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United States Court of Appeals  
*for the*  
Third Circuit

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Case No. 17-1469

TRACI BERARDELLI, JOSEPH BERARDELLI, on behalf of their daughter  
M.B., a minor and individually on their own behalf,

*Appellants.*

— v. —

ALLIED SERVICES INSTITUTE OF REHABILITATION MEDICINE,

*Appellee.*

ON APPEAL FROM AN ORDER ENTERED FROM THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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**BRIEF FOR *AMICUS CURIAE* PUBLIC INTEREST LAW  
CENTER IN SUPPORT OF APPELLANTS**

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### INTEREST OF THE AMICUS CURIAE

Amicus Curiae The Public Interest Law Center<sup>1</sup> is a not-for-profit public interest law firm that has successfully advanced the rights of children with disabilities to a quality public education since its founding in 1969. The Law Center's seminal lawsuit, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, established the rights of children with disabilities to a public education and led to the federal Education for All Handicapped Children Act, the precursor to the Individuals with Disabilities Education Act. Since then, the Law Center has represented clients in hundreds of important cases throughout the country involving the rights of children with disabilities to a good quality public education. The Law Center also has enforced federal antidiscrimination laws to ensure that busses are accessible for people with mobility impairments; that people with disabilities receive appropriate treatment by law enforcement officials; that law schools are accessible to qualified people with disabilities; and to remove barriers to employment for people with disabilities.

The underlying policy of the nation's anti-discrimination laws is their goal of assuring that people with disabilities will have full and equal access to society. The Law Center respectfully submits this brief to highlight the important and pervasive role of service animals in securing this promise; and the ongoing need for vigorous enforcement of these anti-discrimination laws.

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<sup>1</sup> The parties have consented to the filing of this brief. Pursuant to FRAP 29(4)(E), no party or counsel for a party authored or contributed monetarily to the preparation or submission of any part of this brief. No individual has contributed to the preparation

## **ARGUMENT**

### **I. Service Animals Perform a Vital Function**

Service animals have become a regular feature in daily living, and, more importantly, a potentially life-saving aid for people with disabilities. While different service animals may be trained for specific functions, generally, service animals assist with activities of daily life and provide their human companions with greater independence and a higher quality of life.<sup>2</sup> Research shows multiple benefits that children with disabilities gain from the presence of an animal. Children enjoy physiological benefits, including reduction in heart rate and arterial pressure; and behavioral benefits, such as a decrease in behavioral stress.<sup>3</sup> Service dogs also have been recognized as a form of “assistive technology,” increasing social contact, independence and improvements in psycho-social functioning – all of which are crucial to a growing child’s development.<sup>4</sup> “Animal-assisted therapy has proven to be effective in ways that other approaches have not, and these animals are making a

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<sup>2</sup> <http://www.epilepsy.com/article/2014/11/how-service-animals-may-help-people-epilepsy>. See also [www.pawswithacause.org](http://www.pawswithacause.org); [www.cci.org](http://www.cci.org) (“enhances the lives of people with disabilities by providing highly trained assistance dogs”); [www.seeingeye.org](http://www.seeingeye.org) (mission is to “enhance the independence, dignity and self-confidence of people who are blind through the use of specially trained...dogs”)

<sup>3</sup> See, e.g., Sunny Nagengast et al., *The Effects of the Presence of a Companion Animal on Physiological Arousal and Behavioral Distress in Children During a Physical Examination*, 12 J. of Pediatric Nursing 323, 323 (1997); see also Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 Pepp. L. Rev. 1163, 1168-69 (2010) (explaining that both the general population and persons with disabilities are believed to have improved socialization, happiness, and harmony from the use of animals).

profound difference in the lives of many individuals and families in need.”<sup>5</sup> As one family put it, their child’s service dog has been “a miracle for our family, giving us our freedom back and Sam the all-important independence he needs for his development.”<sup>6</sup>

