No. 20-1374

IN THE

Supreme Court of the United States

CVS PHARMACY, INC., ET. AL.,

Petitioners,

—v.—

JOHN DOE, ONE, ET AL.,

Respondents.

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

BRIEF FOR *AMICI CURIAE* THE ARC OF THE UNITED STATES AND THE AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES, ET AL., IN SUPPORT OF RESPONDENT JOHN DOE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Regulations

Congressional Materials

Other Authorities

STATEMENT OF IDENTITY AND INTEREST[1]

Amici curiae are non-profit organizations that represent and advocate for the rights of Americans with disabilities. For decades, *amici* have been involved in administrative proceedings, litigation, and policy advocacy to promote the civil rights of people with disabilities. *Amici curiae* submit this brief to assist the Court in its evaluation of how the "meaningful access" standard for claims under Section 504 of the Rehabilitation Act of 1973 announced in *Alexander v. Choate*, 469 U.S. 287 (1985), should be understood and applied against the backdrop of decades of regulatory and judicial construction of Section 504 that is consistent with *Choate* and has been accepted by Congress repeatedly.

Amici curiae are as follows:

The Arc of the United States, founded in 1950, is the Nation's largest community-based organization of and for people with intellectual and developmental disabilities (IDD). Through its legal advocacy and public policy work, The Arc promotes and protects the human and civil rights of people with IDD and actively supports their full inclusion and participation in the community throughout their lifetimes.

American Association of People with Disabilities works to increase the political and economic power of people with disabilities. A national

[1] Pursuant to Supreme Court Rule 37.6, this brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution to the preparation or submission of this brief.

cross-disability organization, AAPD advocates for full recognition of the rights of over 61 million Americans with disabilities.

American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil-rights laws. Since its founding more than 100 years ago, the ACLU has appeared before this Court in numerous cases, both as direct counsel and as amicus curiae. The ACLU's Disability Rights Program envisions a society in which people with disabilities are valued, integrated members of the community, have jobs, homes, education, healthcare, and families, and are not needlessly segregated into institutions such as nursing homes and psychiatric hospitals.

Association of People Supporting Employment First (APSE), established in 1988, is the only national organization to focus exclusively on inclusive employment and career advancement opportunities for individuals with disabilities. Through its policy and advocacy work at the state and federal level, APSE provides consultation on policy issues that facilitate the full inclusion of people with disabilities in the workplace and community.

Association of University Centers on Disabilities (AUCD) is a nonprofit membership association of over 130 university centers and programs in each of the fifty States and six Territories. AUCD members conduct research, create innovative programs, prepare individuals to serve and support people with disabilities and their families,

and disseminate information about best practices in all disability programming.

The Autism Self Advocacy Network (ASAN) is a national, private, nonprofit organization, run by and for autistic individuals. ASAN provides public education and promotes public policies that benefit autistic individuals and others with developmental or other disabilities. ASAN takes a strong interest in cases that affect the rights of autistic individuals and others with disabilities to participate fully in community life and enjoy the same rights as others without disabilities.

Civil Rights Education and Enforcement Center (CREEC) is a national nonprofit membership organization whose mission is to defend human and civil rights secured by law, including laws prohibiting discrimination on the basis of disability. CREEC's work to defend human and civil rights extends to all walks of life, including ensuring that people with disabilities have access to all programs, services, and benefits of public entities, and adequate resources when such access is denied.

The Coelho Center for Disability Law, Policy and Innovation collaborates with the disability community to cultivate leadership and advocate innovative approaches to advance the lives of people with disabilities. We envision a world in which people with disabilities belong and are valued, and their rights are upheld. The Coelho Center was founded in 2018 by former Congressman Anthony "Tony" Coelho, original sponsor of the Americans with Disabilities Act.

The Disability Rights Education & Defense Fund (DREDF), based in Berkeley, California, is a national nonprofit law and policy center dedicated to protecting and advancing the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy and law reform efforts.

Justice in Aging advocates on behalf of low-income older adults, many of whom live with disabilities, and regularly litigates matters on their behalf under the Americans with Disabilities Act and the Rehabilitation Act.

The National Association of Councils on Developmental Disabilities (NACDD) is the national nonprofit membership association for the Councils on Developmental Disabilities located in every State and Territory in the United States.

National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE) is committed to strengthening the parent and family-led organization voice at decision-making tables. National PLACE is a membership organization of 70 national, state, and local family-led organizations, the majority of which have the mission of serving, supporting and empowering youth and young adults with disabilities and special healthcare needs and their families.

National Federation of the Blind (NFB) is the oldest, largest and most influential membership

organization of blind people in the United States. Since its founding in 1940, the NFB have devoted significant resources towards advocacy, education, research, and development of programs to ensure that blind individuals enjoy the same opportunities enjoyed by others.

National Organization on Disability. When the National Organization on Disability was founded in 1982, it was the first organization in the United States to represent every person with a disability, regardless of particular needs or circumstances. Our mission is to break down the barriers that fence people off from the wider community.

Public Justice is a legal advocacy organization that pursues high-impact litigation aimed at combatting systemic barriers that prevent the courts from serving as a fair and equitable forum for individuals with relatively little power to seek redress and hold wrongdoers accountable. Public Justice has an interest in ensuring that the "meaningful access" standard for discrimination on the basis of disability established by this Court remains in effect so that people with disabilities will continue to have recourse in the courts for the many forms of discrimination that are not the result of intentional animus.

SPAN Parent Advocacy Network (SPAN) is a non-profit organization whose vision is that all families will have the resources and support they need to ensure that their children become fully participating and contributing members of our communities and society. Our mission is to empower and support families and involve professionals to partner to enhance the healthy development and education of

children and youth, including those with disabilities and special healthcare needs.

United Cerebral Palsy. Since 1949, United Cerebral Palsy (UCP) has promoted the independence, productivity, and full citizenship of people with cerebral palsy, intellectual and developmental disabilities, and other conditions. UCP's mission is to be the indispensable resource for individuals with cerebral palsy and other disabilities, their families, and their communities.

SUMMARY OF THE ARGUMENT

"Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference – of benign neglect." *Alexander v. Choate* 469 U.S. 287, 295–96 (1985). A sidewalk without a ramp denies access to a person in a wheelchair, regardless of intent. Congress in Section 504 of the Rehabilitation Act of 1973 sought to remedy just such discrimination.

Thus, in *Alexander v. Choate*, this Court unanimously concluded that Section 504 "requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that [a federal] grantee offers." 469 U.S. at 301. This conclusion was based on the Court's examination of the language, purpose and history of Section 504 of the Rehabilitation Act, as well as its own prior decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). As the Court explained, "much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent." *Choate*, at 296–97.

This view of the scope of Section 504 is consistent with the text of the statute, which contains several provisions that make sense only if Section 504's prohibition applies to policies that have a discriminatory effect on people with disabilities, regardless of intent. These include an exemption adopted in 1988 for "small providers" from otherwise applicable requirements to "alter structures" to

provide access, a provision adopted in 1990 governing transportation accessibility, and 1992 amendments that expressly link Section 504's standards to those in the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* ("ADA"). These textual provisions preclude Petitioners' reading of Section 504 as reaching only policies adopted with discriminatory intent.

