



Update on the *Texas v. Becerra* Lawsuit

This lawsuit was filed by 17 states seeking to invalidate Section 504 of the Rehabilitation Act and do away with the updated Section 504 regulations from the U.S. Department of Health and Human Services (HHS). Section 504 prohibits disability discrimination by the federal government and by recipients of federal funding in areas like health care, education, employment, housing, and transportation. It is our Nation's foundational disability rights law and was signed by President Nixon. The HHS regulations prohibit recipients of federal funding from discriminating in areas like medical treatment and child welfare services and requires accessibility of medical equipment and websites. They prohibit segregation and unnecessary institutionalization of people with disabilities, consistent with the U.S. Supreme Court's ruling in *Olmstead v. L.C.* that disabled people have a right to receive services in their community instead of in institutions.

On February 19, the 17 plaintiff states and the President Trump Department of Justice filed a "Joint Status Report." This filing does not change anything about the case. The states did not make any changes to the complaint. That means the claims remain unchanged, including the broad-based attack on Section 504 and the HHS Regulations. Although several Attorneys General told stakeholders that the lawsuit would be dropped or that their state would withdraw from it, all 17 states made clear in the new filing that they will continue to pursue their original claims that Section 504 itself is unconstitutional. No state has withdrawn from the lawsuit at this time.

The Attorneys General say the filing is to "clarify" what they mean when they say Section 504 is unconstitutional. On page two of the filing, they state that their claim "is an as-applied challenge to any purported application of Section 504 to funds that are not authorized by the Rehabilitation Act." This legalese means that they are saying that Section 504 should only protect people against discrimination in the handful of programs funded under the Rehabilitation Act, like vocational rehabilitation services, and not the many other areas where Section 504 has always been applied, like health care, education, and housing. On the same page, they describe portions of the regulations related to community integration and *Olmstead*, which require states to provide services in the "most integrated setting," as an example of an "alleged unconstitutional application[]" of Section 504. This means that the Attorneys General will continue to advocate that the "integration regulation" is unconstitutional. The integration regulation protects our right to participate in our community with supports instead of being segregated in institutions or separate classrooms.

This language is designed to confuse and distract from the clear meaning of the Attorneys General's filing: they remain steadfast in their effort to have the highest court in our Nation invalidate a fifty-year-old statute that secures the most basic rights of people with disabilities while they learn, work, and seek health care. If successful, the Attorneys General's action would invalidate students' right to a 504 plan in school, patients' right to accessible kiosks in their doctor's offices, and the accessible transportation that people with disabilities need to work and take care of themselves. They also continue their claims involving gender dysphoria as a disability. Thus, the Attorneys General's sweeping attack on the rights of people with disabilities remains as dangerous as it was when filed.

The Attorneys General also make clear that they will aggressively attack the rights recognized and upheld by the Supreme Court in *Olmstead* – that segregation and unnecessary institutionalization of people with disabilities is discriminatory and illegal, and that people with disabilities have a right like everyone else to receive health care and other services in their homes and communities.

The parties asked for an indefinite “pause” of the briefing schedule in the case. While we had hoped that the Attorneys General would drop this case, a pause at least means that the lawsuit is on hold for now.

This new filing ignores the concerns of the disability community. Section 504 and the HHS regulations are still at risk. Advocates in the 17 states should continue to contact their AG to ask them to drop the case. We encourage you to coordinate with other local advocates for the most effective messaging. DREDF will be updating its webpage, including FAQs, to help advocates.

* Contributions also by Alison Barkoff, Hirsh Health Law and Policy Associate Professor, George Washington University

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