No. 24-1809

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Roy Payan, Portia Mason, National Federation of the Blind, and National Federation of the Blind of California,
Plaintiffs/Appellants,

v.

Los Angeles Community College District,
Defendant/Appellee.

On Appeal from the United States District Court for the
Central District of California
Case No. 2:17-cv-01697-SVW-SK
The Honorable Stephen V. Wilson

BRIEF OF *AMICI CURIAE* DISABILITY RIGHTS EDUCATION AND DEFENSE FUND AND SIXTEEN OTHER ORGANIZATIONS IN SUPPORT OF PLAINTIFFS/APPELLANTS

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13. National Council on Independent Living
14. National Disability Rights Network
15. United Spinal Association
16. Paralyzed Veterans of America
17. World Institute on Disability

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CONSENT OF THE PARTIES TO THE FILING PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 29(b)(2)

This motion is filed with the consent of Jessica P. Weber, counsel for Plaintiffs/Appellants, and David A. Urban, counsel for Defendant/Appellee.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(a)(4)(A) of the Federal Rules of Appellate Procedure, counsel for *Amici Curiae* certify that no *Amicus* has a parent corporation and that no publicly held corporation owns 10 percent or more of any *Amicus*'s respective stock.

STATEMENT PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 29(a)(4)(E)

The undersigned certifies that no party's counsel authored this brief in whole or in part, and that no party, party's counsel, or any other person other than *Amici*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

IDENTITY AND INTERESTS OF *AMICI CURIAE*

Amici are organizations that represent and advocate for the rights of people with disabilities.[1] *Amici* have extensive policy and litigation experience and are recognized for their expertise in the interpretation of civil rights laws affecting

[1] This brief uses people-first ("people with disabilities") and identity-first ("disabled people") language interchangeably to represent the spectrum of identities and preferences within the disability community.

individuals with disabilities including the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794. Collectively and individually, *Amici* have a strong interest in ensuring that these disability rights statutes are properly interpreted and enforced, consistent with Congress's remedial intent to eliminate discrimination and address segregation and exclusion on the basis of disability.

Given *Amici's* strong interests, the district court's February 29, 2024 orders granting remittitur and entering limited injunctive relief are of significant concern. The availability of compensatory damages and broad injunctive relief is essential in safeguarding the rights of people with disabilities under the ADA, and in fulfilling Congress's goal of promoting inclusion and ending discrimination.

The experience, expertise, and unique perspective of *Amici* make them particularly well suited to assist this Court in resolving the important legal issues presented in this case. The individual *Amici* are described in the attached Addendum.

INTRODUCTION

The injunction entered by the district court in this case fell far short of remedying the statutory violations established by the jury's verdict. When considered in light of the jury's explicit and implicit findings and additional facts

available to the court that were consistent with those findings, the district court's narrow injunction represents an abuse of discretion.

Amici disability rights organizations write to emphasize the potential harm should such limited injunctions become the rule, constricting the ability of courts "to secure complete justice . . . under a federal statute intended to combat discrimination." *Bayer v. Neiman Marcus Grp., Inc*., 861 F.3d 853, 873-74 (9th Cir. 2017) (internal citations omitted). Courts have "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Id*. (quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975)). In civil rights statutes such as the ADA, when a plaintiff "obtains an injunction, he does so not for himself alone but also as a 'private attorney general,' vindicating a policy that Congress considered of the highest priority." *See Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401-02 (1968).

Additionally, *Amici* write to express concern with the district court's expansion of the damages limitation in *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022). *Cummings* does not apply to Title II of the ADA, a non-Spending Clause statute, nor does it preclude compensatory damages beyond emotional distress damages. It is simply inapposite to this case.

Here, the record properly before the district court for its evaluation in crafting an injunction included a significant number of violations that the eventual injunction did not address. The evidence considered by the jury fully supported the damages originally awarded. If endorsed by this Court, the district court's orders gutting injunctive relief and damages would send the message that colleges and universities may discriminate against and exclude blind and other disabled students and face only trifling consequences.

The orders are also contrary to the intent and effect of the ADA, which provides a "broad mandate" "to eliminate discrimination against disabled individuals." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674-76 (2001). This Court "'construe[s] the language of the ADA broadly to advance its remedial purpose.'" *Fortyune v. City of Lomita*, 766 F.3d 1098, 1101 (9th Cir. 2014) (internal citations omitted). *Amici* urge this court to vacate the district court's February 29, 2024 orders, 1-ER-2-16, and remand with instructions (1) to enter an injunction that eliminates LACCD's discrimination and bars like discrimination in the future; and (2) reinstates the original damages verdict. and thus vindicate Congress's high priorities in passing the ADA.

FACTS

A. Background

Plaintiffs are Roy Payan and Portia Mason (the "Individual Plaintiffs"), two blind students at Los Angeles City College ("LACC"), as well as the National Federation of the Blind ("NFB") and National Federation of the Blind of California ("NFB-CA"), two membership organizations of blind people.[2] Plaintiffs brought suit in 2017 against the Los Angeles Community College District ("LACCD") under Title II of the Americans with Disabilities Act ("Title II"), 42 U.S.C. § 12132, alleging that LACCD and LACC discriminated against and failed to provide accommodations to blind students.

Title II prohibits public entities such as LACCD from discriminating against people with disabilities and from excluding such people from participation in – or denying them the benefits of – its services, programs, or activities. 42 U.S.C. § 12132. Title II's implementing regulations require, among other things, that LACCD make reasonable modifications to policies, practices, and procedures as necessary to avoid discrimination, 28 C.F.R. § 35.130(b)(7), and provide communications that are "as effective as" communications with nondisabled

[2] This Court has held that these organizations have standing to sue LACCD under theories of organizational and associational standing. *Payan v. Los Angeles Comty Coll. Dist.*, Nos. 19-56111, 19-56146, 2021 WL 3743307, at *1-2 (9th Cir. Aug. 24, 2021).

students, *id*. § 35.160(a)(1). LACCD is also prohibited from using criteria or methods of administration that have the effect of discriminating on the basis of disability. *Id*. § 35.130(b)(3).

