

Episode 4 Transcript - Upcoming Supreme Court Session: Critical Cases that Could Impact the Disability Community

Broadcast Date: October 14, 2021

Speakers

Host: Peter Blanck, JD, Ph.D. – Chairman of the Burton Blatt Institute and University Professor at Syracuse University

Attorneys: Arlene Mayerson J.D. (Directing Attorney Emerita and Of Counsel, Disability Rights Education & Defense Fund (DREDF)), Victoria Rodriguez Roldan, J.D. (Senior Policy Manager, AIDS United), and Claudia Center, J.D. (Legal Director DREDF).

Barry Whaley:

Hi, Music

Barry Whaley:

Hi everybody. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University, and the ADA National Network, I want to welcome you to Disability Rights Today. Disability Rights Today provides listeners with new insights on recent court cases that shape the Americans with Disabilities Act and impact the civil rights of people with disabilities.

Barry Whaley:

I'm Barry Whaley, I'm the director of the Southeast ADA Center. And as a reminder, listening audience, if you have questions about the ADA, you can use our online form anytime at disabilityrightstoday.org. The United States Supreme Court began its session on Monday, October 4th, 2021 on the docket are four critical cases that could impact the disability community.

Barry Whaley:

Those cases are, CVS versus Doe, concerning whether 504, the Rehabilitation Act of 1973, and by extension Section 1557 of the Patient

Protection and Affordable Care Act provides a disparate impact cause of action for plaintiffs alleging disability discrimination. Also, we have Cummings versus Premier Rehab Keller, which addresses whether the Civil Rights Act of 1964 and the statutes that incorporate its remedies for victims of discrimination, such as the Rehabilitation Act and the Affordable Care Act include compensation for emotional distress.

Barry Whaley:

The U.S. versus Vaello-Madero. And the question before the court here is whether Congress has violated the fifth amendment by establishing the supplemental security income program in the 50 states, the district of Columbia, the Northern Marianna Islands, but did not include Puerto Rico.

Barry Whaley:

And finally, Carson versus Makin, a case out of Maine that asks whether a state violates the religion clauses or equal protection clause of the U.S. constitution by prohibiting students from participating in an otherwise generally available student aid program from choosing to use their aid to attend schools who provide religious or sectarian instruction.

Barry Whaley:

With us to discuss these potentially significant cases, we're delighted to welcome as our distinguished guests, Arlene Mayerson, the Directing Attorney Emerita of Counsel of Disability Rights Education & Defense Fund or DREDF. Victoria Rodríguez-Roldán, Senior Policy Manager at AIDS United, and Claudia Center, the Legal Director at DREDF. As always, our host is Dr. Peter Blanck, Chairman of the Burton Blatt Institute at Syracuse University, university professor. Peter, I'm going to turn it over to you.

Peter Blanck:

Thank you, Barry. And welcome to our listeners. We have a great treat today, three extraordinary panelists who in each their own ways have shaped and are shaping the past and future of disability rights advocacy. My understanding is, there has not been a convening of this type in which members of the disability community get together to address the issues

coming in a Supreme Court term and what a Supreme Court term this is shaping up to be.

Peter Blanck:

You've heard about some of the cases that we may touch upon. And of course there are other very important pressing cases related to abortion rights, related to gun control. And today, the United States Supreme Court actually heard its first oral arguments. It involved Mississippi, not an abortion rights case, actually a case involving water rights between Mississippi and Tennessee.

Peter Blanck:

So the term is underway and it's a very important term to be considered from a disability perspective and more broadly from a civil rights perspective. I'd like to start with Arlene Mayerson. Arlene, as the saying goes, really needs no introduction, but it would not be fair to give her an introduction as I will for all the folks. Arlene is a foundational and founding member, force of the disability rights movement in the United States.

