

## **Texas v. Becerra Frequently Asked Questions (FAQ)**

*Texas v. Becerra*<sup>1</sup>, is a court case that was filed in Texas in September 2024. A [group of 17 states have sued](#) the United States government. The states are asking the court to get rid of Section 504<sup>2</sup> and roll back the updated Section 504 rules from 2024.<sup>3</sup> Read on to learn the answers to frequently asked questions about the case.

### **What is Section 504?**

Section 504 is an important law passed in 1973 that protects people with disabilities. Section 504 is a very short statute.<sup>4</sup> It says that the federal government and any entities that receive money from the federal government can't discriminate against disabled people. Section 504 covers all parts of society that get money from the United States government.

The specific details about what entities must do to prevent discrimination against people with disabilities are in the Section 504 regulations or "rules."<sup>5</sup> The rules say that places like schools, hospitals,

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<sup>1</sup> *Texas v. Becerra*, 5:24-cv-00225-C (N.D. Tex., 2024), complaint available at <https://www.texasattorneygeneral.gov/sites/default/files/images/press/HHS%20Rehabilitation%20Act%20Complaint%20Filestamped.pdf>.

<sup>2</sup> See *Texas v. Becerra* at 37-40, 42.

<sup>3</sup> See *Texas v. Becerra* at 40-42.

<sup>4</sup> See 29 U.S.C. § 794.

<sup>5</sup> See, e.g., 28 C.F.R. Part 42 (DOJ HHS Rules); 34 C.F.R. Part 104 (Dep't of Educ. rules); 45 C.F.R. Part 84 (HHS 504 rules).

and doctors' offices have to include people with disabilities. Section 504 and its rules are very important, especially in education and healthcare.

## **What do the updated Section 504 regulations say?**

In May 2024, the Department of Health and Human Services issued [updated Section 504 regulations](#), preceded by a long introduction called a preamble. The updated regulations give more examples of prohibited disability discrimination in HHS-funded programs and activities. The regulations say:

- Discrimination in medical treatment or decision making is not allowed.
  - For example, doctors may not make medical decisions based on bias or judgments that disabled people are a burden or their lives are worth less.
- Doctors must have accessible medical equipment.
- HHS services must be provided in the “most integrated setting” and to people “at risk of institutionalization.”
- Websites and mobile apps used by entities receiving federal funds must be accessible and comply with WCAG 2.1.
- Effective communication must be provided to people with disabilities.
- Child welfare systems cannot discriminate against parents or kids with disabilities.
- Supported decision-making can be a reasonable accommodation in medical settings.

## **Are the updated Section 504 regulations currently valid?**

Yes. The updated regulations are currently in effect. They will remain in effect unless the court blocks them or new regulations are issued by HHS after notice and comment period required by the Administrative Procedures Act.

## **I heard the updated regulations say something about gender dysphoria. What is that about?**

The updated regulations include an introduction called a preamble. In the preamble, [HHS reviewed an appellate court case that found that gender dysphoria can be a disability under federal law](#). HHS wrote that it agreed that gender dysphoria could be a disability depending on the facts.<sup>6</sup> We agree with this common-sense approach.

The preamble to the rules is not part of the regulations. The [updated regulations](#) themselves do not discuss gender dysphoria.<sup>7</sup> A preamble can be rejected and rescinded by new leadership at HHS without any procedures. It is almost certain that HHS will reject the passage in the preamble about gender dysphoria.<sup>8</sup>

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<sup>6</sup> Discrimination on the Basis of Disability in Health and Human Service Programs or Activities, Final Rule, 89 Fed. Reg 40066, 40069 (Sept. 14, 2023) (“Such an inquiry is necessarily a fact-based, individualized determination but the Department agrees with the Fourth Circuit that gender dysphoria can satisfy this standard.”).

