No. 24-6576

United States Court of Appeals for the Ninth Circuit

JEFFREY POWERS ET AL.,
Plaintiffs–Appellees

v.

DOUGLAS A. COLLINS ET AL.,
Defendants–Appellants

On Appeal from the U.S. District Court
for the Central District of California

BRIEF OF SWORDS TO PLOWSHARES AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES, URGING AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

In accordance with Fed. R. of App. Proc. 26.1 and 29(a)(4)(A), *Amicus* Swords to Plowshares 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.

RULE 29 STATEMENT

In accordance with Fed. R. of App. Proc. 29(a)(4)(E), *Amicus* Swords to Plowshares 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.

STATEMENT OF AUTHORITY TO FILE

In accordance with Fed. R. of App. Proc. 29(a)(2), *Amicus* Swords to Plowshares submits this brief without a motion for leave to file because all parties before the Court in this proceeding have consented to its filing.

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IDENTITY AND INTEREST OF AMICUS

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 assists veterans through advocacy and public education; partnerships with local, state, and national entities; and direct representation, including helping veterans obtain benefits through the claims adjudication system of the Department of Veterans Affairs (VA). Swords also helps veterans find temporary and transitional housing, provides permanent supportive housing to 400 veterans, and offers rent support and eviction prevention services. For more than 50 years, Swords has worked to heal the wounds of war, restore dignity, hope, and self-sufficiency to all veterans in need, and prevent and end homelessness and poverty among veterans.

Through its work, Swords has found that federal district 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 federal district courts and, to do so, frequently files amicus briefs before the U.S. Courts of Appeals and other courts.

I.
INTRODUCTION

The VA's mission statement—"to care for those who have served in our nation's military and for their families, caregivers, and survivors"—reflects our nation's fundamental promise to leave no veteran behind. That promise is broken when VA's unlawful inactions cause veterans with disabilities to face financial hardships, homelessness, increased health problems, and other adversities—as here, with Appellants' failure to provide veterans permanent supportive housing and other services on VA property in West Los Angeles.

Appellees challenged that failure under the Rehabilitation Act of 1973 (Rehab Act), which guarantees equal access to federal programs for people with disabilities, in the U.S. District Court for the Central District of California. Among other claims and requests for relief, Appellees brought Rehab Act causes of action that included that Appellants deny veterans with disabilities access to housing and health care in the most integrated setting appropriate to their needs, and administer their housing and health

care programs in a discriminatory manner that denies veterans meaningful access solely because of their disabilities. Appellees sought injunctive, declaratory, and mandamus relief from Appellants' Rehab Act violations.

No one doubts that veterans like Appellees have rights under the Rehab Act and can assert them to ensure non-discriminatory access to VA facilities, programs, and services. But Appellants here seek to avoid their obligations under the Act by arguing that 38 U.S.C. § 511 deprives the district court—and by extension all federal district courts—of jurisdiction to hear Rehab Act complaints made against VA. In Appellants' telling, VA's administrative claims adjudication system is the sole and exclusive forum in which veterans can assert Rehab Act rights.

That is wrong. As advocates who have represented thousands of veterans with disabilities before VA, we know by experience and expertise that Rehab Act claims cannot be brought within VA's claims adjudication process. That process is limited to deciding whether an individual claimant is entitled to specific veterans benefits. Neither that process nor the courts established to review its final decisions have the ability or authority to consider and resolve Rehab Act complaints, which are not claims seeking any benefit under laws administered by VA. Were the Court to decide that

§ 511 deprives the district court of jurisdiction, veterans would have no judicial forum available to bring Rehab Act complaints.

But it cannot be that veterans are denied access to all courts for relief under a statute that Congress intended to apply to all federal agencies. In enacting § 511, Congress did not intend to leave veterans without any forum to mount a systemic challenge to VA's policies and practices unrelated to benefits adjudication. Indeed, a primary purpose of the Veterans Judicial Review Act (VJRA), which established appellate review of VA claims decisions, was to strengthen veterans' due-process rights as it pertains to those decisions. A ruling eliminating access to *any* court for Rehab Act complaints would run contrary to that purpose. Nor is such a conclusion supported by the text of § 511, which demonstrates that federal district courts do have jurisdiction over Appellees' Rehab Act causes of action. The Court should therefore affirm the district court's ruling on this jurisdictional issue.