Peter Blanck:

She's a founding member of DREDF, the Disability Rights Education & Defense Fund, and has been involved with cases from the United States Supreme Court on down advocating for the rights of persons with disabilities. Arlene, if I may start with you, as a disability rights lawyer, you were among the first to become involved in Supreme Court cases. You were a relatively young lawyer then, you of course were fighting for civil rights, but disability rights was kind of new on the horizon. And there was really no cohort of lawyers that had argued disability movement and law rights prior.

Peter Blanck:

Now I know you were involved with some of the very early, intimately involved for that matter, both as co-counsel and Amici and coordinating cases, but I thought it'd be very helpful in grounding to our listeners, Arlene, to backtrack a little bit and recount a bit about the first cases you

were involved with and the nature of this evolving disability civil rights bar. Arlene?

Arlene Mayerson:

As a disability rights lawyer right after the first Section 504 case was decided by the U.S. Supreme Court. Section 504 was modeled after race and gender discrimination statutes, which said that if you were a recipient of federal financial assistance, you could not discriminate on the basis of race, ethnicity, gender, and then with 504 disability.

Arlene Mayerson:

And the rules and regulations about 504 came after a very long, hard fought political battle. So when the first Supreme Court decision came down, Southeastern Community College versus Davis, in 1979, the court did not really understand these newfound civil rights called disability rights.

Arlene Mayerson:

And at the time, I was working, as I said, for the predecessor for DREDF, which is part of the first center for independent living in Berkeley, California, and all the activists and the people I worked with there were extremely upset that the court got it so wrong. And it basically involved a woman who was deaf, who wanted to be a student to become a nurse. And without going into any details, there was a lot in the decision showed that the court still had an antiquated view of disability and basically found that she wouldn't be able to be a nurse because she couldn't hear.

Arlene Mayerson:

So there was a human cry in the movement, which was CIL was very much a part of and a founder, to like blast the Supreme Court for their lack of understanding of the nature of disability and how, of course, this deaf nurse could do many things. It would be extremely beneficial in the nursing field.

Arlene Mayerson:

And that was my first foray as a movement lawyer, which I was and continue to be, to explain to the community that you can't really say the Supreme Court got it all wrong and put it in its worst light because

whatever the Supreme Court said, we have to live with in our future cases. And that's a very kind of tricky balance.

Arlene Mayerson:

Anyway, so that's when I came in. So by the time the next case came up, which was consolidated Rail versus Darrone, which involved a one armed railroad engineer, I knew that as important as it was to explain to the court how the law applied to the situation, it was very important to educate the court about the nature of disability discrimination.

Arlene Mayerson:

And even at that point, Marshall leaned forward during the oral argument and said, are you meaning to tell us that we want a one-armed engineer driving the train? And those kinds of things were just considered basically unheard of at the time. Justice Marshall, not only voted favorably in the Consolidated Rail Corporation involving the one-armed engineer, but he wrote a seminal dissent in the Claiborne case about how disability discrimination and race discrimination are not only very similar, but intertwined. And that there is a confluence of discrimination that goes back to at least the turn of the century. So that's when I realized that part of the job of our newly founded National Defense Fund would be to educate the court and to get other lawyers educated about disability rights.

Arlene Mayerson:

And one of the things that's important to know is that most of the cases that go to the Supreme Court are not being done by disability rights lawyers. It became very clear early on that we needed to be involved in writing the brief and writing Amici's briefs and coordinating the country around what contributions they could make through the Amicus process.

Peter Blanck:

I have to say, by the way, sometimes things don't change. Working on the Echazabal, the Chevron case which involved direct threat of people with disabilities, I remember Justice Kennedy leaning forward very different than Justice Marshall, of course, in ideology, and saying, you mean to tell me that employers have to hire suicidal employees? So there seems to be

something about worst case scenarios that the justices think about when hiring persons with disabilities

Arlene Mayerson:

At that point, I was basically a newbie lawyer, but the field was not organized. There were probably a couple handfuls of people in the country who considered themselves disability rights lawyers, the laws were brand new. So DREDF considered it part of its fundamental defense fund role to be involved in Supreme Court cases. And the first three cases that we were involved in, which were the second, third and fourth case the Supreme Court ever heard on 504 were all brought up by lawyers who did not do disability rights law, or even necessarily civil rights law. So it was very important to us to make sure that we were involved in both the writing of the brief and getting other organizations, disability rights organizations around the country to lend a voice. And that's called an Amicus brief, which is a friend of the court brief.