The Court's decision in *Choate* is also consistent with decades of near-uniform judicial and regulatory construction of Section 504 to prohibit discrimination that deprives individuals of meaningful access, even where the discrimination is the result of benign neglect and not of invidious animus. Congress was well aware of these prior judicial and regulatory interpretations each time it reenacted Section 504 – and when it enacted the ADA with statutory language adopting these regulations. Yet Congress has done nothing to suggest that these interpretations are in any way inconsistent with the statutory text. This course of action by Congress provides "convincing support for the conclusion that Congress accepted and ratified" these prior judicial and regulatory interpretations of Section 504. *See Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 563 (2017) ("The [prior construction] canon teaches that if courts have settled the meaning of an existing provision, the enactment of a new provision that mirrors the existing statutory text indicates, as a general matter, that the new provision has that same meaning.") (citing *Bragdon v. Abbott*, 524 U. S. 624, 645 (1998)); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 243 n.11 (2009) (Congress's amendment of statute without altering text previously construed by the Court

"implicitly adopted [the Court's] construction of the statute").

Since hearing *Choate* 36 years ago, the Court has not had the opportunity to address specifically the application of *Choate*'s "meaningful access" standard, but it has recognized that the discriminatory effects of facially neutral policies are actionable under the principles first established in Section 504 and then applied to additional sectors of our society in the ADA.[2] The Court should adhere to *Choate*, uphold decades of prior construction of Section 504, and reinforce the protections afforded by that statute, including the protection against conduct that, while unintentional, is discriminatory in its effect by denying people with disabilities meaningful access to goods and services. To do otherwise would have far-reaching implications and would set back the clock on the hard-earned, long-overdue civil rights of people with disabilities.

[2] Section 504 implementing regulations do not use the phrase "disparate impact," but instead prohibit disability discrimination that occurs through the "effects" of criteria or methods of administration. For *amici*, this wording addresses the question presented by the Court. The key issue is whether the disabled person is being denied "meaningful access" to the benefit at issue, following the framework in *Choate* and the well-established legacy for analyzing facially neutral rules which have a disparate impact on people with disabilities.

ARGUMENT

I. *Alexander v. Choate*'s "Meaningful Access" Standard Should Be Upheld.

In *Alexander v. Choate*, after a thorough review of Section 504's language, purpose, and history, as well as its own prior precedent, this Court recognized that the purpose of the statute would be undermined if Section 504 were interpreted to require proof of intent to discriminate. 469 U.S. at 296–97.[3] Reaffirming its prior decision in *Southeastern Community College v. Davis*, 442 U.S. 397, the Court reasoned that the proper inquiry is whether the plaintiffs had "meaningful access" to the program in question. *Choate*, 469 U.S. at 301 ("The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers.").

The *Choate* Court explained that meaningful access sometimes requires reasonable modifications to a program in order to afford people with disabilities an "equal opportunity" to benefit from a service or activity, but that it does not require "equal results." *Id.* at 300–01, 304–05. In considering whether meaningful access is denied, a court should evaluate the purposes of the program in question and the

[3] The policy at issue in this case is not facially neutral as it explicitly applies to people living with HIV. *See* First Amended Class Action Complaint ¶ 94 (N.D. Cal. June 14, 2018). This is unlike the proposed reduction in the number of annual inpatient hospital days covered by the Tennessee Medicaid program at issue in *Choate*, which "d[id] not apply to only particular handicapped conditions and t[ook] effect regardless of the particular cause of hospitalization." 469 U.S. at 302 n.22.

evidence of an "exclusionary effect." *Id.* at 302–04. Further, the defendants may present a defense that the remedy sought would result in a fundamental alteration of the program and/or an undue burden. *Id.* at 299, 307–08. This framework, the Court explained, is "responsive to two powerful but countervailing considerations – the need to give effect to [Section 504's] statutory objectives and the desire to keep [it] within manageable bounds." *Id.* at 299.

This structure for analyzing core claims under Section 504 strikes an important balance. Discrimination "by effect" remains a pervasive problem for people with disabilities. Were this Court to roll back the reach of Section 504 and exclude "facially neutral" policies that in fact restrict access for people with disabilities, not only would it contravene the careful analysis set forth in *Choate*, but it would also endanger critical disability rights protections in contexts that Congress expressly intended to reach.

A. *Choate* Acknowledged That the Objectives of Section 504 Would Be "Difficult if Not Impossible" to Meet if the Law Were Limited to Intentional Discrimination.

The *Choate* Court specifically considered "whether proof of discriminatory animus is always required to establish a violation of § 504 and its implementing regulations, or whether federal law also reaches action . . . that discriminates against the handicapped by effect rather than by design." *Choate*, 469 U.S. at 292. The Court reasoned that any interpretation of Section 504 must "give effect to [its] statutory

objectives" while also keeping the law "within manageable bounds." *Id.* at 299. It ultimately "assume[d] without deciding that § 504 reaches at least some conduct that has an unjustifiable disparate impact." *Id.* That conclusion is therefore *dicta*, and not binding on this Court. But its analysis of the issue is nonetheless compelling, has proved persuasive, and should be reaffirmed.

In considering the objectives of Section 504, the Court examined the statute's text, implementing regulations,[4] and legislative history. The Court concluded that Section 504's objectives would be "difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent." *Id.* at 296–99.

"Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference – of benign neglect," this Court explained. *Id.* at 295. For example, "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." *Id.* at 297. Through Section 504, Congress sought to remedy the lack of access to public transportation, employment opportunities, and special education; if a showing of discriminatory intent were required, it would undermine these core objectives. *Id.* As such,

[4] The Court discussed Section 504 regulations promulgated by at least 24 federal agencies which adopted a discriminatory effect test. *Choate*, 469 U.S. at 294, 297 n.17.

the Court reasoned that an overly restrictive reading of Section 504 was untenable.

B. *Choate* Reasoned That Section 504 Requires Recipients of Federal Financial Assistance to Provide People with Disabilities "Meaningful Access" to Their Benefits, Programs, and Activities, Subject to Reasonable Limitations.

Petitioners characterize the construction advanced by this Court's decision in *Choate* as "boundless," without "contours . . . much less guardrails." Pet. Br. at 37, 45. In fact, the Court carefully delineated the same sorts of limitations that Petitioners deem sufficient in Titles I and III of the ADA. *See* Pet. Br. at 36. While the *Choate* Court stated that giving effect to Section 504's objectives would mean reaching *some* instances of discriminatory effect, it also recognized that it would be "wholly unwieldy" for the law to reach *all* actions disparately affecting people with disabilities. 469 U.S. at 298. In order to keep Section 504 claims within reasonable limits, the *Choate* Court adopted the meaningful access standard:

> The balance struck [] requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, *reasonable*

> *accommodations in the grantee's program or benefit may have to be made.*

Id. at 301 (emphasis added).

Meaningful access therefore considers as primary factors: (i) the purposes of the underlying program at issue and (ii) the evidence of disproportionate impact. 469 U.S. at 302–04. Meaningful access requires modifications that will provide people with disabilities an "equal opportunity" to benefit from a service or activity but not "equal results," and only where those modifications are reasonable, *i.e.*, do not fundamentally alter the program or impose an undue burden. *Id.* at 304–05.[5]

The *Choate* Court was also careful to establish "reasonable bounds" to actionable claims under Section 504. A defendant may assert an affirmative defense to a "meaningful access" claim when the modification sought would result in a "fundamental alteration in the nature of the program" or impose an undue burden on the entity at issue. *Id.* at 300. The *Choate* Court reviewed its prior holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), explaining:

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[5] The Court also urged caution in defining the "benefit" at issue. "Antidiscrimination legislation can obviously be emptied of meaning if every discriminatory policy is 'collapsed' into one's definition of what is the relevant benefit," the Court explained. *Id.* at 301 n.21. For example, "one can argue that a rampless library is offering, as a service, 'books-in-a-building-without-ramps,' and that *that* is available equally to all[.]" Brief for the United States as *Amicus Curiae* 29 n.36, *Alexander v. Choate*, 469 U.S. 287 (1985).

