No. 24-1128

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NIA LUCAS; A.M., II, a minor, by and through his Guardian ad Litem, Nia Lucas,

Plaintiffs-Appellants,

v.

VHC HEALTH, d/b/a Virginia Hospital Center; VHC PHYSICIAN GROUP, LLC, d/b/a VHC Health Physician/OBGYN,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Virginia at Alexandria
Case No. 1:22-cv-00987, Hon. Patricia Tolliver Giles

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Introduction

Nia Lucas, a Black woman with service-connected disabilities, sought treatment during the third trimester of her high-risk pregnancy at the Virginia Hospital Center. She arrived at the hospital with pre-term contractions, which threatened the viability of her pregnancy, and associated pain in her abdomen and back. Instead of caring for her, doctors discharged Lucas without treatment or medication after asserting that her pain was not real—which they repeated when Lucas returned to the hospital three days later. The hospital's doctors told Lucas to live with her pre-term contractions and pain for the next three-and-a-half months. And they said that if she miscarried, she should do so at home.

Lucas believed the hospital failed to treat her properly because of her race and disabilities, especially after Dr. Saira Mir told Lucas that she does not treat Black people (or veterans) and after Lucas witnessed the callous mistreatment of another patient of color. So, she complained to the hospital about the discriminatory treatment. Just days later, the hospital terminated Lucas as a patient.

Lucas sued the hospital claiming discrimination and retaliation on the basis of race and disability under the Affordable Care Act (ACA), which incorporates two landmark federal laws that prohibit discrimination on those grounds: Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act. The district court dismissed Lucas's claims, failing to appropriately

consider Lucas's allegation that Dr. Mir explicitly admitted to race discrimination and misapplying the Rehabilitation Act's causation standard. The district court also concluded that the ACA doesn't prohibit retaliation at all (or even if it does, that it applies only in the employment context). But the ACA does ban retaliation in all contexts in which it applies. This Court should reverse.

Statement of Jurisdiction

The district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). JA 12. On August 30, 2023, the district court granted Defendants' motion to dismiss, disposing of all parties' claims. JA 86-96. Lucas filed a motion to alter or amend the judgment, which the district court denied on January 25, 2024. JA 97-101. Lucas filed a timely notice of appeal on February 5, 2024. JA 102. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

I. Whether Lucas's complaint stated a claim for race discrimination under Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116.

II. Whether Lucas's complaint stated a claim for disability discrimination under Section 1557.

III. Whether Section 1557 authorizes claims by patients alleging retaliation by their healthcare providers, and, if so, whether Lucas's complaint stated a claim for retaliation.

IV. Whether the district court erred when, after dismissing all of Lucas's claims, it denied as futile Lucas's motion for leave to amend her complaint.

Statement of the Case

I. Factual background

The following facts are from Lucas's pro se complaint, which the district court dismissed for failure to state a claim. These facts must be taken as true, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), with all inferences drawn in Lucas's favor, *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011).

A. Defendants fail to treat Lucas's pre-term contractions or to prescribe pain medication.

Plaintiff-Appellant Nia Lucas is a Black veteran who served in Operation Enduring Freedom in Afghanistan. JA 18. She has been diagnosed with several service-connected disabilities: traumatic brain injury, post-traumatic stress syndrome, depression, anxiety, and panic attacks. JA 18. In August 2018, the Virginia Hospital Center provided Lucas prenatal care during the third trimester of her high-risk pregnancy. JA 10, 18. The Virginia Hospital Center, a hospital in Arlington, Virginia, is operated by Defendants VHC Health, Inc. (VHC), and the Virginia Health Center Physician Group. JA 7, 11-12. Both entities receive federal funding. JA 11.

On August 24, 2018, Lucas sought care at the hospital for pre-term contractions and associated abdominal and back pain. JA 18. Dr. Vayas, Lucas's Maternal Fetal Medicine (MFM) provider (a doctor who takes care

of women with high-risk pregnancies), sent her to the emergency labor and delivery unit. JA 7, 18. There, she received unprofessional, substandard care: a medical student checked her cervix without her permission, and a cellphone flashlight was used to inspect her vagina. JA 18.

VHC physicians sent Lucas home the next day without treating her pain or providing the medication prescribed by Dr. Vayas to stop pre-term contractions, which can lead to life-threatening pre-term labor if left untreated. JA 7, 18. The doctors also told Lucas to "live [with] the pre-term contractions and pain" for the rest of her pregnancy and "if she was to miscarry, to do so at home." JA 19. Despite the urgency of Lucas's symptoms, VHC physicians told her to wait for forty-eight hours until her regularly scheduled appointment to follow up. JA 7, 18.

And even though Lucas's medical record documented that she was in pain when the hospital discharged her, Defendants "asserted that her physical pain was not real[] and was only in her head." JA 8. Contrary to Defendants' accusations, Lucas's symptoms were real, as reflected in both her MFM provider's notes and a medical test evidencing her pre-term contractions. JA 8. Doctors also witnessed Lucas's stomach gather into hard balls and heard her cry out in pain, but they remained unmoved. JA 9.

B. Doctors accuse Lucas of fabricating her contractions and pain.

For the forty-eight hours after her discharge, Lucas was "sleepless, ravaged with pain," and afraid that her worsening symptoms, including pre-

term contractions only a few minutes apart, could kill her and her unborn son. JA 7.

Lucas returned to the hospital around August 27, 2018. JA 18. Although VHC doctors finally gave Lucas medication to stop her contractions, they "made it clear" they believed that, because of her disabilities, she was "fabricating the seriousness of [her] contractions and pain." JA 8, 18-19. But in fact, as already noted, Lucas's medical record confirmed that she was telling the truth about her symptoms. JA 8.

To make matters worse, one of her doctors, Dr. Saira Mir, explicitly told Lucas during an appointment around this time that "she does not take care of veterans or 'Blacks.'" JA 20.

