No. 21-56195

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

C.L.,

Plaintiff-Appellant,

v.

DEL AMO HOSPITAL, INC.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
Case No. 8:18-cv-004575-DOC-DFM
Hon. David O. Carter

BRIEF OF MENTAL HEALTH AMERICA, ASSISTANCE DOGS INTERNATIONAL, PSYCHIATRIC SERVICE DOG PARTNERS, NATIONAL DISABILITY RIGHTS NETWORK, NATIONAL COUNCIL ON INDEPENDENT LIVING, NATIONAL CENTER FOR YOUTH LAW, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, AUTISTIC SELF ADVOCACY NETWORK, DISABILITY RIGHTS CALIFORNIA, MENTAL HEALTH AMERICA OF CALIFORNIA, AND CALIFORNIA FOUNDATION FOR INDEPENDENT LIVING CENTERS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

None of the *amici curiae* has a parent corporation. No publicly held corporation owns 10% or more of the stock of any of the *amici curiae*.

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INTEREST OF *AMICI CURIAE*

Amici are various non-profit organizations committed to advancing and defending the rights and interests of people living with disabilities.[1]

Mental Health America ("MHA") is the nation's oldest and leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and to promoting the mental health of all. MHA has 145 affiliates across the nation dedicated to improving the mental health of all Americans.

Assistance Dogs International ("ADI") is an international non-profit organization comprised of 147 accredited non-profit organizations that train and place assistance dogs with individuals with disabilities. ADI supports their efforts with educational opportunities, promulgation of standards and accreditations, and by advocating to protect and expand the access rights of individuals partnered with an assistance dog. ADI Standards have become the benchmarks to measure excellence worldwide in the assistance dog industry. Studies show that assistance dogs empower people to live a higher quality of life. ADI considers it a fundamental right of individuals with disabilities to determine for themselves what assistance measures provide them a life of independence, productivity, and dignity.

[1] Appellant consented to the filing of this amicus brief, but Appellee did not. Thus, amici curiae have moved for leave to file. No party's counsel authored this brief in whole or in part, and no person, besides *amici curiae*, their members, and their counsel, contributed money intended to fund preparation or submission of this brief.

Psychiatric Service Dog Partners, Inc. ("PSDP") is a non-profit corporation promoting the mental health of people using service dogs for psychiatric disabilities by educating, advocating, providing expertise, facilitating peer support, and promoting responsible service dog training and handling. PSDP works for legislative and regulatory change and has advised the Departments of Justice and Transportation on issues involving service and support animals. PSDP educates businesses and the general public about service animals, but the majority of those who receive PSDP's most direct support are individuals with disabilities who primarily train their own dogs as service animals. PSDP does this work because psychiatric service animals both enable community integration and literally save lives.

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. Congress established P&A and CAP agencies to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. These agencies serve every state, U.S. territory, and the Native American Consortium in the Four Corners region. Collectively, the P&A and CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The National Council on Independent Living ("NCIL") is the oldest cross-disability, national grassroots organization run by and for people with disabilities. NCIL's membership is comprised of centers for independent living, state independent living councils, people with disabilities and other disability rights organizations. NCIL's mission is to advance the independent living philosophy and to advocate for the human rights of, and services for, people with disabilities to further their full integration and participation in society.

The National Center for Youth Law ("NCYL") is a non-profit organization that works to build a future in which every child thrives and has a full and fair opportunity to achieve the future they envision for themselves. For five decades, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support, and opportunities they need. It is important to NCYL that the rights of youth who use service dogs and may need in-patient hospital services are recognized and protected.

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 disability civil rights laws.

The Autistic Self Advocacy Network ("ASAN") is a national, private, non-profit organization, run by and for autistic individuals. ASAN advocates to end stigmatization, discrimination, and violence against autistic people and others with disabilities; promotes access to health care and long-term supports in integrated community settings; and educates the public about the access needs of autistic people. ASAN takes a strong interest in cases that affect the rights of individuals with disabilities to participate fully in community life with the same rights as everyone else.

Disability Rights California ("DRC") is the non-profit P&A agency mandated under state and federal law to advance the legal rights of Californians with disabilities. Established in 1978, DRC is the largest disability rights legal advocacy organization in the nation. DRC works to ensure people with disabilities have access to necessary services and supports that enable them to live in the community and avoid institutionalization. In 2019 alone, DRC assisted more than 24,000 Californians with disabilities.