Title II's remedies provision, 42 U.S.C. § 12133, "authorize[s] individuals to seek redress for violations of [its] substantive guarantees by bringing suits for injunctive relief or money damages." *Fry v. Napoleon Cmty. Sch*., 580 U.S. 154, 160 (2017). All Plaintiffs sought injunctive relief; the Individual Plaintiffs also sought damages.

Since its filing in 2017, this case has been through three trials and a prior appeal before this Court. The most recent trial – a jury trial – was held in May 2023, resulting in a verdict finding that LACCD's websites and LACC library resources were inaccessible, that LACCD had provided inaccessible course materials and software, that it failed to make and honor required accommodations – including note-taking and recording classes – and that it actively excluded or discouraged blind students from certain classes. 2-ER-135-41. Based on these violations, the jury awarded Mr. Payan $218,500 and Ms. Mason $24,000 in damages. 2-ER-141.

Almost a year later, the district court took two actions that are the subject of the current appeal: it issued an injunction that fell far short of remedying the

violations identified by the jury; and it reduced Mr. Payan's damages to $1,650 and Ms. Mason's to zero.

The February 2024 injunction directly addressed only the library and the websites. 1-ER-10. The injunction required LACCD to periodically verify the reliability of any third-party certification of educational software, without requiring such assessments or certifications actually be conducted. 1-ER-11. And it required LACC to provide blind students an accessible version of their accommodations form. 1-ER-10. It did not address LACCD's inaccessible materials and software, its failure to accommodate blind students, its steering and discouraging those students from specific classes, and the need for training, monitoring, and reporting.

B. The Significance for Blind Students of Enforcement of the ADA in Higher Education.

When college course materials were generally found in printed books, ensuring that a college provided "the benefits of [its] services, programs, or activities," *cf*. 42 U.S.C. § 12132, to blind students generally meant rendering those materials into Braille or an audio format, the latter often by way of human readers. With the advent of the digital age – including basic word processed or pdf documents; online articles, databases, and other resources; and proprietary course and learning management software – access for blind students should have been easier to achieve. The text blind students need to read already exists in an electronic format, and screen-reading software such as JAWS is both widely-

available and widely-known. Similarly, instead of having to enlist notetakers, blind students could now record classes for later review either in audio format or rendered into text. As this technology has evolved, student advocates and activists have worked tirelessly to shift the culture and promote progress through education, awareness, and – where necessary – legal action. *See* Marc Parry, *Colleges Lock Out Blind Students Online*, The Chronicle of Higher Education (Dec. 12, 2010).[3]

Unfortunately, access that should have and could have been easy has proven elusive. Colleges and universities – like LACCD – have been slow to ensure that digital materials are accessible and have been lax in ensuring that course software is accessible, removing any incentive for vendors to create and supply accessible software. *See* Courtney Mullin, *et al.*, *Digital Access for Students in Higher Education and the ADA*, ADA National Network at 8, 11 (2021),[4] (hereinafter, "Mullin") (discussing accessibility issues found in online courses including "incompatib[ility] with screen readers, [and] use of JavaScript which requires the use of a mouse," and "time lags between when digital content is originally made and when it is made to be accessible" for online databases); *see also* Lindsay McKenzie, *Blind students learning remotely encounter accessibility barriers*,

[3] www.chronicle.com/article/colleges-lock-out-blind-students-online/
[4] adata.org/sites/adata.org/files/files/LP_Digital%20Access%20for%20Students_final_2021.pdf.

Inside Higher Ed (Feb. 18, 2021)[5] (hereinafter, "McKenzie") (students reporting in 2021 that digital materials provided for remote learning courses were incompatible with screen readers). And while a college may be able to render a single article or even book accessible reasonably promptly, it is impossible to render an entire proprietary course software or learning management system accessible on demand.

As the NFB's *Braille Monitor* summarized the situation:

> Since computers entered our lives, making more and more material available electronically through screen readers and magnification, blind and visually-impaired students have the possibility of full and equal access, the chance to study and learn without hindrance beside their sighted classmates. However, as we all know, that dream is far from reality. All too often electronic material used in the classroom is inaccessible nonvisually.

Note from the Editor to Sabra Ewing, *Why Human Readers are No Substitute for Accessible Software*, 61 Braille Monitor 2 (2018).[6]

This inaccessibility creates barriers to student success, and often ends up entirely precluding students from completing their desired college courses or programs. Mullin at 2; McKenzie.

Exclusion and discrimination have been the experience of the Individual Plaintiffs and other NFB and NFB-CA members at LACC. *See* Appellants' Op. Br.

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[5] www.insidehighered.com/news/2021/02/19/blind-students-learning-remotely-encounter-accessibility-barriers

[6] nfb.org/sites/default/files/images/nfb/publications/fr/fr37/3/fr370314.htm (reprinted).

at 8-16 and record cites therein; 3-ER-498-99; 6-ER-1108-24. The damages awarded vindicated this experience. And although the jury was only permitted to hear evidence concerning the years 2015-2018, the district court had before it significant evidence from before and after that time period – properly supporting an injunction – that demonstrated a longstanding policy of discrimination, exclusion, and failure to accommodate.

ARGUMENT

I. The District Court Abused its Discretion by Issuing an Injunction That Failed to Address the Violations Established by the Jury Verdict and Supported by Record Facts Consistent with that Verdict.

