No. 20-1374

In the Supreme Court of the United States

CVS PHARMACY, INC., CAREMARK, L.L.C., AND CAREMARK SPECIALTY PHARMACY, L.L.C.,

Petitioners,

v.

JOHN DOE ONE, *ET AL.*, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* PARALYZED VETERANS OF AMERICA AND TEN OTHER ORGANIZATIONS ADVOCATING FOR DISABILITY AND CIVIL RIGHTS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI*

Amici curiae are eleven national disability and civil rights organizations: Paralyzed Veterans of America, Association on Higher Education and Disability, Center for Public Representation, Disability Rights Advocates, Disability Rights Legal Center, the Civil Rights Law Section of the Federal Bar Association, Judge David L. Bazelon Center for Mental Health Law, National Disability Rights Network, the National Association of the Deaf, Transgender Legal Defense and Education Fund, and United Spinal Association.[1] Section 504 of the Rehabilitation Act is of tremendous importance to *amici* because it provides a critical route for people with disabilities to address disability-based discrimination by entities receiving federal financial assistance, as well as federal agencies, in areas important to their full and equal participation in our society, as Congress intended, including employment, health care, professional licensure, education, architectural barriers, and community living, among many others. Individual statements of interest for each organization are included in the Appendix.

SUMMARY OF ARGUMENT

With respect, this is not the right case for this Court to address whether section 504 of the

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than *amici curiae*, their leadership, and their counsel made a monetary contribution to the brief's preparation or submission. *Amici* sought and obtained written consent from the parties that had not provided blanket consent to the filing of briefs by *amici curiae*.

Rehabilitation Act, 29 U.S.C. § 794(a), broadly and generally permits any "disparate impact" claim. Rather, Respondents' core allegations involve intentional discrimination.

First, Respondents' claim does ***not*** require Petitioners to eliminate or fundamentally rework the Specialty Drug Program, leading (according to Petitioners) to the imminent collapse of the entire US healthcare system. Rather, the core of Respondents' claim is based on the far more narrow allegation that they were denied a reasonable accommodation, the opportunity to ***opt out*** of the program. *Second*, Respondents directly allege a disparate treatment claim: Petitioners required them to participate in the Specialty Drug Program because of their disability status (i.e., their need for HIV/AIDS drugs) and that they did so to their detriment.

Accordingly, the Court should dismiss the writ as improvidently granted, before a full review of the facts and pleadings had been had and based on the incorrect assumption that only disparate impact was at issue, and remand for the Ninth Circuit to consider Respondents' reasonable accommodation and disparate treatment claims.

Alternatively, there is no need for this Court to hold sweepingly, as Petitioners suggest, that all "disparate impact" claims be eliminated for all time in all circumstances. Settled precedent already appropriately addresses Petitioners' concerns and the Ninth Circuit opinion did not depart from that precedent. Contrary to Petitioners' suggestion that the Ninth Circuit's opinion will lead to rampant industry-destroying disparate impact claims, the law that the Ninth Circuit followed in *Alexander v. Choate*, 469 U.S. 287 (1985), establishes that section

504's application to claims of non-intentional discrimination is very far from unbounded. *Choate* itself, standing along and as adopted by the Ninth Circuit, recognized those bounds, as does other law under section 504. Petitioners' related argument, that the "solely by reason of" language of section 504 means that "plaintiffs must show that the practice in question was the one and only cause of the disparity" and "rule out every single other possible contributing factor" (Pet.Br.18) is also unnecessary and overreaching under both the facts of this case and existing precedent, as well as sweepingly limiting the ways in which people with disabilities can protect themselves from the societal discrimination that Petitioners acknowledge still exists. Pet.Br.4, 11.

ARGUMENT

I. The Court Should Dismiss the Writ as Improvidently Granted and Remand For Consideration of Respondents' Reasonable Accommodation and Disparate Treatment Claims

With their disparate impact claim, Respondents raised (1) a "reasonable accommodation" claim based on Petitioners' refusal to provide an opt-out procedure and (2) a straightforward disparate treatment claim based on Petitioners' requirement that Respondents participate in the Specialty Medicine program because of their HIV/AIDS status to their detriment. However, the Ninth Circuit addressed only the disparate impact claim, *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204 (9th Cir. 2020); did not address the disparate treatment claim, *id.* at 1204, 1213; and erroneously held that Respondents had waived their

"reasonable accommodation" claim by not mentioning it until appeal, *id.* at 1211 n 1.

Petitioners, as they must, concede that "section 504 bans disparate treatment," including "all types of intentional discrimination." Pet.Br.13; *see also id* at 4 ("purposeful discrimination against people with disabilities was a serious problem in 1973 when Congress enacted section 504 … And such discrimination unfortunately remains a serious problem today"); *id.* at 11 (Section 504 "bans disparate treatment of people with disabilities – a serious and ongoing problem").

Petitioners further concede, as again they must, that "intentional" discrimination does not require actual animus against people with disabilities. *Id.* at 11, 22 ("disparate treatment claims are not just confined to animus"; when a policy discriminates, the defendant's "well intentioned or benevolent" aim is "irrelevant").

The core of Respondents claims involve such intentional discrimination.

a. Petitioners' Denial of an Opt-Out Procedure -- Reasonable Accommodation – is at the Heart of Respondents' Case

Respondents' claim does ***not*** require Petitioners to eliminate or fundamentally rework the Specialty Drug Program, something that Petitioners claim would destroy the US insurance industry. Rather, the core of Respondents' claim is based on the far more narrow allegation that they were denied the reasonable accommodation of being able to ***opt out*** of the Program.

The complaint, as well as the class sought to be certified, repeatedly emphasizes the importance of and the lack of an opt-out option, mentioning it 84 times.[2] Respondents allege generally that Petitioners have "implemented the Program and [have] not provided Class Members a right to opt-out of the program, or if and when there is such an opt-out process, proper notice thereof." J.A.6. They allege, further, that "[w]hen Class Members inform CVS Caremark representatives they do not want to participate in the program, they are typically told they have no choice…." J.A.82. *Accord id.* at 12 (alleging that Petitioners provided "no realistic alternative or clear notice of their option not to" participate in the Program). Accordingly, "Defendants have failed to provide a reasonable procedure for subscribers who wish to opt-out of the Program …." J.A.95.