Beyond ignoring Lucas's pain and contractions, VHC provided other substandard care. Its doctors did not conduct the standard test for gestational diabetes—a condition that could harm or kill a fetus—as recommended by Lucas's MFM provider, or properly treat Lucas's liver-function problems. JA 19. Hospital staff also told Lucas that she had cholestasis—a frightening medical condition associated with a 37% chance of stillbirth—without explaining any more about the diagnosis, causing Lucas severe emotional distress. JA 19.

C. Lucas complains about Defendants' race and disability discrimination.

Lucas then complained about Defendants' "intentional discrimination" against her. JA 10. She told VHC officials, including Dr. Mir, Dr. Kelly

Orzechowski, and Kelly White (a business manager at the hospital) that she had received disparate medical treatment, including no treatment at all for her pain or contractions, because of her race and service-connected disabilities. JA 8-9. Lucas told the doctors that their refusal to mitigate her symptoms, against her MFM provider's recommendations, was "based on intentional racism and discrimination." JA 8. She emphasized as well that the failure to provide proper treatment resulted from the doctors' belief that Black people "could not feel pain" to the same extent as white people. JA 8.

Lucas also complained about discrimination against another patient. While being treated at the hospital, Lucas witnessed a phlebotomist "traumatizing" and speaking in a derogatory manner to a non-English-speaking patient of color. JA 9-10. Because doctors had not communicated with the patient about a planned blood draw, she responded by "trying to turn away the needle and crying." JA 9. Lucas raised this callous discriminatory mistreatment in her conversation with Dr. Mir, Dr. Orzechowski, and White. JA 19.

After registering her complaint, Lucas reiterated that she did not want to leave the hospital's prenatal care to deliver her baby elsewhere. JA 9. She feared the high mortality rates at hospitals in Washington, D.C., particularly because Black mothers make up the majority of pregnancy-related deaths. JA 9. Instead, Lucas explained to her doctors that she wished to remain at the hospital and work with VHC to achieve improved care for herself and for "mothers of various colors and creeds." JA 9-10.

D. Just days after Lucas's complaint of discrimination, Defendants permanently terminate her as a patient.

On September 5, 2018, Lucas received a letter permanently terminating her treatment at the hospital, JA 19, even though she was in the final trimester of a high-risk pregnancy, JA 10. The letter was dated August 31, 2018—just two or three days after Lucas made her discrimination complaint. JA 19. The letter stated that the reason for termination was a lack of trust between Lucas and her VHC doctors, including Dr. Mir. JA 19.

The next day, September 6, Lucas attended a previously scheduled appointment with Dr. Mir. JA 19-20. At that appointment, Dr. Mir told Lucas that her care was being terminated because Lucas's expectations couldn't be met. JA 20. Lucas was also informed that she could be dismissed from treatment for any reason, including her race or disabilities. JA 10. Lucas's partner recorded this appointment on video because, as discussed, Dr. Mir had stated at a previous appointment that she "does not take care of veterans or 'Blacks.'" JA 20.

VHC's termination of care caused Lucas severe emotional and physical distress. JA 20. The termination letter stated that Lucas had until September 14, 2018—just nine days after she received the letter—to find a new doctor. JA 10. That already-difficult task was complicated by the fact that Lucas needed Defendants to transfer her medical record to enable her to find a new doctor, JA 19, but Defendants gave themselves thirty days in which to do so, JA 10—more than twice as long as the time they gave Lucas to find a new

provider. Lucas's search for new obstetrical care—which was unsuccessful—caused her to develop stress-related rashes, extreme physical pain, a racing heart rate, peeling skin, and further anxiety, leading, in turn, to high blood pressure. JA 10, 20.

The cumulative effect of all these maladies caused Lucas to give birth to her son early—at thirty-seven weeks, rather than at full term. JA 20. As a result, her son "became jaundiced and los[t] several pounds." JA 21. After giving birth at a Virginia hospital, she had to be transferred to a Maryland facility for post-partum eclampsia (pregnancy-related seizures). JA 21. Lucas was unable to breastfeed because of these health complications. JA 21.

II. Procedural background

Lawsuit. Lucas sued VHC and the Virginia Hospital Center Physician Group in the Eastern District of Virginia alleging discrimination and retaliation on the basis of race and disability under Section 1557 of the Affordable Care Act. JA 6-28.[1]

Section 1557 prohibits discrimination outlawed under Title VI of the Civil Rights Act of 1964 (which bans race discrimination), Title IX of the Education Amendments Act of 1972 (which bans sex discrimination), the Age Discrimination Act of 1975, and the Rehabilitation Act (which bans disability

[1] Lucas has withdrawn her claims under statutes other than the ACA and all claims on behalf of A.M., II, her minor child. ECF 26 at 1, 3; JA 89-90.

discrimination). 42 U.S.C. § 18116. Defendants filed a motion to dismiss all claims. ECF 6.

Amended Complaint. While Defendants' motion to dismiss was pending, Lucas moved to amend her complaint to elaborate on VHC's discriminatory conduct described above. JA 55-59; JA 60-85.

Race-discrimination claim. Lucas's amended complaint explained that Dr. Mir told Lucas that the hospital does not care for African-American women and "would be better off going to a hospital that treated a larger population of African American patients." JA 69. Dr. Mir told her to seek treatment at the Washington Hospital Center instead, JA 69—a recommendation that effectively "attempt[ed] to segregate" Lucas from the white patients at the Virginia Hospital Center. JA 70. Lucas also attached Defendants' letter terminating her care, signed by Dr. Mir, as an exhibit to her amended complaint. ECF 33-1, Ex. 17.

Disability-discrimination claim. Lucas's amended complaint specified that lack of trust—the reason VHC gave for terminating Lucas's care—is a symptom of PTSD, one of her disabilities. JA 71, 74.

District court proceedings. The district court granted Defendants' motion to dismiss all claims. JA 86-96.