II.
BACKGROUND

A. The VJRA's structure and purpose

For as long as this country has engaged in war, it has provided benefits for the individuals who fought in those wars. *See* James Ridgway,

The Splendid Isolation Revisited: Lessons from the History of Veterans' Benefits Before Judicial Review, 3 Veterans L. Rev. 135, 139 (2011). Not until the 1930s, however, did Congress centralize veterans programs and benefits under a unified Veterans Administration. *Id.* at 179-80. Around that time, Congress also provided that the new agency's decisions were final and that courts had no jurisdiction to review challenges to those decisions, with limited exceptions. *See* Economy Act of 1933, Pub. L. 72-2, tit. I, § 5, 48 Stat. 8, 9.

For more than half a century, veterans had almost no judicial recourse to redress errors in decisions on their VA benefits claims. *See* Ridgway, *supra*, at 215-16. Some courts sporadically found that they had jurisdiction over particular types of claims or in specific factual circumstances—often expressing concerns that veterans would otherwise be denied their constitutional rights.[1] *See, e.g.*, *Devine v. Cleland*, 616 F.2d 1080 (9th Cir. 1980); *Plato v. Roudebush*, 397 F. Supp. 1295 (D. Md. 1975); *Taylor v. United States*, 385 F. Supp. 1034 (N.D. Ill. 1974). Meanwhile, from the 1950s to the 1980s, Congress regularly considered bills that would

[1] Most famously, the Supreme Court held that courts had jurisdiction to decide constitutional challenges to veterans benefits statutes, *Johnson v. Robison*, 415 U.S. 361, 373 (1974), and to decide some statutory challenges to VA regulations, *Traynor v. Turnage*, 485 U.S. 535, 543-44 (1988).

create judicial review of veterans benefits decisions, but for a variety of reasons—political, legal, and administrative—none passed. Laurence R. Helfer, *The Politics of Judicial Structure: Creating the United States Court of Veterans Appeals*, 25 Conn. L. Rev. 155, 156, 159-61 (1992).

Finally, in 1988, after sustained advocacy led by a new generation of veterans who served in the Vietnam War, Congress enacted the VJRA. Pub. L. 100-687, 102 Stat. 4105 (1988). As evidenced by the title, a primary purpose of the VJRA was to ensure that veterans could obtain judicial review of adverse VA decisions. The statute created a new Court of Veterans' Appeals (later renamed the U.S. Court of Appeals for Veterans' Claims (CAVC)), an Article I court with jurisdiction to hear direct appeals of final agency adjudication decisions. *Id.* sec. 301, §§ 4051-4052, 102 Stat. at 4113-14. The law also granted jurisdiction to the U.S. Court of Appeals for the Federal Circuit (CAFC) to hear appeals from this new court, as well as to hear challenges to VA regulations. *Id.* sec. 301, § 4092, 102 Stat. at 4120-21. These provisions did grant CAVC and CAFC exclusive jurisdiction for a statutorily defined set of claims. But overall the VJRA was designed to enhance veterans' rights to be heard in federal courts—either Article I or

Article III—and Congress did not express any intent of diminishing veterans' access to the courts.

B. VA's claims adjudication process

VA's primary function is to support veterans—and their survivors, dependents, and caregivers—after they have left service. VA accomplishes this by providing benefits authorized by Congress to eligible recipients. *E.g.*, *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). Those benefits are set forth in title 38 of the U.S. Code, and many are familiar to veterans and non-veterans alike: home loan guarantees, educational benefits, health care, disability compensation, burial and memorial benefits, and more. In sum, by regulation, a "benefit" is "any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by [VA] pertaining to veterans and their dependents and survivors." 38 C.F.R. § 20.3(e).

Veterans request benefits by making a "claim," which is any "written or electronic communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by [VA] . . . ." 38 C.F.R. § 3.1(p); *see also* 38 C.F.R. § 20.3(f). VA adjudicates claims through a multi-step administrative process.

First, using pre-set forms, veterans present claims to VA regional offices (VAROs), where they are considered by the "agency of original jurisdiction" (AOJ), defined as "the [VA] activity or administration . . . that [makes] the initial determination on a claim."[2] 38 C.F.R. § 20.3(a). After determining whether the applicant is entitled to the benefit, the AOJ renders a decision and issues notice to the claimant. *See Henderson*, 562 U.S. at 431; 38 C.F.R. § 3.103(b)(1).