<sup>7</sup> See 45 C.F.R. § 84 *et seq.*

<sup>8</sup> The new administration has issued an Executive Order to agencies like HHS directing them to remove any statements and policies in support of the rights of transgender people. See Executive Order, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Jan. 20, 2025) available at

Regardless of the language in the preamble, it is important for the disability community to stand in solidarity with the LGBTQ community and to oppose attacks targeting transgender people. Further, there is a substantial overlap between people who are transgender and people with disabilities.<sup>9</sup>

## **What are the states that are part of the *Texas v. Becerra* lawsuit asking the court to do?**

The states in the *Texas v. Becerra* lawsuit complain about how the updated regulations could affect how they operate federally funded programs like Medicaid, nursing homes, and child welfare programs. They complain about two parts of the updated regulations:

- The passage in the preamble to the rule (not in the rule itself) that says gender dysphoria could be a disability depending on the facts.
- The regulation that requires entities covered by Section 504 to provide services to disabled people “in the most integrated setting appropriate” and explains that a failure to provide community-based services can violate Section 504 when it causes institutionalization or the serious risk of institutionalization.<sup>10</sup> The

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<https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>

<sup>9</sup> HRC, Understanding Disability in the LGBTQ+ Community (Aug. 12, 2022) (52% of transgender people self-report having a disability), available at <https://www.hrc.org/resources/understanding-disabled-lgbtq-people>.

<sup>10</sup> See 45 C.F.R. § 84.76.

states argue this is illegal, improper, and inconsistent with the *Olmstead* decision.

The states then make two requests of the court. First, they ask the court to declare that the updated Section 504 regulations are unenforceable and unlawful.

#### DEMAND FOR RELIEF

Plaintiffs respectfully request that the Court:

- a. Issue permanent injunctive relief against Defendants enjoining them from enforcing the Final Rule;
- b. Declare that the Final Rule violates the Administrative Procedure Act;
- c. Hold unlawful and set aside (*i.e.*, vacate) the Final Rule;

*Screenshot from page 42 of the complaint asking the court to declare the updated regulations unlawful and prevent HHS from enforcing them.*

Second, the lawsuit, filed 50 years after Section 504 was passed, claims that banning discrimination in all federally-funded programs is – and always was – **unconstitutional** because Congress cannot restrict the use of all federal funds in this way. The states are asking the court to declare that the Section 504 statute, in its entirety, is unconstitutional.

239. Because Section 504 is coercive, untethered to the federal interest in disability, and unfairly retroactive, the Rehabilitation Act is not constitutional under the spending clause.

*Screenshot from page 40 of the complaint explaining why the states think Section 504 is unconstitutional.*

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- b. Declare that the Final Rule violates the Administrative Procedure Act;
- c. Hold unlawful and set aside (*i.e.*, vacate) the Final Rule;
- d. Declare Section 504, 29 U.S.C. § 794, unconstitutional;
- e. Issue permanent injunctive relief against Defendants enjoining them from enforcing Section 504;

*Screenshot from page 42 of the complaint of the “demand for relief” asking the court to declare Section 504 unconstitutional and block HHS from enforcing it. The demand for relief is the part of the complaint where a party tells the judge what they want the judge to do.*

## What will happen next in the lawsuit?

The 17 states and HHS must make a joint report to the court on February 25, 2025, about how they think the case should proceed. There are a lot of unknown questions:

- Will the 17 states continue to litigate this lawsuit, or will they back down?
- If the 17 states continue, will the new administration defend the lawsuit in whole or in part?
- If the new administration will not fully defend the case, will other parties intervene to defend the lawsuit?

We will update our website when we know more answers.

We do know that nothing will happen immediately. There is no briefing schedule. If and when there is a briefing schedule, we will make sure

that the views of the disability community are represented before the court.

## **What is the deadline for amicus briefs to support Section 504 and its regulations?**

Right now, the only deadline is for the parties to report to the court on February 25, 2025, about how the case should proceed. There is no briefing schedule. This means that, right now, there is no deadline for amicus briefs.

## **What is the difference between Section 504 and the ADA?**

Section 504, passed in 1973, was the first major nondiscrimination law protecting people with disabilities.<sup>11</sup> Section 504's disability nondiscrimination requirements apply to the federal government as an employer, to programs of the federal government (like Medicaid and Medicare), and to any private or public entity that receives federal dollars.