Peter Blanck:

That's fantastic grounding for us. I wanted to turn to Victoria briefly, and Arlene, if I may, I'll come back to you, I just want to get our other panels involved. Victoria, I think it's fair to say, you are now part of a new generation of thinkers about Supreme Court advocacy and the issues brought before the Supreme Court. What's your sense of, before we get into the specifics of the cases presently before the court, of the disability communities and broader civil rights community's engagement in both shaping and advocating about the types of issues that are at the United States Supreme Court?

Victoria Rodríguez-Roldán:

Well, and thank you for having me here. I would say then one of the things that civil rights movements need to ensure and handle when it comes to this is basically try to assess whether to what their odd of understanding. And we need to see the Supreme Court, not necessarily as the partisan monolith, where we can easily predict how it will down, but sometimes it

just as the matter of making the right argument or the right justice, basically.

Victoria Rodríguez-Roldán:

And in the process, understanding what we're up against. An example of that in the LGBTQ community, the [inaudible 00:14:39] decision more recently, [inaudible 00:14:41] marriage, where Justice Gorsuch was the one who handed down the decision holding that Title VII of Civil Rights Act covered sexual orientation, gender identity discrimination as a form of sex discrimination. So it is a very interesting affair where we need to not necessarily discount some of the justices that are before us, just because they also hold positions that we don't like than others.

Peter Blanck:

Thank you, Victoria. And now, an opening question for Claudia, and I'm going to come full circle back to Arlene. We're going to talk about the present day Supreme Court cases, but Claudia, I'm not casting any aspersions about age, but if Arlene is a foundational member and Victoria is a relatively new generation member, you and I are kind of mid-level, mid generation members. You've seen a lot. What's your take on how we got to where we are today in terms of Supreme Court advocacy and what can we expect going forward?

Claudia Center:

Thank you, Peter. Well, I think I agree with you that I am in the generation between the founding leaders of the disability rights legal community and the newer leaders. And so part of my role is to try to take the knowledge and foundational work that our original leaders brought to this project and to try to make sure it gets transmitted to all of the lawyers who are up and coming in the work and who will be the leaders, or are the leaders and will be the leaders going forward into the future. So I definitely try to play that role.

Peter Blanck:

Thank you, Claudia. Now, let's get into a little bit more of the substance of today and Arlene, if I may come back to you in this round robin , and again

folks, feel free to jump in. I don't mean to go in this unilateral fashion completely, but Arlene, we have these cases before the Supreme Court, CVS, for example, with Doe, which you can tell us a little bit about. The disability community is clearly concerned about this case, but underlying this case, as a very seasoned strategist and litigator. How did this case get to be where it is? And what's the strategy to deal with it before this current court, understanding that you'll have to give us a little background about the case?

Arlene Mayerson:

Unfortunately, the disability community doesn't get to choose which cases go to the Supreme Court. Most often, it's because we won in the circuit court, the three different levels of trial court, the circuit court, and then the Supreme Court. It's that we won in the circuit court and that's why it ends up in the Supreme Court. And if the Supreme Court doesn't have to take every case, say grant cert very sparingly, and so just the mere fact that you have a winning case in the ninth circuit, which is the CVS case, the fact that the Supreme Court granted cert already gives you butterflies in the stomach.