Mental Health America of California is a non-profit advocacy organization that works to ensure that every Californian who requires mental health services and supports is able to receive the mental health services they need and are not denied any other benefits, services, rights, or opportunities based on their need for mental health services.

California Foundation for Independent Living Centers ("CFILC") is a non-profit organization which supports 25 member California Independent Living Centers in advocating for systems change and in creating access and integration for people with disabilities in their community. The CFILC was founded in 1976 with a mission to increase access and equal opportunity for people with disabilities by building the capacity of Independent Living Centers.

SUMMARY OF THE ARGUMENT

This Court should reverse the district court's decision holding that Defendant-Appellee Del Amo Hospital, Inc. ("Del Amo") established its affirmative defense of fundamental alteration.

The court's ruling contradicts the Congressional intent behind the ADA and guidance promulgated by the Department of Justice ("DOJ") (§ I.A) by endorsing Del Amo's decision to exclude Aspen. The decision further ignores current evidence on the ability of service dogs to improve treatment outcomes (§ I.B). The court's consideration and acceptance of these arguments also undermines fundamental objectives of the ADA (§ II.A), interferes with C.L.'s express right to self-determine how she manages her disability (§ II.B), and sanctions medical treatment for individuals with disabilities that is below accepted standards for patient care (§ II.C).

The district court's reasoning, if this Court adopts it, will facilitate discriminatory treatment of people with disabilities who rely on service animals to participate in society and access vital services. The district court's misinterpretation of the fundamental alteration defense lowers the bar for public accommodations that wish to exclude service animals. Left unchecked, this erodes the rights of people covered under the Americans with Disabilities Act ("ADA") to determine for themselves what works for them. *Amici* will address how the district court's decision undermines the ADA's goals, conflicts with regulations, and reaches a conclusory application of law that poses substantial risks for covered individuals.

ARGUMENT

For many, service animals open doors to a world otherwise ill-equipped to accommodate their needs. For some, this support is more apparent. For others, service animals perform supportive roles that are less conspicuous, but no less transformational. It is for these reasons that Congress and the DOJ have clearly and forcefully provided that service dogs "shall" accompany their handlers in all places of public accommodation, including hospitals. The district court's lenient application of the intentionally limited fundamental alteration defense is incompatible with the ADA's remedial purpose and with research expressly contradicting Del Amo's justifications.

If affirmed, the district court's application of fundamental alteration would facilitate the paternalistic discrimination the ADA was designed to overcome and renege on its promise to expand and preserve individual autonomy, access to vital services, and equal treatment.

I. DEL AMO'S DECISION VIOLATES THE ADA AND CONTRADICTS SCIENTIFIC EVIDENCE ON SERVICE DOGS.

The district court's decision contradicts Congressional intent and DOJ guidance requiring health facilities to permit access to service dogs. Del Amo asks this Court to insulate it from the requirements of Title III by excusing its decision to exclude Aspen from its facility as a fundamental alteration. *See PGA Tour, Inc. v. Martin*, 532 U.S. 661, 689 (2001) ("[P]etitioner's claim that all the substantive rules for its 'highest-level' competitions are sacrosanct and cannot be modified under any circumstances is effectively a contention that it is exempt from Title III's reasonable modification requirement.").

Del Amo argued, and the district court accepted without further inquiry, that the mere presence of a trained service dog would cause such a substantial alteration that it would alter the essential nature of Del Amo's program. This assertion cannot reasonably satisfy Del Amo's burden.[2] It also frustrates the ADA's purpose and

[2] *See Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1082 (9th Cir. 2004) (noting that once a plaintiff establishes coverage, "the defendant must make the requested modification unless it proves that doing so would alter the fundamental nature of its business.").

runs afoul of scientific evidence documenting the essential role and impact of service dogs.

A. Del Amo's Fundamental Alteration Defense Contradicts Congressional Intent and Guidance Promulgated by the Department of Justice.