The Americans with Disabilities Act (ADA), passed in 1990, expanded protections for people with disabilities.<sup>12</sup> Title I of the ADA applies to public and private employment (but not federal employment, which is covered by Section 504). Title III of the ADA applies to businesses that are open to the public, known as "public accommodations." And Title II of the ADA mirrors the requirements of Section 504 and applies them to

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<sup>11</sup> See 29 U.S.C. § 794.

<sup>12</sup> See 42 U.S.C. §§ 12111 (Title I), 12131 (Title II), 12181 et seq. (Title III).

state and local government. Entities can be covered by both Section 504 and the ADA. Some entities are only covered by one law or the other.

Section 504 and Title II of the ADA have particularly strong rules to ensure full inclusion of the disability community. For example, entities covered by these laws must make sure that their programs and activities are readily accessible to people with disabilities. They must provide effective communication to disabled people, giving primary consideration to the communication preferences of the individual.

### **If Section 504 were declared unconstitutional under the Spending Clause, how would that affect protections for people with disabilities generally?**

We do not think that Section 504 will be ruled unconstitutional. We want to make that clear. We are outraged that the plaintiffs in *Texas v. Becerra* are asking for this ruling.<sup>13</sup> But we do not think they will succeed.

However, if Section 504 were declared unconstitutional, it would weaken protections for disabled people. This would happen in particular for students with disabilities in public and private schools, and for disabled patients trying to access healthcare.

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<sup>13</sup> See *Texas v. Becerra*, 5:24-cv-00225-C, 37-40, 42 (N.D. Tex., 2024) (“Declare Section 504, 29 U.S.C. § 794, unconstitutional; Issue permanent injunctive relief against Defendants enjoining them from enforcing Section 504”), complaint available at

<https://www.texasattorneygeneral.gov/sites/default/files/images/press/HHS%20Rehabilitation%20Act%20Complaint%20Filestamped.pdf>

## **If Section 504 were declared unconstitutional under the Spending Clause, how would that affect kids with disabilities in school? What about the IDEA?**

Section 504 applies to all schools that receive federal funding. This includes all public and many private schools. Section 504 applies to colleges and universities that receive federal funding, which includes public and most private colleges.

If Section 504 were declared unconstitutional, students at private schools would lose the strong protections of section 504. They would have some protections under Title III of the ADA but the rules are not as strong as the rules for Section 504.

Students in K-12 public school would no longer have 504 plans for accommodations in school. Students could try to get an IEP under the IDEA. If they did not qualify for an IEP under the Individuals with Disabilities Education Act (IDEA), they could seek accommodations under Title II of the ADA. Title II is a strong law. However, the regulations and guidance documents published by the U.S. Department of Education that help schools know how to comply with the law are all about Section 504, not Title II. This could cause a lot of delay and confusion.

Again, we do not think that Section 504 will be ruled unconstitutional. But it is unacceptable that the plaintiffs in *Texas v. Becerra* are asking for this ruling.

## **If the updated Section 504 rules were declared invalid, how would that affect kids with disabilities in school?**

The updated HHS Section 504 rules apply to entities that receive federal funds from HHS. The [Department of Education has its own, separate set of regulations](#) that apply to entities – including K-12 public schools – that receive funds from the Department of Education.

While some public schools receive HHS funds, and would be covered by the updated rules, *all* public schools receive dollars from the Department of Education and must follow the Department of Education’s Section 504 regulations. The lawsuit does not challenge the Section 504 rules published by the Department of Education.

## **My state Attorney General is saying that they are only signed on to the case because they are challenging the part of the updated rules that say gender dysphoria can be a disability. They are saying this suit will not affect Section 504 as a whole. Is that true?**

No, this is not true. As explained above, the passage about gender dysphoria only says that gender dysphoria *may* be a disability depending on the facts. This common-sense approach appears in the [preamble to the rules](#), not in the [rules themselves](#). The new administration can reject this part of the preamble. There is no requirement that the federal government go through any procedures such as a “notice and comment” period to reject something in a preamble.

And the [lawsuit](#) is not limited to the discussion of gender dysphoria. The lawsuit complains that the obligation to provide services to people in their community in “the most integrated setting” to prevent unnecessary institutionalization and segregation is unlawful. It requests that the court declare that the entire set of regulations are unlawful and unconstitutional.<sup>14</sup> It asks the court to declare Section 504 – the entire statute – unconstitutional.<sup>15</sup>

If your Attorney General does not want to tear down Section 504 then they should drop out of the case.

