

CVS v Doe Explained

CVS IS SEEKING TO GUT SECTION 504 OF THE REHABILITATION ACT, A KEY FEDERAL LAW THAT PROTECTS PEOPLE WITH DISABILITIES FROM DISCRIMINATION.

#BackDownCVS

#Protect504

CVS V. DOE Explained

Q. What is *CVS v. Doe*?

A. *CVS v. Doe* is a case brought by HIV-positive people against CVS. The people living with HIV are the “plaintiffs” in the case. The plaintiffs have pharmacy insurance coverage managed by CVS. They say that they are having problems getting their HIV medications and related advice from qualified pharmacists because of CVS’s rules for these medications.

Q. What do the people living with HIV want in *CVS v. Doe*?

A. The plaintiffs say that the specialty medication program that CVS created for people with complex medical conditions like HIV is not working for them. They want CVS to give them permission to opt out of the program.

Q. How did this case end up in the Supreme Court?

A. The trial court ruled that the lawsuit filed by the people living with HIV could not go forward because the problems they described did not violate federal disability laws. The trial court dismissed the case. The plaintiffs appealed the trial court’s decision to the federal appellate court. That appellate court, which is called the Ninth Circuit, ruled that the lawsuit could go forward. CVS asked the Supreme Court to take the case and rule in CVS’s favor. The Supreme Court agreed to take the case.

Q. Why does this case matter so much?

A. In its papers filed with the Supreme Court, CVS is not just saying that its specialty medication program is lawful. They are saying something much more harmful – something that would turn the clock back more than 40 years for the disability community. CVS is saying that a federal disability law called Section 504 **does not even cover** situations where discrimination is supposedly unintentional, such as when there is a neutral policy or practice that harms or excludes disabled people. Courts often refer to this kind of discrimination as “disparate impact.”

Q. What are some examples of disability discrimination that is unintentional?

A. In most cases, disability discrimination does not happen because of an intent to hurt people with disabilities. Most discrimination against people with disabilities happens because of how society has been organized and built, and due to thoughtlessness about how to make sure disabled people are included. Some examples include:

- Failing to provide accessible spaces with ramps and elevators;
- Using trains or buses in public transit that are not wheelchair accessible;
- Launching websites and mobile apps that are unusable by blind people and people with other disabilities;
- Policies that seem neutral but that actually function to exclude people with disabilities.

The only reason we have made progress is because our federal laws starting with Section 504 require businesses and government to do things differently – regardless of what anyone “intended.”

Q. What are some examples of policies that seem neutral but that discriminate against and harm people with disabilities?

Policies that seem neutral often discriminate against and harm disabled people. This is one of the most common ways that disability discrimination happens. During the pandemic, some states published health care rationing policies for COVID-19 that gave lower priority for scarce life-saving resources to individuals based on the “life years” that the person had left, and based on the likelihood that the person would survive at least ten years. Those policies put disabled people at the back of the line. We successfully fought those policies using Section 504, the very law that CVS is trying to gut.

Other examples of neutral practices that exclude people with disabilities include: requiring a driver’s license for a job or program that does not require driving; sending Social Security Administration benefit notices to blind people in standard print; zoning rules that bar group residences for individuals with intellectual and developmental disabilities; barring motorized vehicles from national parks; excluding people using wheelchairs because they cannot evacuate without assistance or because they are a “fire

hazard”; shutting off power to prevent wildfires but without taking into account that this can threaten the lives of disabled people who rely on electrical medical equipment and devices; and excluding or charging extra for personal care attendants.

Courts often use the phrase “disparate impact” to describe this kind of discrimination. CVS is arguing that Section 504 does not prohibit any form of disparate impact discrimination and that it only protects disabled people from discrimination that is intentional. CVS is asking the Supreme Court to make this the rule for the entire country.