The ADA grants service animals broad access to places of public accommodation because the drafters understood that barring service animals was tantamount to excluding their handlers. The legislative history, enforcement, and case law interpreting the ADA recognize right of people with disabilities to be accompanied by a service dog in medical settings and require these facilities to modify their policies and practices accordingly. The Committee on Labor and Human Resources' report accompanying S. 933 emphasizes the application of the reasonable accommodation requirement to service animals:

> A public accommodation which does not allow dogs must modify that rule for a blind person with a seeing-eye dog, a deaf person with a hearing ear dog, or a person with some other disability who uses a service dog.

S. Rep. No. 101–116 at 62–63 (1989). As public accommodations, medical facilities must afford the same access to treatment when deciding whether to treat patients with or without disabilities. Congress intended the right to access public accommodations to include having that access facilitated by a service animal.

Courts have honored the intent of the ADA by liberally interpreting its protections. *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."); *see also Barden v. City of Sacramento*, 292 F.3d 1073, 1077 (9th Cir. 2002) ("[T]he ADA must be construed broadly . . . to effectively implement the ADA's fundamental purpose of provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.") (internal quotation marks omitted). A liberal construction of the ADA's protections begs a restrained interpretation of its exceptions.

The DOJ defines "fundamental alteration" as "a modification that is *so significant* that it alters the *essential nature* of the goods, services, facilities, privileges, advantages or accommodations offered." U.S. Dep't of Just., *ADA Title III Technical Assistance Manual* § III-4.3600 (2022) (emphasis added). This is a narrow defense that must be substantially supported by evidence demonstrating "an individualized inquiry" into whether the request is "reasonable under the circumstances" and "necessary for that person." *Martin*, 532 U.S. at 688. Only after undertaking an earnest investigation and attempting to accommodate can a covered entity reasonably find the modification so untenable it would "work a fundamental alteration." *Id.*

In *Baughman v. Walt Disney World Co.*, Disney contended that Ms. Baughman had access to a theme park because she *could* use a scooter or powered wheelchair, which were permitted, instead of the Segway she preferred to use,

which Disney prohibited. 685 F.3d 1131, 1136 (9th Cir. 2012). This Court summed up Disney's position as "even if Baughman's access is made 'uncomfortable or difficult' by [Disney's] policies, any discomfort or difficulty she may suffer [from having to use a wheelchair] is too darn bad." *Id.* This Court observed that if covered entities need only make changes where people with disabilities cannot otherwise make do, "the ADA would require very few accommodations indeed." *Id.* at 1134. Extending the logic, this Court noted:

> [A] paraplegic can enter a courthouse by dragging himself up the courthouse steps . . . . And no facility would be required to provide wheelchair-accessible doors or bathrooms, because disabled individuals could be carried in litters or on the backs of their friends. That's not the world we live in, and we are disappointed to see such a retrograde position.

Id. at 1134–35.

In accordance with the ADA's mandate to promulgate regulations, 42 U.S.C. § 12186(b), the DOJ has protected the right to access through express guidance and active enforcement. The DOJ instructs health care facilities "that the broadest feasible access be provided to service animals," 28 C.F.R. pt. 36, app. C, unequivocally recognizing the ADA's coverage of psychiatric service animals and extolling their benefits. *See id.* at app. A (reiterating "psychiatric service animals . . . are protected by the Department's present regulatory approach . . . [and] can be trained to perform a variety of tasks . . . includ[ing] reminding the individual to take medicine, providing safety checks or room searches for

individuals with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations.").

The DOJ further clarified that, "a healthcare facility must . . . permit a person with a disability to be accompanied by a service animal in all areas of the facility in which that person would otherwise be allowed." Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed.Reg. 56,236, 56,272 (Sept. 15, 2010). The DOJ's Disability Rights Section also advises that in-patient healthcare facilities must allow service animals and cannot exclude them "on the grounds that staff can provide the same services." U.S. Dep't of Just., Frequently Asked Questions About Service Animals and the ADA (2015), https://www.ada.gov/regs2010/service_animal_qa.html.