Arlene Mayerson:

Because we had a good decision in the ninth circuit, and they not only chose to take the case, but they chose to present the issue. And you can only argue the issue that they certify is whether 504 of the Rehabilitation Act includes disparate impact claims. And without having a whole law class about this, I'd like to just say that in our tradition, to exclude people with disabilities or racial or people of color or women, but what they institute as policies may have that effect. And that's very, very much a part and foundational to disability rights law. So for instance, if you don't have a ramp on a building and there's only steps, do you really want to be limited to arguing that someone intentionally put steps there in order to exclude people with disabilities? No.

Arlene Mayerson:

So it's a very key element, disparate impact. You might not have been thinking about excluding people, but you are excluding people, has always been actionable under the civil rights laws. I've been doing this for 40 years, it also always been a key part of civil rights law that's under attack by the right and by conservatives.

Arlene Mayerson:

So that's why we are so, so, so nervous. Very briefly, the facts of the case are that people with AIDS who work at various places, their insurance plan has a pharmaceutical manager, CVS, which designates the AIDS drugs that they need, the HIV drugs, that they need to be in a special category where you can't go to your local pharmacy and get them. You have to go either, they get dropped off in a CVS near you, or they come to your house.

Arlene Mayerson:

And there's a lot of problems that the people with AIDS have with this policy. And they brought the case to say, we want to be able to get our HIV drugs the same place that we get all of our other drugs, where the pharmacy can know about the interactions between the drugs, where we have established relationships, where we can discuss et cetera.

Arlene Mayerson:

So that case was brought under ADA 504, but also really, really significantly to our community, the Affordable Care Act and the Affordable Care Act discrimination provision 1557 incorporates Section 504. So it's all kind of tied up in a bundle right here because whatever the threat is to 504, it's also a threat to ACCA, and it could also end up being a backdoor threat to the ADA itself.

Arlene Mayerson:

So the ninth circuit said, well, we understand that, we think that does make out a 504 claim because they're getting the drug, but they're getting inferior service because they don't get the consultation of a pharmacy and et cetera. We're very worried that they decided to certify one question and one question only does 504 cover disparate impact discrimination. Very, very concerned because the right wing movement that has been attacking

that aspect, that essential aspect of disability right law is basically the composition of the court with our few friends as exceptions.

Peter Blanck:

Well, Professor Mayerson, that's an outstanding setup of the CVS case. Let me turn please, to Victoria, who again is the senior policy manager of the AIDS United project. Victoria, what does this case mean to your community, the broader community, and how would you build on what Arlene just talked about?

Victoria Rodríguez-Roldán:

Yeah, it does carry a very similar situation which is one of the problems, the whole 504 of the Rehab Act and by extension, 1557 of the Affordable Care Act. So a big part of the situation is whether it provides a disparate impact cost of action for plaintiffs that are alleging that discrimination against CVS.

Victoria Rodríguez-Roldán:

And one of the things to keep in mind is that, what is at stake here, basically. If it were found that 504 does not include disparate action, the third impact, it does cause a very bad situation where it will hinder pretty much anything that's an actual, intentional discrimination would not be covered or protected under discrimination law.

Victoria Rodríguez-Roldán:

The case relies a lot on the topic on the disparate impact cost by the pharmacy but I'm not going to go too much into that. One of the issues that happen there is, what is the stake like? That is the part that worries me a lot, because so much of the disparate impact of disability discrimination theory relies on disparate impact. Are you exploiting so much disability discrimination if, oh, you didn't make the space successful even if you had the best impression on earth. And while it can be hard to prove in disability, it's probably the most common form of disability discrimination out there, which is basically, it's not haha, we are deliberately excluding people with disabilities or disabled, it's, we honestly did not realize that this harmed people with disability, in some disproportion way. And when we take that

protection out from under the feed of 504, that creates an enormous amount of harm to the ability of litigators to protect people.

