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In Win For WLF, Supreme Court Agrees To Consider Scope of Rehabilitation Act

(CVS v. Doe)

“This case gives the Supreme Court the chance to stop unauthorized disparate-impact claims under the Rehabilitation Act.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC— In a victory for Washington Legal Foundation (WLF), today the U.S. Supreme Court agreed to resolve a circuit split over whether plaintiffs can assert disparate-impact claims under Section 504 of the Rehabilitation Act of 1973. Four courts of appeals, including the Ninth Circuit, have held that plaintiffs can pursue disparate-impact claims under Section 504. On the other hand, a well-reasoned Sixth Circuit opinion has held that Section 504 authorizes no disparate-impact claim. Together with the Independent Women’s Law Center, WLF filed an *amicus curiae* brief urging 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 showed, 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 indicating Congress’s intent to create a disparate-impact cause of action.

WLF’s brief also explained 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. WLF looks forward to the Supreme Court’s correcting the Ninth Circuit’s error.

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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