The general rule that service dogs must be granted access alongside their handlers is subject to limited exceptions that must be supported by evidence.[3] The DOJ recognizes that some "[z]oonotic diseases can be transmitted to humans through bites, scratches, direct contact, arthropod vectors, or aerosols." 75 Fed.Reg. at 56,272. The DOJ guidance accordingly provides it is "generally appropriate to exclude a service animal from limited-access areas that employ general infection-control measures, such as operating rooms and burn units," but is

[3] For example, DOJ rules regarding "service animals in a hospital setting" defer to the Centers for Disease Control and Prevention's ("CDC") guidance "on the use of service animals in a hospital setting." 75 Fed.Reg. at 56,272.

careful to note this does not include "such areas as admissions and discharge offices, the emergency room, inpatient and outpatient rooms, examining and diagnostic rooms, clinics, rehabilitation therapy areas . . . and all other areas of the facility where healthcare personnel, patients, and visitors are permitted without taking added precautions." *Id.*

The ADA empowers the DOJ to investigate complaints and bring civil actions to enforce Title III of the ADA. 42 U.S.C. § 12188(b). The DOJ's enforcement efforts reinforce that medical facilities must accommodate and permit service animals. In one such matter, a prospective patient who "uses a service dog for PTSD and an anxiety disorder" was allegedly denied access from a clinic because of his service dog. Letter of Resolution Between the United States of America and Saint Joseph Hospital and SCL Health, D.J. No. 202-13-314 (July 31, 2018), *available at* https://www.ada.gov/sjh_lof.html. The health care corporation operating the clinic agreed to resolve the violation by compensating the patient and instituting system-wide reforms throughout its eight hospitals and over 100 clinics. *Id.* These reforms included revising its policies, posting notices, training all managers, employees, and volunteers, and agreeing to discipline any future noncompliance. *Id.* In another matter, a medical office agreed to complete a similar list of remedial actions and to submit to compliance monitoring for three years after refusing to treat a patient because he brought his service dog. *See* Settlement

Agreement Between the United States of America and Dr. Bruce Berenson, M.D., P.A., USAO No. 2011-VO-0468, DJ No. 202-18-267 (Aug. 7, 2012), *available at* https://www.ada.gov/berenson_settle.htm.

Here, C.L.'s symptoms were no different from those of Del Amo's other patients. C.L.'s symptoms were not beyond Del Amo's expertise or the scope of its practice. The only thing that separated C.L. from Del Amo's other patients, who were granted unimpeded access, was that she asked to bring her service dog. Del Amo simply ignored clearly defined statutory obligations and express regulatory guidance and, in doing so, made treatment less accessible to C.L. and potentially less effective.

B. Del Amo's Explanations for Excluding Aspen Contradict Current Scientific Evidence on the Role Service Dogs Play and Their Impact on Treatment Outcomes.

Del Amo argues that Aspen was excluded because its staff could perform the same functions and Aspen might interfere with C.L.'s treatment. These justifications contradict research documenting the impact service dogs can have on the daily functioning of people with psychiatric disabilities and on PTSD treatment in particular.

Like a cane or walker, a service dog is "an assistive device on which patients with a physical or psychiatric disability rely to support their independence in day-to-day functioning." Russ Muramatsu et al., *Service Dogs, Psychiatric*

Hospitalization, and the ADA, 66 Psychiatric Services 1, 87 (2015). Research shows that service dogs can be life-changing for those with PTSD. One study evaluated 15 combat veterans with PTSD participating in a service dog program and found that *all* participants reported improvements in anxiety and sleep disturbances. *See* Diane Scotland-Coogan, *Anxiety Symptoms and Sleep Disturbance in Veterans with Posttraumatic Stress Disorder: The Impact of Receiving and Training a Service Dog*, 24 The Qualitative Report 10, 2655 (2019). One participant shared that "before he received and trained his service dog there would be times when he would get so anxious he would pass out," but since finishing the program one year prior, he had not experienced any similar episodes. *Id.* at 2664.

Another study sought to quantify the daily impact of service dogs on veterans with PTSD. *See* K.E. Rodriguez et al., *Defining the PTSD Service Dog Intervention: Perceived Importance, Usage, and Symptom Specificity of Psychiatric Service Dogs for Military Veterans*, 11 Frontiers in Psychology 8, 1638 (2020). Researchers collected data on trained service dog behaviors, including alerting to moments of elevated anxiety and waking their handler from nightmares. They found that "[a]mong those with a service dog, all seven [trained] tasks were rated on average as 'moderately' to 'quite a bit' important for veterans' PTSD" and that participants used service dog tasks "on average 3.16 times per day, with

individual tasks ranging from an average of 1.36–5.05 times per day." *Id.* at 5.