Peter Blanck:

Thank you, Victoria. Now, Claudia, among other things, you are the premier strategist litigation and otherwise that I know about disability issues, you always hear the Supreme Court's going to take something because they want to overturn it or at least narrow it. So it's kind of a catch 22 here, you get a great victory or a win at the ninth circuit and now you have a terrific strategy question at the United States Supreme Court. Is this addressable at all? Are we in kind of a box here as a disability community? What can happen?

Claudia Center:

So I think we are in a bit of a box because the Supreme Court has granted cert on this very risky question about whether Section 504 includes disparate impact claims and when the Supreme Court has already granted cert, really the only thing you can do is try to talk to the parties, the defendants, the plaintiffs, to see if there's any way to resolve the case or to come up with some way that the case is not decided by the Supreme Court.

Claudia Center:

And that has happened in a number of civil rights cases over the decades and a number of disability rights cases over the decades where our community meets with different stakeholders and tries to figure out if there's anything that can be done. I want to add one point about disparate impact and disparate treatment. I think that the conservatives tend to be more comfortable with disparate treatment claims and they tend to be very suspicious and hostile to disparate impact claims.

Claudia Center:

One of the challenges with disability discrimination is that it's often almost like a hybrid between disability, I mean, between disparate treatment and disparate impact. The same evidence can show disparate treatment or disparate impact.

Claudia Center:

And so it's concerning to us that they've taken this question when they don't really understand how disability discrimination happens and they could say things about disparate impact that could go far beyond what we would think of as disparate impact.

Peter Blanck:

emotional distress, something I have studied and obviously experienced in my family and seen a lot because I do a lot of work on mental health issues, mental illness, this case is about basically whether or not emotional distress can be part of a compensation remedy. Cummings, the Premier Rehab Keller, what's the importance of this case and what's going to happen in your crystal ball?

Claudia Center:

Sure. So in this case, Jane Cummings is a deaf woman who lives in Texas. She needed physical therapy for her chronic back pain. She called and tried to make an appointment with the place that was recommended to her. She tried three different times, explained that she needed sign language interpreting for the treatment. And they repeatedly said, no, go somewhere else, we don't provide sign language interpreting.

Claudia Center:

So she eventually sued under Title III of the ADA under Section 504 and under 1557, the provision that we were just talking about of the Affordable Care Act. And as is often the case in these situations, the court found that she did not have standing under Title III of the ADA, because that law only provides for injunctive relief. It does not provide for damages.

Claudia Center:

And so because she could not show that she was going to go back to that physical therapy clinic, or that she had a plan to do that, she could not show standing for injunctive relief. So she had to go for damages, and the damage remedy is available under Section 504 and 1557, which incorporates 504 by reference.

Claudia Center:

And so she was seeking basically emotional distress damages for being treated so poorly, treated with disrespect, shunned to the side, being told we're not going to provide sign language interpreting for you even though we're covered by all the regulations that say that we have to provide sign language interpreting. no remedy for emotional stress damages under section 504 or under 1557.

Claudia Center:

They said that because those laws are adopted, enacted by Congress under something called Spending Clause Authority, that they're akin to a contract, the entities receive federal funding and in exchange for that funding, they agree to comply with laws such as Section 504 or 1557. And the fifth circuit said, well, that contract analogy, if you look at contracts, you don't usually get emotional distress damages under contracts.

Claudia Center:

And so for that reason, we do not think that these entities were unnoticed, that they might be liable for emotional distress damages when they accepted federal financial assistance. So the disability community did a brief in the fifth circuit and they did a brief in the Supreme Court and the briefs detailed all of the notice that the recipients of federal financial assistance have received over the decades. Notice from Congress, from agencies, from appellate courts, from trial courts, and have also underscored how important these remedies are, and they're often the only remedy that is available to a person such as in the case of Jane Cummings.

Peter Blanck:

Oh, let me follow up Claudia, and Victoria and Arlene feel free to jump in. So here you have a negative fifth circuit ruling from the perspective of the disability community and in the ninth circuit, you had a positive one. Why is the court taking these cases? Is there a split among the circuits, or is this a particular area they're interested in? How do we get to this point?