Q. Why do we say that Section 504 covers neutral policies?

Section 504 is a very short law – a few sentences – and the specific rules are contained in federal regulations. The first Section 504 regulations were finalized in 1977, and they explicitly cover neutral policies. To give the legal language, the regulations bar “criteria and methods of administration that have the effect of subjecting” qualified disabled people to discrimination on the basis of disability.

If you watched the 2020 Oscar-nominated movie Crip Camp, you know the sweat and tears and sacrifice that the disability community gave to achieve the first Section 504 regulations in 1977. And it was not just the protests and sit-ins, although those were important. Disability community leaders negotiated for years with representatives of government and business to get to the final rules.

Since those first regulations, more than 80 federal agencies have issued Section 504 regulations that include this same language about neutral policies. Congress has always known about the regulations, and has amended Section 504 several times without changing anything about the type of discrimination that is prohibited.

CVS is saying that all of this is meaningless – including everything we achieved in 1977.

Q. Why does Section 504 matter? What about the ADA?

Section 504 and the ADA are similar because they use the same standards to define disability discrimination. But the two laws cover different parts of our society. Some parts of our society are covered by both laws, and some are only covered by one law.

Section 504 covers federal programs, federal employment, and entities that receive federal money. Section 504 is also the standard used for discrimination in health care under the Affordable Care Act. Section 504 also gives federal agencies important enforcement powers because it links the receipt of federal money to compliance with disability rights.

The ADA covers employment (but not federal employment), state and local government, and private businesses open to the public.

Some parts of our society are **only** covered by Section 504. If CVS is successful, the Supreme Court will immediately gut disability rights protections in these sectors:

- Programs run by the federal government, such as national parks, Veterans Administration programs, Medicare, and Social Security Administration benefits;
- Health care rights protected by Section 1557 of the Affordable Care Act; and
- Enforcement of nondiscrimination by federal agencies supervising recipients of federal money.

(We think that federal employment may not be immediately affected because of some specific language about employment that was added to Section 504 by Congress in 1992.)

In some cases, Section 504 also provides more relief than the ADA.

Q. Does this case threaten the ADA?

A. Yes. CVS says that their argument does not threaten the ADA, but this is a lie.

Title II of the ADA, which covers state and local government, is based on Section 504. Title II incorporates the standards of Section 504 that CVS says are illegal. Congress explicitly stated that Title II was an extension of Section 504 to state and local government.

If the Supreme Court agrees with CVS that Section 504 does not prohibit “disparate impact” or nonintentional discrimination, or that the Section 504 regulations are invalid, then courts could rule that Title II of the ADA is the same.

Q. I thought that CVS cared about people with disabilities – why are they doing this?

A. CVS boasts about its track record of support for the disability community, including through its commitment to disability inclusion in employment. CVS has a 100% rating from the Disability Equality Index, and received the Excellence in Disability Inclusion award from the U.S. Department of Labor in 2020.

These achievements are hollow given the attack on disability rights CVS is making in this case.

The irony is that CVS already has all the protections it needs to protect its business interests without gutting Section 504. The existing law – including a unanimous Supreme Court case from 1985 – provides a balanced framework for considering the rights of businesses and people with disabilities. CVS can go back to the trial court and show that the plaintiffs are getting “meaningful access” to the pharmacy benefit, or that what the plaintiffs want would be a fundamental alteration or undue burden. If the plaintiffs have the better case, CVS can make improvements to its pharmacy benefit.

Q. What can I do to protect Section 504?

A. We need to come together to tell CVS to pull this case from the Supreme Court. Please tweet and tag CVS to drop the appeal. You can also tell CVS why Section 504 matters to you personally.

Twitter handles to tag:

CVS Health, @CVSHealth

Karen S. Lynch, CVS President & CEO, @KarenSLynch

Anne Finucane, CVS Board Member, @AnneFinucane

Fernando Aguirre, CVS Board Member, @FdoAguirreCEO

Nancy-Ann DeParle, CVS Board Member, @ndeparle

David Casey, CVS Diversity Officer, @kcdiversity

Joneigh Khaldun, MD MPH FACEP, CVS Chief Health Equity Officer, @DrKhaldun

Here are some ideas for posts that tag CVS Health, its CEO Karen S. Lynch, and several members of CVS board and staff.

