

Case Brief: *Williams v. Kincaid**

INTRODUCTION

LGBTQ rights, particularly relating to transgender individuals, have received newfound significant attention by state legislatures. In both 2022 and 2023, state legislatures across the country introduced hundreds of anti-LGBTQ bills, significantly more than in prior years.¹ Many of these bills specifically target the trans community and are designed to limit their rights.² However, in *Williams v. Kincaid*,³ the U.S. Court of Appeals for the Fourth Circuit gave individuals with gender dysphoria, many of whom are transgender, a remedy under the Americans with Disabilities Act (“ADA”).⁴ While several district courts had previously decided this question of whether a remedy exists, a federal appeals court had never addressed it.⁵

In *Williams*, the Fourth Circuit reversed and remanded a decision from the Eastern District of Virginia that dismissed plaintiff Kesha Williams’s ADA claim.⁶ To qualify for protection under the ADA, a plaintiff’s disability cannot fall under the statute’s exceptions, one of which is “gender identity disorders not resulting from physical impairments.”⁷ Citing the Diagnostic and Statistical Manual of Mental Disorders (“DSM”) and other medical and scientific research, Judge Motz of the Fourth Circuit determined that there is a

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1. Matt Lavietes & Elliott Ramos, *Nearly 240 Anti-LGBTQ Bills Filed in 2022 So Far, Most of Them Targeting Trans People*, NBC NEWS (Mar. 20, 2022, 6:00 AM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/nearly-240-anti-lgbtq-bills-filed-2022-far-targeting-trans-people-rcna20418> [<https://perma.cc/U5GR-T48E>]; Maggie Astor, *G.O.P. State Lawmakers Push a Growing Wave of Anti-Transgender Bills*, N.Y. TIMES, <https://www.nytimes.com/2023/01/25/us/politics/transgender-laws-republicans.html> [<https://perma.cc/4DR8-KSN4> (staff-uploaded, dark archive)] (last updated June 20, 2023).

2. Lavietes & Ramos, *supra* note 1. In 2023, the General Assembly of North Carolina enacted several pieces of anti-trans legislation, including one preventing trans students from playing on a sports team that conforms with their gender identity and another to prohibit gender-affirming care to minors. Fairness in Women’s Sports Act, ch. 109, §§ 1(a), 2(b), 2023 N.C. Sess. Laws (codified at N.C. GEN. STAT. §§ 115C-12(23)(e), 116-401 (2023)); An Act To Prohibit Gender Transition Procedures for Minors, ch. 111, § 1, 2023 N.C. Sess. Laws (codified at N.C. GEN. STAT. § 90-21.151 (2023)).

3. 45 F.4th 759 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2414 (2023).

4. *Id.* at 769.

5. *Id.* at 769 n.6; *see, e.g.*, *Venson v. Gregson*, No. 18-cv-2185, 2021 WL 673371, at *2–3 (S.D. Ill. Feb. 22, 2021); *Doe v. Mass. Dep’t of Corr.*, No. 17-12255, 2018 WL 2994403, at *5–6 (D. Mass. June 14, 2018); *Blatt v. Cabela’s Retail, Inc.*, No. 14-cv-04822, 2017 WL 2178123, at *2 (E.D. Pa. May 18, 2017).

6. *Williams*, 45 F.4th at 763.

7. *Id.* at 766 (quoting 42 U.S.C. § 12211).

distinction between gender identity disorders as construed when Congress passed the ADA in 1990 and gender dysphoria.⁸ After citing this distinction, determining that there is a potential physical basis for gender dysphoria, and reasoning around potential constitutional issues with the statute's exclusion, the court determined that gender dysphoria qualifies as a disability under the ADA.⁹