Respondents' putative class, similarly, is defined to include only individuals who are participants in the

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[2] *E.g.,* J.A.5, 6, 8, 9, 12, 14, 15, 20, 21, 22, 23, 24, 36, 41, 42, 84, 95, 96, 102, 104, 106, 108, 112, 114, 115, 116, 117, 119, 120, 121, 123, 124, 125, 127.

Specialty Drug Program who obtained or may obtain HIV/AIDS medications and "have been or may in the future be required to participate in the Program ***with no right to opt out or notice thereof***…" J.A.96 (emphasis added).

The relief Respondents seek also focuses on the need for an opt-out option and is thus very far from the sweeping relief Petitioners claim will bring the insurance industry close to collapse: "Defendants must either agree not to continue to implement the Program in its current form or, at a minimum, provide Class members the right to opt out of the program." J.A.96. As Respondents confirm in their brief to this Court, they are not seeking to "threaten[] the structure of HMO angd PPO plans and do not "seek 'out of network services at in network prices.'" Resp.Br.5. Rather, they seek the "reasonable accommodation" of an opt-out: "Before suing, Respondents sought an accommodation allowing them to opt out of the Program and restoring access to the prescription-drug benefits and network pharmacies available to other enrollees. Those requests were denied." *Id.* (citing Pet.App.8a). And, as Respondents point out, that accommodation is reasonable and will "hardly upend" the insurance industry, as most other major companies now allow members to opt out of mandatory mail-order-only delivery of HIV medications. Resp.Br.6; *see also* J.A.19 (John Doe Two's previous insurer allowed him to opt out of its specialty drug program).

Even assuming *arguendo* that requiring Respondents to participate in the Program itself is facially neutral (it is not, as discussed below), once Respondents request and are denied the ability to opt out, that request and denial constitutes individual,

personal, and intentional discrimination. Resp.Br.23 (conceding this). At that point, Petitioners knew about Respondents' HIV/AIDS status. They knew that the Program harmed Respondents by, among other things, (1) not permitting their chosen pharmacists to provide the monitoring and individualized advice important to the medical regimen; and (2) presenting serious privacy and logistics difficulties. With that specific knowledge of Respondents' status and the harm the Program was causing them, Petitioners denied the opt-out, often repeatedly, or failed to respond. J.A.8-9, 13-15, 20-24.

John Doe Two's experience with attempting to opt out illustrates the individual and intentional nature of Petitioners' conduct in refusing to accommodate Respondents. John Doe Two called CVS representatives "more than 20 times in an attempt to opt out of the program" between October 2015 and March 2016. J.A.20. He attempted to appeal and his appeal was denied. He sent letters trying to opt out, which were "either ignored or denied." *Id.* He tried again in a 40-minute call with his employer benefits representative and a CVS Caremark representative. After he "detail[ed] his experience of obtaining his prescriptions through the Program," the CVS Caremark representative "stated she genuinely wished she could do something to help, but said there was nothing she could do." J.A.21. Rather, "there was no provision in [his] health plan allowing him to opt-out of the Program." *Id.*

Other Petitioners had similar individualized experiences leading to denials of accommodation when they repeatedly sought opt-outs in letters, calls, and appeals, and had lengthy discussions with CVS Caremark employees, only to be denied or ignored.

J.A.8-9, 13-15 (John Doe One "on several occasions" wrote, emailed, and called his CVS Caremark representative to attempt to opt out and request an explanation why he was required to participate); *id.* at 23-24 (John Doe Three received a one-month exemption after "numerous calls" but later made several unsuccessful requests to opt out); *id.* at 34 (John Doe Five's opt-out requests). *Accord Doe v. CVS*, 982 F.3d at 1208 (describing Does' denied "request[s] to opt out of the Program").

These allegations regarding requested opt-outs establish that Respondents in fact pled a "reasonable accommodation" claim – i.e., intentional discrimination – and that claim is at the core of their case. Respondents alleged that Petitioners did not, when they should have, recognize the impact that the Program had on people with HIV/AIDS by refusing to provide reasonable accommodations in the form of opt outs.

Petitioners acknowledge, as they must, that reasonable accommodation claims are cognizable under Section 504 and that they are intentional and individualized. Citing this Court's decision in *Fry v. Napoleon Cmty. Sch.*, 137 S.Ct 743, 749 (2017), Petitioners concede that section 504 "demand[s] certain 'reasonable' modifications to existing practices in order to 'accommodate' persons with disabilities." (quoting *Alexander v. Choate*, 469 U.S. 287, 299-300 (1985)).

Petitioners further concede that reasonable accommodation claims are not disparate impact claims:

> Reasonable-accommodation claims differ from disparate-impact claims because the former are

> inherently "individualized," focusing on the nature of the plaintiff's disability and how it can be accommodated.

Pet.Br.23. [3] As Respondents alleged: "How … medications are delivered, the limited options provided to Plaintiffs and Class Members, the mix ups and delays occasioned by CVS's flawed delivery process, the decision not to constantly apply rebates or discounts, and/or the decisions to offer an opt-out and non-opt-out option to plan sponsors and/or recognize opt out requests" are all "within CVS's discretion and control." J.A.41.

Petitioners brief, however, does not even mention Respondents' allegations regarding opt-out requests. Rather, in service of obtaining overbroad relief from this Court, Petitioners prefer to claim Respondents are seeking nothing but sweeping relief eliminating all Specialty Medicine-type arrangements and relying on inaccurate portrayal of the claim to hand-wave about the inevitable failure of the entire US insurance industry. That is unfair and inaccurate. It also ignores the inherently individualized nature of the process by which Respondents sought to opt out based on their disability and were individually denied, in order to portray Respondents' claim incorrectly as nothing but disparate impact claim.

Petitioners claim that although reasonable accommodation claims are available to ***other*** plaintiffs under section 504, Respondents here "do not challenge the Ninth Circuit's holding that

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[3] As the Solicitor General says (S.G.Br.30), reasonable accommodation claims do not require proof of discriminatory intent, but they are not disparate impact claims, further highlighting that section 504 claims do not fit neatly into the labels proposed by Petitioners.

respondents failed to plead a failure-to-accommodate" claim. Pet.Br.23. That is not accurate. Respondents ***do*** in fact contend that the Ninth Circuit erred by holding that the failure-to-accommodate claim was raised for the first time on appeal. At the certiorari stage, they argued that they "did present the claim to the district court, including in response to Petitioners' initial motion to dismiss that resulted in the CVS decision," but the district court wrongly dismissed it. Pet.Opp.33 (citing Pet.App.50a). *See also id.* at ii (listing reasonable accommodation as an issue). Respondents pointed out that they asked for reasonable accommodation in the form of an opt-out in their merits brief as well. Resp.Br.5-6.