> *Davis* [] struck a balance between the statutory rights of the handicapped to be integrated into society and the legitimate interests of federal grantees in preserving the integrity of their programs: while a grantee need not be required to make "fundamental" or "substantial" modifications to accommodate the handicapped, it may be required to make "reasonable" ones.

Choate, 469 U.S. at 300.

These affirmative defenses are meaningful limits. In *Choate*, for example, the Court considered the limited administrative regime created by the Medicaid Act and the substantial discretion given to the Tennessee Medicaid administrators. *Id.* at 307–08. It determined that the remedy requested by the plaintiffs (essentially requiring a balancing of all harms and benefits to disabled insureds and preparation of "Handicapped Impact Statements" before any state action is taken or policy adopted) would be "virtually unworkable" and would fundamentally alter the Medicaid program. *Id.* at 298–99, 307–08. The plaintiffs in *Choate* had no actionable Section 504 claim because their proposed solution was a fundamental alteration. *Id.* at 307–08.

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In *Choate*, then, this Court provided a framework for analyzing Section 504's application to facially neutral policies that have a discriminatory effect on people with disabilities by denying them "meaningful access" to benefits or programs. The framework gives

meaning to Section 504's objectives – to reach not just acts of "invidious animus" but also those of "benign neglect." *See id*. at 295. It also sets out "manageable bounds" through the meaningful access standard. *See id.* at 299. Modifications that provide equal opportunity, without fundamental alteration or undue burden, are required by Section 504, as Congress intended. The affirmative defenses provide the "guardrails" Petitioners claim are missing to exclude overly broad or expensive changes. The outcome in *Choate* itself proves that Section 504 will not impose modifications that are unworkable or unwieldy.

The lower courts have followed *Choate*'s analysis for decades.[6] Regardless of whether the Respondents in this case successfully establish a claim for denial of meaningful access, this Court should reaffirm *Choate* and uphold the careful framework it set forth.

II. The Text of Section 504 Prohibits Some Policies with Discriminatory Effects That Deny Meaningful Access.

The meaningful access standard comports with the language of Section 504, on its face and as interpreted.

First, multiple provisions of Section 504 itself and other provisions of the Rehabilitation Act would be meaningless if that statute were read to prohibit only intentional discrimination.

Second, Section 504 has been reenacted four times, three of them since this Court decided *Choate*. During that time, a clear consensus of lower courts and more

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[6] *See infra* n. 19 and accompanying text.

than 100 sets of regulations have consistently provided that Section 504 recognizes claims that challenge conduct with discriminatory effects, regardless of intent. In the face of that consistent interpretation, Congress has amended the statute in ways that confirm its application to practices that have a discriminatory effect on people with disabilities, and has taken no steps whatsoever to reject that interpretation.

Under the prior-construction canon, "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414 n. 8 (1975)). If a phrase has been uniformly interpreted by lower courts and responsible agencies, "a later version of that act perpetuating the wording is presumed to carry forward that interpretation." Scalia, Antonin; Garner, Bryan A., SCALIA AND GARNER'S READING LAW: THE INTERPRETATION OF LEGAL TEXTS at 247 (Thomson West; Kindle Edition) ("Scalia & Garner"). This presumption is strongest where, as here, Congress demonstrates an awareness of that interpretation. *See, e.g.*, *Lindahl v. Off. of Pers. Mgmt.*, 470 U.S. 768, 782 & n.15 (1985) (recognizing the presumption that Congress is aware of prior administrative or judicial interpretations of a statute when it amends that statute, but finding "the bare force of this presumption" augmented in that case by evidence from legislative history that Congress was aware of the prior interpretation at issue and amended the statute based on that understanding).

A. The Text of Section 504 Supports Claims for Discriminatory Effect, not Just Intentional Discrimination.

If Section 504 does not extend beyond intentional discrimination, multiple provisions enacted by Congress as part of Section 504 would be meaningless. For example, in 1988, Congress amended Section 504 to add subsection (c), which exempts small providers from any obligation to make structural alterations to facilities if they can provide alternative means of access. 29 U.S.C. § 794(c). The provision expressly exempts these entities from what is otherwise "required *by subsection (a).*" *Id.* (emphasis added). Were Section 504 to reach intentional discrimination only, subsection (c) would be unnecessary, because no one would be required to make "structural alterations" unless they were adopted *for the purpose of denying access to people with disabilities*, very likely a null set.

In 1990, Congress further amended the Rehabilitation Act with respect to public transportation accessibility, at the same time that it enacted the ADA. These changes all defined discrimination to include the failure by public entities operating fixed route transportation systems to make their systems accessible to people with disabilities. *See, e.g.*, 42 U.S.C. § 12142(a) ("It shall be considered discrimination for purposes of section 12132 of this title *and section 794 of Title 29* [*i.e.*, Section 504] for a public entity which operates a fixed route system" to fail to purchase new accessible vehicles under specific circumstances) (emphasis added); *see also id.* §§ 12143 (same; failing to provide paratransit in conjunction with fixed route service); 12144 (same; failing to ensure new vehicles in demand responsive systems

are accessible); 12146 (same; constructing a new public transportation facility that is inaccessible); 12147 (same; failure to make alterations in existing transportation facilities to be accessible); 12148 (same; failing to provide program access in existing public transportation facilities); 12162 (same; failing to provide certain types of rail passenger cars that are accessible). No intent was required to prove discrimination – discrimination was established by the effect *of failing to take action*. The conduct at issue – failure to operate public transit in an accessible manner – is a classic example of "benign neglect" rather than "invidious animus." *Cf. Choate*, 469 U.S. at 295. Were invidious animus required to state a Section 504 claim based on, for example, the construction of inaccessible transportation facilities, these provisions would be gutted of their purpose by a defense of no intent to discriminate.

In 1992, Congress enacted the Rehabilitation Act Amendments of 1992, which incorporated by reference the standards of Title I of the ADA for employment claims brought under Sections 501 and 504 of the Rehabilitation Act. Congress stated: "The standards used to determine whether *this section has been violated* in a complaint alleging employment discrimination under this section shall be the standards applied under title I . . . ."[7] Pub. L. 102–569, title I, § 102(p)(32), title V, § 506, 106 Stat. 4360, 4428 (Oct. 29, 1992) (adding 29 U.S.C. § 794(d)) (emphasis

[7] The purpose of the law was to "assure that there will be consistent, equitable treatment for both individuals with disabilities and businesses under the two laws," *i.e.*, the ADA and the Rehabilitation Act. Rehabilitation Act Amendments of 1992, Conference Report, 138 Cong. Rec. S16608 (Oct. 5, 1992).

added). This "section" is Section 504, so sub-section (d) contemplates that Section 504 can be violated, at least in the employment context, by policies that violate Title I of the ADA, which Petitioner agrees "reach disparate impacts." Pet. Br. at 34. Yet there is only one Section 504; it cannot mean one thing in employment and something else in all other settings.

Thus, the text of Section 504, and particularly the specific amendments Congress adopted in 1988, 1990, and 1992, all confirm that the statute reaches conduct that has a discriminatory effect on people with disabilities, whether or not it was undertaken with the intent to discriminate against such people.

B. Congress Has Adopted *Choate*'s Interpretation of Section 504.

Congress repeatedly amended Section 504 against a consistent backdrop of regulations and judicial decisions interpreting the statute to prohibit measures with discriminatory effects, regardless of intent. And Congress once again reaffirmed this understanding of Section 504 when it enacted the ADA with several cross-references to Section 504.