FACTS OF THE CASE

Appellant Kesha Williams is a transgender woman who was incarcerated at a Virginia detention facility.¹⁰ She has gender dysphoria, which is defined as “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth.”¹¹ Prior to her incarceration, she began living as a woman and changed her legal name, which was reflected on her driver’s license.¹² Upon arrival at the prison, she was assigned to the women’s portion of the prison and given clothing reflecting this assignment.¹³ However, after meeting with the prison’s nurse, Xin Wang, Williams was labeled as “male” and moved into men’s housing.¹⁴ This was because Williams had not completed transfeminine bottom surgery, and it was prison policy to classify inmates according to their genitalia.¹⁵ Nurse Wang also took Williams’s hormone medication away from her; Williams went without this medication for several weeks, causing her “significant mental and emotional distress.”¹⁶

While at the prison, Williams experienced harassment by other inmates and deputies, and was also repeatedly misgendered by deputies.¹⁷ Further, her requests to shower on her own and to be searched only by female deputies were denied.¹⁸ She was also threatened with solitary confinement if she refused to be searched by a male deputy.¹⁹ On one occasion, Deputy Garcia, one of the male deputies at the prison, mocked and misgendered Williams and conducted “a

8. *Id.* at 766, 769.

9. *Id.* at 769–72.

10. *Id.* at 763.

11. *Id.* at 764 (quoting THE WORLD PRO. ASS’N FOR TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSEXUAL, TRANSGENDER, AND GENDER NONCONFORMING PEOPLE 2 (7th version 2012), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf [<https://perma.cc/7BT5-Z576>]).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

‘highly aggressive’ search that resulted in bruising to her breast and caused her ‘pain for several days.’”²⁰

After her release in May 2019, Williams brought a claim under 42 U.S.C. § 1983 alleging violations under the ADA, the Rehabilitation Act, the U.S. Constitution, and Virginia law based on the male housing assignment and her treatment at the prison.²¹ She brought these actions against Sheriff Stacey Kincaid of Fairfax County and numerous prison employees, including Nurse Wang and Deputy Garcia.²² The district court held that the ADA and Rehabilitation Act provided “no basis for relief because ‘gender dysphoria is not a “disability” under the ADA.’”²³

LEGAL ISSUES & OUTCOMES

After the district court decision, Williams appealed to the Fourth Circuit, arguing that the district court incorrectly dismissed her ADA claim because her gender dysphoria was not a “gender identity disorder,” and thus did not fall under the exceptions for the ADA.²⁴ In the alternative, she argued that if the court determined that gender dysphoria is a gender identity disorder under the ADA, the exclusion does not apply because her gender dysphoria “results from a physical basis.”²⁵

Since Congress did not define “gender identity disorders” when it adopted the ADA, the central question addressed by the Fourth Circuit concerned whether gender dysphoria would have been considered a “gender identity disorder” in 1990.²⁶ To do so, the court looked to the DSM-III-R,²⁷ the version of the manual in use when the ADA was enacted.²⁸ This version did not include gender dysphoria, but instead included “gender identity disorders,” which was “a class of other disorders” that were defined as “an incongruence between assigned sex (i.e., the sex that is recorded on the birth certificate) and gender identity.”²⁹ The majority contrasted this definition with “gender dysphoria”

20. *Id.* at 765.

21. *Id.*; Amended Complaint at 2–3, *Williams v. Kincaid*, No. 20-cv-01397, 2021 WL 2324162 (E.D. Va. Feb. 12, 2021).

22. *Williams*, 45 F.4th at 765. Williams originally sued Sheriff Kincaid and numerous unknown prison employees, but after discovery, she amended her complaint to include only the Sheriff, Nurse Wang, and Deputy Garcia. *Id.*

23. *Id.* The district court dismissed the claims against Nurse Wang and Deputy Garcia, mostly on statute of limitations grounds. *Id.* The district court also dismissed the gross negligence claims against Sheriff Kincaid and Deputy Garcia, finding that they exercised “some degree of care.” *Id.*

24. *Id.* at 766.