While most people are aware of guide dogs for the blind and the deaf, service animals have an invaluable impact on the lives of persons coping with other disabilities, and now receive training to service individuals suffering from a broad spectrum of disabilities, including neurologic and psychiatric disabilities.<sup>7</sup> People with a wide range of disabilities benefit from the use of service animals ranging from mobility issues to post traumatic stress disorder, from cancer to sensory loss, from multiple sclerosis to diabetes. The use of service animals for children with autism in particular is increasing as autism becomes more familiar to parents and as research continues to show myriad benefits that a child with autism gains from having a service dog. The primary benefit is safety because children with autism are prone to wandering off, so autism service dogs are “tethered” to their child and trained to slow and stop the child. The tether system allows the child to be more independent by allowing the child with autism to walk without having to hold a caretaker’s hand. But beyond physical safety, the autism service dog provides other benefits, including improvement to the child’s physiological, psychological, social and cognitive

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<sup>5</sup>[http://www.nj.com/healthfit/index.ssf/2014/08/service\\_dogs\\_can\\_benefit\\_people\\_struggling\\_with\\_a\\_variety\\_of\\_disabilities.html](http://www.nj.com/healthfit/index.ssf/2014/08/service_dogs_can_benefit_people_struggling_with_a_variety_of_disabilities.html).

<sup>6</sup> *Id.*

<sup>7</sup> Rebecca J. Huss, *The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and Their Animal Companions*, 43 *Vol. II, J. Rev.* 1131, 1169



development.<sup>8</sup> A service animal is trained to provide a child with critical aid that improves the child's attention span, broadens the child's focus, encourages the child's development of communicative skills, and promotes social interactions between the child and other persons.<sup>9</sup>

Service dogs are particularly helpful for the approximately 65 million people around the world who have epilepsy—over 2 million in the United States alone.<sup>10</sup> Many people living with epilepsy often avoid certain everyday activities in fear of having a seizure in public. Seizure alert dogs like M.B.'s golden retriever Buddy are trained to both detect seizures before onset and to respond to the child's seizures. Some dogs have been trained to bark or otherwise alert families when a child has a seizure while playing outside or in another room.<sup>11</sup> Some dogs learn to lie next to someone having a seizure to prevent injury. Others are able to activate alarm systems. Dogs that are trained to respond in various ways when someone has a seizure are no different from service dogs for other disabilities, and public interest in seizure assistance dogs has fueled demand for dogs with these skills.

Accordingly, the Epilepsy Foundation recognizes that “[l]iving with a seizure disorder can be physically challenging and emotionally isolating for both the person living with the condition and their caregivers.”<sup>12</sup> To ameliorate the effects of living

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<sup>8</sup> Tara A. Waterlander, *Canines in the Classroom: When Schools Must Allow a Service Dog to Accompany a Child with Autism into the Classroom Under Federal and State Law*, 22 Geo. Mason U. Civ. Rts. L.J. 337, 354-55 (Summer 2012).

<sup>9</sup> *Id.*

<sup>10</sup> <http://k94life.org/seizure-alert/>.

<sup>11</sup> <http://www.epilepsy.com/get-help/staying-safe/seizure-dogs>.

<sup>12</sup> <http://www.epilepsy.com/article/2014/11/how-service-animals-may-help-people>.

with epilepsy, service dogs “provide functional assistance to help people gain back independence.”<sup>13</sup> Without their service animals, many children with disabilities such as epilepsy would be unable to successfully attend school.

The anecdotes of service animals transforming lives are legion. Digby the poodle assists Detective Scott Sefranka of the Phoenix Police Department in functioning after a shooting nearly took his life, providing both physical support as well as emotional support to cope with the significant trauma which resulted from his experience.<sup>14</sup> As a child with a debilitating spinal cord injury, Alex was paired with Keno, who enabled her to develop independence and act “like an average kid,” later graduating to become a mom with service dog Bright, who allows her to perform everyday tasks which would otherwise be borderline impossible.<sup>15</sup> And Lucia is not only 8-year old Spencer Wyatt’s best friend, but has become a vital caregiver, alerting Spencer’s family when he is about to suffer a seizure.<sup>16</sup> These individuals and thousands of other people suffering from mental, physical and emotional disabilities rely on their service animals to provide support and normalcy in their everyday lives.

It is therefore no wonder that state and federal law has so prominently recognized the necessity for action to ensure that disabled individuals are not deprived of their right to keep a service animal by their side.

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Virginia School of Medicine and Chair of the Epilepsy Foundation's Professional Advisory Board.