A. Applicable Law

The scope of an injunction is dictated by the extent of the violation established. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion. *eBay Inc. v. MercExchange*, L.L.C., 547 U.S. 388, 391 (2006). Courts have "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Bayer v. Neiman Marcus Grp., Inc*., 861 F.3d 853, 873-74 (9th Cir. 2017) (quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975)); *see also Disabled in Action v. Bd. of*

Elections in City of New York, 752 F.3d 189, 198 (2d Cir. 2014) (same; enforcing Title II of the ADA).

Once a statutory violation has been established – as the verdict did here – "the remedy must include appropriate restraints on 'future activities both to avoid a recurrence of the violation and to eliminate its consequences.'" *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 779 (1994) (Stevens, J., concurring in part) (quoting *Nat'l Soc. of Professional Engineers v. United States*, 435 U.S. 679, 697-698 (1978)). "Moreover, '[t]he judicial remedy for a proven violation of law will often include commands that the law does not impose on the community at large.' As such, repeated violations may justify sanctions that might be invalid if applied to a first offender . . .." *Id*. at 779 (internal citation omitted).

Where, as here, a case includes both legal and equitable claims, the court "must follow the jury's implicit or explicit factual determinations in deciding the equitable claims." *Teutscher v. Woodson*, 835 F.3d 936, 944 (9th Cir. 2016) (internal citations omitted). In crafting an injunction, however, the court may go beyond the jury's explicit and implicit findings. For example, where an issue does not appear in a special verdict, the court may "properly suppl[y] its own factual findings to supplement" the special verdict. *Charles Jacquin Et Cie, Inc. v. Destileria Serralles, Inc*., 921 F.2d 467, 472 (3d Cir. 1990); *see also Burton v. Armontrout*, 975 F.2d 543, 545 (8th Cir. 1992) (holding that a "court may rely on

evidence not presented to the jury when the jury's factual findings are incomplete or inconclusive"); *United States v. An Article of Drug*, 661 F.2d 742, 746-47 (9th Cir. 1981) (holding that where the verdict is ambiguous, the judge may rely on their own "view of the facts established by the evidence."). "Moreover, an injunction may be framed to bar future violations that are likely to occur." *Id.*, 661 F.2d at 747.

B. The Injunction Failed to Remedy Discrimination Explicitly and Implicitly Found by the Jury and Supported by Additional Facts Not Inconsistent with the Verdict.

The district court correctly recited that it was required to "follow the jury's implicit or explicit factual determinations," 1-ER-3, and then proceeded to ignore most of them. There were also a number of factual issues not presented to the jury – but relevant to the issue of injunctive relief – rendering the verdict incomplete in those respects and making it appropriate for the district court to consider additional evidence relating to periods before and after that considered by the jury. The jury's explicit and implicit findings and the balance of the record before the district court called for a far broader injunction.

1. The Injunction Ignored Explicit and Implicit Findings Concerning Inaccessible Course Materials and Software.

The jury explicitly found that LACCD provided course materials and learning platforms that were inaccessible to blind students, 2-ER-135-37, but the injunction fails to remedy these violations, *see generally* 1-ER-9-11. The only

mention in the injunction of educational programs is the attenuated requirement that LACCD periodically verify the reliability of any third-party it uses to assess such programs, 1-ER-11; there is no requirement that LACCD actually assess accessibility of these programs, much less refrain from using them when found to be inaccessible. There is no requirement whatsoever to ensure – or develop a process to ensure – timely provision of accessible course materials.

The district court explained this lapse by asserting that the jury had neither implicitly nor explicitly found that the *process* for acquiring inaccessible materials violated the ADA. 1-ER-5. The jury was not asked to make an explicit finding on whether the violations suffered by the Individual Plaintiffs could be attributed to LACCD's process and such a finding was not necessary to determining their damages. However, the multiple explicit findings of inaccessibility carry the implicit finding that the process failed. The district court also had before it years of evidence that LACCD systemically abdicated its responsibility to ensure accessible materials and platforms, all completely consistent with the jury's explicit findings. *See infra* section I.C.

2. The Injunction Ignored Explicit and Implicit Findings Concerning Accommodations and Steering.

The jury also explicitly found that LACCD failed to make and honor required accommodations, including note-takers, recording of classes, and testing accommodations, and that it either discouraged or outright barred blind students

from certain classes. 2-ER-139-41. The injunction provides no remedy for any of these violations, *see generally* 1-ER-9-11. Rather, the district court dismissed these findings as "one-off incidents." 1-ER-7. As an initial matter, this disregards the explicit findings of the jury, which included six such violations. 2-ER-139-41. This disaggregation also misses the bigger picture of systemic discrimination implicit in the jury's verdict and, again, in the significant additional evidence before the district court that was consistent with that verdict. *See* Appellants' Op. Br. at 8-16 and record cites therein; 2-ER-53-103 (expert evidence of continuing inaccessibility).

The district court's minimization of repeated violations is similar to the error of evaluating inaccessible facilities by treating each physical barrier as a separate violation. This Court has rejected this approach, as it "mistakes the [ADA's] forest for its trees by focusing on individual barriers instead of access to places of public accommodation." *Chapman v. Pier 1 Imports (U.S.) Inc*., 631 F.3d 939, 952 (9th Cir. 2011). Analogously, treating each accommodation denied a blind student and each discouragement or rejection from a course as a one-off misses the forest of exclusion encountered by blind students at LACCD over the past nine years.

3. The Injunction Ignored Implicit Findings Concerning Training and Monitoring.

The verdict found fourteen ADA violations by LACCD personnel; the implicit finding of that verdict is that LACCD personnel are not properly trained to

provide required accessibility and accommodations. In addition, as discussed in the next section, LACCD has demonstrated that it is not capable, without external advice and monitoring, of ensuring that the rights of blind students are respected.