Del Amo's argument that staff could perform the same functions as Aspen is not only explicitly prohibited by DOJ guidance, *supra* § I.A, but also disproven by the record. Aspen wakes C.L. from nightmares, and her quick response time prevents the nightmares from increasing in intensity. ER269. C.L. testified that Aspen's ability to wake her from nightmares has not only improved her sleep, but also improved her ability to function throughout the day. ER366. Conversely, Ms. Rahimi testified that it could take up to 15 minutes for Del Amo staff to arrive at C.L.'s room. ER877–79. C.L. noted that she often tried to force herself to stay awake to avoid nightmares. ER339. In asserting that staff could perform the same specialized services as Aspen, Del Amo put C.L.'s treatment outcomes at risk. Individuals with PTSD often experience impaired cognitive function and sleep deprivation as a result of their symptoms. Scotland-Coogan, *supra*, at 2656. A study found that the cognitive effects of PTSD "impede treatment participation," and that sleep deprivation "causes problematic issues such as more severe daytime PTSD symptoms, higher suicide rates, substance abuse, inferior treatment outcomes, and exacerbates co-occurring psychopathology." *Id.*

Del Amo's decision to exclude Aspen not only ignores the body of research establishing the legitimate functions of psychiatric service dogs, but also threatens

C.L.'s ability to rely on Aspen after discharge.[4] Katie Gonzalez, an expert service dog trainer, testified regarding the impact that a lengthy separation would have on Aspen's training:

> [I]f I were going to pick up a dog that had been boarded that long in a typical boarding facility, I don't expect for their training to be intact. I would expect that after multiple sessions that the training would come back, but it would take a lot of work. The bond—that would be horrible to the bond.

ER673–75.

Del Amo's second justification for excluding Aspen—that Aspen would impede C.L.'s ability to benefit from Del Amo's treatment—further contradicts current evidence on the ability of dogs to regulate human stress hormones and improve treatment for PTSD. Studies show that dogs can reduce stress in humans as measured through secretion of cortisol. *See* Kerstin Meints, et al., *Can Dogs Reduce Stress Levels in School Children? Effects of Dog-Assisted Interventions on Salivary Cortisol in Children with and without Special Educational Needs Using Randomized Controlled Trials*, PLOS ONE 17(6): e0269333 (2022) ("[S]alivary cortisol is accepted as [a] reliable biomarker in social science research."); K.E. Rodriguez et al., *The Effect of a Service Dog on Salivary Cortisol Awakening Response in a Military Population with Posttraumatic Stress Disorder (PTSD),* 98

[4] Separation has the effect of breaking the handler-service dog bond and makes the dog less effective. *See Crowder v. Kitagawa*, 81 F.3d 1480, 1482 (9th Cir. 1996) ("The quarantine also renders guide dogs susceptible to irretrievable loss of their training.").

Psychoneuroendocrinology 202 (2018); *see also* Scotland-Coogan, *supra*, at 2658 ("When the hypothalamic-pituitary-adrenal (HPA) axis is activated by a stressful event, it will trigger the release of cortisol.").

One study found that sessions with a dog had a significant impact on children's cortisol levels. Researchers took saliva samples from children before and after 20-minute sessions with dogs and their handlers and found that "[d]og interventions lead to significantly lower stress in children with and without special educational needs compared to their peers in relaxation or no treatment control groups." Kerstin Meints, et al., *supra*. Other studies have shown similar results in adults, finding that positive human-canine interactions lead to significantly lower cortisol levels and have a greater impact on lowering stress than the presence of a human friend. *See* J. S. Odendaal & R. A. Meintjes, *Neurophysiological Correlates of Affiliative Behaviour between Humans and Dogs*, 165 Vet. J 3, 296–301 (2003); John Polheber & Robert Matchock, *The Presence of a Dog Attenuates Cortisol and Heart Rate in the Trier Social Stress Test Compared to Human Friends*, 37 J. Behav. Med. 860 (2013).