"When a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation, and this Court is bound thereby." *United States v Bd. of Comm'rs of Sheffield, Ala.*, 435 U.S. 110, 134 (1978). And "'a specific policy embodied in a later federal statute should control [the Court's] construction of the [earlier] statute, even though it ha[s] not been expressly amended.'" *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*,

529 U.S. 120, 133 (2000). This "prior-construction canon" only reinforces the textual support for the longstanding interpretation that Section 504 reaches facially neutral conduct that has a discriminatory effect on people with disabilities by denying them meaningful access.

1. Cases and Regulations Interpreting and Implementing Section 504 Consistently Prohibit Measures with Discriminatory Effects.

a. The First Section 504 Regulations – Adopted with the Oversight and Approval of Congress -- Explicitly Prohibit Measures with Discriminatory Effects.

The first regulations implementing Section 504 were promulgated by the Department of Health, Education and Welfare ("HEW") in May of 1977 to provide guidance to recipients of funding from that agency. Those regulations from the outset interpreted that statute to prohibit practices with a discriminatory effect.[8] Section 84.4(b) of these regulations identifies four different forbidden types of discriminatory effects, including methods of administration that have the effect of discriminating

[8] *See* 42 Fed. Reg. 22676 (May 4, 1977) (final agency regulations); 45 C.F.R. § 84.4(b)(4).

against qualified handicapped people.[9] Section 84.13 forbids the use of employment tests or selection criteria that "screen[ ] out or tend[ ] to screen out" handicapped persons. Subpart C of the regulations is devoted entirely to assuring that disabled individuals are not excluded from programs because they are physically "inaccessible to or unusable by handicapped persons." 45 C.F.R. §§ 84.21-23.[10]

HEW first proposed these regulations in May 1976 after consulting with the relevant committees of both the House and Senate.[11] Senate hearings in that year expressly considered the scope and effectiveness of the proposals.[12] In January 1977, first HEW Secretary Mathews[13] and then HEW Secretary Califano[14] provided each member of Congress with copies of the proposed regulations and solicited their comments. Following the final promulgation of those regulations,

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[9] 45 C.F.R. § 84.4(b)(4). *See also* 45 C.F.R. §§ 84.4(b)(1)(ii) (unequal opportunity to participate), 84.4(b)(1)(iii) (services not "as effective as" those provided to the nonhandicapped), 84.4(b)(5) (locating facility at a site which has the effect of excluding handicapped persons).

[10] These provisions were all included in the regulations as promulgated in 1977. 42 Fed. Reg. 22676, 22678-81.

[11] Hearings on Rehabilitation of the Handicapped Programs Before the Subcommittee on the Handicapped of the S. Comm. on Labor and Public Welfare, 94th Cong. 1491, 1503-04 (1976) (hereinafter cited as "1976 Senate Hearings").

[12] 1976 Senate Hearings 323 (Rep. Dodd), 1502 (Sen. Williams), 1511 (Sen. Williams).

[13] Hearings on Review of Programs for the Handicapped Before the Subcomm. on the Handicapped of the S. Comm. on Human Resources, 95th Cong. 73 (1977).

[14] *Id*. at 76.

a House subcommittee conducted further hearings on the implementation of Section 504 at which the Director of HEW's Office of Civil Rights expressly called attention to the various HEW regulations concerning discriminatory effects.[15]

b. Since 1977, at Least 80 Federal Agencies Have Consistently Construed Section 504 to Reach Some Actions Causing Discriminatory Effects.

Following issuance of the 1977 HEW regulations, and pursuant to Executive Order 11914, that agency issued regulations (the "HEW Coordination Regulations") that were to "coordinate governmentwide enforcement of section 504." 43 Fed. Reg. 2132 (Jan. 13, 1978). These regulations, like HEW's 1977 funding recipient regulations, included a prohibition on using "criteria or methods of administration . . . that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap." 45 C.F.R. § 85.21(b)(3)(i) (as published in 43 Fed. Reg. 2132, 2138). HEW's contemporaneous commentary explained that "Section 504, like other nondiscrimination statutes, prohibits not only those practices that are overtly discriminatory but also those that have the effect of discriminating." *Id.* at 2134.

[15] *Id.* at 295–96.

Between 1977 and 2012, when the most recent agency issued Section 504 regulations,[16] more than 80 agencies have issued more than 100 sets of regulations[17] that included the language prohibiting criteria and methods of administration that have the effect of discriminating on the basis of disability. *See* Appendix A, Column E.[18]

At the time of each reenactment discussed in Section II(B)(2) below, regulatory agencies had consistently interpreted Section 504 to prohibit conduct with discriminatory effects.

c. Appellate Caselaw Has Consistently Construed Section 504 as Reaching Beyond Intentional Discrimination.

Even before this Court decided *Choate*, some circuit courts had already held that Section 504 must reach beyond intentional discrimination. *See, e.g.*, *Prewitt v. U.S. Postal Serv.*, 662 F.2d 292, 305–07, 308

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[16] 12 C.F.R. § 1072.106(b)(4)(i), 77 Fed. Reg. 46606, 46610 (Aug. 6, 2012).

[17] Many agencies issue two sets of Section 504 regulations, one governing the agency itself, and the other governing recipients of funding from the agency. *Compare, e.g.,* 34 C.F.R. pt. 104 (Department of Education recipient regulations) *with id.* pt. 105 (Department of Education agency regulations).

[18] In fact, most of the regulations implementing Section 504 and in place during repeated reenactments omit the word "solely." *See* Appendix A, Columns C & D. *Accord* H.R. Rep. 101-485(II), at 85, 1990 U.S.C.C.A.N. 303, 367 ("A literal reliance on the phrase 'solely by reason of his or her handicap' leads to absurd results.").

n.21 (5th Cir. 1981); *Pushkin v. Regents of Univ. of Colo.*, 658 F.2d 1372, 1385 (10th Cir. 1981). In the wake of *Choate*, the remaining circuits joined the consensus, rooting their analysis of effects-based discrimination in this Court's "meaningful access" framework. *See Henrietta D. v. Bloomberg*, 331 F.3d 261, 275 (2d. Cir. 2003) ("the Rehabilitation Act requires affirmative accommodations to ensure that facially neutral rules do not in practice discriminate against individuals with disabilities" by denying them meaningful access to federally funded programs, and distinguishing between such failure-to-accommodate claims and disparate-treatment claims); *Washington v. Indiana High Sch. Athletic Ass'n, Inc.*, 181 F.3d 840, 846 (7th Cir. 1999) ("a plaintiff making a claim under the Rehabilitation Act need not prove an impermissible intent") (citing *Choate*, 469 U.S. at 296–97); *DeBord v. Bd. Of Educ. of Ferguson-Florissan Sch. Dist.*, 126 F.3d 1102, 1105–06 (8th Cir. 1997) (observing that "[d]isparate treatment is not the only way to prove unlawful discrimination" and citing *Choate* in discussion of effects-based theories).[19]

Congress was aware "of the longstanding judicial interpretation" that Section 504 reaches some policies

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[19] *See also, e.g.*, *Ruskai v. Pistole*, 775 F.3d 61, 78–79 (1st Cir. 2014); *Disabled in Action v. Bd. of Elections*, 752 F.3d 189, 197 (2d Cir. 2014); *Nathanson v. Med. Coll. of Pa.*, 926 F.2d 1368, 1384–85 (3d Cir. 1991); *Nat'l Fed'n of the Blind, Inc. v. Lamone*, 813 F.3d 494, 504 (4th Cir. 2016); *Brennan v. Stewart*, 834 F.2d 1248, 1261 (5th Cir. 1988); *Durand v. Fairview Health Servs.*, 902 F.3d 836, 842 (8th Cir. 2018); *Mark H. v. Lemahieu*, 513 F.3d 922, 936–37 (9th Cir. 2008); *Hollonbeck v. U.S. Olympic Comm.*, 513 F.3d 1191, 1197 (10th Cir. 2008); *United States v. Bd. of Trs.*, 908 F.2d 740, 747–49 (11th Cir. 1990); *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1260 (D.C. Cir. 2008).

with discriminatory effects "and intended for it to retain its established meaning." *See Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018). The two requirements for Congressional ratification are satisfied by the three post-*Choate* amendments to Section 504: "(1) the interpretation must be so well settled that we can 'presume Congress knew of and endorsed it' at the time of the reenactment, and (2) the statute must be reenacted without material change." *Minerva Surgical, Inc. v. Hologic, Inc.*, 141 S. Ct. 2298, 2315 (2021) (Barrett, J., dissenting) (quoting *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 349 (2005)).