Training and monitoring are standard features of remedial injunctions, presenting no affront to federalism or comity. The single case on which the district court relied for this concept was one in which there had been no judicial determination of a violation. *See* 1-ER-6 (citing *Clark v. Coye*, 60 F.3d 600, 603-04, 605 (9th Cir. 1995)). On the other side of the balance are the many cases in which courts order extensive training and monitoring to remedy discrimination. *See, e.g.*, *Armstrong v. Newsom*, 58 F.4th 1283, 1297 & n.12 (9th Cir. 2023) (affirming district court order requiring, among other remedial measures, monitoring by a court-appointed expert, reporting to plaintiffs' counsel and the court, and additional training); *Huezo v. Los Angeles Cmty. Coll. Dist.*, No. 04-cv-09772-MMM-JWJX, 2008 WL 4184659, at *2-3 (C.D. Cal. Sept. 9, 2008) (injunction requiring LACCD to comply with Title II as it applies to individuals who use wheelchairs and to retain an accessibility expert to monitor compliance).

C. The District Court Improperly Deferred to Defendant's Belated and Ineffective Policy Changes.

In refusing to enter an order addressing all of the jury's findings, the district court relied in part on a new policy implemented by LACCD in 2020. 1-ER-5-6. Plaintiffs-Appellants have explained the substantive shortcomings of this policy

and the ongoing violations it has failed to address. *See* Appellants' Op. Br. at 51-53 and record cites therein. Notably, the district court pointed to no evidence in the record that the new policy had been implemented or trained on or had resulted in improved access for blind students.

Amici urge that, even were the policy facially compliant, a more thorough injunction remains necessary to ensure compliance with the ADA and realization of its broad antidiscrimination mandate. *Cf. Martin*, 532 U.S. at 674. While LACCD has argued that its belated policy changes moot the requested injunction, the Supreme Court has cautioned that "courts [must] beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption." *United States v. Oregon State Med. Soc'y*, 343 U.S. 326, 333 (1952).

"It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. . . . [I]f it did, the courts would be compelled to leave [t]he defendant . . . free to return to his old ways." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (internal citations omitted). And the fact that litigation has continued since the policy change in 2020 does not affect this analysis. *See Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 243 (2024). The defendant's burden remains heavy "whether the suit happens to be new or long

lingering, and whether the challenged conduct might recur immediately or later at some more propitious moment." *Id.* Ultimately, "[i]t is no small matter to deprive a litigant of the rewards of its efforts . . .;" this should not be done unless it is "absolutely clear that the litigant no longer had any need of the judicial protection that is sought." *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 224 (2000).

The record before the district court underscores the need for a broad injunction that includes training, monitoring, and reporting no matter what LACCD's most recent policy may aspire to. All of the discrimination found by the jury occurred 15 to 18 years after the Chancellor of the California Community Colleges issued "Guidelines for Producing Instructional and Other Printed Materials in Alternate Media for Persons with Disabilities." 3-ER-505-16. Most of the discrimination found by the jury occurred while three different LACCD policies were in place, ostensibly designed to ensure accessibility of digital materials: Regulation B-33, issued in February 2014, mandating website accessibility; Regulation B-34, issued in June 2015, mandating software accessibility; and the Alternative Media Production Policy, issued in 2016, requiring all third-party instructional resources or materials to be accessible and creating a deanship to oversee this requirement that was never staffed. *See* Appellants' Op. Br. at 11-14 and record cites therein.

As noted above, later unrebutted expert testimony, appropriate for the district court's consideration in issuing the injunction, demonstrated that, even in 2023 *after the issuance of the most recent policy on which the district court relied in justifying its narrow injunction*, LACCD's website and student-facing software continued to be inaccessible to blind users. 2-ER-53-103. Here, there is not merely the "probability of resumption" of challenged practices, *cf. Oregon State Med. Soc'y*, 343 U.S. at 333; those practices never ceased.

These repeated failures at self-correction and self- monitoring demonstrate the need for a robust injunction including training and external monitoring. Based on its more than 20-year history of ignoring its own accessibility policies, LACCD has not satisfied its "formidable burden" to demonstrate that the challenged discrimination will not recur. *See Fikre*, 601 U.S. at 241. It was an abuse of discretion not to issue a broad injunction substantially in the form requested by the Plaintiffs.

It is crucial to the mission of equality and inclusion shared by all *Amici* that courts fully remedy and take meaningful steps to prevent discrimination evident in the record before them. For this reason, *Amici* respectfully request this Court vacate the current injunction with instructions to fully address all violations in the record.

II. The District Court Abused Its Discretion by Gutting the Jury's Damages Award.

In reducing the jury's award of damages to Mr. Payan by 99% and eliminating Ms. Mason's, the district court stated that the portion it eliminated "could only be attributed to one of two sources: emotional damages or lost educational opportunities." 1-ER-14. The court explained that the former type of damages were precluded by the Supreme Court's decision in *Cummings v. Premier Rehab Keller PLLC*, 596 U.S. 212 (2022), *see* 1-ER-14, a case holding that emotional distress damages were not recoverable under Section 504, a statute no longer at issue in this case. Finally, the district court held that the Individual Plaintiffs had not produced evidence to support lost educational opportunities. 1-ER-14-15.

Neither of these grounds were correct. *Cummings* does not apply to Title II of the ADA, the statute under which the Individual Plaintiffs sought damages, and that case, even if it applied here, does not preclude damages for lost educational opportunities. The remittitur order was thus an abuse of discretion.[7]

[7] Orders on motions for new trial and remittitur are reviewed for abuse of discretion. *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 52 F.4th 1054, 1063 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 2583 (2023).