Next, if a veteran is dissatisfied with the AOJ's decision, they have several options. The first is to seek *de novo* higher-level review (HLR) within the AOJ. *See* 38 U.S.C. § 5104B(e); 38 C.F.R. § 3.2601(e). The second is to file a supplemental claim based on new and relevant evidence. *See* 38 C.F.R. §§ 3.2500(a)(2), 3.2501. The last is to seek *de novo* review of the AOJ decision—whether an initial decision, a decision after HLR, or a decision on a supplemental claim—by the Board of Veterans' Appeals (Board). *See* 38 U.S.C. § 7104. "The Board is a body within the VA that makes the agency's final decision in cases appealed to it." *Henderson*, 562 U.S. at 431 (citing 38 U.S.C. §§ 7101, 7104(a)).

[2] Depending on the benefit sought, the AOJ is one of three VA divisions: the Veterans Benefits Administration, the Veterans Health Administration, or the National Cemetery Administration. 38 C.F.R. § 20.3(a).

After a final Board decision, a claimant may appeal adverse outcomes to CAVC. *See* 38 U.S.C. § 7252. CAVC jurisdiction is limited by statute. *Love v. McDonough*, 35 Vet. App. 336, 341 (2022) (per curiam), *aff'd*, 100 F.4th 1388 (Fed. Cir. 2024). It reviews the "decisions of the Board," and the scope of review is limited to the claims and questions that the Board actually considered and decided. *See* 38 U.S.C. §§ 7252(b), 7261; *see also King v. Nicholson*, 19 Vet. App. 406, 411 (2006).

Finally, claimants still aggrieved after a CAVC decision may appeal to the CAFC. *See* 38 U.S.C. § 7292. CAFC's authority is strictly limited to reviewing questions of law. *See id.* § 7292(a) (granting jurisdiction to review "a decision of [CAVC] on a rule of law or of any statute or regulation . . . or any interpretation thereof (other than a determination as to a factual matter) that was relied on by [CAVC] in making the decision"). CAFC decisions are "final subject to review by the Supreme Court upon certiorari." *Id.* § 7292(c).

C. VA's Rehab Act policy and procedures

VA has a written policy setting forth procedures for ensuring that its programs, activities, and facilities are accessible and comply with the Rehab Act. *See* VA Handbook 5975.6, *Compliance Procedures Implementing*

Section 504 of the Rehabilitation Act of 1973 – Nondiscrimination Based on Disability in Federally Conducted Programs or Activities (Jan. 23, 2020).[3] The policy establishes that "external" complaints under the Rehab Act (as opposed to employee complaints) are heard and decided by the Office of Resolution Management (ORM) and sets forth the ways a veteran may file such a complaint and the procedures for handling it. *Id.* ¶¶ 3.b(4), 4.h & Appx F. This process is entirely different from that used to adjudicate benefits claims, including that: a Rehab Act complaint must be filed with the VA Civil Rights Division, not a VARO or AOJ; it utilizes a specific form for civil rights discrimination complaints,[4] not any of the forms for filing benefits claims; and it provides for administrative appeal within ORM, not to the Board or CAVC. *See* VA Handbook 5975.6, Appx. F.

Unsurprisingly then, Veterans Benefits Administration (VBA) Manuals that provide guidance to claims adjudicators are entirely silent as to Rehab Act complaints. And the manual that primarily governs AOJ claims adjudication nowhere mentions the Rehab Act. *See* VBA Manual

[3] VA Handbook 5975.6 is available at https://www.va.gov/vapubs/.

[4] *See* Civil Rights Discrimination Complaint, VA Form 0381, *available at* https://www.va.gov/ORMDI/docs/Civil_Rights_Discrimination_Complaint_VA0831.pdf.

M21-1 Adjudication Procedures Manual (M21-1).[5] The M21-1's list of "Benefit Programs" does not include the Rehab Act. *See id.* pt. 1, subpt. ii, ch. 2. Nor do the VBA M21-4 Manual, the VBA M21-5 Appeals and Reviews Manual, or the VBA Fiduciary Program Manual.

