

# United States Court of Appeals For the First Circuit

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No. 02-1823

IVETTE GARCIA-FIGUEROA,

Plaintiff, Appellant,

v.

COMMONWEALTH OF PUERTO RICO, ET AL.,

Defendants, Appellees.

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[Hon. Jay A. García-Gregory, U.S. District Judge]

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

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Before

Boudin, Chief Judge,  
Campbell, Senior Circuit Judge,  
and Lipez, Circuit Judge.

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Angel L. Rivera Colon on brief for appellant.  
Francisco A. Rullan and Quinones & Sanchez, P.S.C. on brief  
for appellees.

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March 3, 2003

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**Per Curiam.** After a thorough review of the record and of the parties' submissions, we affirm. Because appellant failed to argue below that her Complaint did not include a claim under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"), the argument is forfeited. See Plumley v. Southern Container, Inc., 303 F.3d 364, 372 n. 7 (1<sup>st</sup> Cir. 2002) (arguments raised for the first time on appeal are forfeited). Whether the complainant did attempt to state an ADA claim was surely debatable, but the time and place for that debate in the first instance was in the district court.

In addition, appellant has failed adequately to argue that she has a viable ADA claim. Under the rule established in Board of Trustees v. Garrett, 531 U.S. 356, 373-74 (2001), no cause of action under the ADA for money damages can lie against the Commonwealth, the Department of Education, or appellee Fajardo in his official capacity. See 28 U.S.C. § 2111. Finally, we do not address whether a cause of action could lie against appellee Fajardo in his individual capacity, as appellant has not argued the matter and hence it has been forfeited. See Plumley, 303 F.3d at 372 n. 7 (argument not raised in appellate brief is forfeited). This seems especially appropriate where the appellees addressed the issue in detail in their appellate brief, yet appellant chose not to file a reply brief.

**Affirmed.** See 1<sup>st</sup> Cir. Loc. R. 27(c).