A. The Supreme Court's Ruling in *Cummings*, Limiting Access to Certain Compensatory Damages under Section 504, Does Not Apply to Title II of the ADA.

1. The Limitations of *Cummings* Do Not Apply to Title II Because the ADA Is Not Spending Clause Legislation.

The Supreme Court's holding excluding emotional distress damages from Section 504 was based on the fact that that Congress enacted that statute pursuant to its authority under the Spending Clause of the Constitution. *Cummings*, 596 U.S. at 219-221. The ADA, in contrast, is based in Congress's powers under the Commerce Clause and the Fourteenth Amendment. There, Congress "invoke[d] the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities," including the "critical" area of "education." 42 U.S.C. § 12101(a)(3), (b)(4). The ADA is not Spending Clause legislation and imposes liability on all municipalities regardless of the receipt of federal funds. 42 U.S.C. § 12132.

The district court erred in relying on *Cummings* as justification for reducing the jury's damages awards. *Cummings* precluded emotional distress damages in private suits brought under Section 504; it did not consider the availability of emotional distress damages under Title II of the ADA. *Id.*, 596 U.S. at 218. The Supreme Court expressly limited the reach of *Cummings* to Spending Clause legislation like Section 504, explaining that the "contract analogy" is "'only . . . a

potential limitation on liability' compared to that which 'would exist under nonspending statutes.'" *Id.* at 225. Because Title II is a non-Spending Clause statute, the contract analogy does not apply. Public entities are bound by Title II's requirements not because they have voluntarily agreed to accept certain conditions in exchange for federal funding, but because Congress has validly exercised its constitutional authority to prohibit discrimination.

Congress's reliance on the Commerce Clause and Fourteenth Amendment demonstrates the breadth and strength of Title II. The Supreme Court has consistently recognized that these constitutional provisions support more expansive federal enforcement powers, particularly relevant in the context of civil rights enforcement. *See Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 255-58 (1964) (Commerce Clause); *Tennessee v. Lane*, 541 U.S. 509, 522-23 (2004) (Fourteenth Amendment).

2. In Enacting Title II of the ADA in 1990 and Incorporating by Reference the Remedies of Section 504, Congress Intended To Allow Compensatory Damages Including Damages for Emotional Distress.

Title II of the ADA provides that the "remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability[.]" 42 U.S.C. § 12133. Section 794a is the remedies provision for Section 504; it, in turn, incorporates the remedial scheme of Title VI of the Civil Rights

Act of 1964, 42 U.S.C. § 2000d. 29 U.S.C. § 794a(a). But the Supreme Court has recently noted that Congress's intent and understanding in adopting these words generally must be interpreted according to their meaning at the time of enactment. *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2266 (2024) ("That is the whole point of having written statutes; 'every statute's meaning is fixed at the time of enactment.' … [C]ourts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.") (citing *Wisconsin Central Ltd. v. United States*, 585 U.S. 274, 284 (2018)); *Wisconsin Central*, 585 U.S. at 284 ("That is why it's a 'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary, contemporary, common meaning … at the time Congress enacted the statute.").

When Congress enacted Title II of the ADA, it was well established that "where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Davis v. Passman*, 442 U.S. 228, 245 (1979) (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)); *accord Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239 (1969) ("The existence of a statutory right implies the existence of all necessary and appropriate remedies."); *see also Franklin v. Gwinnett Cty. Pub. Schs.*, 503 U.S. 60, 66 (1992) ("[W]e presume the availability of all appropriate remedies unless Congress has expressly indicated otherwise.").

More specifically, when Congress incorporated the remedies of Section 504 into Title II of the ADA, a body of appellate caselaw held that plaintiffs suing under Section 504 could bring claims for compensatory damages. *See*, *e.g.*, *Bonner v. Lewis*, 857 F.2d 559, 566 (9th Cir. 1988) ("We have recognized a private right of action under section 504, … and plaintiffs suing under section 504 may pursue the full panoply of remedies, including equitable relief and monetary damages[.]" (citations omitted)); *Greater L.A. Council on Deafness v. Zolin*, 812 F.2d 1103, 1107 (9th Cir. 1987) (reversing dismissal of case brought by deaf residents excluded from jury service); *Miener v. Missouri*, 673 F.2d 969, 978 (8th Cir. 1982) (holding that disabled student could seek damages under Section 504 based on the denial of access to educational resources and recognizing "the presumption of *Bell v. Hood*, *supra*, that a wrong must find a remedy, and in light of the inadequacy of administrative remedies, conclude that damages are awardable under § 504.").[8]

[8] *Accord Fitzgerald v. Green Valley Area Educ. Agency*, 589 F. Supp. 1130, 1138 (S.D. Iowa 1984) ("[T]he full panoply of remedies is available to a private plaintiff under § 504."); *Nelson v. Thornburgh*, 567 F. Supp. 369, 383 (E.D. Pa. 1983) ("Congress certainly has the power to limit remedies if it so chooses. In the absence of any indication that Congress intended to exercise that power to create a limited remedial scheme for section 504, it is a fair canon of statutory interpretation to indulge the presumption that Congress intended that the full panoply of remedies be available to the private plaintiff under section 504."); *Bachman v. Am. Soc'y of Clinical Pathologists*, 577 F. Supp. 1257, 1262 (D.N.J. 1983) ("[I]n suits to enforce Title VI and the Rehabilitation Act, private plaintiffs who have been subjected to discrimination by federal grantees are not limited to equitable relief but may also seek monetary damages. … [C]ourts have permitted

Consistent with this history, shortly before enactment, the House Committee on Education and Labor explained that "[a]s with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies." H.R. Rep. No. 101-485, pt. 2, at 98 (1990). The House Committee on the Judiciary similarly stated: "Section 205 incorporates the remedies, procedures and rights set forth in Section 504 of the Rehabilitation Act of 1973. … The Rehabilitation Act provides a private right of action, with a full panoply of remedies available, as well as attorney's fees." H.R. Rep. No. 101-485, pt. 3, at 52 & n.62 (1990). The House Judiciary report cited with approval to *Miener v. Missouri*, 673 F.2d 969 (8th Cir. 1982).