As to the race-discrimination claim (under the ACA's incorporation of Title VI), the court held that Dr. Mir's expressly discriminatory statement that she does not take care of Black people was a "stray" comment insufficient to plead a race-discrimination claim. JA 93.

The district court also held that Lucas failed to allege disability discrimination (under the ACA's incorporation of the Rehabilitation Act) because her disability was not the "sole" reason that Defendants denied her services and treatment. JA 94-95.

Lastly, the district court held that the ACA does not prohibit retaliation at all. JA 95. And even if the ACA did prohibit retaliation, the court concluded that a retaliation claim based on disability under the Rehabilitation Act could be brought only in the employment context. Because Lucas had no employment relationship with Defendants, her claim failed. JA 95-96.

The court then denied as futile Lucas's motion to amend her complaint. JA 96. The court later rejected Lucas's motion to alter or amend the judgment. ECF 41 at 1-5.

Summary of Argument

I. The district court erred in dismissing Lucas's ACA Section 1557 race-discrimination claim because Dr. Mir admitted that she does not treat Black people. That's not a stray comment as the district court maintained, but direct evidence from which intentional discrimination can easily be determined. Lucas also pleaded additional facts, which the district court ignored, from which racially discriminatory medical treatment can be inferred, further supporting her claim.

II. Lucas alleged that Defendants intentionally discriminated against her and terminated her care because of her disabilities, and not for any other nondiscriminatory reason. That is sufficient to state a disability-discrimination claim under ACA Section 1557, and the district court was wrong to hold otherwise.

III. Contrary to the district court's holding, ACA Section 1557's bar on discrimination on the grounds prohibited under Title VI (race) and the Rehabilitation Act (disability) provides a cause of action for retaliation because both of those incorporated statutes prohibit retaliation. And retaliation claims under Section 1557 aren't confined to the employment context either, as the district court held alternatively. Rather, Section 1557 bans retaliation in the provision of healthcare (and is not focused on employment). Moreover, neither Title VI nor the Rehabilitation Act, the relevant statutes that Section 1557 incorporates, is limited to any particular context. Lucas thus stated a claim for retaliation when she alleged that Defendants terminated her healthcare just days after she made a discrimination complaint.

IV. The district court erred when it denied as futile Lucas's motion for leave to amend her complaint. As demonstrated, Lucas stated discrimination and retaliation claims in her original complaint. But if this Court thinks otherwise, her amended complaint would not be futile because it included additional allegations that would resolve any (purported) deficiencies.

Standard of Review

This Court reviews the grant of a motion to dismiss for failure to state a claim de novo. *See Benjamin v. Sparks*, 986 F.3d 332, 351 (4th Cir. 2021). This Court "must assume the truth of the material facts as alleged in the complaint," *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 171 (2005) (citation omitted), and "draw all reasonable inferences in favor of the plaintiff," *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citation and quotation marks omitted).

In applying this standard, a pro se complaint like Lucas's, "however inartfully pleaded," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), must be construed liberally, "particularly if the pro se plaintiff raises civil rights issues," *DePaola v. Clarke*, 884 F.3d 481, 486 (4th Cir. 2018).

This Court generally reviews the denial of a motion for leave to amend a complaint for abuse of discretion. *See Laber v. Harvey*, 438 F.3d 404, 428 (4th Cir. 2006). When, as here, a district court denies an amendment on the ground that it would be futile, however, this Court reviews that legal conclusion de novo. *Save Our Sound OBX, Inc. v. N.C. Dep't of Transp.*, 914 F.3d 213, 227 (4th Cir. 2019) (citing *United States ex rel. Ahumada v. NISH*, 758 F.3d 268, 274 (4th Cir. 2014)). It is "this Circuit's policy to liberally allow amendment." *Adbul-Mumit v. Alexandria Hyundai, LLC*, 896 F.3d 278, 293 (4th Cir. 2018) (citation omitted).

Argument

I. Lucas stated a claim for race discrimination under ACA Section 1557.

The Affordable Care Act prohibits any health program or activity that receives federal funds from discriminating on the grounds prohibited under four statutes: Title VI of the Civil Rights Act of 1964 (which prohibits race discrimination), Title IX of the Education Amendments of 1972 (which prohibits sex discrimination), the Age Discrimination Act of 1975 (which prohibits age discrimination), and the Rehabilitation Act (which prohibits disability discrimination). *See* 42 U.S.C. § 18116(a). The ACA also incorporates each of these cross-referenced statutes' "enforcement mechanisms." *Id.* Thus, because Title VI provides a right to sue entities that receive federal funding for race discrimination, so too does the ACA. *See* 42 U.S.C § 2000d; *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *Basta v. Novant Health Inc.*, 56 F.4th 307, 314 (4th Cir. 2022).

ACA race-discrimination claims also incorporate Title VI's "substantive analytical framework." *Basta*, 56 F.4th at 314 (citation omitted); *Doe v. BlueCross BlueShield of Tenn.*, 926 F.3d 235, 238 (6th Cir. 2019). To state an ACA race-discrimination claim, Lucas must plead facts that can lead to a plausible inference that Defendants (1) received federal funding and (2) engaged in intentional race discrimination. *See Sandoval*, 532 U.S. at 280. Lucas plausibly alleged, and Defendants do not dispute, that Defendants receive federal funding. JA 11, 92. As we now show, Lucas also plausibly

alleged that Defendants engaged in intentional race discrimination, and the district court was wrong to conclude otherwise.

A. Dr. Mir's statement that she does not treat Black people is direct evidence of race discrimination.

To survive a motion to dismiss, a plaintiff must plead race discrimination "either with direct evidence or by developing 'an inferential case of discriminatory intent.'" *Robinson v. Priority Auto. Huntersville, Inc.*, 70 F.4th 776, 783 (4th Cir. 2023) (citation omitted); *Woods v. City of Greensboro*, 855 F.3d 639, 648-49 (4th Cir. 2017). Direct evidence is "conduct or statements that both reflect directly the alleged discriminatory attitude and that bear directly on the contested [] decision." *Taylor v. Va. Union Univ.*, 193 F.3d 219, 232 (4th Cir. 1999) (en banc) (citation and quotation marks omitted). Here, Dr. Mir stated that she does not treat Black patients, a discriminatory statement that "bears directly" on Defendants' failure to treat Lucas and on the termination of her care, constituting direct evidence of race discrimination.

