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## **LDF Submits Amicus Brief for Landmark Disability Rights Lawsuit Before Supreme Court**

Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF) filed an amicus brief in *CVS Pharmacy, Inc. v. Doe*, a case before the Supreme Court that will determine whether the Patient Protection and Affordable Care Act (ACA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibit disparate impact discrimination against people with disabilities. Disparate impact claims under these statutes are essential for people with disabilities to reveal and reverse the discriminatory outcome of policies that impact their ability to live independent lives.

The Respondents in this case are HIV-positive individuals who are enrolled in employer-sponsored health plans, under which CVS administers prescription-drug benefits covering medications that treat HIV. Under CVS' "specialty medication" program, people who require HIV medications (and other medications used to treat disabilities) may only obtain them through the mail or by drop-shipment to a CVS-branded pharmacy and may only speak with call center representatives about their medication. Other medications may be obtained at any pharmacy in CVS' network with access to speak to a pharmacist in person. The Respondents seek meaningful access to the broader prescription-drug benefits available to other enrollees.

LDF's brief supports the Respondents in their assertion that Section 504 and the ACA permit disparate impact suits. Nearly 40 years ago, the Supreme Court assumed that Section 504 reaches some conduct that has an unjustifiable discriminatory impact on people with disabilities. For decades since, courts have relied on this framework to authorize disparate impact claims under Section 504. The ACA is structured in such a way that if disparate impact claims are permitted under Section 504, they are also permitted under the ACA. Accordingly, in its decision, the Ninth Circuit Court of Appeals correctly found that Section 504 and the ACA prohibit disparate impact discrimination. LDF's brief asserts that the Supreme Court should reach the same conclusion.

LDF's brief makes clear that the Supreme Court and other courts have authorized claims of disparate impact in other antidiscrimination statutes when the law's text prohibits "discrimination," as Section 504 and the ACA do, particularly when supported by an analysis of other sources of congressional intent, such as the statute's purpose and history. Further, the purpose and history of Section 504 make clear that the statute was intended to address unintentional forms of discrimination that may impact people with disabilities. This supports a finding that both Section 504 and the ACA allow disparate impact claims.

"The purpose of Section 504 is to empower people with disabilities and promote their full inclusion in our society," said LDF Senior Counsel Coty Montag. "Disparate impact claims are essential in the disability context, where healthcare companies or providers often do not act with undeniably discriminatory intent, either because they prefer more covert ways, or because the discriminatory results of their policies are sincerely unintentional. One of the main reasons disability discrimination statutes exist, however, is to nullify and eliminate

acts of discrimination, which would be all but impossible to achieve if the law required a showing of intentional discrimination.”

LDF’s brief also notes that disparate impact liability is especially necessary to protect people from intersectional discrimination based on disability and race.

“Black people are disproportionately more likely to have a disability than other groups, which is consistent with this country’s legacy of racial inequality,” said LDF attorney Victoria Wenger. “Further, Black people are more likely to encounter unique forms of discrimination and specific barriers to full participation in our society. This reinforces the need for disparate impact liability under Section 504 and the ACA to address both the intentional and inadvertent outcomes of policies and practices that full access to society for people with disabilities. We urge the Court to safeguard disability rights and affirm the Ninth Circuit Court’s decision.”

Read LDF’s amicus brief [here](#).

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*Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization. LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF. Follow LDF on [Twitter](#), [Instagram](#) and [Facebook](#).*