There is no reason to think Congress in 1990 would have anticipated, much less intended, that a novel contract-based limitation on Section 504 damages

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plaintiffs suing under section 504 the full panoply of remedies, including equitable relief and monetary damages." (citations omitted)) (denying motion to dismiss plaintiff's claim for failure to provide testing accommodations on certification exam); *Gelman v. Dep't of Educ.*, 544 F. Supp. 651, 653 (D. Colo. 1982) ("[T]here is a right to compensatory damages under 29 U.S.C. § 794."); *Hutchings v. Erie City & Cty. Library Bd. of Dirs.*, 516 F. Supp. 1265, 1268 (W.D. Pa. 1981) ("In our view, the private right of action created by Section 504 encompasses both actions for injunctive relief and actions for monetary damages."); *Patton v. Dumpson*, 498 F. Supp. 933, 939 (S.D.N.Y. 1980) ("Where, as here, money damages are the only means of compensating a victim of past discrimination, that remedy must be available to the plaintiff. Thus, absent an expression of congressional intent to the contrary, private actions under § 504 cannot be limited to suits for equitable relief."); *Poole v. S. Plainfield Bd. of Educ.*, 490 F. Supp. 948, 949 (D.N.J. 1980) ("Monetary damages are the most usual form of relief given to successful plaintiffs, and I conclude that they are appropriately sought here.").

would, 33 years later, disallow "emotional distress" damages as an element of the full panoply of compensatory damages available under Title II of the ADA. Until *Cummings*, Section 504 jurisprudence did not divide the remedy of compensatory damages into the categories "emotional distress" and "not emotional distress." At the time of the enactment of the ADA, the remedy of compensatory damages was understood to capture a range of proven injuries including emotional distress.[9] This Court should decline to apply the limitations of *Cummings* to Title II of the ADA.

3. Ensuring Full Compensation for Persons Who Have Experienced Discrimination Advances the ADA's Findings and Purposes.

The availability of comprehensive remedies under Title II serves essential functions beyond merely compensating individuals who have been subjected to discrimination. These remedies play a crucial role in achieving Congress's broader goals in enacting the ADA and ensuring the statute's effectiveness as a tool for eliminating disability discrimination in American society.

Discrimination can inflict a complex web of injuries on people with disabilities, ranging from immediate economic losses to long-term limitations on educational and professional opportunities, as well as dignitary harms that affect one's ability to participate fully in society. Comprehensive remedies acknowledge

[9] *See*, *e.g.*, *Carey v. Piphus*, 435 U.S. 247, 263-64 (1978) ("Distress is a personal injury familiar to the law, customarily proved by showing the nature and circumstances of the wrong and its effect on the plaintiff.").

this reality and provide courts with the tools necessary to craft relief that truly makes injured individuals whole.

Robust remedies also deter discrimination. When public entities face the prospect of significant liability for discrimination, they have stronger incentives to voluntarily comply with the ADA's requirements. This deterrent function serves Congress's goals of proactively "assur[ing] equality of opportunity, full participation, independent living, and economic self-sufficiency," 42 U.S.C. § 12101(a)(7), rather than merely providing after-the-fact relief.. Limited remedies, by contrast, might lead some entities to treat occasional discrimination claims as an acceptable cost of doing business, undermining the ADA's fundamental purpose.

Title II's effectiveness as an enforcement mechanism depends significantly on private litigation. Congress chose to make private enforcement "the primary method of obtaining compliance with the [ADA]," recognizing that government enforcement alone is insufficient to address the pervasive problem of disability discrimination. *See Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039-40 (9th Cir. 2008) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972)); *see also* Brief for United States as *Amicus Curiae* Supporting Neither Party, *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1 (2023) (No. 22-429), 2023 WL 4028533, at *1 ("private suits . . . are an essential complement to the federal government's enforcement of [the ADA] and other antidiscrimination laws" by supplementing

"the federal government's limited enforcement resources."). By providing for private enforcement with comprehensive remedies, Congress created a system of "private attorneys general" who supplement government enforcement efforts. This system works only if private plaintiffs can obtain remedies that justify the substantial costs and burdens of bringing discrimination claims.

When it passed Title II, Congress intended to provide the "full panoply" of remedies. H.R. Rep. No. 101-485, pt. 2, at 98, *reprinted in* 1990 U.S.C.C.A.N. 303, 381. Congress understood and acknowledged, based on decades of civil rights enforcement experience, that effective anti-discrimination legislation requires strong remedial provisions. *Id.* at 40, *reprinted in* 1990 U.S.C.C.A.N. at 322 ("the rights guaranteed by the ADA are meaningless without effective enforcement provisions."). Courts have long reiterated this principle, noting that civil rights statutes should be interpreted broadly to effectuate their remedial purposes. *See Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014) (Courts "construe the language of the ADA broadly to advance its remedial purpose.")