Post 1: @CVSHealth claims to care about the disability community but plans to argue to the Supreme Court that disability rights should be gutted. If they succeed, laws that prohibit disability discrimination won't even cover discrimination that is supposedly unintentional. #Protect504

Post 2: But that's not all. If @CVSHealth succeeds, gutting prohibitions on discrimination like Section 504 won't be where they stop. A ruling for CVS would impact protections under Section 1557 of the ACA, and could quickly threaten the ADA too. #Protect504 #BackDownCVS

Post 3: Tell @CVSHealth they need to BACK DOWN and drop their Supreme Court appeal. If they do so, they can go back to trial court where existing legal principles provide a balanced framework for considering business interests AND the rights of disabled people. #Protect504 #BackDownCVS

Post 4: We're helping people understand how much is at stake in CVS v. Doe. Read our explainer of the case, linked here, and then Tweet what #Section504Means to you. Be sure to tag @CVSHealth #BackDownCVS #Protect504 [INSERT LINK TO THIS EXPLAINER]

Post 5: We refuse to turn back the clock on disability civil rights. But the CVS v. Doe case is trying to do just that. Tell CVS what #Section504Means to you and tag @CVSHealth #BackDownCVS #Protect504 [INSERT LINK TO THIS EXPLAINER]

Post 6: We're inspired by the amount of people who want to join the fight to #Protect504. Learn more about the case by reading this explainer #BackDownCVS: [INSERT LINK TO THIS EXPLAINER]

Post 7: We're telling @CVSHealth to #BackDownCVS and reminding them why it's so important to #Protect504. Tell CVS what #Section504 Means to you and be sure to tag them! [INSERT LINK TO THIS EXPLAINER]

Post 8: CVS is trying to gut 40 years of progress on disability rights. @CVSHealth: drop the case – don't gut Section 504! #BackDownCVS #Protect504 @KarenSLynch @AnneFinucane @FdoAguirreCEO @ndeparle @kcdiversity @DrKhaldun

Post 9: @CVSHealth is bad medicine for the disability community! #BackDownCVS #Protect504 @KarenSLynch @AnneFinucane @FdoAguirreCEO @ndeparle @kcdiversity @DrKhaldun

Post 10: @CVSHealth says their purpose is “bringing our heart to every moment of your health” - but gutting 40 years of progress on disability rights and healthcare access is HEARTLESS! #BackDownCVS #Protect504 @KarenSLynch @AnneFinucane @FdoAguirreCEO @ndeparle @kcdiversity @DrKhaldun

Post 11: “Healthier happens together,” unless you're disabled! CVS is trying to gut disability rights and our access to health care. @CVSHealth: drop the appeal! #BackDownCVS #Protect504 @KarenSLynch @AnneFinucane @FdoAguirreCEO @ndeparle @kcdiversity @DrKhaldun

Post 12: @CVSHealth Your position is dangerous and wrong – don't gut Section 504! #BackDownCVS #Protect504 @KarenSLynch @AnneFinucane @FdoAguirreCEO @ndeparle @kcdiversity @DrKhaldun

Graphics & Image Descriptions

Image 1



Image Description 1: Black and red banner with blue dots in background that reads “CVS Stop Attacking Disability Rights #BackDownCVS.” It is on a black background with text highlighted in red. It contains the following logos: AAPD, The Arc, Bazelon Center, CREEC, DREDF, and NCIL.