Moreover, the Ninth Circuit erred when it said Respondents did not mention their opt-out/reasonable accommodation claim until appeal. Both Petitioners and the Ninth Circuit ignore Respondents' repeated, central, and critical factual allegations regarding the lack of reasonable opt-out option in the Program, which allegations in fact allege a reasonable accommodation claim. *See* J.A.95 ("Defendants have failed to provide a reasonable procedure for subscribers who wish to opt-out of the Program ….") (incorporated into discrimination claim, J.A.98); *supra* at 8. The Ninth Circuit also ignored that Respondents affirmatively raised the opt-out/reasonable accommodation claim in the trial court motion to dismiss briefing. MTD.Opp. at 10, 17, 24.[4]

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[4] Petitioners themselves do not appear to have raised their argument that section 504 does not reach disparate impact claims, or that the "solely by reason of" language in section 504 requires plaintiffs to affirmatively eliminate any other cause of discrimination, before the trial court. Mem. in Supp. of MTD;

As this Court noted in in assessing whether plaintiffs pled a claim under the IDEA in *Fry*, 137 S.Ct at 746, 754, courts "should look to the substance, or gravamen, of the plaintiff's complaint" in determining the import of the allegations under the Rehabilitation Act and related statutes; the examination should "consider substance, not surface"; and whether or not "magic words" are included in the complaint is not determinative). *Accord Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (on a motion to dismiss "the complaint is to be liberally construed in favor of plaintiff").

In short, contrary to Petitioners' assertion that this case exclusively concerns allegations of disparate impact, Respondents repeatedly pled a reasonable accommodation claim because they were denied the ability to opt out of the Program. They further raised that argument before the district court, the Ninth Circuit, and now this Court.

b. Petitioner's Allegations At Their Core Involve Disparate Treatment, Not Disparate Impact

Respondents also made a claim of disparate treatment – intentional discrimination – along with their disparate impact claim. These allegations if proven establish that the Program is not a "facially neutral" policy with respect to Respondents. Rather, it quite specifically requires Respondents to do something to their detriment because of their disability status.

Reply on MTD. If anyone waived their claims by failing to raise them until appeal, it is Respondents.

Respondents are people with a disability, i.e., an HIV/AIDS diagnosis. J.A.104. Petitioners require Respondents to participate in the Program under their insurance plans to obtain medicine that is necessary for them to live with HIV/AIDs. J.A.5; *see also* Pet.Br.8 (respondents "require specialty medicines to manage their condition"). As Respondents alleged, the Program formulary "categorically lists 'HIV Medications' as 'specialty medicines, all subject to the mandatory requirements of the Program," and those drugs "may only be obtained through the program." J.A.49.

Respondents alleged that these actions constituted disparate treatment of people with HIV/AIDS because of their disability, as well as alleging disparate impact. They alleged, for instance that "Defendants' [d]iscriminatory [b]usiness [p]ractices [s]pecifically [t]arget HIV/AIDS [p]atients." J.A.47. By requiring patients to obtain only their HIV/AIDS medication through the program, Respondents allege, "the Program specifically targets and discriminates against individuals on the basis of their disability." J.A.48. Further, ". . . the Program demonstrates discriminatory intent on behalf of CVS against HIV and AIDS patients. CVS' Program is designed to discourage HIV and AIDS patients, as well as individuals with other disabilities, from enrolling in or remaining enrolled in a CVS Caremark health plan." J.A.49-50 n.8. *Accord* J.A.87-88 ("Defendants' intentionally discriminatory actions have denied Plaintiffs … full and equal enjoyment of the benefits, services, facilities, privileges, advantages, and accommodations under their health plans prescription drug benefit," putting at risk their "health and privacy"); J.A.88 ("based on their disability [Respondents] are subject to discriminatory

treatment that threatens their health and their privacy"); J.A.90 (alleging that "the program targets individuals with specific disease states").[5] All those allegations were incorporated into Respondents' section 504 claim. J.A.98.

Respondents also alleged many ways that Petitioners' requirement that they participate in the Program directly harmed them, including that they do not have access to pharmacy counseling and contact that is important to ensure that their medical treatment is effective and safe (J.A.16, 42-47); that the delivery options result in missed doses, contrary to medical advice (J.A.32), as well as missed work and substantial out of pocket expenses and lack of privacy (J.A.17, 19); that requirements that "split" medications between the Program and outside it result in no one pharmacy knowing all the medicines the Respondent is receiving and being able to address potential adverse interactions (J.A.15); and that their repeated requests for accommodations in the form of opt-outs were denied or ignored (*see supra* at 5-8).

John Doe Five, for instance, missed doses of his medications based on the unilateral decision of a CVS Caremark technician to combine or skip delivery, contrary to his doctor's advice that the medications should be taken at the same time every day, resulting in new batteries of blood tests with each missed dose. J.A. 32. Even when he advised CVS Caremark of its technician's error, CVS Caremark refused to grant an

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[5] *Cf.* J.A.104 ("By implementing the Program without an option to opt-out or clear notice thereof … [Respondents] have specifically and intentionally targeted individuals on the basis of a particular disability and affirmatively discriminated against such persons on the basis of their disability" in violation of the Americans with Disabilities Act).

exemption from the Program to cure the error, instead telling Doe that "there would be no detrimental effects from missing a dose of his medications for 24 hours." *Id.*

Those allegations, which must be taken as true at the motion to dismiss stage, involve disparate treatment. Petitioners, however, depend on the mantra that the Program is "facially neutral" and thus the allegations cannot involve disparate treatment because the Program incorporates many medicines other than HIV/AIDS drugs. As Respondents allege, however, the Program is not at all "facially neutral" as to them. It directly requires them, because they have HIV/AIDS, to participate in the Program to obtain the drugs they need, and it does not provide any reasonable way to opt out. *See supra* at 5-8.