Claudia Center:

Sure. Actually, the fifth circuit in Cummings made very clear that it was considering an 11th circuit case called Sheely, which was very, very similar. In that case, it was a blind woman who wanted to access a medical facility with her service dog. But the Sheely case said, no, the funding recipient is on notice of the possibility of emotional distress damages. In fact, it should have been foreseeable to the medical facility that what they did to this plaintiff, excluding them on the basis of their disability and their need for service animal, that it should have been foreseeable that that would cause emotional distress damages.

Claudia Center:

And so the fifth circuit decided that Sheely case and said explicitly, we understand this case exists and we reject it. We think the proper analogy is contract and the funding recipients not on notice. So there was really a clear split in the authority that the fifth circuit acknowledged explicitly. And in that situation, the Supreme Court will often grant review.

Peter Blanck:

Oh, got it. That's very helpful. And Victoria, was there such a split in the CVS case, how did that get to the Supreme Court?

Victoria Rodríguez-Roldán:

Oh, that is an excellent question. Because what happened in the case of the CVS case, and you can correct me if I'm wrong is I'm not the litigator in the room, is that we have a very good decision from the ninth circuit. The question is, why is Supreme Court taking it? Usually when there's circuit split, it's pretty easy to get it. Even then the Supreme Court doesn't like taking cases that much.

Peter Blanck:

Arlene, it was just because it was the ninth circuit that's Supreme Court stuck it nose out?

Arlene Mayerson:

I think that, as I said, the issue of disparate impact, this is why I particularly fear this court, this case being before the Supreme Court, that issue has

been on the target on the bullseye for conservative jurists ever since the sixties.

Peter Blanck:

But tell us in plain language, why, why is this such a politicized issue?

Arlene Mayerson:

Well, it all starts with race discrimination because it's one thing to have what they... The Supreme Court has decided that in order to have a constitutional claim for race discrimination, you have to show animus. And the race discrimination is filled with obviously a history of extreme animus. And that's what they're comfortable with.

Arlene Mayerson:

They're comfortable like, if you had animus and you excluded someone for that reason, okay, we can get that that's called civil rights. The classic disparate impact case from the seventies is, but what about if a high school diploma is required for a job and particular people of color are less likely to have that high school diploma, and therefore that's a discrimination claim. They don't like that. They call that social engineering, they don't want it to go that far.

Arlene Mayerson:

And so that's already they've already been pretty successful in the area of race discrimination, as far as the Title VI, which 504 was based on, but they don't like the idea that something that has the effect, which wasn't based on an intention would be recognizable under any of these laws.

Arlene Mayerson:

And now, there's a big move in all the civil rights bar to recognize the fact, particularly in the context of race and ethnicity of implicit bias, which is, all the employers know better now, all the various entities know better now than to say, we don't want you because you're black. So there's all these veiled policies that get to the same result. And that's why the civil rights bar is so determined to keep that.

Peter Blanck:

And remind us, just building on that point why disability is different than race in this regard.

Arlene Mayerson:

So while there has been a horrible history of animus and terrible treatment of people with disabilities, there's also this gloss of good intentions, which has also resulted in the same exclusion, the same segregation of people with disabilities. So for instance, an example I always use is that there's studies that find that the inclination to pity someone who is blind corresponds with the inclination to advocate for segregation. So it's a tricky area because people often think they're acting, it's paternalism.

Arlene Mayerson:

It's similar in gender also. It's, oh, we're going to outlet you have this job because it's not good for your fair sex. And, oh, we don't think you're you can handle this job because of your disability. So it's it has come up in a different context. There is also a lot of animus, don't get me wrong, but most of the cases involve false stereotypes or low expectations that are not based on any facts, or just prejudice, but not prejudice with animus, prejudice about what someone can do.

Peter Blanck:

And so that would include basically thoughtlessness like thoughtlessness.