Canine impact on cortisol levels is particularly important for those with PTSD. "In contrast to healthy individuals, individuals with PTSD tend to experience hyperarousal-induced dysregulation of HPA activity leading to atypical cortisol profiles." K.E. Rodriguez et al., *supra*, at 3; *see also* Scotland-Coogan,

supra, at 2658 ("[F]indings suggest that treatment for posttraumatic stress disorder should address alterations in cortisol levels."). Morning cortisol output outside of the normal range has been consistently linked to acute and chronic stress, and research has shown that PTSD is associated with lower morning cortisol output. *See* Yoichi Chida & Andrew Steptoe*, Cortisol Awakening Response and Psychosocial Factors: A Systematic Review and Meta-Analysis*, 80 Biol. Psychol 3, 265–278 (2009); K.E. Rodriguez et al., *supra*, at 3. Fortunately, dogs can aid this biological response in people with PTSD. Researchers studying veterans who use PTSD service dogs found that "after controlling for demographic and physical health covariates, having a PTSD service dog was significantly associated with a higher morning cortisol awakening response." K.E. Rodriguez et al., *supra*, at 9.

Current evidence on the relationship between dogs and cortisol indicates that Del Amo's decision to exclude Aspen was not only contrary to available evidence, but also potentially harmful to C.L.'s treatment. Research on the relationship between cortisol awakening response and PTSD found that a higher cortisol awakening response prior to treatment was associated with a reduction in PTSD symptoms post-treatment. A.E. Rapcencu et al., *Pre-Treatment Cortisol Awakening Response Predicts Symptom Reduction in Posttraumatic Stress Disorder After Treatment*, 82 Psychoneuroendocrinology 1 (2017); *see also* Daryl O'Connor et al., *Resilience and Vulnerability Factors Influence the Cortisol*

Awakening Response in Individuals Vulnerable to Suicide, 142 J. Psychiatric Research 312 (2021) (finding that risk factors for suicide are associated with lower cortisol awakening responses). Given that patients with service dogs had higher cortisol awakening responses, this research suggests that Aspen's presence at the hospital supports C.L.'s testimony that Aspen would have improved her symptoms, thereby supporting rather than impeding her treatment. ER310–12.

II. DEL AMO'S DECISION UNDERMINES A FUNDAMENTAL GOAL OF THE ADA AND CONTRADICTS SCIENTIFIC EVIDENCE ON PATIENT-CENTERED CARE.

Respect for individuality and autonomy is a central value in our society and legal system. From its inception, the ADA has aimed to curb the prejudicial treatment of individuals with disabilities to facilitate access, participation, and autonomy. Commitment to these goals not only serves that foundational intent, but also aligns with evidence-backed approaches for addressing shortfalls in patient treatment and health outcomes.

A. Del Amo's Decision Undermines Core Objectives of the ADA to Facilitate Greater Independence of People with Disabilities and Protect Their Rights from Prejudice and Misinformation.

The ADA enshrined broad new protections to ensure that all people with disabilities, apparent or imperceptible, would be afforded the same rights to independence, self-determination, and the dignities of equal access as people without disabilities. This goal is stated plainly in the text of the law, "to assure

equality of opportunity, full participation, independent living, and economic self-sufficiency." 42 U.S.C. § 12101(a)(7).

The drafters understood that achieving this result would require insulating the rights of covered people from the incursions and subjective treatment that flow from the public's ignorance, apathy, or ambivalence. *See* Committee on Education and Labor, *Legislative History of Public Law 101-336* at Vol. 1 at p. 122, *The Americans with Disabilities Act* (1991) (quoting *School Bd. Of Nassau Cty. v. Arline*, 480 U.S. 273, 284 (1987) ("Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from the actual impairment."). The ADA and its authors sought to remedy these wrongs. *See, e.g.*, 136 Cong. Rec. S9689 (July 13, 1990) (statement of Sen. Tom Harkin) ("You knew in your hearts what we now write into law—that discrimination based on fear, ignorance, prejudice, and indifference is wrong.").

The legislature's intent to write a law that shielded individuals from misconceptions and prejudices was exemplified in an eleventh-hour debate over a proposed amendment. The Chapman Amendment was a measure that added an exception for restaurants to remove employees from food handling positions solely for being HIV positive. National Council on Disability, *Equality of Opportunity: The Making of the Americans with Disabilities Act* ("*Equality of Opportunity*") Ch.