This Court has held a statement that it was a "done deal" that "an African-American female candidate was going to be hired" could be "understood as direct evidence of discrimination by the committee member who cast the deciding vote" sufficient to survive summary judgment. *Schafer v. Md. Dep't of Health & Mental Hygiene*, 359 F. App'x 385, 389 (4th Cir. 2009). Here, at the motion-to-dismiss stage, Dr. Mir's statement that she does not treat Black patients is more than sufficient to state a claim for race discrimination.

The district court discounted Dr. Mir's racist statement that she does not treat Black people as a "stray" remark that could not serve as direct evidence of discrimination. JA 93. That determination was seriously wrong because "statements related to the [] decision made by an actual decisionmaker are not 'stray remarks.'" *Schafer*, 359 F. App'x at 388 n.2 (citation omitted).

The two cases cited by the district court do not support its conclusion. The first, *McNeal v. Montgomery County*, relied on the plaintiff's failure to "temporally connect" comments about the plaintiff's race "with any employment decision," so he had not stated a race-discrimination claim. 307 F. App'x 766, 774 (4th Cir. 2009). Here, by contrast, Dr. Mir's statement that she does not treat "Blacks" was contemporaneous with Defendants' failure to treat Lucas and Lucas's termination. And *McNeal* acknowledged that remarks "related to the employment decision in question" can provide evidence of discrimination. *Id.* (citation omitted). Applying that principle here, a discriminatory remark related to the critical question—whether Lucas did not receive medical care because she is Black—is (obviously) evidence of race discrimination, not a stray remark.

The district court's other case, *Glenn v. Wells Fargo Bank, N.A.*, 710 F. App'x 574, 577 (4th Cir. 2017), held only that a bank employee who "reacted negatively" upon learning a customer's race was insufficient to constitute direct evidence of discrimination by the bank. That's poles apart from this case. Lucas doesn't allege an unspecified negative reaction, but that Dr. Mir—the treating physician who terminated Lucas's care—explicitly said

that she does not treat Black people, a direct admission of discriminatory treatment. Dr. Mir's statement is no different from a "Whites Only" sign outside the maternity ward.

B. Lucas's other allegations bolster her race-discrimination claim.

Dr. Mir's racist statement alone is easily enough to state an ACA race-discrimination claim, as just explained. But there's more. Lucas alleged further facts that also raise a plausible inference that Defendants did not treat her pain and contractions and then terminated her because she is Black.

First, Lucas was discharged without pain medication, against the recommendation of her MFM provider and even though her pain upon discharge was "denoted throughout her medical record." JA 8. Second, even though Lucas's pre-term contractions were verified by multiple medical tests, VHC doctors believed that, as a Black person, Lucas "could not feel pain" to the same extent as a white person. JA 8. Third, Lucas witnessed another incident of intentional race discrimination, when the hospital failed to provide a translator, "traumatize[d]," and spoke in a derogatory manner to a non-English-speaking patient of color. JA 9-10. And finally, as explained further below (at 18-21), Defendants provided no nondiscriminatory justification for terminating her care.

The district court dismissed these allegations as conclusory and speculative. But they are neither. Lucas alleged that she was not given pain medication, in spite of pain and contractions noted in her medical record,

because doctors believed she "could not feel pain" to the same extent as a white person. JA 8. Further, ignoring the MFM provider's recommendation that Lucas receive pain medication can provide evidence of discrimination. *See Holloway v. Maryland*, 32 F.4th 293, 299 (4th Cir. 2022). Lucas's observation that another patient was discriminated against also supports her claim. *See Woods v. City of Greensboro*, 855 F.3d 639, 649 (4th Cir. 2017).

II. Lucas stated a claim for disability discrimination under ACA Section 1557.

Under the ACA, "an individual shall not, on the ground prohibited under [the Rehabilitation Act] be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity." 42 U.S.C. § 18116(a); *see Basta v. Novant Health Inc.*, 56 F.4th 307, 314 (4th Cir. 2022).

The Rehabilitation Act, in turn, prohibits discrimination under any program or activity receiving federal funding "solely by reason of … disability." 29 U.S.C. § 794(a). A Rehabilitation Act plaintiff must demonstrate that (1) she has a disability as defined by the Act; (2) she is otherwise qualified for the program or benefit at issue; (3) she was excluded solely by reason of her disability; and (4) the program receives federal funds. *Basta*, 56 F.4th at 315; *see also Davis v. Univ. of N.C.*, 263 F.3d 95, 99 (4th Cir. 2001). As noted earlier, VHC acknowledges that it receives federal funds. JA 11. As we now show, Lucas's complaint meets the other three requirements as well.

A. Lucas has disabilities and was otherwise qualified for treatment.

Under the Rehabilitation Act, "individual with a disability" means any person with a disability as defined under the Americans with Disabilities Act (ADA). 29 U.S.C. § 705(20)(B). The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities of such individual[.]" 42 U.S.C. § 12102(1)(A). A major life activity includes "concentrating, thinking," or "the operation of a major bodily function, including … neurological [and] brain … functions." *Id.* § 12102(2)(A)-(B). Lucas has been diagnosed with "Traumatic Brain Injury, Post-Traumatic Stress Syndrome, Depression, Anxiety and Panic Attacks," JA 18, conditions that "substantially limit[]" her major life activities, JA 21.

Further, a "qualified" individual is "one who, with or without reasonable modifications to rules, policies, or practices … meets the essential eligibility requirements for participation in a program or activity." *Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454, 462 (4th Cir. 2012) (alteration in original) (citation omitted). After Lucas was referred by her MFM provider, she was admitted and treated in-patient at the hospital. JA 7. No one disputes that Lucas was qualified to receive care there.

