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## WLF Urges Supreme Court To Apply Rehabilitation Act's Plain Language

(CVS v. Doe)

**“If the Supreme Court affirms the Ninth Circuit’s decision, many Americans will lose their prescription-drug coverage.”**

—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 hold that plaintiffs cannot assert disparate-impact claims under Section 504 of the Rehabilitation Act of 1973. Four courts of appeals have held that plaintiffs can pursue disparate-impact claims under Section 504. These decisions conflict with a well-reasoned Sixth Circuit opinion. WLF’s brief urges the Supreme Court to side with the Sixth Circuit and apply the Rehabilitation Act’s plain language.

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, 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. And because the Constitution vests the power to make laws with Congress, the Court should not imply a cause of action that Congress declined to create.

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 Cato Institute, which joined the brief, WLF urges the Supreme Court to give Section 504 its plain-language meaning.

*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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