At the time of each reenactment discussed below, the scope of Section 504 was uniformly understood by courts as applying to more than just conduct involving discriminatory intent.

2. Congress Has Repeatedly Reenacted Section 504 Against the Backdrop of Consistent Judicial and Regulatory Interpretation that It Prohibits Conduct with Discriminatory Effects.

Section 504 was first enacted in 1973. It was then reenacted on four separate occasions in 1978, 1986, 1988, and 1992, all following the January 1978 promulgation of the HEW Coordination Regulations, which interpreted Section 504 to reach policies with a discriminatory effect on people with disabilities. On three occasions, discussed above, Congress adopted amendments that necessarily presume that Section 504 reaches some policies with discriminatory effects on people with disabilities. On no occasion did

Congress take any steps to reject the portions of the implementing regulations that prohibit some forms of discrimination by effect, or take any step to impose an intent standard.

The first reenactment of Section 504 occurred in November 1978, just ten months after HEW issued its Coordination Regulations. Congress extended Section 504's coverage to executive agencies as well as recipients of federal funding, ordered agency heads to issue regulations and submit them to congressional committees, and added a remedies provision. Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, § 120, 92 Stat. 2955 (Nov. 6, 1978). In the legislative history of that reenactment, Congress specifically referred to the HEW Coordination Regulations and noted that, in light of these regulations, the "amendment codifie[d] existing practice as a specific statutory requirement." *See* S. Rep. No. 95-890, at 19 (May 15, 1978). The report also explained that the remedies provision was "designed to enhance the ability of handicapped individuals to assure compliance with . . . [Section 504] and the regulations promulgated thereunder." *Id.* at 18. Congress was well aware that those regulations included an effects standard. *See Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 635 nn.15 & 16 (1984) ("In adopting § 505(a)(2) in the amendments of 1978, Congress incorporated the substance of the Department's regulations into the statute." (citing S. Rep. 95-890). And pursuant to the requirement that agency regulations be submitted to Congress, 29 U.S.C. § 794(a), since that time, congressional committees have had the opportunity to review at least 50 sets of Section 504 regulations containing the

prohibition on discriminatory effect. See Appendix A, Column G.

Congress also enacted several amendments to other provisions of the Rehabilitation Act in 1978 that specifically confirmed its knowledge and approval of the discriminatory-effect regulations promulgated the previous year. For example, Section 502(b) directed the Architectural and Transportation Barriers Compliance Board to develop standards and provide technical assistance with regard to the Section 504 regulations concerning architectural, transportation and communication barriers. 29 U.S.C. § 792(b). The 1978 amendments necessarily assumed that Section 504 applied to physical barriers that had a discriminatory effect on disabled people.

Congress reenacted Section 504 again in 1986 to abrogate sovereign immunity under the Eleventh Amendment, Rehabilitation Act Amendments of 1986, Pub. L. 99-506, §1003, 100 Stat. 1807 (Oct. 21, 1986). Again, nothing in that reenactment disturbed the settled understanding that Section 504 reached conduct with discriminatory effects.

In 1988, Congress reenacted the statute again specifically to address and overturn a decision of this Court that Congress believed had misinterpreted (among others) Section 504. In *Grove City College v. Bell*, this Court read the phrase "program or activity" as used in Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), narrowly to include only the specific program receiving federal funding. 465 U.S. 555, 573 (1984). Through the Civil Rights Restoration Act of 1987, Congress overturned that decision and added to Section 504 a subsection (b), providing a

broad definition for the phrase "program or activity." Pub. L. No. 100–259, § 4, 102 Stat 28 (Mar. 22, 1988). In the statutory language, Congress explained that "certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of . . . section 504 of the Rehabilitation Act of 1973 . . ." and that "legislative action [was] necessary to restore the prior consistent and long-standing executive branch interpretation." *Id.* § 2. Although Congress took proactive steps to overturn *Grove City College*, it took no action to overturn or limit the meaningful access standard established in *Choate* or the consistent judicial and regulatory interpretation of Section 504.

The Rehabilitation Act was reenacted once again in 1992 to (among other things) add more extensive language addressing the findings and purpose of the Act. Rehabilitation Act Amendments of 1992, Pub. L. No. 102–569, § 506, 106 Stat 4344 (Oct. 29, 1992). In doing so, Congress expressly linked Section 504 and the ADA. It explained that the new "statement of purpose is [a] reaffirmation of the precepts of the Americans with Disabilities Act of 1990 . . . . It is the Committee's intent that these principles guide the policies, practices, and procedures developed under all titles of this Act." H.R. Rep. 102-822, 81 (Aug. 10, 1992). Given that the ADA includes claims for discriminatory effects, *see infra* Section II(B)(3), this underscores Congress's understanding that Section 504 does as well.

When Congress reenacts a statute against a consistent backdrop of judicial and regulatory interpretation, it is presumed to adopt that interpretation. *Lorillard*, 434 U.S. at 580; *see also*

Scalia & Garner at 247 ("The clearest application of the prior-construction canon occurs with reenactments."). Congress's reenactments of Section 504 are properly understood to adopt the understanding consistently set forth in HEW's regulations that Section 504 covers practices with discriminatory effects but no discriminatory intent. That history is "persuasive evidence that the interpretation is the one intended by Congress." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 275 (1975).

This Court has previously relied on consistent regulatory interpretation of Section 504 to interpret language common to that statute and the ADA. In *Bragdon v. Abbott*, the question was whether asymptomatic HIV was covered under the ADA's definition of disability. 524 U.S. 624 (1998). That definition was "drawn almost verbatim from the definition of 'handicapped individual' included in the Rehabilitation Act of 1973." *Id.* at 631. This Court held that asymptomatic HIV was a "disability" within the meaning of the two statutes, explaining that this "holding is confirmed by a consistent course of agency interpretation before and after enactment of the ADA. Every agency to consider the issue under the Rehabilitation Act found statutory coverage for persons with asymptomatic HIV." *Id.* at 641. The Court concluded: "[t]he uniform body of administrative and judicial precedent confirms the conclusion we reach today as the most faithful way to effect the congressional design." *Id.* at 645.

Similarly, the uniform administrative interpretation of Section 504 to include a claim for conduct with discriminatory effects, coupled with Congressional awareness and reenactment on

multiple occasions, indicates Congressional intent to incorporate that interpretation into the statutory text.

3. In Enacting the ADA, Congress Codified the Section 504 Regulations and Reaffirmed that Section 504 Extends Beyond Intentional Discrimination.