A veteran seeking to challenge the outcome of the VA's internal Rehab Act process has access to the same forum as others seeking review of agency Rehab Act decisions: federal district court. Indeed, exhaustion of this administrative complaint process is not required for a veteran to seek recourse in federal court.[6]

III.
ARGUMENT

The Court should reject Appellants' attempt to sweep Appellee's Rehab Act causes of action out of district court. The only alternative forum Appellants propose—the VA benefits adjudication system—is not intended, designed, or authorized to decide Rehab Act complaints or grant relief to veterans under the Act. Were district courts to decline to exercise

[5] Available at https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/topic/554400000004049/M21-1-Adjudication-Procedures-Manual.

[6] *See infra* Section III.A.2.a.

jurisdiction over veterans' Rehab Act causes of action in favor of the VA's limited jurisdiction, benefits-only adjudication process, they would contradict the text, structure, and purpose of the VJRA. And they would leave aggrieved veterans with nowhere to turn.

A. VA's claims adjudication process cannot consider or decide relief under the Rehab Act

A close examination of VA's claims adjudication system sheds light on why it is federal district courts that possess jurisdiction over Rehab Act causes of actions. VA's multilayered administrative claims adjudication system is narrowly focused on determining a claimant's substantive eligibility for a particular "benefit" as created and defined by statute, with appellate review limited to the facts and issues decided by the agency.[7] A claimant's assertion of a cause of action under the Rehab Act is neither a "benefit" nor a "claim" as defined in statutes and regulations. It follows, then, that neither AOJs, nor the Board, nor CAVC have the ability or authority to provide relief under the Rehab Act.

[7] VJRA, Pub. L. 100-687, preamble, 102 Stat. 4105 (declaring Act's purpose as establishing "procedures for the adjudication of claims for [veterans] benefits").

1. A Rehab Act complaint is not a "claim" for a "benefit"

The text and purpose underlying the VA's administrative system, as well as its structure, confirm that it lacks authority to decide Rehab Act complaints, including Appellees' causes of action here. VA's administrative system creates a clear distinction between claims for an individual veteran's benefits, which belong in the agency's benefits adjudication system, and complaints under federal statutes challenging systemic VA non-adjudicatory policies and procedures, which do not.

First, Rehab Act complaints cannot be presented to VAROs for decision by the AOJ because they are not "claims" and do not seek "benefits," based on how as those terms are defined and understood by agency regulations and cases interpreting them. Though "claim" is not defined by statute, "claimant" is defined as "any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary," 38 U.S.C. § 5100, "which necessarily suggests that a claim is one for a benefit." *Jarrell v. Nicholson*, 20 Vet. App. 326, 330 (2006). Likewise, veterans "benefits" are authorized by Congress and set forth in title 38, U.S.C.—the "laws administered by the Secretary." 38 C.F.R. § 20.3(e); *see also id.* § 20.3(f) (defining "claim" as an "application made under title 38,

[U.S.C.] … for entitlement to [VA] benefits"). Remedies under the Rehab Act, such as those sought here, are not among the benefits enumerated in those laws.[8] For that reason, naturally, the M21-1—the AOJ's primary guide for front-line adjudicators—contains nothing instructing the AOJ how to approach, analyze, or decide requests for such remedies. In Swords' experience representing veterans, and the experience of counsel, if a veteran made a request for an accommodation under the Rehab Act or another anti-discrimination law through the claims process, the VARO would disregard it as outside its adjudicative scope.[9] As one example, undersigned Legal Services Center counsel represented an Army veteran who had experienced Military Sexual Assault in her claim for VA service-

[8] Specifically, permanent supportive housing—the remedy Appellees seek here—is not "a specific benefit under the laws administered by [VA]." 38 C.F.R. § 3.1(p). VA does partner with local public health agencies (PHAs) in a program known as HUD-Veterans Affairs Supportive Housing (HUD-VASH), which provides rental assistance to veterans experiencing housing insecurity. HUD-VASH is a program of the Department of Housing and Urban Development (HUD), not VA. *See* 42 U.S.C. § 1437f(o)(19). VA's role is limited: designated VA medical centers screen veterans and their families using criteria specified in § 1437f(o)(19)(D) and refer them to participating PHAs, which provide the housing assistance payments.

