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Supreme Court No. 95794-1
(COA No. 34852-1-III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington,

Respondent,

v.

Jason Michael Catling,

Appellant.

**AMICUS CURIAE BRIEF OF DISABILITY RIGHTS
WASHINGTON IN SUPPORT OF APPELLANT'S
PETITION FOR REVIEW**

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I. INTERESTS AND IDENTITY OF AMICUS CURIAE

Amicus Disability Rights Washington is the organization designated by federal law and the Governor of Washington to provide protection and advocacy services to people in Washington with mental, developmental, physical, and sensory disabilities. Disability Rights Washington has a Congressional mandate to advocate on behalf of people with disabilities through the provision of a full range of legal assistance including legal representation, regulatory and legislative advocacy, and education and training.

Because of the high percentage of people with disabilities involved in the criminal justice system, Disability Rights Washington created a program dedicated to protecting the rights of people with disabilities experiencing incarceration and reentering society. This program is called AVID, which stands for Amplifying Voices of Inmates with Disabilities. AVID has extensive experience representing the interests of people with a variety of disabilities and fields hundreds of calls and letters annually from individuals with legal problems related to their disabilities, such as the Americans with Disabilities Act's application to court processes and barriers to receiving Social Security benefits upon release from prison.

II. STATEMENT OF THE CASE

Amicus Disability Rights Washington joins generally in Appellant's Statement of the Case.

III. ARGUMENT

Disability Rights Washington agrees that this Court should accept review for all of the reasons stated by Appellant, but writes to specifically support review under RAP 13.4(b)(4) because this case involves an issue of substantial public interest concerning individuals with disabilities. First, Disability Rights Washington explains that the Americans with Disabilities Act (ADA) was passed to combat discrimination against people with disabilities, including discrimination in state court programs and processes like those at issue here. Second, DRW argues that people with disabilities already face more barriers than their non-disabled peers in prison and upon release and reentry into society. Washington's Legal Financial Obligation (LFO) statutory scheme preventing a person whose only income is Social Security benefits from vacating criminal records due to inability to pay court-imposed LFOs, and the State's proposal to impose indefinite hearings about ability to pay LFOs, constitute discrimination on the basis of disability under the ADA.

A. THE ADA WAS PASSED TO COMBAT RAMPANT DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES, INCLUDING DISCRIMINATION IN STATE COURT PROCESSES AND PROGRAMS

In passing the ADA, Congress found that “individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society....” Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, 329 (1990). President George H.W. Bush proclaimed that the passage of the ADA was another showing that Americans will not tolerate discrimination, and that the “shameful wall of exclusion” of people with disabilities would “finally come tumbling down.” “Remarks of President George Bush at the Signing of the Americans with Disabilities Act,” http://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html (last visited June 8, 2018).

Title II of the ADA prohibits a public entity from discriminating against a qualified individual with a disability, or excluding such an individual from participation in, or denying the individual the benefits of, any of the entity’s services, programs, or activities. 42 U.S.C. § 12132. State court processes and programs are covered by Title II. *See, e.g.,*

Tennessee v. Lane, 541 U.S. 509, 533, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004) (stating Title II creates an “affirmative obligation to accommodate persons with disabilities in the administration of justice”); *Duvall v. Kitsap*, 260 F.3d 1124, 1136 (9th Cir. 2001) (applying Title II to state court proceeding). This Court acknowledged that people with disabilities are entitled to equal access to courts under the ADA when it adopted General Rule 33, the court rule that outlines a process for accommodating people with disabilities in court proceedings. *See* GR 33.

Throughout American history, people with disabilities have been the subjects of “pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights.” *Lane*, 541 U.S. at 524. State entities have had a long history of depriving people with disabilities basic liberties like the ability to vote, marry, or serve as jurors. *See id.* States have also treated individuals with disabilities unconstitutionally through unjustified commitment, abuse and neglect in state mental health hospitals, and irrational discrimination in zoning decisions. *See id.* at 524-25 (citing *Jackson v. Indiana*, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972); *Youngberg v. Romeo*, 457 U.S. 307, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982); *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985)). It is in this context of historical discrimination against people

with disabilities that Mr. Catling's case and Washington's LFO scheme must be examined.