<sup>13</sup> *Id.*

<sup>14</sup> [http://health.usnews.com/wellness/articles/2016-11-23/how-service-dogs-  
provide-support](http://health.usnews.com/wellness/articles/2016-11-23/how-service-dogs-provide-support).

<sup>15</sup> <http://www.cci.org/about/stories/alex-bright.html>

## II. The Service Animal Provision Is Intended to Ensure that Individuals with Disabilities Are Not Separated From Their Service Animals

The Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“ADA”) is designed to respect the choices of individuals with disabilities to ensure they are able to live as independently as possible. As stated by the honorable Thomas Harkin in addressing the Senate Committee on Labor and Human Resources, people with disabilities “are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and free from policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.”<sup>17</sup>

As demonstrated by the ADA’s legislative history, Congress understood that for many people with disabilities, living independently requires the use of a service animal. The protection is so strong that “[r]efusal to admit [a] dog...is tantamount to refusing to admit the person who is in need of the dog.”<sup>18</sup> Moreover, it is clear that Congress intended that “individuals with disabilities are not separated from their service animals.” 28 C.F.R. Pt. 36, app. C § 36.302 at 916 (Jul. 1, 2014); *Crowder v. Kitagawa*, 81 F.3d 1480, 1485 (9<sup>th</sup> Cir. 1996) (citing 28 C.F.R. § 36, App. B, at 616; “the general intent of Congress was to ensure that individuals with disabilities are not separated from their service animals”). The service animal regulation implements this specific intent by providing the “broadest feasible access...to

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<sup>17</sup> *Hearing Before the S. Comm. on Labor & Human Resources*, 101st Cong. 188 (1989) (statement of Sen. Harkin) at page 8. *accord Tennessee v. Lane*, 541 U.S. 509, 538 (2004) (Ginsberg, J. concurring) (ADA is Congress’s “barrier-lowering, dignity-respecting national solution”).

service animals,” and permitting their exclusion only in “rare circumstances.” 28 C.F.R. pt. 36, app. C § 36.302 at 916 (Jul. 1, 2014). This is consistent with Congress’s recognition that separating a person with a disability from their service animal is discriminatory.<sup>19</sup>

Likewise, the Office of Civil Rights, U.S. Department of Education (“OCR”) has confirmed that a school’s refusal to permit a child to attend school with their service animal may violate Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794:

If not allowing a student to bring a service dog into the classroom would effectively deny the student the opportunity to participate in or benefit from the education program, then the recipient school would be in violation of Section 504 and its implementing regulations.<sup>20</sup>

Accordingly, the ADA and Section 504 specifically combat discrimination by recognizing the right of children with disabilities to be accompanied by a service animal. Children with disabilities therefore rely on their schools to allow their service animals, and the courts and juries are their last resort where this fundamental right is denied them.

### **III. Ongoing Discrimination and Misunderstanding – The Public and Schools Need to Understand the Service Animal Laws**

Despite the legal protections afforded to individuals with disabilities to have their service animals accompany them in public places, and the documented positive and vital impact which service animals have been demonstrated to have, the public, including potential jurors, schools and parents, are not always aware of these

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<sup>19</sup> See, e.g., *Johnson v. Gambrinus Company/Spoetzl Brewery*, 116 F.3d 1052 (5th Cir. 1997).

protections. Schools in particular have been slow to permit service dogs in the classroom, as demonstrated by the anecdotes below and the cases which have been placed before the courts.

Kaleb Drew has autism. Until he was paired with Chewey, Kaleb could only sleep three hours a night. With his dog pressed against him, Kaleb feels secure and comforted and is sleeping through the night. With a proper night's sleep, Kaleb is able to focus better – looking at a book for more than hour. After seeing the benefits Chewey gave to Kaleb, Kaleb's parents were shocked when Kaleb's school refused to let him attend school with Chewey. The school district's position is that they were “not convinced that the dog is considered a service animal.”<sup>21</sup>