[9] Appellants appear to contend that the housing remedy Appellees seek is an aspect of their VA benefits. Br. 30-31. But courts have rejected "any implication that all action or inaction by the VA represents a type of 'service,' and therefore automatically constitutes a 'benefit'" under § 20.3(e). *Thomas v. Principi*, 394 F.3d 970, 975 (D.C. Cir. 2005).

connected disability compensation for Post-Traumatic Stress Disorder. Because of the veteran's mental health disabilities, counsel submitted multiple letters asking that VA make certain accommodations to its required mental health examination—including that the veteran be provided sufficient advance notice of the exam, flexibility in scheduling the exam, and a female examiner. Counsel expressly invoked the veteran's rights under Section 504 of the Rehabilitation Act in communications with the VARO adjudicators. Those adjudicators referred the correspondence to a supervisor who forwarded it to VA's Office of General Counsel. The Office of General Counsel responded that Section 504 does not apply to VA claims processing. At no point did a VA adjudicator or other employee issue a decision on the veteran's Rehab Act complaint. And the eventual substantive decision on the veteran's claim for disability compensation did not mention the Rehab Act.

Second, because a veteran cannot file a Rehab Act complaint with the AOJ, it follows that neither the Board nor CAVC have jurisdiction over any Rehab Act complaint. The Board is vested with jurisdiction only to "review" matters decided at the AOJ level; "the Board has no jurisdiction to adjudicate [a] claim in the first instance." *Jarrell*, 20 Vet. App. at 331

(2006).[10] Moreso, in the Board's Rules of Practice the list of more than two dozen "issues over which the Board has jurisdiction," 38 C.F.R. § 20.104(a)(1)-(29), does not include relief under federal anti-discrimination statutes like the Rehab Act. *See also id.* § 20.104(b). And while it is not exhaustive, the issues on that list relate to an individual's entitlement to payments, programs, or services offered by VA under veterans benefit statutes, not damages or injunctive relief under other federal laws such as the Rehab Act.

Finally, CAVC likewise cannot provide relief under the Rehab Act. CAVC's authority is limited to reviewing "decisions of the Board," 38 U.S.C. § 7252, and the scope of review includes only the issues the Board considered and decided. *See King*, 19 Vet. App. at 411. And while CAVC

[10] Though it has authority to decide "[a]ll questions" necessary to its decision, 38 U.S.C. § 7104(a), those questions must be connected to a benefits determination. *E.g.*, 38 U.S.C. § 511(a) (cabining jurisdiction to "law[s] that affect[] the provision of benefits by the Secretary"). The Board (and thus CAVC) could arguably consider a veteran's argument that a specific benefits claim determination violates the Rehab Act. The Board appears to have done so, though rarely. *See, e.g.*, *In re [Title Redacted by Agency]*, No. 0401835, 2014 WL 1974996 (Bd. Vet. App. Jan. 16, 2014) (considering argument that VA's decision on a claim for fee-basis care violated the Rehab Act); *In re [Title Redacted by Agency]*, No. 0533845, 2005 WL 3924108 (Bd. Vet. App. Dec. 15, 2005) (same). (Based on the factual recitations, these cases involve the same claim by a single veteran.) Of course, Appellees' Rehab Act claims are not of that nature.

decisions have used the term "claim" "to describe a wide variety of circumstances," all involve VA-administered benefits and processes. *Rice v. Shinseki*, 22 Vet. App. 447, 451 (2009); *accord Cacciola v. Gibson*, 27 Vet. App. 45, 53 n.2 (2014). None have used the term "claim" in connection with a request for relief under the Rehab Act. In short, if the AOJ cannot adjudicate a Rehab Act complaint, neither can the Board or CAVC.

The discussion above concerns VA's benefits claims adjudication process. On top of that, VA's *non-benefits-adjudication* policies also confirm that specialized veterans courts are not the proper forum for veterans to bring a Rehab Act cause of action. Namely, there is an internal VA process for handling Rehab Act complaints (*see supra* Section II.C); it is distinct from the process for adjudicating benefits claims, indicating that the AOJs play no role in considering and resolving Rehab Act complaints made to VA. Moreover, a veteran aggrieved by the outcome of that internal process would still have recourse to federal district court, as Appellants concede (Br. 29). Using the VJRA to preclude such recourse, as the Appellants urge here, would rewrite § 511 to encompass more than jurisdiction over benefits matters. The Court should decline the invitation to do so.