B. Lucas was excluded from services and treatment solely by reason of her disabilities.

Lucas alleged that she was intentionally discriminated against and denied medical treatment solely by reason of her disabilities. She stated that hospital staff and providers expressed their belief that her disabilities caused her to

fabricate her pain, explicitly informed her that her pain was "only in her head," and consequently "provided absolutely no treatment" for it. JA 8, 18-19. Then, going a step further, Defendants terminated Lucas's care because of her race and disabilities, and in retaliation for her complaint regarding Defendants' discrimination.

The district court relied on alternative justifications to hold that Lucas was not denied treatment solely because of her disabilities: a purported lack of trust between Lucas and Defendants, and Lucas's other allegations of intentional race discrimination and retaliation. JA 94-95. At the motion-to-dismiss stage, neither of these reasons is sufficient to negate Lucas's claim that she was subject to intentional disability discrimination.

1. The district court erroneously accepted Defendants' purported justification as true. In disposing of Lucas's disability-discrimination claim, the district court observed (correctly) that Lucas "received a dismissal letter from Defendants, stating that 'there was no trust between' Plaintiff and at least one of Defendants' medical providers[.]" JA 94. That observation—about what *Defendants* stated—somehow led the court to hold that "*Plaintiff* alleges that her disability was not the *sole* reason that she was excluded from services," and that she therefore had not been subjected to discrimination under the Rehabilitation Act. JA 94-95 (first emphasis added). The district court's reasoning should be rejected for two independently sufficient reasons.

First, Lucas did not allege that an *actual* lack of trust existed between her and Defendants. She alleged only that Defendants "*informed her* that there was no trust" between them. JA 19 (emphasis added). At the motion-to-dismiss stage, the court must accept as true that Defendants provided this justification when terminating Lucas's care, but it may not accept the justification itself as true because Lucas did not plead that it was true. This basic understanding of pleading-stage rules is all that is needed to reject the district court's reasoning.

Second, at this stage—when all plausible inferences must be construed in Lucas's favor, *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020)—it easily can be inferred that any supposed lack of trust was nothing more than pretext for Defendants' discrimination. Lucas alleged that just days after she complained of intentionally discriminatory treatment, Defendants identified a vague and dubious ground on which to terminate her care entirely. At the motion-to-dismiss stage, Defendants' nondiscriminatory justification for an action must be "so obviously an irrefutably sound and unambiguously nondiscriminatory and non-pretextual explanation that it renders [Plaintiff's] claim of pretext implausible." *Woods v. City of Greensboro*, 855 F.3d 639, 649-50 (4th Cir. 2017). Any purported lack of trust between Lucas and her doctors comes nowhere close, and a fact-finder could easily determine that Defendants' explanation was not the real basis for their conduct.

2. In any event, any real lack of trust stemmed from Defendants' discriminatory actions. Even if a genuine lack of trust existed between Lucas and her doctors, meaning that Defendants' stated reason *was* true, it still resulted from Lucas's disabilities. Lucas alleged that "[b]ecause [of] her diagnosis of PTSD, depression, as well as panic attacks and anxiety," Defendants "asserted that her physical pain was not real[] and was only in her head," despite contrary medical tests. JA 8. And hospital "staff made it clear that they believed that because of her diagnosed emotional conditions … she was fabricating the seriousness of [her] contractions and pain." JA 18-19.

Thus, one effect of Lucas's disabilities could be that it led Defendants to believe she was lying, plausibly creating a real lack of trust between them. And when assessing whether an individual was discriminated against solely because of her disability, courts may not draw "a false distinction between the 'disability *itself*' and the disability's effects." *Shaikh v. Tex. A&M Univ. Coll. of Med.*, 739 F. App'x 215, 222 (5th Cir. 2018). So, Defendants' discrimination stemming from the impact of Lucas's disabilities on her doctor-patient relationship could be discrimination solely on the basis of her disabilities.

Alternatively, Defendants may have meant they did not trust Lucas because she had complained of discrimination. Either way, any genuine lack of trust derived from *discriminatory* motivations. *See Doe v. BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 242 (6th Cir. 2019).

3. Lucas's allegations of intentional race discrimination and retaliation do not preclude her Rehabilitation Act claim. The district court also suggested that Lucas's allegations of race discrimination and retaliation necessarily meant that her discharge was not "solely" because of her disabilities. JA 94-95. That reasoning—which appears to be taken directly from Defendants' motion to dismiss, ECF 7 at 5—is flatly wrong. Simply put, the Rehabilitation Act's causation standard excludes from liability only "actions taken for *nondiscriminatory* reasons." *BlueCross BlueShield of Tenn., Inc.*, 926 F.3d at 242 (emphasis added). Lucas's allegations of both race discrimination and retaliation are certainly not that.

Further, it would make no sense to ascribe to Congress the notion that a plaintiff pleads herself out of court when she alleges more than one discriminatory basis for an action—especially at the motion-to-dismiss stage, because later in the case only the Rehabilitation Act claim may be proved. *See Hayes v. Prudential Ins. Co. of Am.*, 60 F.4th 848, 855 (4th Cir. 2023) ("Federal Rule of Civil Procedure 8(a)(3) specifically permits pleading 'in the alternative[.]'"). As the House Education and Labor Subcommittees on Employment Opportunities and Select Education put it, a "literal reliance on the phrase 'solely by reason of,'" particularly when it prompts the exclusion of other allegations of discrimination, "leads to absurd results." H.R. Rep. No. 485(II), 101st Cong., 2nd Sess., at 85 (1990); *see also* S. Rep. No. 116, 101st Cong., 1st Sess., at 44-45 (1989).