Petitioners made individualized decisions whether to include particular drugs in the Program. Pet.Br.7 (specialty drugs "have special shipping, administration, or storage requirements; treat rare conditions, or are very expensive"; they are included in the Program to "control the[ir] disproportionate costs and complexities"). Petitioners decided to include all drugs used to treat HIV/AIDS in the Program, further decided to require people with HIV/AIDS to participate in the Program, and determined to refuse or ignore all opt-out requests. J.A.4, 36, 49. This is, at its core, intentional disparate treatment, not a facially neutral policy presenting disparate effects.

The fact that Respondents made parallel decisions to include ***other*** drugs in the same Program does not change the character of their decision with respect to Respondents and their HIV/AIDS drugs. As

Petitioners' counsel acknowledged, if one assumes that the Program includes only HIV/AIDS drugs – which is correct with respect to these particular Respondents – "it would really be a disparate treatment claim I think, not a disparate impact claim." Tr., 11/4/20, at 11.

It makes no difference to the disparate treatment claim that the discriminatory classification at issue was based on Respondents' need for HIV/AIDS drugs rather than on their HIV/AIDS status itself. As this Court has ruled, discrimination based on a trait that is a marker for, or associated with, a disability (here, the use of HIV medication as marker for having HIV/AIDS) is disparate treatment based on disability. *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 282 (1987) (discrimination based on contagious effects of plaintiff's tuberculosis was discrimination based on the disability).

This is a true case of "proxy" discrimination, an intentional form of discrimination in which a benefit recipient discriminates against people in a protected class based on a seemingly-neutral criterion that is so closely correlated to the protected class that discrimination based on the "proxy" criterion is constructively discrimination against the protected class. *E.g., Schmitt v. Kaiser Foundation Health Plan of Wash.*, 965 F.3d 945, 958 (9th Cir. 2020). Proxy cases have included, for instance, using "grey hair" for age, *id.*, or "ancestry" for race, *Rice v. Cayetano*, 528 U.S. 495, 514 (2000).

Typically, the question in a proxy case is whether the correlation between the proxy and the protected class is a close enough "fit." In *Rice,* this Court found ancestry from 1778 was a proxy for race even though not all Hawaiians were Polynesian in 1778, because most were. 528 U.S. at 514. In *Schmitt* the question

was whether people who need hearing loss treatment was a close enough fit to serve as a proxy for people with a disability based on their hearing loss. 965 F.3d at 958.

Here, the "proxy" is Petitioners' requirement that Respondents participate in the Program because they need for HIV/AIDS drugs. Unlike many cases, the proxy and the protected class are, by definition, co-extensive – the fact that Respondents take HIV/AIDS drugs is a direct proxy for the fact that they are, in fact, people who have HIV/AIDS.

Although Respondents' complaint does not use the word "proxy," their factual allegations set out the basis for a proxy claim, and it is encompassed within their claims of intentional discrimination. *See Fry*, 137 S.Ct. at 746, 754 (courts should look to substance of complaint, not whether it contains "magic words"). Respondents allege that Petitioners included HIV/AIDS drugs, as a class, in the Program; that as a result of their status as people with HIV/AIDS who need the drugs they are required to participate in the Program; and that this discriminatory classification injured them. *E.g.,* J.A.45, 50. *See also* J.A.48 ("The Program denies HIV/AIDS patients full and equal access to utilize the in-network pharmacies and method of delivery of their choice specifically because of the medications attributable to their illness…").

Thus, Respondents' claim is, at its heart, one of disparate treatment, involving intentional and required inclusion of Respondents in a program that harms them because of their HIV/AIDS status.

Petitioners, again in service of trying to persuade this Court to establish a broad and unjustified "rule" against disparate impact cases that not required by

the allegations in this case, the Ninth Circuit decision, or existing jurisprudence from the Court, claim that Respondents' disparate treatment claim is not part of this case because Respondents "specifically disavowed any claim of intentional discrimination." Pet.Br.9. However, Petitioners ignore both the extensive allegations in the complaint and the factual nature of the claims themselves. Far from being conclusory the disparate treatment allegations are directly and abundantly supported by the factual underpinnings of the claim, the gravamen of which is that Petitioners used Respondents' HIV/AIDS status to require their inclusion in a program that hurt them. *See Fry*, 137 S.Ct. at 749, 754 (courts "should look to the substance, or gravamen, of the plaintiff's complaint").

Petitioners also ignore the case history, in which Respondents repeatedly raised and preserved their disparate treatment claims. Petitioners' claim that Respondents "specifically disavowed" any intentional discrimination claim, for instance, depends on a statement in the district court order dismissing the case which is less categorical than Petitioners' paraphrase indicates. *See* Pet.App.35a-36a (noting only that Petitioners "appear to concede" they are not alleging intentional discrimination). And that order itself incorrectly relied on a snippet from an out-of-context statement from Respondents' opposition to the motion to dismiss.[6] More fundamentally, the order ignored Respondents unequivocal statement, two sentences earlier, that Respondents "specifically allege that CVS adopted and implemented the Program in a manner that ***both discriminates***

[6] The statement read in context makes the unremarkable point that when plaintiffs are proving a disparate ***impact*** claim, they do not need to show disparate ***treatment***.

against and has a disparate impact on enrollees prescribed HIV/AIDS medicines." Opp. MTD at 9. *See also id.* at 1 ("The CVS Defendants have put in place a program … that require[s] …. Enrollees [with a prescription for HIV/AIDS medication] to obtain their HIV/AIDS Medications" through the Program). Respondents again pursued and preserved their intentional discrimination claims in their submissions to the Ninth Circuit (Resp.Br. at Ninth Cir. at 39; Letter Br., 11/3/20, at 2 n.1) and in their submissions to this Court (Pet.Opp.30-32, ii; Resp.Br.7 (describing disparate treatment claim not addressed by Ninth Circuit)). It is simply not correct to claim that Respondents have conceded they have no disparate treatment claim.

c. This Court Should Dismiss the Writ as Improvidently Granted and Remand for Consideration of the Reasonable Accommodation and Disparate Treatment Claims

This Court may dismiss a writ of certiorari as improvidently granted when the more intensive consideration of the issues and the record in the case that attends full briefing and oral argument reveals that conditions originally thought to justify granting the writ of certiorari are not in fact present. "[C]ircumstances ... 'not ... fully apprehended at the time certiorari was granted,'" *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 183 (1959), may reveal that an important issue is not in fact presented by the record, or not presented with sufficient clarity in the record …." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 73 (1955).