Image 2

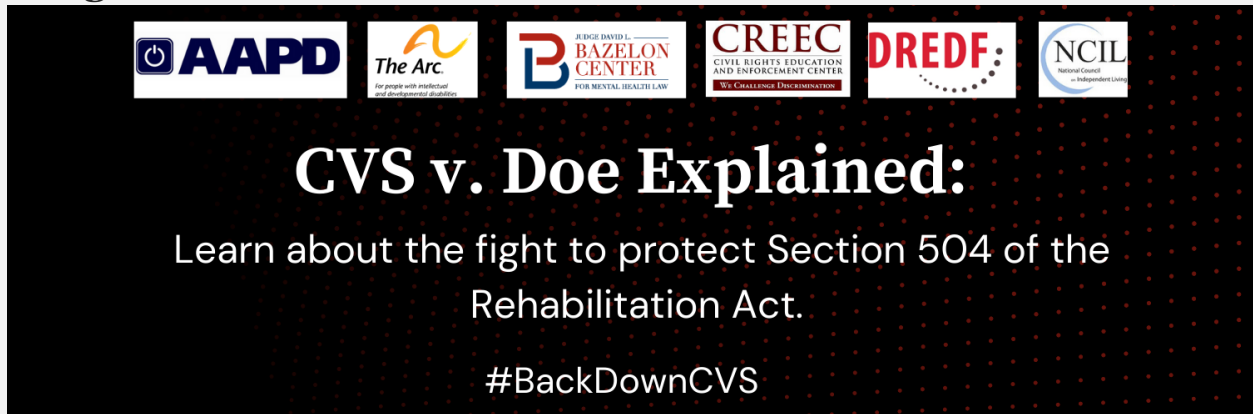


Image Description 2 Black banner with red dots in background that reads “CVS v. Doe Explained: Learn about the fight to protect Section 504 of the Rehabilitation Act #BackDownCVS”. It contains the following logos: AAPD, The Arc, Bazelon Center, CREEC, DREDF, and NCIL.