Congress's enactment of the ADA also supports reading Section 504 to reach some practices that have a discriminatory effect on people with disabilities, because Congress expressly cross-referenced and adopted Section 504 regulations into the text of the ADA. Title II of the ADA prohibits disability discrimination by public entities and does so using language that tracks Section 504: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

Title II explicitly incorporates the HEW Coordination Regulations into its statutory language. Section 204(b) of the ADA directs the Department of Justice to issue regulations "consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978)".[20] 42 U.S.C.

[20] The Coordination Regulations were promulgated by HEW and codified at 45 C.F.R. part 85. 43 Fed. Reg. 2132 (Jan. 13, 1978). They were later transferred to the Department of Justice

§ 12134(b).[21] Congress's express incorporation in the ADA of regulations prohibiting discrimination by effect under Section 504 controls the interpretation of Section 504. "'[A] specific policy embodied in a later federal statute should control [the Court's] construction of the [earlier] statute, even though it ha[s] not been expressly amended.'" *Brown & Williamson Tobacco Corp.*, 529 U.S. at 143 (quoting *United States v. Estate of Romani*, 523 U.S. 517, 530-31 (1998)); *see also Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 786 n.17 (2000) ("it is well established that a court can, and should, interpret the text of one statute in the light of text of surrounding statutes, even those subsequently enacted").

The ADA's legislative history confirms that Congress was adopting and codifying the HEW Section 504 regulations and that they reach discrimination by effect. In addition to explicitly adopting the HEW Coordination Regulations into the ADA's text, Congress explained that the purpose of Title II is to "make applicable the prohibition against discrimination on the basis of disability, *currently set out in regulations implementing section 504 of the Rehabilitation Act of 1973*, to all programs, activities, and services" of state and local government, H.R. Rep. 101-485(II) at 84, 1990 U.S.C.C.A.N. 303, 366

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and codified at 28 C.F.R. part 41. 46 Fed. Reg. 40686 (Aug. 11, 1981).

[21] Petitioners reference section 12134(b) and state that it required the Title II regulations to be consistent with "the rest of the ADA," Pet. Br. at 35-36 n.4, but they omit mention of the statutory instruction to ensure consistency with the HEW Coordination Regulations.

(emphasis added). Congress further explained that "Section 504 recognizes that discrimination results from actions or inactions, and *that discrimination occurs by effect* as well as by intent or design." H.R. Rep. 101-485(III), at 26, 1990 U.S.C.C.A.N. 445, 448 (emphasis added).

Title II "extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local governmental entities." H.R. Rep. 101-485(II) at 84, 1990 U.S.C.C.A.N. 303, 367. Thus, both the text and history of the ADA confirm that Congress expressly adopted an interpretation of Section 504 that addressed conduct with discriminatory effects.[22]

Accordingly, this Court has used the framework established in *Davis*, *Choate*, and Section 504 regulations in analyzing – under the ADA – a facially neutral rule that resulted in discrimination against people with disabilities. In in *Olmstead v. L.C.* ex rel. *Zimring*, the Court interpreted Title II of the ADA based on its implementing regulations which the Court specifically noted were required by Congress to be consistent with Section 504 regulations. 527 U.S. 581, 591–92 (1999) (citing 42 U.S.C. § 12134(b)). The holding in *Olmstead* incorporated the defense,

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[22] This stands in sharp contrast to Title VI of the Civil Rights Act, which the Court has held does not encompass claims involving discriminatory effect. *Alexander v. Sandoval*, 532 U.S. 275 (2001). *Sandoval* rested on the Court's prior decisions interpreting Title VI, *id.* at 288-92, rather than interpretation of Title VI's text. Moreover, the Court in *Sandoval* expressly distinguished *Choate* and observed that the regulations that construe Section 504 are the sort of regulations that are enforceable through the statutory cause of action. *Id.* at 284-85.

available to Petitioners here, first articulated in *Davis*: that the state was not required to take steps that would constitute a fundamental alteration. *Id.* at 603.

In short, at every stage that Congress has reconsidered the issue of disability discrimination, it has taken steps to reaffirm that Section 504 reaches policies that have a discriminatory effect on people with disabilities. There is a consistent through line from the statute's initial enactment, to the earliest regulations, to *Choate*, to over 100 subsequent regulations, and through repeated rounds of Congressional action, all supporting the view that Section 504 reaches conduct and policies that deny people with disabilities meaningful access, even where they are the product of "benign neglect." This Court should follow suit and reaffirm that understanding.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the United States Court of Appeals for the Ninth Circuit.

November 2, 2021

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APPENDIX

Appendix A

Amici have enclosed as Appendix A a table showing 104 sets of regulations issued to enforce Section 504 of the Rehabilitation Act of 1973. The table's columns provide the following information:

A. Issuing agency.

B. Whether the regulations govern the conduct of recipients of federal funding from the agency or of the agency itself.

C. A cite to the provision generally prohibiting exclusion from participation, denial of benefits, and other discrimination against people with disabilities.

D. Whether the provision cited in Column C included the word "solely" when prohibiting discrimination "on the basis of" disability or handicap.

E. A cite to the provision prohibiting criteria or methods of administration that have the effect of subjecting disabled people to discrimination on the basis of disability.

F. The date the regulations were promulgated in the Federal Register.

G. Whether the regulations were transmitted to a congressional committee pursuant to the 1978 reenactment of Section 504, *see* 29 U.S.C. § 794(a). Since this requirement was only enacted in 1978 and only applied to regulations governing the conduct of agencies (not funding recipients), regulations from before 1978 and/or those that apply to recipients are marked as "not applicable," or "n/a."

Appendix A: Regulations Enforcing Section 504 of the Rehabilitation Act of 1973

A	B	C	D	E	F	G
Agency	**Type**	**General Nondiscrimination Cite**	**Solely**	**Methods of Administration Cite**	**Date Issued**	**Transmitted to Congress**
Department of Health, Education, and Welfare	Recipient	45 CFR 84.4(a)	No	45 CFR 84.4(b)(4)(i)	5/4/1977	n/a
Department of Health, Education, and Welfare	Coordination	45 CFR 85.21(a)[1]	No	45 CFR 85.21(b)(3)(i)	1/13/1978	n/a
National Endowment for the Arts	Recipient	45 CFR 1151.16(a)	No	45 CFR 1151.17(c)(1)	4/17/1979	n/a
Corporation for National and Community Service f/k/a ACTION a/k/a Americorps	Recipient	45 CFR 1232.4(a)	No	45 CFR 1232.4(b)(3)(i)	5/30/1979	n/a
Department of Transportation	Recipient	49 CFR 27.7(a)	Yes	49 CFR 27.7(b)(4)(i)	5/31/1979	n/a
Nuclear Regulatory Commission	Recipient	10 CFR 4.121(a)	No	10 CFR 4.121(b)(3)(i)	3/6/1980	n/a
Tennessee Valley Authority	Recipient	18 CFR 1307.4(a)	No	18 CFR 1307.4(b)(3)(i)	4/4/1980	n/a
Department of Education	Recipient	34 CFR 104.4(a)	No	34 CFR 104.4(b)(4)(i)	5/9/1980	n/a
Department of Justice	Recipient	28 CFR 42.503(a)	Yes	28 CFR 42.503(b)(3)	6/3/1980	n/a
Department of Energy	Recipient	10 CFR 1040.63(a)	No	10 CFR 1040.63(b)(4)(i)	6/13/1980	n/a
Agency for International Development	Recipient	22 CFR 217.4(a)	No	22 CFR 217.4(b)(4)(i)	10/6/1980	n/a
Department of Labor	Recipient	29 CFR 32.4(a)	No	29 CFR 32.4(b)(4)(i)	10/7/1980	n/a
Department of State	Recipient	22 CFR 142.4(a)	No	22 CFR 142.4(b)(4)(i)	10/21/1980	n/a
National Endowment for the Humanities	Recipient	45 CFR 1170.11	No	45 CFR 1170.12(c)(1)	11/12/1981	n/a
National Science Foundation	Recipient	45 CFR 605.4(a)	No	45 CFR 605.4(b)(4)(i)	3/1/1982	n/a
Department of Defense	Recipient	32 CFR 56.8(a)(1)	No	32 CFR 56.8(a)(6)(i)	4/8/1982	n/a
Department of Commerce	Recipient	15 CFR 8b.4(a)	No	15 CFR 8b.4(b)(4)(i)	4/23/1982	n/a

[1] Transferred to the Department of Justice and codified at 28 CFR part 41. 46 Fed. Reg. 40686 (Aug. 11, 1981).