## **My state attorney general is saying the updated Section 504 regulations harms kids with disabilities in schools and threatens their accommodations. Is that true? Does the lawsuit help kids with disabilities in schools?**

No. There is nothing in the updated rules that harms students with disabilities. And the lawsuit does not help disabled students. The lawsuit asks the court to declare Section 504 unconstitutional.<sup>16</sup>

## **What can I do to help?**

If you live in one of the states that is part of the lawsuit, you can [contact your state Attorney General](#) and tell them to drop out of the case.

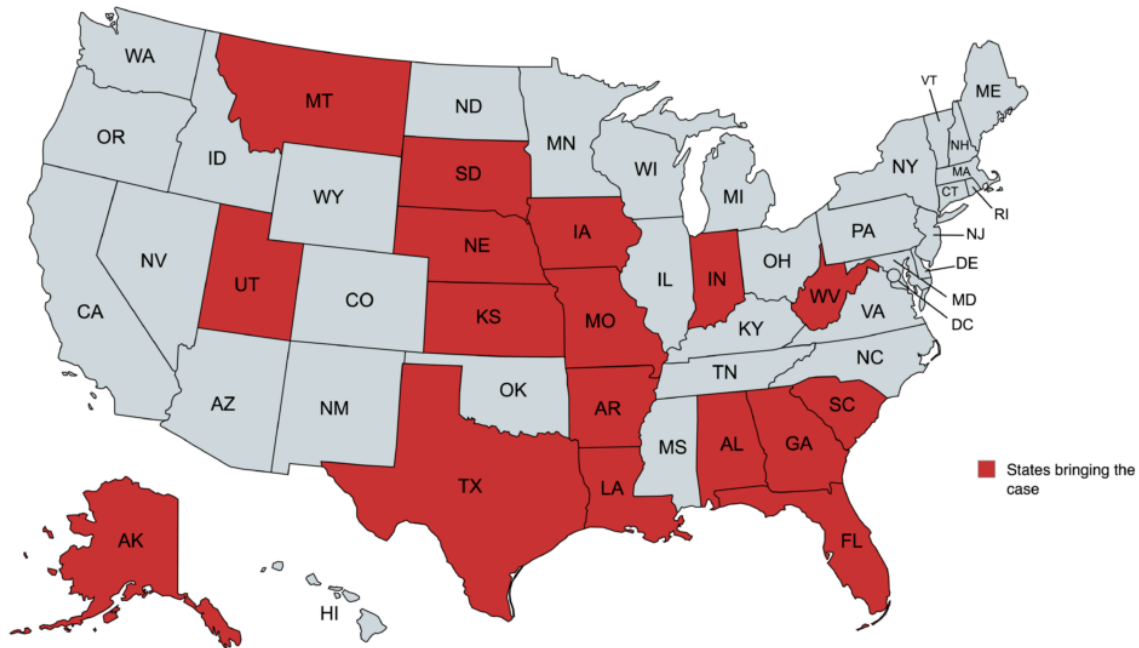
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<sup>14</sup> See *Texas v. Becerra* at 40–42.

<sup>15</sup> See *Texas v. Becerra* at 37–40, 42.

<sup>16</sup> See *Texas v. Becerra* at 37–40, 42.

If you live in a state that is not part of the lawsuit, you can [contact your state Attorney General](#) and tell them why Section 504 is important to you. You can say that you want them to pay attention to this case and protect Section 504.



You can find more information about the case, including an example letter [on DREDF's website](#). We do not think this case will move quickly. We hope that the states drop the case.

**People with disabilities need Medicaid to live in our communities and to stay out of nursing homes and hospitals. We urge everyone who cares about disabled people to [get involved in the fight to protect Medicaid](#) NOW.** Medicaid is essential to the disability community, and Congress is currently considering a budget measure that would cut Medicaid programs by hundreds of billions of dollars. Call your

members of Congress today and tell them to keep their hands off  
Medicaid!