B. THE ADA PROHIBITS DISCRIMINATORY STATE PROCESSES THAT SUBJECT PEOPLE TO HARSHER CRIMINAL PENALTIES BECAUSE THEY HAVE DISABILITIES

People with disabilities are overrepresented in our country's criminal justice system. *See* Jennifer Bronson et al., Bureau of Justice Statistics, U.S. Dep't of Justice, *Special Report: Disabilities Among Prison and Jail Inmates, 2011-12* 1 (2015), <http://www.bjs.gov/content/pub/pdf/dpji1112.pdf>. National surveys show that approximately 32 percent of inmates in state prisons report having at least one disability. *Id.* Jail inmates are more than four times more likely than the general population to report having at least one disability. *Id.*

While incarceration is hard for everyone, it is more challenging for inmates with disabilities. *See* Rachael SeEVERS, Disability Rights Washington, *Making Hard Time Harder: Programmatic Accommodations for Inmates with Disabilities Under the Americans with Disabilities Act 4* (2016), <http://avidprisonproject.org/Making-Hard-Time-Harder/>. Research shows that inmates with disabilities are sentenced to an average of fifteen more months in prison as compared to other inmates with similar criminal convictions. Paula M. Ditton, Bureau of Justice Statistics, U.S. Dep't of

Justice, *Special Report: Mental Health and Treatment of Inmates and Probationers* 8 (1999), <http://www.bjs.gov/content/pub/pdf/mhtip.pdf>.

The time that inmates with disabilities serve is also harder, with more sanctions imposed and less access to positive programming than other inmates. Sasha Abramsky & Jamie Fellner, Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* 59-60 (2003), <http://www.hrw.org/reports/2003/usa1003/usa1003.pdf> (noting that in some states, inmates with mental illness account for 41 percent of institutional infractions, while constituting only 19 percent of the prison population).

Upon reentry to society, a criminal record exacerbates the barriers people with disabilities already have to accessing employment, housing, and healthcare. See Rebecca Vallas, Center for American Progress, *Disabled Behind Bars: The Mass Incarceration of People With Disabilities in America's Jails and Prisons* 14-15 (2016), <https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf>. Most, if not all, jails and prisons in Washington State do not have a pre-release agreement with the Social Security Administration, so people who have received Social Security benefits in the past may face lengthy delays in benefit reinstatement once they are released. See *id.* at 15. This delay in

getting financial assistance leaves people with disabilities in a very precarious situation that may lead to an increased rate of recidivism. *See id.*

In this case, Mr. Catling is facing criminal justice system barriers solely because he has a disability and receives benefits from the Social Security Administration. He receives these benefits because he has a disability that results in his inability to engage in substantial gainful activity and that disability is expected to last for a continuous period of not less than 12 months. *See* 42 U.S.C. § 423(d)(1)(A); 42 U.S.C. § 1382c(a)(3)(A); *State v. Catling*, 2 Wn. App. 2d 819, 821-22 (2018); *Catling*, 2. Wn. App. 2d at 828 (Fearing, J., dissenting). While a non-disabled person in Mr. Catling's position could eventually be eligible to vacate his conviction after payment of LFOs and receiving a certificate of discharge, the same remedy is not available to Mr. Catling. *See id.* at 836-37. Washington's LFO scheme prevents Mr. Catling from vacating his conviction because the court cannot attach his Social Security benefits to pay for his LFOs, which means he cannot get a certificate of discharge. *See* 42 U.S.C. § 407(a); RCW 9.94A.637(1)(a); *City of Richland v. Wakefield*, 186 Wn.2d 596, 609 (2016). Without a certificate of discharge, he will not be eligible to vacate this conviction. RCW 9.94A.637(5). Therefore, Washington's LFO scheme discriminates against people with

disabilities who receive Social Security benefits, depriving them of a benefit that nondisabled people may enjoy and is in violation of Title II of the ADA. To be further punished and marked for life because you have a disability that is so severe as to qualify for Social Security benefits is discriminatory.

The State's suggestion of compelling Mr. Catling to indefinitely submit to periodic hearings about his ability to pay his LFOs because his sole income is Social Security benefits is also discriminatory under the ADA. Disability Rights Washington agrees with the dissent in this case, that because of Mr. Catling's disability, "he abides trapped in an enduring legal process and he suffers other coercive consequences." *Catling*, 2 Wn. App. 2d at 845 (Fearing, J., dissenting). Mr. Catling should not be stuck in an "ongoing, burdensome court process" because of his disability-related inability to pay. *Id.* In effect, the State will "continuously hold a lien on Catling's civil rights and encumber his Social Security disability benefits until he pays all of his legal financial obligations from this sheltered source." *Id.* For these reasons, this Court should accept review of Mr. Catling's case and find that Washington's LFO scheme violates the ADA.

IV. CONCLUSION

Amicus Disability Rights Washington respectfully asks this Court to accept review of this case.

Respectfully submitted this 8th day of June, 2018.

A handwritten signature in cursive script that reads "Heather McKimmie". The signature is written in black ink and is positioned above a horizontal line.

Heather McKimmie, WSBA #36730
Director of AVID Program
Disability Rights Washington

DISABILITY RIGHTS WASHINGTON

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Motion 1: Disability Rights Washington's Motion to Appear as Amicus Curiae in Support of Appellant

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