A	B	C	D	E	F	G
Agency	**Type**	**General Nondiscrimination Cite**	**Solely**	**Methods of Administration Cite**	**Date Issued**	**Transmitted to Congress**
Department of Agriculture	Recipient	7 CFR 15b.4(a)	No	7 CFR 15b.4(b)(4)(i)	6/11/1982	n/a
Department of the Interior	Recipient	43 CFR 17.203(a)	No	43 CFR 17.203(b)(4)(i)	7/7/1982	n/a
Environmental Protection Agency	Recipient	40 CFR 7.45	Yes	40 CFR 7.50(c)	1/12/1984	n/a
Federal Election Commission	Agency	11 CFR 6.130(a)	No	11 CFR 6.130(b)(3)(i)	8/22/1984	✓
Department of Justice	Agency	28 CFR 39.130(a)	No	28 CFR 39.130(b)(3)(i)	9/11/1984	✓
United States Postal Service	Agency	39 CFR 255.3	Yes		4/10/1985	
Selective Service System	Agency	32 CFR 1699.130(a)	No	32 CFR 1699.130(b)(3)(i)	8/30/1985	✓
American Battle Monuments Commission	Agency	36 CFR 406.130(a)	No	36 CFR 406.130(b)(3)(i)	2/5/1986	✓
Consumer Product Safety Commission	Agency	16 CFR 1034.130(a)	No	16 CFR 1034.130(b)(3)(i)	2/5/1986	✓
Department of Energy	Agency	10 CFR 1041.130(a)	No	10 CFR 1041.130(b)(3)(i)	2/5/1986	✓
Export-Import Bank of the United States	Agency	12 CFR 410.130(a)	No	12 CFR 410.130(b)(3)(i)	2/5/1986	✓
Institute of Museum and Library Sciences	Agency	45 CFR 1181.130(a)	No	45 CFR 1181.130(b)(3)(i)	2/5/1986	✓
International Boundary and Water Commission	Agency	22 CFR 1103.130(a)	No	22 CFR 1103.130(b)(3)(i)	2/5/1986	✓
International Development Cooperation Agency/Agency for International Development	Agency	22 CFR 219.130(a)	No	22 CFR 219.130(b)(3)(i)	2/5/1986	✓
International Trade Commission	Agency	19 CFR 201.130(a)	No	19 CFR 201.130(b)(3)(i)	2/5/1986	✓
Marine Mammal Commission	Agency	50 CFR 550.130(a)	No	50 CFR 550.130(b)(3)(i)	2/5/1986	✓
National Commission on Libraries and Information Science	Agency	45 CFR 1706.130(a)	No	45 CFR 1706.130(b)(3)(i)	2/5/1986	✓

A	B	C	D	E	F	G
Agency	**Type**	**General Nondiscrimination Cite**	**Solely**	**Methods of Administration Cite**	**Date Issued**	**Transmitted to Congress**
National Endowment for the Humanities	Agency	45 CFR 1175.130(a)	No	45 CFR 1175.130(b)(3)(i)	2/5/1986	✓
National Transportation Safety Board	Agency	49 CFR 807.130(a)	No	49 CFR 807.130(b)(3)(i)	2/5/1986	✓
Advisory Council on Historic Preservation	Agency	36 CFR 812.130(a)	No	36 CFR 812.130(b)(3)(i)	6/23/1986	✓
Broadcasting Board of Governors	Agency	22 CFR 530.130(a)	No	22 CFR 530.130(b)(3)(i)	6/23/1986	✓
Commission of Fine Arts	Agency	45 CFR 2104.130(a)	No	45 CFR 2104.130(b)(3)(i)	6/23/1986	✓
Committee for Purchase from People Who are Blind or Severely Disabled	Agency	41 CFR 51-10.130(a)	No	41 CFR 51-10.130(b)(3)(i)	6/23/1986	✓
Commodity Futures Trading Commission	Agency	17 CFR 149.130(a)	No	17 CFR 149.130(b)(3)(i)	6/23/1986	✓
Department of State	Agency	22 CFR 144.130(a)	No	22 CFR 114.130(b)(3)(i)	6/23/1986	✓
Federal Maritime Commission	Agency	46 CFR 507.130(a)	No	46 CFR 507.130(b)(3)(i)	6/23/1986	✓
Federal Mine Safety and Health Review Commission	Agency	29 CFR 2706.130(a)	No	29 CFR 2706.130(b)(3)(i)	6/23/1986	✓
Inter-American Foundation	Agency	22 CFR 1005.130(a)	No	22 CFR 1005.130(b)(3)(i)	6/23/1986	✓
Japan-United States Friendship Commission	Agency	22 CFR 1600.130(a)	No	22 CFR 1600.130(b)(3)(i)	6/23/1986	✓
National Capital Planning Commission	Agency	1 CFR 457.130(a)	No	1 CFR 457.130(b)(3)(i)	6/23/1986	✓
National Commission for Employment Policy	Agency	1 CFR 500.130(a)	No	1 CFR 500.130(b)(3)(i)	6/23/1986	✓
National Credit Union Administration	Agency	12 CFR 794.130(a)	No	12 CFR 794.130(b)(3)(i)	6/23/1986	✓

A	B	C	D	E	F	G
Agency	**Type**	**General Nondiscrimination Cite**	**Solely**	**Methods of Administration Cite**	**Date Issued**	**Transmitted to Congress**
National Endowment for the Arts	Agency	45 CFR 1153.130(a)	No	45 CFR 1153.130(b)(3)(i)	6/23/1986	✓
Navajo and Hopi Indian Relocation Commission	Agency	25 CFR 720.130(a)	No	25 CFR 720.130(b)(3)(i)	6/23/1986	✓
Nuclear Regulatory Commission	Agency	10 CFR 4.130(a)	No	10 CFR 4.530(b)(3)(i)	6/23/1986	✓
Occupational Safety and Health Review Commission	Agency	29 CFR 2205.130(a)	No	29 CFR 2205.130(b)(3)(i)	6/23/1986	✓
Pennsylvania Avenue Development Corporation	Agency	36 CFR 909.130(a)	No	36 CFR 909.130(b)(3)(i)	6/23/1986	✓
Pension Benefit Guaranty Corporation	Agency	29 CFR 4907.130(a)	No	29 CFR 4907.130(b)(3)	6/23/1986	✓
Surface Transportation Board	Agency	49 CFR 1014.130(a)	No	49 CFR 1014.130(b)(3)(i)	6/23/1986	✓
Tennessee Valley Authority	Agency	18 CFR 1313.130(a)	No	18 CFR 1313.130(b)(3)(i)	6/23/1986	✓
National Aeronautics and Space Administration	Recipient	14 CFR 1251.130(a)	No	14 CFR 1251.130(b)(5)(i)	7/28/1986	n/a
Department of the Interior	Agency	43 CFR 17.530(a)	No	43 CFR 17.530(b)(3)(i)	3/4/1987	✓
Department of Labor	Agency	29 CFR 33.6(a)	No	29 CFR 33.6(b)(3)(i)	4/9/1987	✓
Architectural and Transportation Barriers Compliance Board	Agency	36 CFR 1154.130(a)	No	36 CFR 1154.130(b)(3)(i)	5/5/1987	✓
Environmental Protection Agency	Agency	40 CFR 12.130(a)	No	40 CFR 12.130(b)(3)(i)	8/14/1987	✓
Federal Trade Commission	Agency	16 CFR 6.130(a)	No	16 CFR 6.130(b)(3)(i)	12/1/1987	✓
Department of Commerce	Agency	15 CFR 8c.30(a)	No	15 CFR 8c.30(b)(3)(i)	5/27/1988	✓
Small Business Administration	Agency	13 CFR 136.130(a)	No	13 CFR 136.130(d)(1)	5/31/1988	✓
Farm Credit Administration	Agency	12 CFR 606.630(a)	No	12 CFR 606.630(b)(3)(i)	6/1/1988	[Not reflected in Fed. Reg.]

