing insecure. Delaying the injunctive relief would be devastating to their health and well-being, even deadly. Neither law nor equity warrants a stay.

II.
ARGUMENT

A. The jurisdictional bar of the VJRA does not justify a stay.[1]

Appellants support their stay request by arguing that the VJRA bars jurisdiction over the Rehab Act claims. *See* Stay Mot., at 10-12 (discussing 38 U.S.C. § 511(a)). That argument has no merit, and Appellees are unlikely to prevail on it. It's also bad policy: adopting the argument would have serious and far-reaching consequences for disabled veterans.

[1] Before the district court, Amicus discussed how the VJRA is unsuited for adjudicating Rehab Act complaints because they are not claims for benefits under laws administered by VA. ECF 92. Amicus briefly summarizes those arguments here, rather than repeating them.

1. The Veterans Benefits Administration cannot adjudicate Rehab Act causes of action.

As detailed in Swords' amicus brief before the district court, VA's claims adjudication process lacks the authority to decide Rehab Act complaints, including the causes of action asserted below, and grant injunctive relief of the nature provided by the district court. There is no process or regulation under which a veteran can present to a VA Regional Office, prepare and submit a form asking for accommodations under the Rehab Act, and obtain a decision requiring VA to build permanent supportive housing.

Rather, the VA claims adjudication process is limited to deciding whether an individual claimant is entitled to a benefit under laws administered by VA, and Rehab Act complaints are not seeking entitlement to any such benefit. Thus, neither VA's claims adjudication process nor the courts set up to review final decisions from that process have the ability or authority to consider and resolve Rehab Act complaints.

By contrast, the Rehab Act is meant to protect qualified individuals from discrimination based on disability, and it applies to VA as much as it does any other federal program or agency. Veterans have rights under the

Act—rights equal to other citizens. Exempting VA from compliance with the Rehab Act would be contrary to its plain language and purpose.

2. The Rehab Acts causes of action do not "relate to" VA benefits determinations.

Appellants don't appear to contend that the Rehab Act causes of action are a necessary part of any specific or even hypothetical VA benefit determination—or to any decision made, or that would be made, in the course of reaching such determination. Instead, Appellants assert, without elaboration, that "determinations of what accommodations a Veteran needs to access benefits are determinations that *relate to* benefits decisions." Stay Mot. at 11 (quotation marks omitted). There is no support for the assertion.

After all, accommodations under the Rehab Act come in many forms: sign language interpreters for people who are deaf or hard of hearing, screen readers for people who are blind or vision impaired, removal of physical barriers and lower counters for people who use wheelchairs, and so on. Appellants cannot credibly argue that a determination that a veteran needs one of these physical accommodations "relates to" a benefits decision, even if it were needed for the veteran to access that benefit (such as to access healthcare at a VA medical facility). But Appellants' argument

doesn't somehow carry more water where, as here, the accommodation involves barriers related to mental health disabilities rather than physical ones.

3. Applying the VJRA to bar the Rehab Act causes of action would deprive veterans of any judicial forum to assert them.

Further, if the Court were to accept Appellants' tortured jurisdictional argument, veterans would be left without a judicial forum to assert Rehab Act causes of action. The effect would be to deny veterans access to all courts—whether Article I or Article III—for relief from violations of a statute that Congress meant to apply to all federal agencies.

But in enacting § 511, Congress did not intend to leave veterans and veterans' advocacy groups without any forum to challenge VA's systemic, non-adjudicatory policies and practices. Indeed, a primary purpose of the VJRA was to *strengthen* due-process rights of veterans making VA claims for benefits. A ruling that eliminates access to *any* court for Rehab Act complaints would run contrary to that purpose.

The district court considered, and rejected, Appellant's jurisdictional arguments, and arguments in opposition—including Swords' amicus brief addressing the VJRA in detail—in a thorough, well-reasoned opinion. The

district court did not err in rejecting Appellants' arguments. Because VA's claims process cannot consider and decide the Rehab Act causes of action, federal courts should not decline to exercise jurisdiction over them.

B. Staying the judgment would delay relief that is critical to disabled veterans' post-service well-being.

Appellants are not just wrong on the law; their error, if accepted, would have disastrous consequences for veterans.

VA's primary function is to support and serve veterans—as well as their survivors, dependents, and caregivers—after they leave service. VA accomplishes this by providing eligible recipients with benefits and services authorized by Congress. *E.g.*, *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). But VA's ability to achieve its supportive function is tested, even undermined, by forces that interfere with veterans' ability to access VA programs and services, such as mental health conditions and housing instability. The temporary and permanent housing that the district court ordered—relief that VA agrees is necessary and is committed to provide—addresses a critical need for disabled veterans in the Los Angeles area. Staying the judgment would worsen the proven troubles veterans have faced in accessing VA benefits.