This is such a case. As described above, the core of the case is that (1) Petitioners engaged in intentional disparate treatment of people with HIV/AIDS by requiring them, by virtue of having been prescribed HIV/AIDS drugs, to participate in a Program that harmed them and (2) Petitioners refused to permit a reasonable accommodation through an opt-out procedure. Accordingly, this is not an appropriate vehicle for this Court to decide whether disparate impact cases are broadly permitted under section 504, let alone overruling the long-standing *Choate* rule as Petitioners suggest. Pet.Br.24-27.

Dismissing the petition would be entirely consistent with the principles of jurisprudence that counsel courts to decide only the issues squarely presented by the facts and claims, and to avoid overbroad advisory opinions, ensuring that decisions are tailored and focused on resolving actual issues presented by the parties rather than broad legislative-type fiat. *See Morse v. Frederick*, 127 S.Ct. 2618, 2642 (2007) ("the 'cardinal principle of judicial restraint' is that 'if it is not necessary to decide more, it is necessary not to decide more.'" (quoting *PDK Labs., Inc. v. United States DEA*, 362 F.3d 786, 799 (C.A.D.C.2004) (Roberts, J., concurring in part and concurring in judgment)) (Breyer, J., concurring in part and concurring in judgment); *Barnes v. Gorman*, 536 U.S. 181, 193 (2002) ("whenever the Court reaches out to adopt a broad theory that was not discussed in the early stages of the litigation, and that implicates statutes that are not at issue, its opinion is sure to have unforeseen consequences. When it does so unnecessarily, it tends to assume a legislative, rather than a judicial, role." (Stevens, J., joined by Ginsburg, J., and Breyer, J., concurring)).

Dismissal would also recognize that the assumption on which the Court appears to have granted review, that this case squarely presents and is limited to a true disparate impact claim, is not accurate. *See Mitchell v. Oregon Frozen Foods Co.*, 361 U.S. 231 (1960) ("In view of ambiguities in the record as to the issues sought to be tendered, made apparent in oral argument and the memoranda of counsel subsequently filed at the Court's request, the writ of certiorari is dismissed as improvidently granted."); *New York v. Uplinger*, 467 U.S. 246, 248-49 (1984) (when the precise constitutional issue at hand was uncertain, the case "provides an inappropriate vehicle for resolving" it); *McClanahan v. Morauer & Hartzell, Inc.*, 404 U.S. 16, 16 (1971) (dismissing when "[f]uller examination of the case on oral argument discloses that the record does not adequately present that question [on which certitiorari was granted]").

If/when this Court is presented with a true "disparate impact" case under section 504, it would then be appropriate for the Court to determine whether such claims are permitted. In *Choate*, for instance, the claim involved a Medicaid rule limiting covered hospital stays to 14 days, a true rule of general application that undisputed statistical evidence showed had disproportionate adverse effects on people with disabilities. 469 U.S. at 309, 289. This is not that claim, and this case is accordingly not an appropriate vehicle to overrule *Choate* or address whether impact claims are cognizable under section 504.

Dismissal of the writ would allow further factual development below on all Respondents' claims, possibly permitting further review and determination

whether the claims are permitted by section 504 on a fully developed record. *See Smith v. Mississippi*, 373 U.S. 238 (1963) (dismissing writ because the record was not sufficient to permit decision of petitioner's claims): *Massachusetts v. Painten*, 389 U.S. 560, 561 (1968) ("After oral argument and study of the record, we have reached the conclusion that the record is not sufficiently clear and specific to permit decision of the important constitutional questions involved in this case.").

It is possible that the district court, on a full factual record, will find that no discrimination occurred here, or that the opt-out procedure that Petitioners request is not in fact a "reasonable" accommodation, or that Petitioners already have meaningful access to the benefit. Or, the lower court may actually decide a disparate impact claim. At that point, this Court may decide that further review is appropriate to determine exactly what claims section 504 allows. But cutting off Petitioners' right to engage in factual development based on a broad issue not squarely presented by the case does not appear to be an efficient use of the Court's time and resources.

Dismissal of the writ is also justified because, notwithstanding Petitioner's black-or-white division of claims into "disparate impact" and "disparate treatment," many section 504 claims that are not so easily classified. For instance, many section 504 claims present issues of whether people with disabilities are being inappropriately institutionalized or otherwise segregated from the community, similar to the claims this Court recognized in *Olmstead v. L.C.*, 527 U.S. 521 (2002). In such claims, a plurality of this Court held that there is no need for a "disparate impact" comparison

between people with disabilities and people without disabilities, explaining that the Court was "satisfied" that Congress had a "more expansive" view of what constituted discrimination when it enacted the nearly-identical language of the Americans with Disabilities Act. *Id.* at 598.

However, an *Olmstead*-type claim does not require an allegation of intent, either. Rather, a remedy is available when "community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the and the needs of others with mental disabilities." *Id.* at 587. A holding based on the issue on which this Court granted review – whether any cases of "disparate impact" are permitted – could unwittingly and unintentionally threaten this whole class of critical cases.

Amici respectfully ask this Court to dismiss the writ as improvidently granted and remand to the Ninth Circuit with instructions to consider Respondents' reasonable accommodation and disparate treatment claims.

II. Alternatively, This Court Should Affirm The Ninth Circuit

a. The Ninth Circuit Adopted Long-Standing Precedent in *Choate* That Already Limits "Disparate Impact" Claims Under Section 504

Long-settled jurisprudence in *Alexander v. Choate*, 469 U.S. 287 (1985), already curtails the broad-based disparate impact claims that Petitioners claim would

bring economic calamity on the entire insurance industry. *Choate* specifically rejected the notion that Section 504 "reach[ed] all action disparately affecting" people with disabilities. *Id.* at 298. In so doing, the Court relied on exactly the policy considerations that Petitioners now claim require broad elimination of all Section 504 claims based on effects:

> [R]espondents' position would in essence require each recipient of federal funds first to evaluate the effect on the handicapped of every proposed action that might touch the interests of the handicapped, and then to consider alternatives for achieving the same objections with less severe disadvantage to the handicapped. The formalization and policing of this process could lead to a wholly unwieldly administrative and adjudicative burden.