B. Even if *Cummings* Applied to Title II Claims, It Would Not Reach the Types of Damages Awarded in This Case.

Even assuming, *arguendo*, that *Cummings* could be read to limit emotional distress damages under Title II, the decision would not affect the availability of damages for concrete harm such as lost educational opportunities and other

consequential damages.[10] Indeed, the availability of other forms of compensatory damages after *Cummings* has been acknowledged by multiple courts. *See, e.g.*, *Montgomery v. District of Columbia*, 2022 WL 1618741, at *25 (D.D.C. May 23, 2022) (holding that while *Cummings* barred damages for emotional distress, other injuries could support an award of compensatory damages, including damages arising from plaintiff's loss of an opportunity to engage in interrogations).[11] And a number have specifically found that damages for lost educational opportunities remain available post-*Cummings*. *See. e.g.*, *A.W. by and through J.W. v. Coweta*

[10] Each of the U.S. Supreme Court's cited sources in *Cummings* is narrowly focused on damages for emotional distress and not the category of compensatory damages more broadly. Rightfully so, as other compensatory damages are traditionally awarded for breaches of contract. *See, e.g.*, Restatement (Second) of Contracts § 347 ("[T]he injured party has a right to damages based on his expectation interest as measured by (a) the loss in value to him of the other party's performance caused by its failure or deficiency, plus (b) any other loss, including incidental or consequential loss, caused by the breach, less (c) any cost or other loss that he has avoided by not having to perform."); Williston on Contracts § 64:1 ("The fundamental principle that underlies the availability of contract damages is that of compensation"); Corbin on Contracts § 55.11: "Compensatory Damages – The General Standard."

[11] *See also A.T. v. Oley Valley Sch. Dist*., No. CV 17-4983, 2023 WL 1453143, at *4 (E.D. Pa. Feb. 1, 2023) (holding that nothing in the *Cummings* decision bars a plaintiff from seeking other forms of compensatory damages); *Doe next friend of Doe v. City of Pawtucket*, 633 F.Supp.3d 583, 590 (D.R.I., 2022) (compensatory damages in the form of medical expenses resulting from physical injuries permitted under *Cummings*); *Chaitram v. Penn Medicine-Princeton Med. Ctr*., No. 21-17583, 2022 WL 16821692, at *2 (D.N.J. Nov. 8, 2022) (holding plaintiff had "an expectation interest in the ability to fully participate in her own medical care through effective communication" and that compensatory damages under a loss of opportunity theory were therefore recoverable).

Cnty. Sch. Dist., 110 F.4th 1309, 1314-15 (11th Cir. 2024) (holding that district court's failure to consider entitlement to other forms of compensatory damages under Title II – such as damages for physical harm, compensation for lost educational benefits, remediation, and nominal damages – was an error); *Doe v. Fairfax Cnty. Sch. Bd.*, No. 1:18-cv-00614, 2023 WL 424265, at *4-5 (E.D. Va. Jan. 25, 2023) (holding that "losses of educational opportunities remain recoverable post-*Cummings*" and observing that "[s]everal post-*Cummings* district courts have allowed plaintiffs to seek recovery for lost opportunities they suffered as a result of discrimination in violation of Spending Clause statutes."). This Court should similarly find that *Cummings* is narrowly focused on emotional distress damages and does not bar compensatory damages generally.

Characterizing the harm incurred by the Individual Plaintiffs here as "emotional" misconstrues and demeans their experiences and, if adopted by this Court, will impact the ability of students to seek full redress for education delayed or denied. The record in this case reflects two dedicated students, interested in pursuing classes in higher education. When LACCD made those classes inaccessible or unavailable to the Individual Plaintiffs, it did not merely cause them to be emotional; it took from them a specific opportunity to learn and to further their lives and careers. More broadly, many discrimination cases take years to litigate, during which time students either delay their education and careers or

incur expenses to supplement their accommodations or education. Lost educational opportunity is far more than emotional harm.[12]

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court reverse the February 29, 2024 orders of the district court.

Respectfully submitted,

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Dated: November 8, 2024

[12] The Supreme Court's recent decision in *Perez v. Sturgis Public Schools*, 143 S. Ct. 859 (2023), also provides support for maintaining these remedies. In that case, the Court held that a plaintiff is not required to exhaust administrative processes to seek compensatory damages for lost educational opportunities under the ADA, implicitly recognizing this form of damages. *Id*. at 863-65.

ADDENDUM

Disability Rights Education and Defense Fund: The Disability Rights Education and Defense Fund ("DREDF") based in Berkeley, California, is a national law and policy center dedicated to protecting and advancing the civil rights of people with disabilities. Founded in 1979, DREDF pursues its mission through education, advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal and California disability rights laws.

The Arc of the United States: The Arc of the United States ("The Arc"), 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.

Autistic Self Advocacy Network: The Autistic 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's advocacy activities include combating stigma, discrimination, and violence against autistic people and others with disabilities; promoting access to health care and long-term supports in integrated community settings; and educating

the public about the access needs of autistic people. 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.

Autistic Women & Nonbinary Network: The Autistic Women & Nonbinary Network ("AWN") provides community support, and resources for Autistic women, girls, transfeminine and transmasculine nonbinary people, trans people of all genders, Two Spirit people, and all people of marginalized genders or of no gender. AWN is committed to recognizing and celebrating diversity and the many intersectional experiences in our community. AWN's work includes solidarity aid, community events, publications, fiscal support, and advocacy to empower disabled and autistic people in their fight for disability, gender, and racial justice.

The Judge David L. Bazelon Center for Mental Health Law: Founded in 1972 as the Mental Health Law Project, the Judge David L. Bazelon Center for Mental Health Law ("Bazelon Center") is a national non-profit advocacy organization that advocates for the rights of individuals with mental disabilities. Through litigation, public policy advocacy, public education, and technical assistance, the Bazelon Center works to advance the rights and dignity of individuals with mental disabilities in all aspects of life, including health care,

community living, employment, education, housing, voting, parental and family rights, and other areas. The Americans with Disabilities Act and Section 504 are the foundation for most of the Center's legal advocacy.

