

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1374

CVS PHARMACY, INC., ET AL., PETITIONERS

v.

JOHN DOE, ONE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case; that the time allotted for oral argument be enlarged to 70 minutes; and that the time be allotted as follows: 35 minutes for petitioners, 20 minutes for respondents, and 15 minutes for the United States. Petitioners and respondents consent to this motion.

This case presents the question whether disparate-impact claims are cognizable under Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and by extension Section 1557 of the Affordable Care Act, 42 U.S.C. 18116. The United States has a substantial interest in the resolution of that question. The federal government is charged with enforcing these statutes, see 29 U.S.C. 794a(a)(2); 42 U.S.C. 2000e-5, 18116(a). Congress directed all federal agencies to issue regulations implementing Section 504 with respect to the programs or activities to which they provide financial assistance. See 29 U.S.C. 794(a). The Department of Justice is charged with coordinating federal agencies' implementation and enforcement of Section 504. See 28 C.F.R. Pt. 41; Exec. Order No. 12,250, 3 C.F.R. 298 (1980 Comp.); see also 28 C.F.R. 0.51(b)(3). Federal agencies have consistently issued regulations that interpret the Rehabilitation Act to proscribe forms of disparate-impact discrimination. See 45 C.F.R. 84.4(b)(4), 85.51(b)(3) (1978); see also 45 C.F.R. 84.13(a), 84.42(b)(2), 84.44(a), 84.52(a)(4) (1977); 42 Fed. Reg. 22,676, 22,688 (May 4, 1977).

The United States has previously presented oral argument as amicus curiae in cases concerning the Rehabilitation Act, including in Alexander v. Choate, 469 U.S. 287 (1985), which presented a similar question to the one at issue in this case. See also, e.g., Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743 (2017); Barnes v. Gorman, 536 U.S. 181 (2002). In light of the substantial

federal interest in the question presented, oral presentation of the views of the United States would materially assist the Court in its consideration of this case.

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General
Counsel of Record

OCTOBER 2021