Image 3

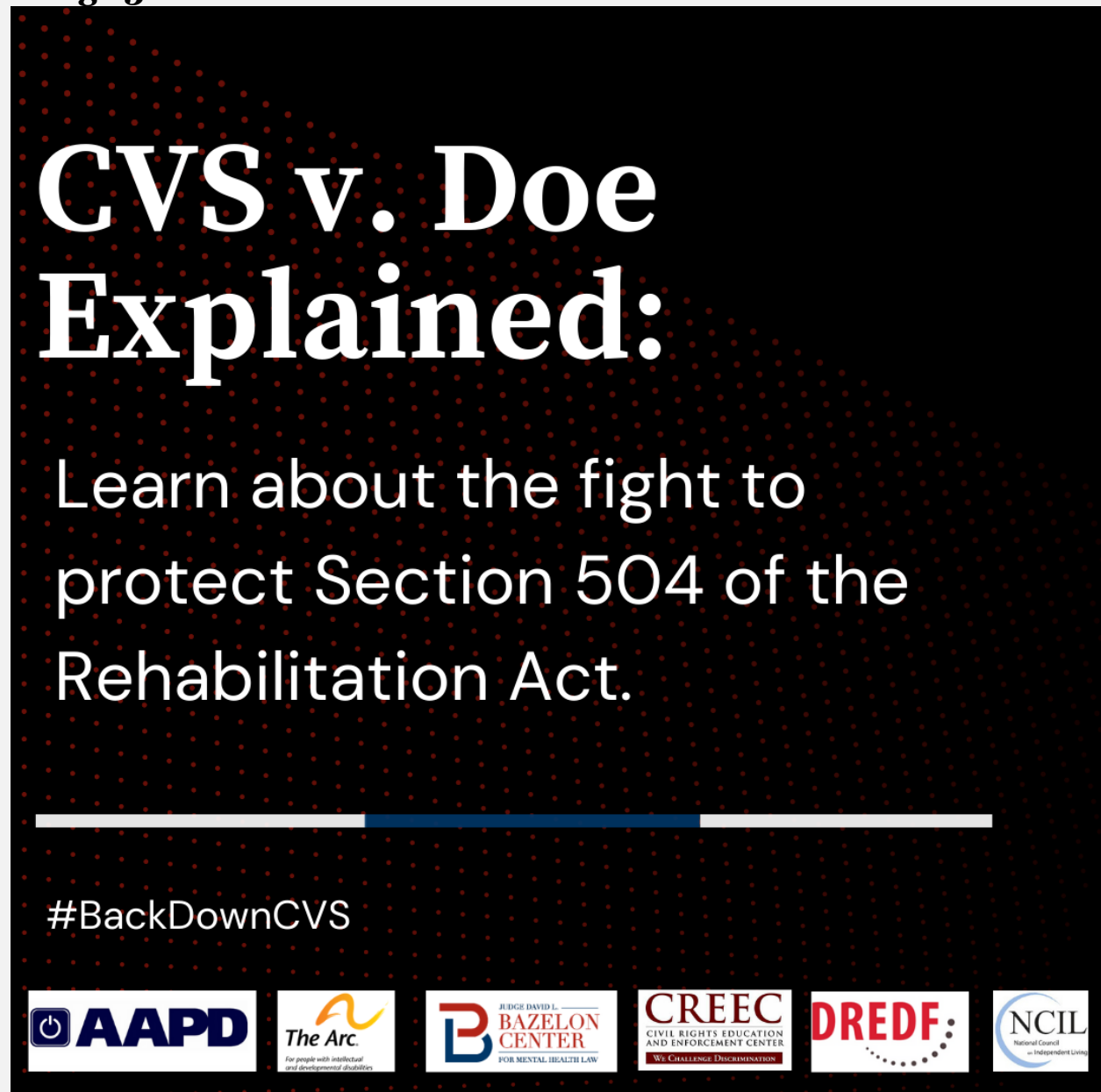


Image Description 3: Black square graphic with red dots in background that reads “CVS v. Doe Explained: Learn about the fight to protect Section 504 of the Rehabilitation Act #BackDownCVS”. It contains the following logos: AAPD, The Arc, Bazelon Center, CREEC, DREDF, and NCIL.

Image 4

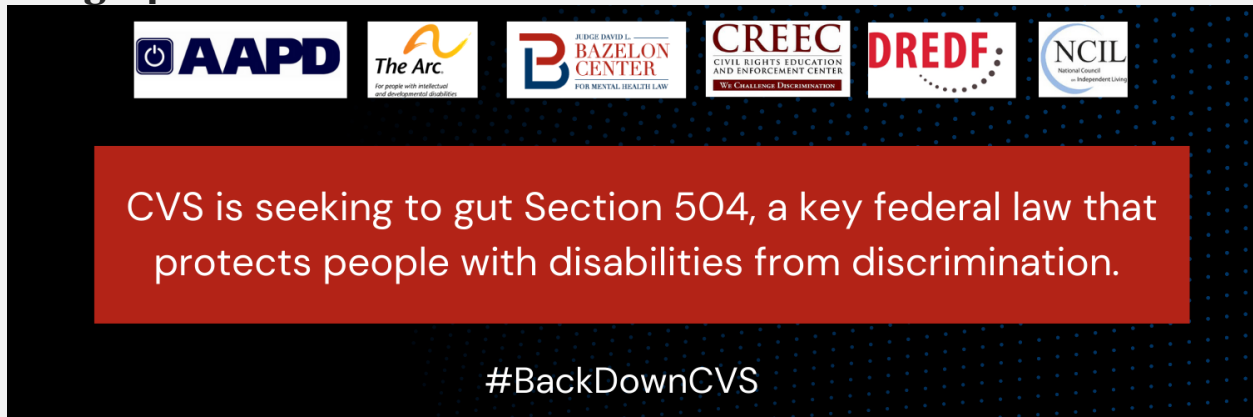


Image Description 4: Black and red banner with blue dots in the background that reads “CVS is seeking to gut Section 504, a key federal law that protects people with disabilities from discrimination. #BackDownCVS” It is on a black background with text highlighted in red. It contains the following logos: AAPD, The Arc, Bazelon Center, CREEC, DREDF, and NCIL.

Image 5:



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