25. *Id.*

26. *Id.*

27. AM. PSYCH. ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL 71 (3d ed., rev. 1987) [hereinafter DSM-III-R].

28. *Williams*, 45 F.4th at 767.

29. *Id.* (quoting DSM-III-R, *supra* note 27, at 71).

from the current DSM-5,³⁰ which also removed “gender identity disorder” in 2013.³¹ Instead, the DSM-5 defined gender dysphoria as the “‘clinically significant distress’ felt by some of those who experience ‘an incongruence between their gender identity and their assigned [gender].’”³² The court emphasized that this distress can cause “intense anxiety, depression, suicidal ideation, and even suicide.”³³ Accordingly, the court noted that the revision itself “suggests a meaningful difference, and the contrast between the definitions of the two terms . . . confirms that these revisions are not just semantic.”³⁴ Similarly, the majority further emphasized that under the previous DSM, being trans alone would be enough for a diagnosis of a gender identity disorder.³⁵ Yet this would be insufficient for a diagnosis of gender dysphoria under the DSM-5, which requires a trans person to experience associated “clinically significant distress.”³⁶

In addition, the court pointed to direction from Congress to determine how to construe the ADA.³⁷ Responding to decisions from the U.S. Supreme Court that narrowed protections under the statute, Congress amended the ADA in 2008, explicitly stating that it intended “disability” to be defined broadly under the statute “to the maximum extent permitted by the [ADA’s] terms.”³⁸ Accordingly, the Fourth Circuit determined that the exceptions listed in the statute should be considered narrowly.³⁹ With that in mind, the court noted that it could not “rewrite the statute . . . by penciling in a new condition into the list of exclusions . . . when Congress has not chosen to do so itself.”⁴⁰

The majority also determined that Williams could plead discrimination under the ADA because “her gender dysphoria ‘result[s] from physical impairments.’”⁴¹ Because the ADA does not define “physical impairment,” the court defined it by looking to regulations promulgated by the Equal Employment Opportunity Commission (“EEOC”).⁴² Under the EEOC regulations, physical impairment is defined broadly as “[a]ny physiological disorder or condition . . . affecting one or more body systems, such as neurological . . . and endocrine.”⁴³ The court then considered Williams’s

30. AM. PSYCH. ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL 451–53 (5th ed. 2013) [hereinafter DSM-5].

31. *Williams*, 45 F.4th at 767.

32. *Id.* (citing DSM-5, *supra* note 30, at 451–53).

33. *Id.* at 768.

34. *Id.* at 767.

35. *Id.* at 768.

36. *Id.* at 767–68 (quoting DSM-5, *supra* note 30, at 451–53).

37. *Id.* at 766.

38. *Id.* (quoting 42 U.S.C. § 12102(4)(1)(A)).

39. *Id.* at 769–70.

40. *Id.* at 770.

41. *Id.* (quoting 42 U.S.C. § 12211(b)(1)).

42. *Id.*

43. 28 C.F.R. § 35.108(b)(1)(i) (2022).

experience, noting that she received medical treatment of hormone therapy, a requirement for those with gender dysphoria.⁴⁴ It found that failure to receive this treatment during her incarceration caused Williams “emotional, psychological, and physical distress.”⁴⁵

The court also cited medical and scientific research supporting the notion that gender dysphoria can be derived from a physical basis, including “hormonal and genetic drivers contributing to the in utero development of dysphoria.”⁴⁶ The court cited the approval of such medical research by numerous federal district courts and the Department of Justice to support its conclusion.⁴⁷ It also rejected Sheriff Kincaid’s argument that Williams needed to include the phrase “from a physical basis” in her complaint, finding that no “‘specific words’ [are required] to defeat a motion to dismiss,” nor does defeating a motion to dismiss require “a scientific analysis explaining the precise biomechanical processes by which her condition arose.”⁴⁸