2. Veterans are not required to use VA's Rehab Act procedure nor are the outcomes of this process reviewable in veteran's claims courts

a. There has never been a Rehab Act administrative exhaustion requirement solely for veterans, and the VJRA did not create one

Though veterans may use VA's internal Rehab Act complaint review process, they are not required to do so. The Ninth Circuit has made clear that "private plaintiffs suing under [the Rehab Act] need not first exhaust administrative remedies." *Smith v. Barton*, 914 F.3d 1330, 1338 (9th Cir. 1990). The Court did not carve out an exception for veterans; indeed, doing so would nonsensically single out veteran plaintiffs for unequal treatment under the Act. Appellants protest, pointing to *J.L. v. Social Security Administration* for the proposition that agencies should be the first stop since they are "responsible" for Rehab Act compliance. Br. 29 (citing 971 F.2d 260, 265 (9th Cir. 1992)).[11] This misconstrues the case: the responsibility *J.L.* referred to is that "federal agencies themselves should take primary responsibility for [Rehab Act] compliance [by]

[11] To be clear: Appellants did not ask this Court or the court below to dismiss Appellees' Rehab Act causes of action based on failure to exhaust administrative remedies. Rather, their exhaustion arguments are an unsuccessful attempt to shoehorn Appellees' Rehab Act causes of action into the VA benefits adjudication system.

'promulgat[ing] such regulations as may be necessary to carry out' [the Rehab Act's] non-discrimination directive." 971 F.2d at 265. Promulgating regulations has no bearing on the existence of an exhaustion requirement. In fact, *J.L.* recognizes that "the Rehabilitation Act contains no *per se* exhaustion requirement; parties may proceed directly to district court." *Id.* at 264.[12]

Appellants also appear to argue that the VJRA creates a requirement that veterans can file Rehab Act complaints *only* with VA in the first instance. The VJRA does no such thing. Congress's purpose in enacting the VJRA was to expand veterans' access to judicial review, not to shrink it, as Appellants would have the Court do here. The VJRA accomplished this in several ways, including creating CAVC to hear direct appeals of final Board decisions, and granting jurisdiction to CAFC to hear appeals from this new court. In so doing, Congress did not express any intent to diminish veterans' access to the courts. On the contrary: in vesting these

[12] Though the Court required plaintiffs to exhaust in *J.L.*, it recognized that exhaustion is not necessary "where resort to the agency would be futile," namely, when an agency's position on the issue is already set. *Id.* at 271. That is the case here, where VA has both resisted providing the full scope of the Rehab Act relief that Appellees sought below and failed to deliver on past promises to provide supportive housing on the West LA campus.

two specialized courts with exclusive jurisdiction over benefits matters, Congress left the door open to federal district court for everything else—including Rehab Act complaints.

b. Neither the Board nor CAVC can review the outcome of VA's Rehab Act procedure or consider an accommodation request in the first instance

Appellants' attempt to steer Appellees' Rehab Act causes of action into VA's claims adjudication system fails for another critical reason: neither the Board nor CAVC has jurisdiction to review a decision rendered through the internal process set forth in VA's Rehab Act policy manual.

As detailed above, Board jurisdiction is limited to the review of benefits decisions made by the AOJ: "nothing . . . confer[s] jurisdiction upon the Board over a claim that was never presented to and adjudicated by the [AOJ] because there [would be] no decision [to review]." *Jarrell*, 20 Vet. App. at 331. The Board therefore may not "adjudicate [a] claim in the first instance." *Id.* CAVC likewise may review only final Board decisions. 38 U.S.C. § 7252. It is therefore unsurprising that CAVC has declared that "neither the Board nor the Court is authorized to hear actions brought under" the Rehab Act. *Camacho v. Nicholson*, 21 Vet. App. 360, 366 (Ct. App.

Vet. Cl. 2007).[13] There could not be a clearer statement that Appellants' jurisdictional argument is wrong.