Id. *Compare* Pet.Br.40-47 (an "otherwise-boundless" permit for disparate impact claims would "eviscerate the contracting arrangements that underpin America's health care sector" while requiring federal-funding recipients to "struggle to discern all the ways their facially neutral policies could expose them to the risk of losing federal aid" while courts will "struggle to identify … guardrails" on litigation theories).

The *Choate* Court accordingly "reject[ed] the boundless notion that all disparate-impact showings constitute *prima facie* cases under § 504." Rather, without determining whether such claims were of "disparate impact" or not, it found instead that plaintiffs stated a claim under section 504 when they alleged "an otherwise qualified handicapped individual" did not have "meaningful access" to the benefit at issue. *Id.* at 301.

The *Choate* Court found further that "to assure meaningful access, reasonable accommodations in the …. program or benefit may have to be made." *Id.* As the Court explained, "a refusal to modify an existing program might become unreasonable and discriminatory. Identification of those instances where a refusal to accommodate the needs of a disabled person amounts to discrimination against the handicapped [is] an important responsibility" under § 504. *Id.* at 300.

Under this standard, the *Choate* Court rejected a classic purely effects-based disparate impact claim, that Tennessee's limitation of Medicaid benefits to 14 days of inpatient hospital treatment disparately impacted people with disabilities. *Id.* at 309. It did so even though ***undisputed*** statistical evidence demonstrated that the limitation had a disproportionate effect on people with disabilities, with 27.4% of people with disabilities who used needing more than 14 days of care as opposed to 7.8% of Medicaid recipients without disabilities. *Id.* at 289.

The Ninth Circuit opinion applied this settled precedent in holding that Respondents' complaint – with all allegations taken as true as required in the context of a motion to dismiss – "adequately alleged that they were denied meaningful access to their prescription drug benefit." *Doe*, 982 F.3d at 1208, 1211. It explained that *Choate* "concluded that not all disparate impact showings qualified as prima-facie cases under Section 504", and "rather than try to classify particular instances of discrimination as intentional or disparate-impact, the Court focused" on whether people with disabilities were denied "meaningful access" to the benefit at issue. *Id.* at 1210. The Ninth Circuit then held, following *Choate*,

that "[t]he fact that the benefit is facially neutral does not dispose of a disparate impact claim based on lack of meaningful access." *Id.* at 1211.

This is not a broad holding that it is open season for any and all disparate impact claims under § 504, as Petitioners inaccurately suggest. Rather, the Ninth Circuit properly recognized the limitations on such claims established by the *Choate* Court in 1985 and held that under *Choate*, Respondents' claim as alleged may proceed.

b. The Application of Section 504 to Non-Intentional Discrimination Is Already Far from Unbounded

The separate *amicus* briefs filed by the Solicitor General, The Arc of the United States et al., and the NAACP Legal Defense Fund demonstrate that the language of section 504 and the long history of Congress' treatment of it and related statutes show it includes some disparate impact claims. Indeed, as those briefs explain, addressing some claims of disparate impact is essential to protecting the core protections of section 504.

For instance, the most basic, but critical, claims regarding architectural and structural access are disparate impact claims: Benefit recipients do not set out intending to construct buildings inaccessible to people with physical disabilities or to provide programs that are difficult for blind or deaf people to use, for instance. But section 504 has long addressed those claims and they are critical to allowing people with disabilities full and equal participation in society. See 29 U.S.C. § 701(b)(1) (Rehabilitation Act meant "to empower individuals with disabilities to maximize employment, economic self-sufficiency,

independence, and inclusion and integration into society.").

Petitioners construct a straw man when they contend that reversal of the Ninth Circuit is necessary to avoid ***unbounded*** disparate impact claims under section 504. To the contrary, section 504 claims are already quite limited, and the limitations apply to any "disparate impact" cases that section 504 may cover.

As noted above, *Choate* itself limited disparate impact claims under section 504. Its determination, without reference to whether claims related to intentional discrimination, that claimants show they lack "meaningful" access or prove that cannot be "reasonabl[y]" accommodated further bound the kinds of claims that may be cognizable under section 504.

To state the obvious, both "meaningful" and "reasonable" impose some limitations on section 504 claims, even if they involve disparate impact. A lack of access is "meaningful" under the plain meaning of the word when it is "significant," "serious," or "important." *See* Miriam Webster Online, at https://www.merriam- webster.com/dictionary/ meaningful; Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/meaningful. And requiring a modifying accommodation to be "reasonable" is the quintessential requirement for a balanced assessment taking into account all relevant factors.

Case law under these standards has recognized their qualifications. "Meaningful" access does not mean equal access or equal results. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 277 (2d Cir. 2003). And the public entity need not "employ any and all means" of making the denied service available; instead, the ADA

and Rehabilitation Act require that the entity make "reasonable modifications." *Tennessee v. Lane*, 541 U.S. 509, 531-32 (2004). The accommodations need not (1) "fundamentally alter the nature of the service provided," or (2) "impose an undue financial or administrative burden." 28 C.F.R. § 35.150(a)(2), (3).

Similarly, there are other limitations on the claims that plaintiffs may bring under section 504 that affect when and how a disparate impact claim is cognizable. For instance, section 504 requires a person with a disability to be "otherwise qualified." 29 U.S.C. § 794. An "otherwise qualified" person is one who can "meet all of a program's" requirements in spite of his handicap." *Southeastern Community College v. Davis*, 442 U.S. 379, 406 (1979). In an employment discrimination claim, for instance, a person with a disability must be "qualified" for the job – i.e., must be able to perform the job's "essential functions" – in order the challenge the practice at issue. *Arline*, 480 U.S. at 279-80 & n.17. If the person is not able to perform the job's essential functions, the court must consider whether she could, if offered "reasonable accommodations," but if such accommodations would cause "undue hardship" to the employer, failure or promote is not discrimination. *Id.* Under this law, employment criteria that screen out people with disabilities are permissible if they are job-related and consistent with business necessity. And there is no requirement to hire or promote a person with a disability if their condition poses "a significant risk of communicating an infectious disease to others in the workplace if reasonable accommodation will not eliminate that risk." *Arline*, 480 U.S. at 287 & n.16. The same limitations apply in different contexts. *See Davis*, 442 U.S. at 413-14 (nursing program could refuse to admit a deaf student, because the program

could impose "reasonable physical qualifications" for admission to its program and was not required to "make major adjustments" to it); *Bragdon v. Abbott*, 524 U.S. 624, 649 (1998) (dentist could refuse to treat a person with a disability if treatment posed a direct threat to health or safety of others).