6, pp. 1–2 (1997). It had passed in the House despite statements from public health officials that HIV-AIDS was not readily transferable through food handling. *Id.* The measure nearly forced a choice between compromising the ADA's inclusive values and derailing its future.[5]

Over the course of several closed meetings, members of the disability rights community conveyed similar messages and Senator Orrin Hatch, initially a strong advocate for the amendment in these meetings, began to yield. *Id.* at Ch. 6, p. 7. Senator Hatch devised a compromise to appease the amendment's supporters—instead of singling out HIV-AIDS based on fear, the Secretary of Health and Human Services would create an annual list "of communicable and contagious diseases that were knowingly able to be transmitted through food handling." *Id*. The law would only permit limitations backed by evidence and supported by science. Introducing his amendment, Senator Hatch stated, "I think if we would rely more on science and a little less on fears and misperception we would be better off as a society, as a nation, and there would be less prejudice." 136 Cong. Rec. S9533 (July 11, 1990) (statement of Sen. Orrin Hatch). This consensus

[5] Robert Burgdorf, largely credited as the author of the original ADA, wrote of the amendment: "It is blatantly irrational for Congress to rely upon . . . prejudicial attitudes, ignorance, myths, fears, misapprehensions, and reflex reactions about contagiousness . . . as the basis for an exception from the ADA's nondiscrimination mandate" and further argued the amendment would violate "the underlying principles, premises, and requirements of the very piece of legislation it is attached to." *Id.* (quoting Letter from Burgdorf to Bob Tate, June 20, 1989).

approach, relying on objective fact to resolve disputes over the scope of coverage, united the two congressional bills and would be signed into law.

In addition to its clear moral imperatives, the ADA was driven by fiscally prudent objectives. *See* 42 U.S.C. § 12101(a)(8) ("[T]he continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity . . . to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity."). Indeed, members of Congress lent their support to the bill on the belief that it would remove paternalistic constraints from the lives of covered individuals and allow them to seek meaningful employment and self-sufficiency, rather than having to rely on public benefits. *See e.g.*, *Equality of Opportunity*, *supra* at 13 ("As we empower people to be independent, to control their own lives, to gain their own employment, their own income, their own housing, their own transportation, taxpayers will save substantial sums from the alternatives.") (quoting statement of Congressman Steve Bartlett). Congress understood that independence could only be achieved through access to the services individuals without disabilities depend on—few as critical as medical care. The ADA accordingly demanded that medical providers make the same accommodations as other public services.

In denying C.L.'s accommodation, Del Amo tries to pass off reactive excuses as medical judgment. The permissive standard exemplified in the district court's ruling falls far short of the ADA's central respect for objectivity and fair treatment.

B. The Decision to Exclude Aspen Denies C.L.'s Right to Self-Determination and Personal Autonomy in How She Manages Her Disability and Is Antithetical to the ADA's Express Purposes.

The ADA expressly aims to promote the right to self-determination and personal autonomy for individuals with disabilities, and to protect those rights from prejudicial treatment based on public perception. The right of people with disabilities to choose for themselves what assistive devices, such as service dogs, or strategies best help them mitigate their conditions, navigate the world, and meet their own needs cannot be preserved if public accommodations can arbitrarily reject those choices or supplant them with their own. Autonomy and self-determination will inevitably be eroded by discrimination and subjective treatment if public accommodations are allowed to consider the individual's chosen aids in determining whether and how to grant them access.

Deference must be shown to the manner in which individuals with disabilities choose to manage their circumstances. *See e.g.*, *Sullivan By & Through Sullivan v. Vallejo City Unified Sch. Dist*., 731 F.Supp. 947, 958 (E.D. Cal. 1990) (instructive case decided under Section 504 of the Rehabilitation Act regarding the

deference to be given an individual's choice in accommodation). This reflects the goals of the ADA as well as the practical considerations associated with finding the right tool that meets the needs of each unique individual.

Deciding which tools or strategies best help manage a disability must account for many factors, including emotional and physical considerations, aesthetic norms, public awareness, economics, physical barriers, availability of support systems, systemic policies, and personal preferences. Acquiring and adapting to the use of a service dog, in particular, is a highly individualized process, often requiring special assessment, training, coordination with other treatments and therapies, and significant time and lifestyle changes. It is difficult to fathom how the ADA's goals of "equality of opportunity, full participation, [and] independent living," 42 U.S.C. 12101(a)(8), are met if the ADA is construed to require individuals with disabilities to conform such significant and personal decisions to the views of public accommodations. Therein lies the danger in the district court's judgment. It has the very practical effect of telling C.L., and others similarly situated, that public accommodations like Del Amo have the right to control how they will manage their disabilities and how they will access voluntary mental health programs and services. This is inherently antithetical to the express purposes of the ADA.