We need look no further than the relief Appellees seek under the Rehab Act for further confirmation of why their causes of action simply do not belong in VA's benefits adjudication system. Even if the Board and CAVC could review decisions rendered by the VA under its specialized Rehab Act procedure—which they cannot—those bodies lack the authority to order the relief Appellees have requested and that is available under the Rehab Act. Whereas Appellees seek injunctive, declaratory, and mandamus relief from Appellants' systemic discriminatory administration of housing and health care programs, the Board and CAVC are limited to affirming, reversing, and remanding benefits claims decisions.[14] That the Board and

[13] Appellants' attempt to distinguish *Camacho* is puzzling. The CAVC's conclusion that neither it nor the Board had jurisdiction over Rehab Act complaints is not qualified or limited in any way, and it didn't depend on the identity of the defendant in such a complaint. Had Mr. Camacho made a Rehab Act complaint against VA—as Appellees did here—the Board and CAVC could not review it.

[14] 38 C.F.R. § 20.903(b) (The Board can issue orders "granting or denying the benefit or benefits sought on appeal or dismissing the appeal."); 38 U.S.C. § 7252(a) (CAVC has the "power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.").

CAVC can only offer such limited relief is another signal that they are not the correct fora for Appellees to bring their Rehab Act causes of action.

B. Neither text nor logic supports Appellants' reading of the VJRA

The Court should reject Appellants' overly broad reading of § 511 because it is unsupported by a plain reading of the statute, contrary to precedent, and would produce absurd results Congress could never have attended.

1. The Rehab Act causes of action here do not fall within the ambit of § 511

a. By its plain language, § 511 is limited to matters "necessary" to a VA benefits decision

Appellants urge an interpretation of § 511 that would encompass *all* VA determinations "that relate to benefits decisions." But the statute's language won't bear Appellants' reading. Section 511 is actually quite narrow. It reads:

> The Secretary shall decide *all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits* by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

38 U.S.C. § 511(a) (emphasis added). Considering the plain meaning of the words Congress used, § 511 applies only when a matter is (1) necessary to (2) a VA decision made under (3) a law that affects the provision of benefits. The Rehab Act causes of action here do not satisfy these elements for at least two reasons.

First, here the Rehab Act is not "a law that affects the provision of benefits"—it prohibits disability-based discrimination. The Rehab Act does not relate to benefits decisions at all; those laws are found in title 38, U.S. Code, and regulations promulgated thereunder. *E.g.*, 38 C.F.R. § 20.3(e), (f). And here, VA has already decided that all named Appellees, and the class they represent, are eligible for and entitled to disability benefits, so the Rehab Act cannot "affect[] the provision of" those benefits.[15]

Second, and similarly, the Rehab Act causes of action here are not "necessary to a [VA] decision" made under such law. Whether VA denies veterans with disabilities equal opportunity to *receive* benefits and services is wholly separate from whether those veterans are eligible for and entitled

[15] Appellants cannot argue that "the provision of benefits" in § 511 means "the delivery of benefits." As discussed immediately below, that argument is foreclosed by this Court's precedent. *See Veterans for Commons Sense v. Shinseki (VCS)*, 678 F.3d 1013, 1025 (9th Cir. 2012) (en banc) (construing § 511 as pertaining to "benefits determinations").

to such benefits and services—a determination that, again, has already occurred. The legal question here is not whether VA should grant benefits, or how it should handle a benefits application; it is whether VA can refuse to provide accommodations Appellees need to obtain benefits already granted. That legal question is not exclusive to the Secretary, so the district court has jurisdiction to determine it.

b. Appellants' broad reading of § 511 conflicts with precedent

This circuit's precedent confirms the plain reading set forth above. As this Court held *en banc* in *VCS*, § 511 precludes jurisdiction only as to matters necessary to a benefits decision:

> [W]e conclude that § 511 precludes jurisdiction over a claim if it requires the district court to review "*VA decisions that relate to benefits decisions*," including "any decision made by the Secretary *in the course of making benefits determinations*[.]" This standard . . . is reflected in § 511(a)'s plain statement that we may not review a "decision by the Secretary under a law that affects the provision of … benefits[.]" This preclusion extends not only to cases where adjudicating veterans' claims requires the district court to determine *whether the VA acted properly in handling a veteran's request for benefits*, but also to those decisions that may affect such cases.

VCS, 678 F.3d at 1025-26 (citations and internal quotation marks omitted) (emphases added). The § 511 preclusion thus extends not to every case "related to benefits," as Appellants urge, but rather only to cases

challenging VA's handling of and deciding benefits applications and to decisions "that may affect" them.