The court also used constitutional avoidance,⁴⁹ looking to the constitutional issues that would occur if the law excluded both gender identity disorders and gender dysphoria.⁵⁰ Since many trans individuals have gender dysphoria, and both gender dysphoria and gender identity are “closely connected to transgender identity,” a statute that excludes both discriminates against transgender people, raising concerns under the Equal Protection Clause of the Fourteenth Amendment.⁵¹ Accordingly, this provision of the ADA would be subject to intermediate scrutiny,⁵² and the court pointed to evidence suggesting that the statute would fail if subject to intermediate scrutiny’s “exceedingly persuasive” standard.⁵³ Legislative history from the ADA includes anti-trans comments from senators associating transgender individuals with

44. *Williams*, 45 F.4th at 770.

45. *Id.* at 770–71.

46. *Id.* at 771 n.7 (citing *Doe v. Mass. Dep’t of Corr.*, No. 17-12255, 2018 WL 2994403, at *6 (D. Mass. June 14, 2018)).

47. *Id.* at 771 (citing Statement of Interest of the United States of America at 1–2, *Blatt v. Cabela’s Retail, Inc.*, No. 14-cv-4822, 2017 WL 2178123 (E.D. Pa. May 18, 2017)).

48. *Id.* at 772.

49. Constitutional avoidance is “most commonly described as providing that ‘where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such a construction is plainly contrary to the intent of Congress.’” Trevor W. Morrison, *Constitutional Avoidance in the Executive Branch*, 106 COLUM. L. REV. 1189, 1192 (2006) (quoting *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988)).

50. *Williams*, 45 F.4th at 772.

51. *Id.*

52. Laws that discriminate against transgender people are subject to intermediate scrutiny, which requires the law to be “substantially related to a sufficiently important government interest.” *Id.* (quoting *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020)). Furthermore, such interest must be supported by an “exceedingly persuasive justification.” *Id.* (quoting *United States v. Virginia*, 518 U.S. 515, 534 (1996)).

53. *Id.*

“immoral” behavior.⁵⁴ Furthermore, since Sheriff Kincaid did not offer a justification for the law, the court concluded there is not an “exceedingly persuasive justification” for the law as required to pass intermediate scrutiny.⁵⁵ In the majority’s view, these conclusions bolster support for its holding that the ADA does not exclude gender dysphoria.⁵⁶

Judge Quattlebaum concurred only on the statute of limitations issues but dissented on the other claims, including whether gender dysphoria is a disability under the ADA.⁵⁷ Unlike the majority, Judge Quattlebaum concluded that gender dysphoria falls within what Congress considered a “gender identity disorder” in 1990.⁵⁸ Judge Quattlebaum also cited the DSM-III-R, which noted that “even in mild cases of gender identity disorder, ‘discomfort and a sense of the inappropriateness about the assigned sex are experienced.’”⁵⁹ To the dissent, the definitions’ similarities and emphasis on “discomfort or distress” were enough to show that gender dysphoria would fall under the definition of gender identity disorders under the DSM-III-R.⁶⁰ The change merely reflects “linguistic drift.”⁶¹ However, the majority responded that those similarities are not enough for gender identity disorders to encompass gender dysphoria considering that the gender identity disorder diagnosis no longer exists.⁶²

The dissent also cited concerns about the role of courts and influence of private organizations when interpreting statutes.⁶³ Judge Quattlebaum argued that the majority’s reasoning would give organizations like the American Psychiatric Association “power to effectively modify statutes passed by Congress and signed into law by the President.”⁶⁴ Furthermore, Judge Quattlebaum also expressed concern about courts changing the meaning of a statute due to “society’s changing attitudes,” which the dissent argued is the role of the legislature.⁶⁵ In addition, Judge Quattlebaum noted that Congress’s decision to retain the gender identity disorders exclusion when amending the

54. *Id.* at 773.

55. *Id.*

56. *Id.* In addition, the Fourth Circuit determined that Williams’s amended complaint replacing the prison “Doe” defendants relates back to the original complaint, and the district court erred by dismissing her other claims on statutes of limitations grounds. *Id.* at 774–76. It also disagreed with the lower court that Sheriff Kincaid and Deputy Garcia exercised some degree of care and allowed the state gross negligence claim to proceed. *Id.* at 776–77.