Arlene Mayerson:

Thoughtlessness.

Peter Blanck:

Yeah. Very interesting. So Victoria, obviously that manifests itself in the HIV community, the AIDS community, what's your take on what Arlene was just saying?

Victoria Rodríguez-Roldán:

One thing to keep in mind, often the HIV world and the rest of the disability worlds can live in separate planets to extent, aren't really aware that they're part of each other. And then the process, we can go back all the

way to the 1990s and the inclusion by the Supreme Court of HIV under the protection of the ADA.

Victoria Rodríguez-Roldán:

So part of the reason why this is so important is precisely how it impacts, for example, with chronic illnesses, immuno compromise illnesses and so on. Because for example, in the CVS case, if I remember correctly, the plaintiff, part of the issue was disparate impact towards people living with HIV, for example.

Victoria Rodríguez-Roldán:

That is one fact and a significant amount of disparate impact cases harmed the most precisely with chronic invisible illnesses basically, where, for example, let's say a requirement that you cannot take X amount of breaks at a workplace or things like that in an accommodation, that is a form of disparate impact when it starts harming the person with a disability. And of course, in the employment context, we go through a reasonable accommodation process, but that is still a rule that imposes a disparate burden to an extent, on people with a disability that cannot do that thing. So that's a problem. So much of disability discrimination is precisely the unintentional type, the well intended.

Victoria Rodríguez-Roldán:

And I like to joke that a significant amount of all the worst initiatives in disability are made with the best of intentions because they're made by the, let's help these poor people of disabilities intention. And when we go into that, we create further and further disparate impacts that disproportionate people with disabilities.

Peter Blanck:

Not a closing argument, Claudia, but your thoughts, have we omitted any important points? Are there other cases that you think should be on our radar screen, and what are your foreshadow? You can take any, or all of those points and your closing remarks?

Claudia Center:

This is Claudia. I think the most important case for the disability community, the most risky case is the CVS versus Doe case because it really threatens the ability of people with disabilities to bring complaints under section 1557 to access critical health benefits. And many of those claims are put under the label of disparate impact. I'm also keeping an eye out on the Supreme Court's review of United States versus by Vaello-Madero, which is about whether the exclusion of Puerto Rican residents from the Supplemental Security Income program, the SSI program, is a violation of equal protection because there's no rational basis for excluding residents of Puerto Rico.

Claudia Center:

I think that the disability community has an interest in equal protection with the LGBT cases of the past 10 years, we've seen a sort of renaissance of rational basis actually have some some force to, a renaissance of a case called Cleburn that is from the late eighties that said disability constitutional law case. And so I'm interested to see what happens with this case about SSI and residents of Puerto Rico.

Peter Blanck:

If there are adverse decisions in CVS, for example, would there be remedies in state law or other avenues that people could pursue such claims?

Claudia Center:

Yeah. Whatever happens, we will do what we can to advocate for our communities. We will make claims that are permitted under federal law in federal court, and we will make claims in state court under state law. Some states have very good state courts and state laws and some states do not. So as with issues with voting and abortion, it's really hard to let go of federal law because we want everyone to have the same rights

Peter Blanck:

Well said, Victoria, I know you wanted to pick up on that and perhaps discuss state law issues?

Victoria Rodríguez-Roldán:

Well, yeah, I'm just going to say, it's very important also that we do not neglect whether our state legal protection, obviously we want, as Claudia said, state protection for everyone, and it's hard to let go of the federal protection, but basically many attorneys, many civil rights attorneys often have a bit of lack of imagination when it comes to engaging in litigation and focus solely on federal argument, and shouldn't be afraid of exploiting state law whenever it's available.

Victoria Rodríguez-Roldán:

That's a way of preserving the claim if there's an identical statute or if the law is even better than the federal law. One thing I would say as the close thing is that I'm very much interested in the Puerto Rico case around SSI, I do feel very strongly that how it goes will tell us a lot of the future of the disability rights movement of the next several decades, to be very honest.