VCS establishes that § 511 does not preclude the Rehab Act causes of action here: Appellees' causes of action challenge neither the outcome or handling of a benefits application nor a VA decision that "may affect" the outcome or handling of a benefits application. Analysis of those causes of action can be (and was) conducted without examining the benefits claims of any veteran. Jurisdiction therefore is not precluded under § 511. *See VCS*, 678 F.3d at 1034 (§ 511 did not bar jurisdiction over claim that was "sufficiently independent" from VA benefits determinations).[16]

2. Appellants' reading of the VJRA would produce absurd and harmful results

Appellants are not just wrong on the law. Their interpretation of § 511 would lead to absurd results and, if accepted, would leave veterans without any judicial forum in which to bring Rehab Act causes of action.

a. Applied to Rehab Act causes of action challenging physical barriers, Appellants' interpretation of § 511 leads to the

[16] Unlike here, where VA already granted Appellees' benefits applications, plaintiffs were *seeking* benefits in both *VCS* and another of Appellants' cases, *Valentini v. Shinseki*, 2012 WL 12882704 (C.D. Cal. June 19, 2012). Further, though they rely on *Valentini*, Appellants failed to note that the decision has been vacated. *See Valentini v. McDonald*, 2015 WL 14020677 (C.D. Cal. Feb. 17, 2015).

absurd result of veterans with physical disabilities being locked out of federal court

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, because Appellees seek accommodations needed to access already-granted benefits, Appellants argue that the Rehab Act causes of action "relate to benefits decisions." But that argument cannot be limited to mental-health disabilities like those at issue here, and applying it to all types of disabilities leads to absurd results.

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 the veteran needed it to access that benefit—as is nearly always the case. Yet accepting their interpretation of § 511, if taken to its logical conclusion, would exclude veterans with physical disabilities from

federal district court. Congress did not intend § 511 to have such wide-ranging consequences.

b. Applying § 511 to bar the Rehab Act causes of action would uniquely burden disabled veterans and frustrate the purpose of the VJRA

Accepting Appellants' flawed reading of § 511 would have uniquely devastating consequences for veterans seeking to remedy disability-based discrimination: it would not just oust them from the court below but from all other federal district courts, leaving them without a forum to assert their claims. It would also frustrate the objectives of the VJRA itself.

Declining to exercise jurisdiction here would also contradict the purpose of the VJRA. The rationales behind § 511 are two-fold: to ensure that "*veterans' benefits claims* will not burden the courts and [VA] with expensive and time-consuming litigation" and that "the technical and complex determinations and applications of [VA] policy connected with *veterans' benefits decisions* will be adequately and uniformly made [by the agency]." *Johnson*, 415 U.S. at 370 (addressing predecessor statute) (emphases added). Those policy justifications simply don't apply where, as here, the asserted causes of action aren't "veterans' benefits claims." In dismissing under § 511, the Court would not be deferring to VA's and

CAVC's jurisdiction, as they have none. To the contrary, dismissal here would leave veterans with disabilities—unlike others with disabilities—with no judicial forum to assert discrimination claims. That outcome is untenable.

IV.
CONCLUSION

The district court can and should hear veteran Appellees' systemic challenge under the Rehab Act, and this Court should affirm its ability to do so. Because the VA claims process is not an authorized forum to adjudicate Appellees' Rehab Act causes of action, and Appellees have no other forum, this Court should decline to apply § 511 and instead recognize the district court's jurisdiction. Leaving veterans without a forum to challenge harmful and unlawful VA inaction would break our nation's fundamental promise to care for those who have served.

For the foregoing reasons, the Court should affirm the district court's ruling.

Dated: February 25, 2025

Respectfully submitted,

By: /s/ Rose Carmen Goldberg

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COMBINED CERTIFICATION OF COMPLIANCE AND CERTIFICATION OF SERVICE

I, Rose Carmen Goldberg, counsel for *Amicus*, certify:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and Cir. R. 32-1(a) because it contains 5,990 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in Microsoft Word using the proportionally spaced typeface 14 point Book Antigua.

2. I caused this brief 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 on February 25, 2025. All participants in the case are represented by counsel who are registered CM/ECF users and will be served by the appellate CM/ECF system.

Date: February 25, 2025

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