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WLF Urges Supreme Court To Hear Disparate-Impact Case

(CVS v. Doe)

“Given the Rehabilitation Act’s expanded reach, the Supreme Court needs to step in and stop unauthorized disparate-impact claims.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Supreme Court to resolve a circuit split over whether plaintiffs can assert disparate-impact claims under Section 504 of the Rehabilitation Act of 1973. Joining three other circuits, the Ninth Circuit held that plaintiffs can pursue disparate-impact claims under Section 504. This decision conflicts with a well-reasoned Sixth Circuit opinion. WLF’s brief urges the Supreme Court to hear the case and adopt the Sixth Circuit’s construction.

The appeal arises from five AIDS patients’ lawsuit against CVS. The plaintiffs claim that CVS’s specialty-drug program has a disparate impact on those with AIDS. Under the Patient Protection and Affordable Care Act, participants in federally funded health-care plans can sue for disability discrimination. But rather than provide an independent remedy, the ACA merely incorporates Section 504’s remedy provision.

As WLF’s brief shows, Section 504’s plain language does not permit disparate-impact claims. And the Supreme Court has held that the nondiscrimination statute with the most similar, but still broader, language does not authorize disparate-impact claims. Those statutes that allow disparate-impact claims use different language that indicates Congress’s intent to create a disparate-impact cause of action.

WLF’s brief also explains the high costs of recognizing disparate-impact claims under Section 504. At least one court has held that businesses that received PPP loans can be sued under Section 504. If the Court allows disparate-impact claims, these businesses will face astronomical costs. Together with the Independent Women’s Law Center, who joined the brief, WLF urges the Supreme Court to resolve this important question now.

Celebrating its 44th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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