The Coelho Center for Disability Law, Policy and Innovation: 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. The Coelho Center envisions 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.

CommunicationFIRST: CommunicationFIRST is a national, disability-led nonprofit organization based in Washington, DC. It is dedicated to protecting and advancing the rights and interests of the estimated five million people in the United States who cannot rely on speech alone to be heard and understood. CommunicationFIRST works to reduce barriers and expand equitable access and opportunity for our historically marginalized population in all aspects of community and society, including in schools and universities.

Deaf Equality: Deaf Equality is a non-profit legal services organization committed to achieving true equality for Deaf, DeafBlind, DeafDisabled, Hard of

Hearing, and Late Deafened (collectively, "Deaf and Hard of Hearing") individuals across the United States and worldwide. As an organization led by and for Deaf and Hard of Hearing individuals, Deaf Equality offers unique expertise and first-hand knowledge of the lived experience of these communities. Despite the apparent advances made under federal laws protecting the rights of people with disabilities, such as Section 504 and the ADA, members of our communities continue to face pervasive discrimination and barriers in many aspects of daily life. Through a comprehensive approach that includes advocacy, litigation, policy development, consulting, and education, Deaf Equality strives to challenge and dismantle oppressive attitudes and systemic discrimination. Such efforts are intended to ensure that all Deaf and Hard of Hearing individuals have full, equitable access to every aspect of society including in areas such as education, employment, healthcare, and the justice system.

Disability Law United: Disability Law United ("DLU") (formerly the Civil Rights Education and Enforcement Center) is a nonprofit legal organization that fights for liberation through the lens of intersectional disability justice with a combination of education, legal advocacy, direct services, and impact litigation. DLU has successfully enforced both state and federal anti-discrimination laws protecting the disabled in multiple jurisdictions, bringing both individual actions

and class actions challenging access restrictions. DLU clients and members of partner organizations continue to face access challenges that limit their full participation in our society.

Disability Rights Advocates: Disability Rights Advocates ("DRA") is based in Berkeley, California with offices in New York, New York and Chicago, Illinois. DRA is a national nonprofit public interest legal center recognized for its expertise on issues affecting people with disabilities. DRA is dedicated to ensuring dignity, equality, and opportunity for people with all types of disabilities, and to securing their civil rights. To accomplish those aims, DRA represents clients with disabilities who face discrimination or other violations of federal or state civil rights or federal constitutional protections in complex, system changing class action and impact litigation. DRA is generally acknowledged to be one of the leading public interest disability rights litigation organizations in the country, taking on precedent-setting disability rights class actions across the nation.

Disability Rights Legal Center: Disability Rights Legal Center ("DRLC") is a non-profit legal organization that was founded in 1975 to represent and serve people with disabilities. DRLC assists people with disabilities in obtaining the benefits, protections, and equal opportunities guaranteed to them under Section 504, the ADA, the Unruh Civil Rights Act, and other state and federal laws. DRLC's mission is to champion the rights of people with disabilities through

education, advocacy and litigation. DRLC is generally acknowledged to be a leading disability public interest organization.

Impact Fund: The Impact Fund is a non-profit legal organization that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as party or *amicus* counsel in major civil rights class actions, including cases enforcing protections of essential rights guaranteed under California law on behalf of underrepresented and vulnerable communities.

National Council on Independent Living: The National Council on Independent Living ("NCIL") is the longest-running national cross-disability, grassroots organization run by and for people with disabilities. NCIL works to advance independent living and the rights of people with disabilities. NCIL's members include individuals with disabilities, Centers for Independent Living, Statewide Independent Living Councils, and other disability rights advocacy organizations.

National Disability Rights Network: The National Disability Rights Network ("NDRN") is the non-profit membership organization for the federally mandated Protection and Advocacy ("P&A") and Client Assistance Program

("CAP") agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally-based advocacy services to people with disabilities in the United States.

United Spinal Association: United Spinal Association, founded by paralyzed veterans in 1946, is dedicated to enhancing the quality of life of all people living with spinal cord injuries and disorders ("SCI/D"), including veterans, and providing support and information to loved ones, care providers and professionals. United Spinal Association is a VA-accredited veterans service organization serving veterans with disabilities of all kinds.

Paralyzed Veterans of America: Paralyzed Veterans of America ("PVA") is a national, congressionally-chartered veterans service organization headquartered in Washington, DC. PVA's mission is to employ its expertise, developed since its founding in 1946, on behalf of armed forces veterans who have

experienced SCI/D. PVA seeks to improve the quality of life for veterans and all people with SCI/D through its medical services, benefits, legal, advocacy, sports and recreation, architecture, and other programs. PVA advocates for quality health care, for research and education addressing SCI/D, for benefits based on its members' military service and for civil rights, accessibility, and opportunities that maximize independence for its members and all veterans and non-veterans with disabilities.

PVA has nearly 16,000 members, all of whom are military veterans living with catastrophic disabilities. To ensure the ability of our members to participate in their communities, PVA strongly supports the opportunities created by and the protections available through the ADA.

World Institute on Disability: World Institute on Disability is an internationally recognized public policy center organized by and for people with disabilities, which works to strengthen the disability movement through research, training, advocacy, and public education so that people with disabilities throughout the world enjoy increased opportunities to live independently.

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2024, I electronically filed the foregoing Brief of *Amici Curiae* Disability Rights Education and Defense Fund and Sixteen Other Organizations In Support of Plaintiffs/Appellants with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all the participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Respectfully Submitted,

FOX & ROBERTSON, PC

By: s/ Amy Farr Robertson
Amy Farr Robertson
Attorney for Amici Curiae

Dated: November 8, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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