57. *Id.* at 780 (Quattlebaum, J., concurring in part and dissenting in part).

58. *Id.*

59. *Id.* at 782 (quoting DSM-III-R, *supra* note 27, at 71).

60. *Id.*

61. *Id.* at 780.

62. *Id.* at 769 n.5 (majority opinion).

63. *See id.* at 785 (Quattlebaum, J., concurring in part and dissenting in part).

64. *Id.*

65. *Id.*

statute in 2008 shows that the statute should still be considered based on its 1990 interpretation.⁶⁶

Another disagreement between the dissent and majority involved whether the majority's use of constitutional avoidance was appropriate.⁶⁷ There, Judge Quattlebaum noted that constitutional avoidance should be used only when a statute is ambiguous.⁶⁸ Since the dissent found that gender identity disorders "plainly included . . . gender dysphoria," it argued that the statute is not ambiguous.⁶⁹ Furthermore, Judge Quattlebaum noted that use of constitutional avoidance is inappropriate because Williams did not argue a constitutional claim against Sheriff Kincaid at the district court.⁷⁰ However, the majority argued that there is no precedent suggesting that a constitutional claim is required for a court to use constitutional avoidance, reflecting the notion that Congress would not have meant for a statute to "raise[] serious constitutional doubts."⁷¹

Judge Quattlebaum also disagreed with the majority's finding that Williams's gender dysphoria resulted from a physical impairment.⁷² Specifically, Judge Quattlebaum emphasized that even though hormone therapy may be required or could be helpful for someone with gender dysphoria, this does not mean that it results from a physical impairment as required by the statute.⁷³ Accordingly, the dissent argued that the majority "get[s] things backwards" because the physical impairment does not come first in this case.⁷⁴ However, the majority argued that Williams's requirement of hormone therapy, the absence of which causes physical distress, is sufficient for a finding that her gender dysphoria resulted from a physical impairment.⁷⁵

POTENTIAL IMPACT

Williams will provide greater protections to trans people with gender dysphoria.⁷⁶ While limited to the Fourth Circuit, other courts may adopt its approach, particularly given that the Supreme Court refused an opportunity to overturn it.⁷⁷

66. *Id.* at 786.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 774 n.8 (majority opinion) (quoting *Clark v. Martinez*, 543 U.S. 371, 381 (2005)).

72. *Id.* at 787 (Quattlebaum, J., concurring in part and dissenting in part).

73. *Id.* at 787–88.

74. *Id.* at 788.

75. *Id.* at 771 (majority opinion).

76. *Id.* at 773–74.

77. *See Kincaid v. Williams*, 143 S. Ct. 2414, 2414 (2023) (mem.) (denying petition for writ of certiorari).

The impact of *Williams* in the carceral context has the potential to benefit many trans individuals. First, prisons may be reluctant to adopt or continue to enforce policies making inmate housing assignments by genitalia alone. This policy shift would likely result in increased safety for trans individuals, as studies estimate that 59% of transgender women who are housed in men's prisons are sexually assaulted.⁷⁸ This is significantly higher than the rate of sexual assault for the prison population as a whole, which is 4%.⁷⁹ Furthermore, transgender women are frequently subjected to harassment while incarcerated, exacerbating mental health problems,⁸⁰ including those associated with gender dysphoria. Housing in accordance with gender identity may reduce these wrongs.⁸¹

In addition, *Williams* has the potential to result in changes to prison policies surrounding gender-affirming care. For example, prisons may consider adopting policies that would not disrupt a trans inmate's hormone therapy as occurred here. In addition, under *Williams*, prisons could be required to provide trans-affirming care, including gender-affirming surgery, to inmates with gender dysphoria to comply with the ADA.⁸²