A	B	C	D	E	F	G
Agency	**Type**	**General Nondiscrimination Cite**	**Solely**	**Methods of Administration Cite**	**Date Issued**	**Transmitted to Congress**
Department of Housing and Urban Development	Recipient	24 CFR 8.4(a)	Yes	24 CFR 8.4(b)(4)(i)	6/2/1988	n/a
African Development Foundation	Agency	22 CFR 1510.130(a)	No	22 CFR 1510.130(b)(3)(i)	7/8/1988	✓
Department of Health and Human Services	Agency	45 CFR 85.21(a)	No	45 CFR 85.21(b)(3)(i)	7/8/1988	✓
Department of Veterans Affairs	Agency	38 CFR 15.130(a)	No	38 CFR 15.130(b)(3)(i)	7/8/1988	✓
Executive Office of the President	Agency	3 CFR 102.130(a)	No	3 CFR 102.130(b)(3)(i)	7/8/1988	✓
Federal Emergency Management Agency	Agency	44 CFR 16.130(a)	No	44 CFR 16.130(b)(3)(i)	7/8/1988	✓
Federal Labor Relations Authority	Agency	5 CFR 2416.130(a)	No	5 CFR 2416.130(b)(3)(i)	7/8/1988	✓
Merit Systems Protection Board	Agency	5 CFR 1207.120(a)	No	5 CFR 1207.120(b)(3)(i)	7/8/1988	✓
National Aeronautics and Space Administration	Agency	14 CFR 1251.530(a)	No	14 CFR 1251.530(b)(3)(i)	7/28/1988	✓
National Archives and Records Administration	Agency	36 CFR 1208.130(a)	No	36 CFR 1208.130(b)(3)(i)	7/8/1988	✓
National Labor Relations Board	Agency	29 CFR 100.530(a)	No	29 CFR 100.530(b)(3)(i)	7/8/1988	✓
Office of Personnel Management	Agency	5 CFR 723.130(a)	No	5 CFR 723.130(b)(3)(i)	7/8/1988	✓
Office of Special Counsel	Agency	5 CFR 1850.130(a)	No	5 CFR 1850.130(b)(3)(i)	7/8/1988	✓
Overseas Private Investment Corp.	Agency	22 CFR 711.130(a)	No	22 CFR 711.130(b)(3)(i)	7/8/1988	✓
Securities and Exchange Commission	Agency	17 CFR 200.630(a)	No	17 CFR 200.630(b)(3)(i)	7/8/1988	✓
Railroad Retirement Board	Agency	22	No	20 CFR 365.130(b)(3)(i)	10/27/1988	✓
Harry S. Truman Scholarship Foundation	Agency	45 CFR 1803.6(a)	No	45 CFR 1803.6(c)(1)	1/31/1989	[Not reflected in Fed. Reg.]

A	B	C	D	E	F	G
Agency	**Type**	**General Nondiscrimination Cite**	**Solely**	**Methods of Administration Cite**	**Date Issued**	**Transmitted to Congress**
National Science Foundation	Agency	45 CFR 606.30(a)	No	45 CFR 606.30(b)(3)(i)	1/31/1989	✓
Equal Employment Opportunity Commission	Agency	29 CFR 1615.130(a)	No	29 CFR 1615.130(b)(3)(i)	5/26/1989	✓
Department of Education	Agency	34 CFR 105.20(a)	No	34 CFR 105.20(b)(3)(i)	9/7/1990	[Not reflected in Fed. Reg.]
Corporation for National and Community Service (Americorps)	Agency	45 CFR 1214.130(a)	No	45 CFR 1214.130(b)(3)(i)	11/15/1990	[Not reflected in Fed. Reg.]
General Services Administration	Agency	41 CFR 105-8.130(a)	No	41 CFR 105-8.130(a)(3)(i)	3/8/1991	✓
Department of Transportation	Agency	49 CFR 28.130(a)	No	49 CFR 28.130(b)(3)(i)	8/6/1991	✓
Department of the Treasury	Agency	31 CFR 17.130(a)	No	31 CFR 17.130(b)(4)(i)	8/16/1991	✓
Central Intelligence Agency	Agency	32 CFR 1906.130(a)	No	32 CFR 1906.130(b)(3)(i)	9/1/1992	✓
Department of Agriculture	Agency	7 CFR 15e.130(a)	No	7 CFR 15e.130(b)(3)(i)	10/26/1993	✓
Federal Retirement Thrift Investment Board	Agency	5 CFR 1636.130(a)	No	5 CFR 1636.130(b)(3)(i)	10/26/1993	✓
National Council on Disability	Agency	34 CFR 1200.130(a)	No	34 CFR 1200.130(b)(3)(i)	10/26/1993	✓
United States Arctic Research Commission	Agency	45 CFR 2301.130(a)	No	45 CFR 2301.130(b)(3)(i)	10/26/1993	✓
United States Institute of Peace	Agency	22 CFR 1701.130(a)	No	22 CFR 1701.130(b)(3)(i)	10/26/1993	✓
Department of Housing and Urban Development	Agency	24 CFR 9.130(a)	No	24 CFR 9.130(b)(4)(i)	6/16/1994	✓
National Counterintelligence Center	Agency	32 CFR 1807.130(a)	No	32 CFR 1807.130(b)(3)(i)	9/14/1999	[Not reflected in Fed. Reg.]
U.S. Commission on Civil Rights	Agency	45 CFR 707.6(a)	No	45 CFR 707.6(b)(3)(i)	11/22/2002	[Not reflected in Fed. Reg.]

A	B	C	D	E	F	G
Agency	**Type**	**General Nondiscrimination Cite**	**Solely**	**Methods of Administration Cite**	**Date Issued**	**Transmitted to Congress**
Department of Homeland Security	Agency	6 CFR 15.30(a)	No	6 CFR 15.30(b)(4)(i)	3/6/2003	✓
Federal Deposit Insurance Corporation	Agency	12 CFR 352.4	Yes		5/13/2004	[Not reflected in Fed. Reg.]
Election Assistance Commission	Agency	11 CFR 9420.3(a)	No	11 CFR 9420.3(b)(3)(i)	9/18/2008	[Not reflected in Fed. Reg.]
Bureau of Consumer Financial Protection	Agency	12 CFR 1072.106(a)	No	12 CFR 1072.106(b)(4)(i)	8/6/2012	[Not reflected in Fed. Reg.]