

# South Carolina AG backs away from lawsuit challenging disability civil rights

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Est Mungai chants during a rally supporting gender-affirming care at the South Carolina Statehouse in Columbia on Jan. 10, 2024. South Carolina Attorney General Alan Wilson has joined a 17-state lawsuit challenging federal civil rights protections of individuals with gender dysmorphia.

STAFF

Inundated with complaints from the disabilities community, South Carolina's attorney general is distancing himself from a 17-state lawsuit that challenges federal civil-rights protections for disabled Americans.

The lawsuit — which Attorney General Alan Wilson says he joined because of a Biden-era update adding **gender dysphoria** as a protected disability — targets **Section 504** of the Rehabilitation Act, which has guaranteed access to services for people with disabilities since the 1970s.

The complaint filed last September — **Texas vs. Becerra** — takes issue with the Biden administration's updated language but also asks for Section 504 to be declared unconstitutional and thrown out.

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## EDUCATION LAB

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A nationwide campaign this past week brought the lawsuit to light, and disabilities advocates on Feb. 12 flooded the South Carolina Attorney General's Office with calls and emails demanding Wilson **remove the Palmetto State from the complaint.**

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Section 504 protections have made a profound difference in the lives of disabled people, said Kimberly LaJoie Tissot, executive director of the disabilities rights organization Able SC. These include so-called "504 Plans" that guarantee access to classrooms and lessons for school children with a range of conditions, from missing limbs to diabetes.

"If we didn't have them, we would be locked up, out of society, and miserable and, you know, unemployed, uneducated and not contributing to society," Tissot said Feb. 12. "And if that's the way South Carolina wants a disability community, then the disability community will get very loud."

Though still listed as a plaintiff, Wilson's office on Feb. 13 distanced itself from the complaint saying it had meant just to target updates that the Biden administration made to Section 504 in July.

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"We're talking to other states, and we expect the lawsuit to be withdrawn," Wilson spokesman Robert Kittle told The Post and Courier by email on Feb. 13. "But if for some reason it's not, Attorney General Wilson will withdraw from it."

## AG's evolving position

Striking down Section 504 would put all other protections tied to federal funding — including those that cover race and sex discrimination — in jeopardy, national disabilities attorney [Steven Schwartz](#) said.

He called this spillover effect "simply frightening."

Controversy over gender dysphoria is likely what triggered the Texas vs. Becerra lawsuit for most states, Schwartz said. This includes South Carolina, where the issue has gained political momentum in conservative circles.

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[Gender-affirming care for minors](#) was outlawed in South Carolina a year ago.

## GENDER DYSPHORIA: CIVIL RIGHTS TIMELINE

**2013:** The [Diagnostic and Statistical Manual of Mental Disorders](#) adds gender dysphoria as a condition.

**2022:** A [federal ruling](#) finds gender dysphoria can be a protected disability.

**July 2024:** U.S. Department of Health and Human Services updates Section 504 of the Rehabilitation Act of 1973 to say an individual with [gender dysphoria "may have a disability."](#)

**September 2024:** In [Texas v. Becerra](#), 17 states sue the HHS, arguing gender dysphoria should not be a protected class and that Section 504 should be dismantled as unconstitutional.

**Jan. 20, 2025:** President Trump issues an [order](#) saying the federal government recognizes two sexes (male and female) and that agencies must remove all policies that "inculcate" ideology around [gender dysphoria](#).

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Still, the broader push to dismantle Section 504 altogether was driven, at least in part, by the costs states faced to comply with the regulation's 2024 updates, Schwartz said.

Section 504 takes a carrot-and-stick approach, threatening to withdraw federal funds from local or state entities that violate the regulation.

Federal funds for programs unrelated to disabilities should not be held hostage by Section 504, Kittle told the newspaper on Feb. 12.

"For example, a state Department of Agriculture shouldn't have to comply with Section 504's requirements since it doesn't receive funds pursuant to Section 504 or any other federal legislation related to disability," Kittle wrote in an email.

People carry their disabilities wherever they go and are impacted in every setting, responded Jennifer Rainville, an attorney with the SC Appleseed Legal Justice Center.

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"It seems to me that the Department of Ag should be accessible to folks, just like any other agency," Rainville said.

On Feb. 13, Kittle clarified the attorney general's earlier remarks, saying the whole point of the lawsuit was to "put Section 504 back to what it was."

This would remove the Biden administration's gender-dysphoria protections but also an expansion of protections in healthcare settings.

Attorneys in Texas vs. Becerra face a Feb. 25 deadline to submit a status report to the federal judge hearing the case in the Northern District of Texas.

If the case does go forward, it might focus just on gender dysphoria, Schwartz said.

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"Although there is uncertainty, we cannot sit and do nothing," Schwartz said. "So as disability advocates, we are trying to prepare for all the options that could occur."

## 504 protections

More than a third of adults in South Carolina — 1.1 million people — live with a disability, according to the Centers for Disease Control. In the state's public schools, at least 100,000 kids have a disability.

504 plans in schools allow diabetic students to carry cell phones to track their blood sugar. They also make sure students who are hard of hearing get a seat at the front of the room.

"Many moons ago when I was a student at Summerville High School, I had a 504 plan because I have a physical disability," Tissot said, "and so I needed classrooms to be on the first floor because I could not go up stairs."

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In medical settings, newly implemented 504 protections include accessible exam-room tables, dentist chairs and mammogram machines.

Tissot couldn't climb onto a scale at her doctor's office and for years went to a veterinarian's office to figure out how much she weighed, which then helped determine the dosages of medicine she was taking.

Individuals with gender dysphoria also deserve protection because of broad consensus in the American psychiatric community that it is a disability, Tissot said. Discrimination, she added, can block them from care.

The COVID-19 pandemic called attention to "longstanding" inequities in healthcare, said [Alison Barkoff](#), a former Biden appointee who spearheaded updates last year to Section 504.

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Disabled people were denied life-saving treatment based on a belief that their lives were worth less, and organ transplants were denied based on a stereotype they couldn't follow post-operative instructions, she said.

"This rule makes clear that all of those things are illegal disability discrimination," Barkoff said.

## **Advocates unite**

Word of the lawsuit spread rapidly over the past week through [social media](#), culminating in a Feb. 12 community briefing online that ran out of slots after 3,000 people signed up.

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Section 504 was one of the first civil rights laws that protected Americans from discrimination through federally funded programs.

Section 504 is under fire in 17 states and we'll be attending the Zoom call on how to combat the removal of rights from people with disabilities

**Julian Price**  @julian\_pricee

"Section 504 is a civil rights law that prohibits discrimination based on disability in federally funded programs. It has:

-  Ensured equal access to public education for students with disabilities
-  Protected disabled workers from workplace discrimination
-  ...

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Schwartz, a Harvard-trained lawyer based in Massachusetts, joined a panel in the briefing that included Barkoff, disabled individuals directly affected by Section 504, and Claudia Center, legal director of the organized by the California-based **Disability Rights Education and Defense Fund**.

States have a desire to provide disability services "the way they want to provide them," said Schwartz, who has defended thousands of individuals with disabilities.

As for trusting the state to guarantee accommodations for people with disabilities, South Carolina's Tissot was skeptical.

"I've lived in the state all my life; I do not trust South Carolina to regulate disability rights or provide any oversight, and it's not anything against the state," Tissot said. "It's just not their role."

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***Editor's note: This story was originally published at 11 a.m. Feb. 13. It was updated at 3 p.m. to reflect Attorney General Alan Wilson's updated response.***

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