Beyond carceral settings, *Williams* will affect other contexts where the ADA is applicable, such as the workplace.⁸³ While trans individuals are protected in the workplace under Title VII after *Bostock v. Clayton County*,⁸⁴ the *Williams* decision could provide additional protection for all trans employees. Even though a plaintiff may have to prove that they experience "clinically significant distress" in order to prevail under an ADA claim for gender dysphoria,⁸⁵ the decision may still encourage employers to adopt trans-friendly policies since it may not be evident whether a trans employee has gender dysphoria. This is particularly important for trans individuals, who often report

78. *Williams*, 45 F.4th at 778 (citing Valerie Jenness, Cheryl L. Maxson, Kristy N. Matsuda & Jennifer Macy Sumner, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, BULLETIN, June 2007, at 1, 2, <https://cpb-us-e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/BulletinVol2Issue2.pdf> [<https://perma.cc/LNX8-YC9K>]).

79. *Id.*

80. Jaclyn M. White Hughto, Sari L. Reisner, Trace S. Kershaw, Fredrick L. Altice, Katie B. Biello, Matthew J. Mimiaga, Robert Garofalo, Lisa M. Kuhns & John E. Pachankis, *A Multisite, Longitudinal Study of Risk Factors for Incarceration and Impact on Mental Health and Substance Use Among Young Transgender Women in the USA*, 41 J. PUB. HEALTH 100, 101 (2018).

81. *See Williams*, 45 F.4th at 778.

82. *See Zayre-Brown v. N.C. Dep't of Pub. Safety*, No. 22-cv-191, 2022 WL 4456268, at *4–5 (W.D.N.C. Sept. 23, 2022). The Western District of North Carolina, citing *Williams*, determined that a transgender plaintiff's ADA claim could proceed. *Id.* The case involved an inmate with gender dysphoria who argued that failure to provide her with gender-affirming care, including gender-affirming surgery, was discrimination under the ADA because the prison provided treatment for inmates with other disabilities. *Id.*

83. 42 U.S.C. § 12112.

84. 140 S. Ct. 1731, 1737 (2020).

85. *See Williams*, 45 F.4th at 768.

that they suppress their true selves and are not addressed by the correct pronouns in the workplace.⁸⁶ Furthermore, trans employees often report wanting to quit, and many are terminated or not hired in the first place because of their identity.⁸⁷

Further, *Williams* will also apply in public schools given the ADA's application in that context.⁸⁸ Accordingly, the ruling may bring into question some of the bills targeting trans students in public schools.⁸⁹ For example, some of these bills, such as the Fairness in Women's Sports Act enacted in North Carolina, would prevent trans students from playing on a school sports team that conforms with their gender identity.⁹⁰ Additionally, an Alabama law enacted in April 2022 prevents trans students from using bathrooms or changing rooms that conform with their gender identity.⁹¹ In light of *Williams*, a student with gender dysphoria might consider a claim of discrimination under the ADA⁹² based on these laws. Accordingly, while trans rights have been limited by some state legislatures, *Williams* provides an additional avenue for a remedy, and possibly greater protections, for the trans community.

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86. Christian N. Thoroughgood, Katina B. Sawyer & Jennica R. Webster, *Creating a Trans-Inclusive Workplace*, HARV. BUS. REV., Mar.–Apr. 2020, at 115, 115–16.

87. *Id.*

88. See 42 U.S.C. §§ 12131–12132.

89. See *infra* notes 90–91 and accompanying text.

90. See, e.g., Fairness in Women's Sports Act, ch. 109, §§ 1(a), 2(b), 2023 N.C. Sess. Laws (codified at N.C. GEN. STAT. §§ 115C-12(23)(e), 116-401 (2023)).

91. See Act of Apr. 8, 2022, No. 290, § 1, 2022 Ala. Acts (codified at ALA. CODE § 16-1-54 (2023)).

92. See 42 U.S.C. § 12132.

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