c. Petitioners' Interpretation of "Solely By Reason Of" Is Incorrect, Unnecessary, and Would Seriously Limit People With Disabilities' Ability to Challenge Disability Based Discrimination

Petitioners' brief is rife with arguments about how if the Court eliminates all disparate impact claims under section 504, it will still function as intended to allow people with disabilities to avoid discrimination and participate fully and equally in society. *E.g.*, Pet.Br.4. They protest too much. Petitioners contend that no claims of disparate impact at all are cognizable under section 504, and further claim that the "solely by reason of" language in section 504 requires plaintiffs "plaintiffs must show that the practice in question was the one and only cause of the disparity" and "rule out every single other possible contributing factor." Pet.Br.18. If the Court were to adopt these interpretations, there would be very little left to section 504.

Petitioners' proposed interpretation of "solely by reason of" is overbroad, inconsistent with decades worth of section 504 jurisprudence, and would eviscerate many section 504 claims. Defendants will almost always be able to articulate some reason for a law, policy, or classification other than the particular disability involved. Previous jurisprudence allowed

cases to proceed without requiring plaintiffs to disprove all these excuses; the new rule Petitioners propose would not.

In *Arline*, for instance, defendants would have been able to defeat the case quite truthfully by pointing out that tuberculosis is contagious, so they had a reason unrelated to disability for firing the plaintiff. 480 U.S. at 280. So too in every "proxy"-type case – defendant could always say something other than disability caused the discrimination. Similarly defendants will claim that nearly every barrier preventing people with mobility issues or other disabilities from accessing buildings or services could be explained as cheaper, more efficient, and easier to build than accessible sites. But as this Court has recognized, Congress plainly meant the Rehabilitation Act to protect against discriminatory architectural barriers. *Choate*, 469 U.S. at 297 (""elimination of architectural barriers was one of the central aims of the Act, yet such barriers were clearly not erected with the aim or intent of excluding the handicapped").

These cases are the mainstay of section 504 litigation and are significant both to the individuals involved and to all people with disabilities. Imposing a new requirement that plaintiffs have the burden of proof to eliminate every single other potential reason could sweepingly eliminate critical relief for people with disabilities. That is not the law, as this Court has recognized. *Fry*, 137 S. Ct. at 749 (Title II of the ADA, which omits "solely," and Section 504, which includes it, reflect "the same prohibition"). *Accord, e.g., Disabled in Action v. Bd. of Elections in the City of N.Y.*, 752 F.3d 189, 196 (2d Cir. 2014).

Although obvious, it also bears repeating that the rule Petitioners urge would affect not only insurers' policies regarding HIV/AIDS drugs, but also people in a variety of contexts with a large array of disabilities and perceived disabilities. People with mobility impairments, hearing loss, blindness, intellectual and developmental disabilities, mental illness, cognitive loss, all would be affected. Challenges to architectural barriers, employment policies, and any other statute, regulation, policy, classification, or action by any recipient of federal funding could be limited. This is a case of a limited issue driving law on a wide and unintended set of unrelated claims.

d. Petitioners' Claim That Permitting Disparate Impact Cases Would Upend The Insurance Industry is Untrue

Petitioners' rhetoric regarding the effect of disparate impact cases is overblown. They do not and could not contend that there has been an explosion of disparate impact cases under section 504 since it was enacted in 1973 and *Choate* decided in 1985. Nor does *amici*'s research indicate anything like such an explosion; indeed they estimate at most around 100 such cases.

Respondents' claims that permitting disparate impact cases would upend the insurance industry also appear to be wildly exaggerated. As Respondents point out, other insurers have granted reasonable accommodations to people who have HIV/AIDS by permitting opt-outs. Resp.Br.6; *see also* J.A.19.

Moreover, many state laws appear to require that insureds be able to choose their own pharmacies under certain circumstances – meaning that insurers

likely would have to allow exemptions from specialty drug programs even if this Court holds section 504 does not allow disparate impact claims. For instance, Alabama, [7] South Carolina, [8] South Dakota, [9] and Texas[10] state that insurers and HMOs may not deny, limit, or prohibit pharmacies from the right to participate as contract providers in insurance plans. North Dakota dictates that no payer may "prevent a beneficiary from selecting the pharmacy or pharmacist of the beneficiary's choice to provide pharmaceutical good and services, provided that pharmacist or pharmacy is licensed in this state."[11] *See also* Va. Code Ann. § 38.2-4312.1 ("no health maintenance organization providing health care plans, or its pharmacy benefits manager . . . shall prohibit any person receiving pharmaceutical benefits, including specialty pharmacy benefits, thereunder from selecting, without limitation, the pharmacy of his choice to furnish such benefits.").

CONCLUSION

Amici respectfully suggest that the Court should dismiss the writ as improvidently granted and remand for consideration of Respondents' reasonable accommodation and disparate treatment claims. Alternatively, the Court should affirm.

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[7] Ala. Code § 27-45-3.

[8] S.C. Code Ann. § 38-71-147.

[9] S.D. Codified Laws § 58-18-37(1).

[10] Tex. Ins. Code Art. 21.52B(a)(2).

[11] N.D. Cent. Code § 26.1-36-12.2(1).

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October 29, 2021

APPENDIX

INDIVIDUAL STATEMENTS OF INTEREST FOR *AMICI CURIAE*

Association on Higher Education And Diversity. The Association on Higher Education And Disability ("AHEAD") is a not-for-profit organization committed to full participation and equal access for persons with disabilities in higher education. Its membership includes faculty, staff and administrators at approximately 2,000 colleges and universities, not-for-profit service providers and professionals, and college and graduate students planning to enter the field of disability practice. AHEAD members strive to ensure that institutions of higher education comply with applicable disability rights protections and provide reasonable accommodations to both students and employees. AHEAD is a nationally recognized voice advocating for access to higher education and graduate admissions and licensing examinations. The outcome of this case is of significant importance to AHEAD members and the individuals they serve.