Peter Blanck:

Thank you, Victoria. As appropriate, Arlene, you're going to have the last word, but I'm thinking maybe as some of our listeners are, if there's an adverse ruling in CVS, why doesn't Congress change the law?

Arlene Mayerson:

I did just want to point out that every case we've talked about, that Claudia talked about the blind woman, the deaf woman, the people with AIDS and CVS, all of those cases involve accommodations that the individual needed and wanted.

Arlene Mayerson:

And the danger of the CVS case is that it could say, well, we didn't exclude her because she was deaf, we excluded her because she wanted an interpreter. We didn't exclude her because she was blind, we excluded her because we don't like dogs. It can get very, very scary.

Arlene Mayerson:

The ramifications that we fear have a lot to do with the political agenda of many of the justices in the Supreme Court. And so even if, let's say, we fixed

1557 and say, well, it's not based on 504, it's based on the ADA, the pronouncements being broad is what we fear.

Arlene Mayerson:

So the Supreme Court's decisions have such a tremendous direct impact on people with disabilities that the disability community has also worked very hard to try to get the Supreme Court, not to hear certain cases. And in California, there was a case where the medical board decided to not allow someone to be a doctor because of their mental illness.

Arlene Mayerson:

The community lobbied, demonstrated, did so much that the state of California withdrew its surpetition to the Supreme Court and actually said, we were withdrawing this because we don't want to do harm to the ADA. And so it was address the tremendous victory of the community.

Arlene Mayerson:

And then in another case that was before the Supreme Court, which had to do with how much ADA applies to supreme court. The city of San Francisco had taken a very regressive point of view. The disability community met with them and sure enough, they changed their position actually standing in front of the Supreme Court. So I want to say that in general, one thing that I just love about disability rights law is that the disability rights community and disability rights law are intertwined, that it's owned by the community.

Peter Blanck:

Well, thank you, Arlene. I could listen to the three of you for another hour still. What I take away from this, not just substantively as I've had the chance and our listeners have had the chance to listen to three brilliant legal minds who were at the forefront of cutting edge legal advocacy, disability advocacy, who are from essentially three generations of leaders in this area.

Peter Blanck:

And it leads me optimistic in light of the challenges ahead, not minimizing those that people like yourself will continue to make an important difference in the civil rights lives of us all. And for that, I thank you three. I hope that we'll have you back again. It's been a marvelous discussion and thank you on behalf of our listeners.

Barry Whaley:

Thank you. Thank you Peter, listeners, our guests on this episode of Disability Rights Today have been Arlene Mayerson, Directing Attorney Emerita of Counsel Disability Rights Education and Defense Fund, DREDF, Victoria Rodríguez-Roldán, Senior Policy Manager of AIDS United, and Claudia Center, Legal Director for DREDF.

Barry Whaley:

To access Disability Rights Today episode, visit our website at disabilityrightstoday.org. All episodes are archived with streamed audio, accessible transcripts and resources. You can listen to Disability Rights Today on SoundCloud, and you can download Disability Rights Today to your mobile device podcast app by searching for Disability Rights Today.

Barry Whaley:

If you have questions about the ADA, you can submit them anytime at disabilityrightstoday.org or contact your regional ADA Center. That number is 1-800-949-4232. And remember, those calls are always free and their confidential. Disability Rights Today is a program of the Southeast ADA Center and the Burton Blatt Institute. Thanks for listening today. Visit Disability Rights Today for more information and as our discussion today emphasizes, your rights matter.

Disability Rights Education & Defense Fund or DREDF is based in Berkeley, California at the Ed Roberts Campus, which is an accessible community center focused on supporting people with disabilities. DREDF was founded in 1979 by people with disabilities and by parents of children with disabilities. DREDF's board and staff led by people with abilities and works

to advance and protect the civil and human rights of disabled people through education, advocacy, and law reform.