1. Stable housing is essential for health and wellness, especially for veterans with mental health conditions.

Social science has recognized that a person's overall well-being is linked to what are known the social determinants of health—"the nonmedical factors that influence health outcomes."[2] These are "the conditions in which people are born, grow, work, live, worship, and age" and include a wide range of systems, policies, and personal circumstances that shape a person's life.[3] Stable, affordable housing is one such social determinant of health, and one that is linked very closely to health outcomes. Access to housing both affects and is affected by mental health:

> Experiencing housing instability may contribute to stress, anxiety or other mental health symptoms. The symptoms of a serious mental health condition can also lead to housing instability. Moreover, it's well-documented that people with mental illness experience housing discrimination throughout the rental process. [¶] People with mental illness are overrepresented in the unhoused population, as about 1 in 5 people experiencing homelessness in the U.S. have a serious mental health condition. Homelessness has a profoundly negative impact on mental health … .[4]

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[2] Centers for Disease Control, Social Determinants of Health (SDOH) (Jan. 17, 2024), https://www.cdc.gov/about/priorities/why-is-addressing-sdoh-important.html

[3] *Ibid*.

[4] National Alliance of Mental Illness, Social Determinants of Health: Housing, https://www.nami.org/advocacy/policy-priorities/supporting-

Of course, access to stable and affordable housing has a positive effect on people's lives, supporting recovery, preventing hospitalizations, and reducing criminal justice involvement, among other things.[5] Because a significant number of veterans leave service with physical and mental health conditions, they are more affected by these correlations.

By experience, Amicus is well-familiar with how housing instability affects the health and well-being of disabled veterans. Swords provides critical services to nearly 3,000 homeless and extremely low-income veterans each year. Almost half of them have service-connected disabilities, and many more are only one paycheck away from homelessness. The COVID-19 health crisis only worsened the health, housing, employment, and food needs of veterans and their families who were already vulnerable.

Amicus has found that stable housing transforms the lives of these veterans and families. Due in large part to services provided by Swords

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community-inclusion-and-non-discrimination/social-determinants-of-health-housing/; *see also* Office of Disease Prevention & Health Promotion, Housing Instability – Health People 2030 (U.S. Dept. of Health & Human Servs.) (housing instability "may negatively affect physical health and make it harder to access health care"), https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/housing-instability

[5] Social Determinants of Health: Housing, *supra*.

and other organizations, veteran homelessness in the San Francisco area dropped by 40%; 95% of veterans receiving services remain housed, with housing stability contributing to more positive health and life outcomes.

2. The injunctive relief granted below promises to dramatically improve the lives of disabled veterans in Los Angeles.

Over 3,000 veterans in Los Angeles County face housing insecurity. *See* Post-Trial Op. at 11-12, 79-80. As the district court recognized, most have severe disabilities. *Id.* at 39. Since at least 2016—when in response to litigation VA issued the first of two Master Plans for the West LA Campus—VA has been promising veterans hundreds of units of permanent supportive housing there. But few have been delivered.

Given this reality, the district court's injunctive relief promises to transform the lives of many hundreds of veterans in the Los Angeles area. "Permanent supportive housing is a residential housing model" that "links affordable, independent, long-term housing with access to social services" for people with mental-health and other disabilities. *Daveri Dev. Grp., LLC v. Village of Wheeling*, 934 F. Supp. 2d 987, 992 (N.D. Ill. 2013). For veterans, then, permanent supportive housing facilitates access to VA healthcare and other services that are critical for their care. And according to social

scientific data and Amicus's own experience, such housing will both reduce veteran homelessness and improve overall health and wellness. Appellants do not deny these realities; they simply do not want to be subject to a court order requiring them to do what they have already committed to do.

The injunctive relief crafted by the district court will go a long way in addressing the housing crisis for veterans in Los Angeles, dramatically improving the lives of thousands of veterans and families. The Court should deny Appellants' request for a stay pending appeal.

III.
CONCLUSION

The Court should deny Appellants' stay motion and allow the injunctive relief to take effect.

Dated: November 19, 2024

Respectfully submitted,

By: /s/ Peter Perkowski

LEGAL SERVICES CENTER OF
HARVARD LAW SCHOOL
Daniel L. Nagin**
Dana Montalto**
122 Bolyston St.
Jamaica Plain, MA 02130
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