Center for Public Representation. The Center for Public Representation ("CPR") is a public interest law firm that has assisted people with disabilities for more than 40 years. CPR uses legal strategies, systemic reform initiatives, and policy advocacy to enforce civil rights, expand opportunities for inclusion and full community participation, and empower people with disabilities to exercise choice in all aspects of their lives. CPR is both a statewide and a national legal backup center that provides assistance and support to public and private attorneys representing people with

disabilities in Massachusetts and to the federally funded protection and advocacy programs in each of the States. CPR has litigated systemic cases on behalf of persons with disabilities in more than 20 states and submitted amici briefs to the United States Supreme Court and many courts of appeals in order to enforce the constitutional and statutory rights of persons with disabilities, including the right to be free from discrimination under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and other laws.

Disability Rights Advocates. Disability Rights Advocates ("DRA") is a non-profit public interest law firm that specializes in class action civil rights litigation on behalf of persons with disabilities throughout the United States. DRA regularly brings successful disparate impact cases on behalf of people with disabilities, see, e.g., *Bloom v. San Diego*, Case No.: 17-cv-2324-AJB-NLS, 2018 WL 9539238 (S.D. Cal. June 8, 2018), and asks the Court to preserve and protect both the disparate impact and disparate treatment standards under Section 504.

Disability Rights Legal Center. The Disability Rights Legal Center ("DRLC") is a non-profit legal organization founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle against ignorance, prejudice, insensitivity, and lack of legal protection in their endeavors to achieve fundamental dignity and respect. This is true regardless of whether the actions are intentional or the result of facially neutral acts, policies, and procedures. DRLC assists people with disabilities in attaining the benefits, protections, and

equal opportunities guaranteed to them under the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and other state and federal laws. Its mission is to champion the rights of people with disabilities through education, advocacy, and litigation. Much of DRLC's work addresses disparate impact discrimination, as people with disabilities continue to face unreasonable barriers in all aspects of their lives.

Civil Rights Law Section of the Federal Bar Association. The Civil Rights Law Section of the Federal Bar Association are a group of 620 civil rights practitioners who represent both plaintiffs and defendants on the issues implicated by the above-captioned matter. We collaborate on continuing legal education and share meaningful dialog on shared interests in our practice. We consider the statutes implicating the rights of persons with disabilities to be essential components of the constellation of federal civil rights and we are united in our concern that the interpretation of these statutes be considered with due deliberation and care.

The Civil Rights Law Section of the Federal Bar Association joins this brief in its name only and not that of the national Federal Bar Association. Neither this brief nor the decision to join it should be interpreted to reflect the views of the national Federal Bar Association, nor of any member of the Association (including any member of the Civil Rights Law Section) who is a judicial officer or is employed by or represents a party or other amicus in the case. This brief was not circulated to any such member prior to filing, and no inference should be drawn that any such

member has participated in the adoption of or endorsement of any position advocated in this brief.

Judge David L. Bazelon Center for Mental Health Law. Founded in 1972 as the Mental Health Law Project, the Judge David L. Bazelon Center for Mental Health Law is a national non-profit advocacy organization that provides legal assistance to individuals with mental disabilities. Through litigation, public policy advocacy, education, and training, the Bazelon Center works to advance the rights and dignity of individuals with mental disabilities in all aspects of life, including health care, community living, employment, education, housing, voting, parental and family rights, and other areas. The Americans with Disabilities Act and Section 504 of the Rehabilitation Act are the foundation for most of the Center's legal advocacy.

National Disability Rights Network. The National Disability Rights Network ("NDRN") is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands), and there is a P&A and CAP affiliated with

the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

National Association of the Deaf. The National Association of the Deaf (NAD), founded in 1880 by deaf and hard of hearing leaders, is the oldest national civil rights organization in the United States. As a non-profit serving all within the USA, the NAD has as its mission to preserve, protect, and promote the civil, human, and linguistic rights of 48 million deaf and hard of hearing people in this country. The NAD is supported by affiliated state organizations in 49 states and D.C. as well as affiliated nonprofits serving various demographics within the deaf and hard of hearing community. Led by deaf and hard of hearing people on its Board and staff leadership, the NAD is dedicated to ensuring equal access in every aspect of life: health care and mental health services, education, employment, entertainment, personal autonomy, voting rights, access to professional services, legal and court access, technology, and telecommunications.

Paralyzed Veterans of America. Paralyzed Veterans of America ("PVA") is a national, congressionally chartered veterans service organization headquartered in Washington, DC. PVA's mission is to employ its expertise, developed since its founding in 1946, on behalf of armed forces veterans who have experienced spinal cord injury or a

disorder (SCI/D). PVA seeks to improve the quality of life for veterans and all people with SCI/D through its medical services, benefits, legal, advocacy, sports and recreation, architecture, and other programs. PVA advocates for quality health care, for research and education addressing SCI/D, for benefits based on its members' military service and for civil rights, accessibility, and opportunities that maximize independence for its members and all veterans and non-veterans with disabilities. PVA has nearly 16,000 members, all of whom are military veterans living with catastrophic disabilities. To ensure the ability of our members to participate in their communities, PVA strongly supports the opportunities created by and the protections available through federal disability civil rights laws, including Section 504 of the Rehabilitation Act of 1973, as amended.

Transgender Legal Defense and Education Fund. Transgender Legal Defense and Education Fund ("TLDEF") is a non-profit organization that advocates on behalf of transgender and non-binary people across the United States. TLDEF is committed to ensuring that law and policy permit full, lived equality for the transgender and non-binary community. TLDEF seeks to coordinate with other civil rights organizations to address key issues affecting transgender people in the areas of employment, healthcare, education, government, and public accommodations, and to ensure that civil rights protections are applied to their fullest extent on behalf of transgender and non-binary people,h including the application of disability rights laws to people seeking relief from discrimination due to gender dysphoria.

United Spinal Association. Founded by paralyzed veterans in 1946, United Spinal Association is the largest non-profit organization dedicated to enhancing the quality of life of all people living with spinal cord injuries and disorders (SCI/D), including veterans, and providing support and information to loved ones, care providers and professionals. United Spinal has 75 years of experience educating and empowering over 2 million individuals with SCI/D to achieve and maintain the highest levels of independence, health and personal fulfillment. United Spinal has over 58,000 members, nearly 50 chapters, close to 200 support groups and more than 100 rehabilitation facility and hospital partners nationwide. United Spinal Association is also a VA-accredited veterans service organization (VSO) serving veterans with disabilities of all kinds.