Accordingly, when this Court has previously entertained Rehabilitation Act claims alongside other discrimination claims, it has never suggested that pleading other discrimination claims precludes the disability-discrimination claim. *See, e.g.*, *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474 (4th Cir. 2005) (pleading First Amendment retaliation and disability-discrimination claims); *Atkins v. Holder*, 529 F. App'x 318, 320 (4th Cir. 2013) (pleading race-discrimination, age-discrimination, and disability-discrimination claims).

III. Lucas stated an ACA Section 1557 retaliation claim.

After erring in resolving Lucas's race- and disability-discrimination claims, the district court veered even further off course when it considered her retaliation claim. The district court held that the ACA's antidiscrimination provision does not prohibit retaliation at all. JA 95. But Section 1557 incorporates the anti-retaliation coverage provided under the cross-referenced statutes. And, contrary to the district court's further reasoning, the retaliation cause of action provided by Section 1557, Title VI, and the Rehabilitation Act are not limited to the employment context. So, as we now explain, Lucas stated a retaliation claim.

A. Section 1557 bars discrimination prohibited under the incorporated statutes, including retaliation against a person who complains of discrimination.

ACA Section 1557 prohibits discrimination by incorporating four antidiscrimination statutes, including Title VI, Title IX, and the

Rehabilitation Act. 42 U.S.C. § 18116(a). Claims under Section 1557 "rise and fall" with claims under the incorporated statutes. *Basta v. Novant Health Inc.*, 56 F.4th 307, 314 (4th Cir. 2022). So, to state a claim under Section 1557, plaintiffs must allege facts adequate to state a claim under the cross-referenced statute on which they rely. *See Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1209-10 (9th Cir. 2020). Section 1557 thus makes unlawful the discrimination barred under each of the cross-referenced statutes. *See Doe v. BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 238 (6th Cir. 2019); *Panama R.R. v. Johnson*, 264 U.S. 375, 391-92 (1924) (noting that cross-references to existing statutes bring in "all that is fairly covered by the reference").

Retaliation "is a form of 'discrimination' because the complainant is subjected to differential treatment … [and] it is an intentional response to … an allegation of … discrimination." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005). Accordingly, by prohibiting various types of discrimination, Title VI, Title IX, and the Rehabilitation Act each bars retaliation as well. *See Peters v. Jenney*, 327 F.3d 307, 310 (4th Cir. 2003); *Jackson*, 544 U.S. at 174; *S.B. ex rel. A.L. v. Bd. of Educ. of Harford Cnty.*, 819 F.3d 69, 78 (4th Cir. 2016).[2]

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[2] The same is true as to several other antidiscrimination statutes. *See, e.g.*, *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 237 (1969) (holding that 42 U.S.C. § 1982 bars retaliation); *Gomez-Perez v. Potter*, 553 U.S. 474, 479 (2008) (same as to ADEA); *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 445 (2009) (same as to 42 U.S.C. § 1981).

Here, Lucas's retaliation claims are premised on her complaint of race and disability discrimination. The relevant incorporated statutes, therefore, are Title VI and the Rehabilitation Act, which—as explained—prohibit retaliation against individuals who complain about race and disability discrimination. Because retaliation is a form of discrimination barred by the incorporated statutes, Section 1557 prohibits this retaliation too. *See Basta*, 56 F.4th at 314.

Accordingly, the district court was incorrect that no caselaw supports Lucas. JA 95. The line of precedent just discussed, though not Section 1557-specific, is on point and compels the conclusion that the ACA covers retaliation. That conclusion is confirmed by the presumption that, in drafting and enacting ACA Section 1557, Congress legislated against the background understanding that the antidiscrimination statutes cross-referenced in the ACA bar retaliation. *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988); *Gomez-Perez v. Potter*, 553 U.S. 474, 488 (2008); *United States v. Perkins*, 67 F.4th 583, 611 (4th Cir. 2023).

B. Retaliation claims brought under ACA Section 1557 may be brought by patients—not just employees.

The district court alternatively held that individuals can bring retaliation claims through the ACA's incorporation of the Rehabilitation Act against only their employers. JA 95. (Oddly, the district court ignored entirely Lucas's race-based retaliation claim tethered to Title VI.) The district court again erred.

1. Claims brought under Section 1557 must be adapted to the healthcare—not the employment—context. When analyzing retaliation claims, courts adapt the claim's elements to the relevant statutory context. Most retaliation caselaw concerns Title VII, which prohibits retaliation by employers against employees. 42 U.S.C. § 2000e-2; *see also, e.g.*, *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 60-61 (2006). When retaliation claims are brought under other antidiscrimination statutes, though, this Court borrows and adapts Title VII's standard by "requir[ing] the same elements [as under Title VII], with the exception that no employment relationship is required." *Alberti v. Rector & Visitors of the Univ. of Va.*, 65 F.4th 151, 156 n.6 (4th Cir. 2023) (citing *Peters v. Jenney*, 327 F.3d 307, 320 (4th Cir. 2003)); *see also Lauren W. ex rel. Jean W. v. De Flaminis*, 480 F.3d 259, 267 (3d Cir. 2007); *Shotz v. City of Plantation*, 344 F.3d 1161, 1181 (11th Cir. 2003). So, when retaliation claims are brought outside the employment context under Title VI, Title IX, or the Rehabilitation Act, the plaintiff challenges retaliation by someone other than her employer—for instance, a school or a prison. *See, e.g.*, *Alberti*, 65 F.4th at 153; *Williams v. Carvajal*, 63 F.4th 279, 282 (4th Cir. 2023); *Lauren W.*, 480 F.3d at 266; *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 696 (4th Cir. 2018).