In a situation considered recently in the Southern District of Florida, the school denied a 6 year old student, A.M., use of his service dog Stevie to address A.M.'s epileptic seizures, with the school imposing obligations of restrictions on Stevie's handler and mandating that additional insurance be provided. The Court ultimately determined that the conditions imposed by the school were unreasonable, and amounted to discrimination against A.M.<sup>22</sup> In an arguably more blatant exhibition of misunderstanding of the law as to service animals, Madyson, a diabetic child reliant upon her service dog, Duke, to sniff out her blood sugar when it dips too low or spikes too high and to remind her to administer insulin, was denied her request to have Duke with her during school hours. The reason given was nothing more than to avoid disruption of “the school environment.”<sup>23</sup>

<sup>21</sup> <http://illinoistimes.com/article-6120-school-bars-autistic-child-and-his-service-dog.html>

<sup>22</sup> *Alboniga v. Sch. Bd. of Broward County Fla.*, 87 F. Supp. 3d 1319 (S.D. Fla. 2015)

<sup>23</sup> <http://www.punditbox.com/news/national/diabetic-girl-11-barred-service-dog>

In a case that has worked its way to the United States Supreme Court, Ehlena Fry, the minor plaintiff, suffers from cerebral palsy.<sup>24</sup> She relied on her service dog, Wonder, to assist her with various tasks including balancing, opening doors, and turning off lights. But in 2009, when she was only 5 years old, Ehlena's school district refused Ehlena's requests that Wonder be allowed to accompany her to school. While the school district bowed to pressures placed on it by the American Civil Liberties Union of Michigan, Wonder was still prohibited from staying by Ehlena's side for most of the day. Rather than separate Ehlena from Wonder, Ehlena's family decided to homeschool her – further isolating the child. While ultimately the OCR determined that Wonder should be permitted to attend school with Ehlena, the impact which Ehlena suffered by being deprived the assistance of her service dog – and, consequently, being denied effective public education – cannot be overlooked.

The story of M.B., the plaintiff-appellant, again demonstrates the need to enforce the legislation protecting people with disabilities from discrimination. M.B. suffers from, among other maladies, treatment-resistant epilepsy and cannot attend school without her service dog Buddy. Buddy not only detects and responds to M.B.'s seizures, he protects M.B. from the panic and anxiety that goes hand-in-hand with a child's experience of the seizure itself:

They are an alarm system. They are helpers, protectors and service providers. So-called seizure response dogs can be all these things – and more.<sup>25</sup>

<sup>24</sup> *Fry v. Napoleon Community Schools et al.*, 137 S.Ct. 743, 752 (2017).

<sup>25</sup> Statement of the Epilepsy Foundation, available at <http://www.epilepsy.com/get->

For M.B., her trained service dog Buddy was that and “more” – providing M.B. with comfort and courage. When Appellee refused to admit Buddy in the school, it refused to admit M.B.

#### IV. CONCLUSION

We, as a nation, have come a long way from refusing children with disabilities access to school under the notion that their mere presence may be detrimental to other students.<sup>26</sup> Towards this progression, and in accord with the recognition that “every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential,”<sup>27</sup> it is respectfully submitted that it is critical that our courts properly enforce the laws ensuring the right of a disabled person to be with their service animal.

Respectfully submitted,

/s/ Amanda L. Nelson

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<sup>26</sup> See, e.g., *State ex rel. Beattie v. Board of Education*, 169 Wis. 231 (Wis. 1919).

<sup>27</sup> *Hearing Before the S. Comm. on Labor & Human Resources*, 101st Cong. 188



**CERTIFICATION OF ADMISSION TO BAR**

I, Amanda L. Nelson, certify as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.
2. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

/s/ Amanda L. Nelson  
Amanda L. Nelson

**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a) AND LOCAL RULE 31.1**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because this brief contains 2,662 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using the 2008 version of Microsoft Word in 14 point Times New Roman font.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and the Vipre Virus Protection, version 3.1 has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: July 27, 2017

/s/ Amanda L. Nelson  
Amanda L. Nelson

**CERTIFICATE OF FILING AND SERVICE**

I, Elissa Diaz, hereby certify pursuant to Fed. R. App. P. 25(d) that, on July 27, 2017, the foregoing Brief for Amicus Curiae Public Interest Law Center in Support of Appellants was filed through the CM/ECF system and served electronically.

Unless otherwise noted, copies have been sent to the court on the same date as above for filing via Express Mail.

/s/ Elissa Diaz  
Elissa Diaz