Here, the elements of Lucas's retaliation claim must be adapted to Section 1557. That section prohibits discrimination in "any health program or activity." 42 U.S.C. § 18116; *see Schmitt v. Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 952 (9th Cir. 2020) (explaining that "Section 1557 is limited to

discrimination in the context of health programs or activities"); *T.S. ex rel. T.M.S. v. Heart of CarDon, LLC*, 43 F.4th 737, 743 (7th Cir. 2022); *Joganik v. E. Tex. Med. Ctr.*, 2021 WL 6694455, at *6 (E.D. Tex. Dec. 14, 2021). So, courts take for granted that "patients [are] … the most obvious individuals whose interests are protected by section 1557's broadly worded text." *Heart of CarDon*, 43 F.4th at 742. Accordingly, all that is required to bring a Section 1557 retaliation claim is an adverse action taken by a healthcare provider against a patient.[3]

2. In any event, retaliation claims brought under the Rehabilitation Act and Title VI are not limited to the employment context. Even if Section 1557 did not require adapting the standard retaliation elements as just described, the district court's employment limitation finds no support in the relevant cross-referenced statutes themselves, either. Lucas complained to Defendants about race and disability discrimination, JA 9-11, 19, so her retaliation claim invokes both Title VI and the Rehabilitation Act, as incorporated in Section 1557. Neither statute is limited to retaliation claims brought by employees against their employers.

Nothing in the Rehabilitation Act's text is limited to employment-based claims. 29 U.S.C. § 794. So, this Court and its sister circuits have entertained

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[3] That Section 1557 requires some adaptation of the statutory elements is confirmed by its cross-reference to Title IX. Title IX covers only "education program[s] or activit[ies]," 20 U.S.C. § 1681(a), but because Section 1557 prohibits acts taken by only healthcare programs, the cross-reference to Title IX would do almost no work if it were limited to the education context.

retaliation claims brought under the Rehabilitation Act outside the employment context. *See, e.g.*, *Williams*, 63 F.4th at 282 (retaliation claim brought by prisoner against the Bureau of Prisons); *Lauren W.*, 480 F.3d at 266 (retaliation claim brought by student against school); *T.B. ex rel. Brenneise v. San Diego Unified Sch. Dist.*, 806 F.3d 451, 457, 472-74 (9th Cir. 2015) (same); *Zainulabeddin v. Univ. of S. Fla. Bd. of Trs.*, 749 F. App'x 776, 782 (11th Cir. 2018) (same). Under Title VI too, "no employment relationship is required" for retaliation claims. *Alberti*, 65 F.4th at 156 n.6.

S.B. ex rel A.L. v. Board of Education of Harford County, 819 F.3d 69, 78-79 (4th Cir. 2016), the Rehabilitation Act case relied on by the district court, JA 95, doesn't say otherwise. Sure, that case concerns employment-based retaliation, but it nowhere suggests that retaliation under the Act is limited to the employment context. *See S.B.*, 819 F.3d at 78-79. Thus, retaliation claims can be brought against entities other than a plaintiff's employer under both the Rehabilitation Act and Title VI.

C. Lucas alleged a claim for retaliation under Section 1557.

To state a claim for retaliation, Lucas must show (1) that she engaged in protected activity; (2) that Defendants took an adverse action against her; and (3) that a causal connection existed between the protected activity and the adverse action. *See Feminist Majority Found. v. Hurley*, 911 F.3d 674, 685 (4th Cir. 2018); *Peters v. Jenney*, 327 F.3d 307, 320 (4th Cir. 2003).

1. Lucas engaged in protected activity. A plaintiff engages in protected activity when she reports unlawful discrimination that she "reasonably believed had occurred or was occurring." *Peters*, 327 F.3d at 320-21 (citation omitted). The inquiry is "(1) whether [the plaintiff] 'subjectively (that is, in good faith) believed' that the [defendant] had engaged in a [discriminatory] practice … and (2) whether this belief 'was objectively reasonable in light of the facts.'" *Id.* at 321 (citation and emphasis omitted). The plaintiff may, but need not, be the victim of the reported discrimination. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 179 (2005).

Lucas's complaint easily satisfies this element. She complained to Defendants that she was being discriminated against based on her race and disabilities. JA 9-11, 19. She also complained that she had witnessed doctors discriminate against another patient of color. JA 9-10, 19. Reporting discrimination is classic protected activity. *See, e.g.*, *S.B. ex rel. A.L. v. Bd. of Educ. of Harford Cnty.*, 819 F.3d 69, 78 (4th Cir. 2016); *Feminist Majority Found.*, 911 F.3d at 694; *Lauren W. ex rel. Jean W. v. De Flaminis*, 480 F.3d 259, 267 & n.7 (3d Cir. 2007); *Wilcox v. Lyons*, 2018 WL 1955826, at *2 (W.D. W. Va. Apr. 25, 2018).

And Lucas's belief that discrimination had occurred and was occurring was (more than) reasonable: her doctor told her that she does not treat Black patients, JA 20; Lucas repeatedly did not receive treatment for her pain and pre-term contractions even though VHC doctors recognized that she might

lose her baby, JA 7-8; and she witnessed doctors "traumatiz[e] and be[] derogatory" to another patient because of her race, JA 9.

2. Defendants took material adverse action against Lucas. Retaliatory conduct is actionable when it is "materially adverse," meaning that it would "dissuade[] a reasonable [person] from making or supporting a charge of discrimination." *Feminist Majority Found.*, 911 F.3d at 694 (citation omitted).

Defendants took material adverse action against Lucas by terminating her care. JA 19. Terminating the healthcare of an expectant mother who is exhibiting symptoms in the third trimester of a high-risk pregnancy that doctors have acknowledged may result in a miscarriage, JA 10, 18-19, would dissuade a reasonable person from reporting discrimination because doing so would risk the health and well-being of both mother and child. Terminating a doctor-patient relationship is analogous to terminating an employee-employer relationship, which universally satisfies this standard. *See, e.g.*, *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 173-74 (2011).

3. Lucas alleged that the termination of her care was causally connected to her discrimination complaint. To establish a causal connection, "a plaintiff can either show a temporal proximity between the protected activity and adverse action, or that other relevant evidence indicates 'continuing retaliatory conduct and animus' toward the plaintiff." *Alberti v. Rector & Visitors of the Univ. of Va.*, 65 F.4th 151, 156 (4th Cir. 2023) (citation omitted). When only temporal proximity is relied on to establish causality, "the temporal proximity must be 'very close[.]'" *Clark Cnty. Sch. Dist. v. Breeden*,

532 U.S. 268, 273 (2001) (citation omitted). But a "prima facie showing of causation requires little proof." *Dea v. Wash. Suburban Sanitary Comm'n*, 11 F. App'x 352, 364 (4th Cir. 2001); *see also Romeo v. APS Healthcare Bethesda, Inc.*, 876 F. Supp. 2d 577, 588 (D. Md. 2012); *Brunson v. Johns Hopkins Cmty. Physicians, Inc.*, 2022 WL 4386217, at *6 (D. Md. Sept. 21, 2022).

The timing of Lucas's termination easily establishes a causal relationship between the discharge and Lucas's protected complaint. Because Defendants terminated Lucas's care only a few days after she registered her discrimination complaint, *see* JA 19, the temporal proximity is "very close"—much shorter than the one-month gap found "sufficient to create a jury question" on causation in *Foster v. University of Maryland-Eastern Shore*, 787 F.3d 243, 253 (4th Cir. 2015). *See also Newcomb v. City of Newport News*, 549 F. Supp. 3d 458, 467 (E.D. Va. 2021) (nine-day gap sufficient). That indicates that Defendants took the "first opportunity" after the complaint to retaliate against Lucas, further suggesting a causal connection. *See Newcomb*, 549 F. Supp. 3d at 467.

Lucas's retaliation claim is also bolstered by the pretextual reasons Defendants provided for terminating her, as already discussed (at 20 above). Recall that Defendants' termination letter said they were terminating Lucas's care because of a lack of trust between Lucas and Defendants. JA 19. This plausibly suggests discrimination and retaliation, *supra* at 20-21, given that the lack of trust to which Defendants referred could be, in part, a response to Lucas's complaint of discrimination, particularly given the suspect timing.

IV. The district court should have granted Lucas's motion to amend her complaint.

Lucas's first amended complaint, which she sought to file early in the case, contained relevant information that bolstered her initial claims. But the district court denied Lucas's motion for leave to amend on futility grounds "because no amendment can cure the discussed deficiencies." JA 96. As explained earlier in this brief, Lucas's initial complaint did not suffer from the deficiencies identified by the district court. But even if it did, the amended complaint addressed them, so Lucas should have been allowed to amend.

The district court's refusal contravenes "this Circuit's policy to liberally allow amendment," *Adbul-Mumit v. Alexandria Hyundai, LLC*, 896 F.3d 278, 293 (4th Cir. 2018) (citation omitted), as well as the Federal Rules, under which a court "should freely give leave" to amend a complaint "when justice so requires," Fed. R. Civ. P. 15(a)(2); *United States v. MedCom Carolinas, Inc.*, 42 F.4th 185, 197 (4th Cir. 2022). Further, this Court has counseled against dismissing a complaint with prejudice without at least one opportunity to amend, yet the district court denied Lucas that opportunity. *See Ostrzenski v. Seigel*, 177 F.3d 245, 252-53 (4th Cir. 1999) (citing 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357, at 360–67 (2d ed. 1990)).

Turning to the district court's justification, leave to amend "should only be denied on the ground of futility when the proposed amendment is clearly

insufficient or frivolous on its face." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986); *see also Save Our Sound OBX, Inc. v. N.C. Dep't of Transp.*, 914 F.3d 213, 228 (4th Cir. 2019). Far from satisfying this stringent standard, Lucas's additional allegations strengthen her claims and cure any purported deficiencies identified by the district court.

For her race-discrimination claim, the amended complaint states that Dr. Mir informed Lucas "that VHC does not care for African American women and that she would be better off going to a hospital that treated a larger population of African American patients." JA 68-69. Lucas alleged, in other words, that Dr. Mir was "attempting to segregate her from VHC white patients, because of her race." JA 70. These allegations address the supposed deficiency identified by the district court that a "lone statement of racial animus" was insufficient to bring a race-discrimination claim. JA 93. Moreover, Lucas attached Defendants' dismissal letter, signed by Dr. Mir, to her amended complaint. ECF 33-1, Ex. 17.

As for Lucas's disability-discrimination claim, the amended complaint states that a lack of trust is "a symptom of Ms. Lucas['s] PTSD" and "a reason for her removal." JA 71, 74; ECF 33-1, Ex. 17. As discussed, the district court held that Lucas was terminated not solely by reason of her disabilities because the court (incorrectly) accepted Defendant's reason for termination: the lack of trust between Lucas and Defendants. So, the amended complaint's description of that lack of trust as a direct effect of Lucas's disabilities resolves any supposed deficiency.

Conclusion

This Court should reverse the district court's dismissal and denial of Lucas's motion for leave to amend her complaint and remand for further proceedings on each of Lucas's claims.

Respectfully submitted,

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Request for Oral Argument

Plaintiffs-Appellants requests oral argument because it would aid this Court in determining whether the Affordable Care Act's prohibition on discrimination includes a bar on retaliation, a question of first impression in this Circuit. Argument would also assist this Court in clarifying when a statement is direct evidence of race discrimination. Finally, argument would help this Court decide whether, as the district court held, a defendant can escape liability for disability discrimination if a plaintiff also alleges race discrimination.

Certificate of Compliance

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 7,838 words, as calculated by Word 2021, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(a)(1). 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 has been prepared in 14-point Palatino Linotype, a proportionally spaced typeface.

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May 6, 2024

Certificate of Service

I certify that on May 6, 2024, I electronically filed this Brief of Plaintiffs-Appellants Nia Lucas and A.M., II using the CM/ECF System, which will send notice of the filing to the following registered CM/ECF user: counsel for Defendants-Appellees' Paul Walkinshaw (ptw@whartonlevin.com).

/s/ Natasha R. Khan

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