Additionally, places of public accommodation and courts are not immune to

the "stereotypic assumptions" about people with disabilities that Congress sought to combat in enacting the ADA. 42 U.S.C. 12101(a)(7). They may not perceive, understand, or agree with a person with a disability's decision to use a particular mitigating measure or corrective device. Allowing their subjective judgments and opinions to influence how the ADA is applied in a particular case threatens to undermine the ADA's goal of "clear, strong, enforceable" standards. 42 U.S.C. 12101(b)(2).

C. The Decision to Exclude Aspen Contradicts Current Evidence Regarding Patient-Centered Care as a Means to Improve Treatment Outcomes.

Del Amo's decision to exclude Aspen reflected its subjective judgement as to C.L.'s choice of corrective device and ignored available evidence on the role patient-autonomy plays in improving treatment outcomes. The expansion of patient-centered care[6] has provided a valuable tool to improve patient health outcomes and combat healthcare bias by ensuring that all patients—especially members of historically marginalized groups—maintain autonomy over their health care. Patient-centered care "is respectful of and responsive to individual

[6] Patient-centered care emerged as a health care philosophy in 1998 when medical professionals and institutions began calling for improvements in health outcomes through greater emphasis on patient-autonomy. *See* Committee on Quality of Health Care in America, *Crossing the Quality Chasm: A New Health System for the 21st Century*, 23 (2001). The year was a "watershed in the quest for improvement in the quality of health care" spurred by the issuance of "three major reports detailing serious quality-of-care concerns." *Id*.

patient preferences, needs, and values and ensur[es] that patient values guide all clinical decisions." *See* Committee on Quality of Health Care in America, *supra*, at 40. This theory of care has been incorporated into the Code of Medical Ethics,[7] and a growing body of research has supported its efficacy. *See* Ravishankar Jayadevappa & Sumedha Chhatre, *Patient Centered Care - A Conceptual Model and Review of the State of the Art*, 4 Open Health Services and Policy J. 15 (2011).

Incorporating patient-centered approaches in mental health care has been shown to improve treatment outcomes for patients. Researchers found that shared decision-making ("SDM")[8] and other patient-centered approaches in mental health care can lead to "greater follow-through with treatment plans [and] greater self-management on the part of consumers." Irma Mahone et al., *Shared Decision Making in Mental Health Treatment: Qualitative Findings from Stakeholder Focus Groups*, 6 Archives of Psychiatric Nursing 27 (2011). One study of patient

[7] The Code of Medical Ethics provides: "Physicians can best contribute to a mutually respectful alliance with patients by serving as their patients' advocates and by respecting patients' rights. Th[is] include[s] the right… To make decisions about the care the physician recommends and to have those decisions respected. A patient who has decision-making capacity may accept or refuse any recommended medical intervention." Opinion 1.1.3, American Medical Association (2022), *available at* https://www.ama-assn.org/delivering-care/ethics/patient-rights.

[8] Like other patient-centered approaches, SDM is a collaborative process that allows patients and their providers to "make health care decisions together, taking into account the best scientific evidence available, as well as the patient's values and preferences." Sarah Hawley & Arden Morris, *Cultural Challenges to Engaging Patients in Shared Decision Making*, Patient Educ. Counsel, 18–24 (2016).

decision-making found that "[d]epressed patients with higher ratings of involvement in medical decisions have a higher probability of . . . improving their symptoms over an 18-month period." Sarah Clever et al., *Primary Care Patients' Involvement in Decision-Making is Associated with Improvement in Depression*, 44 Med. Care 398 (2006). Evidence also indicates that patient-centered approaches in mental health services can assist in reducing the length of hospital stays, number of readmissions, and number of emergency department visits. *See* Timothy Carey, *Beyond patient-centered care: Enhancing the patient experience in mental health services through patient-perspective care*, 3 Patient Experience J. 46 (2016).

Del Amo's decision to exclude Aspen did not reflect the values or practices of patient-centered care. Del Amo never conducted an independent assessment of Aspen. They ignored C.L.'s preferences and values by denying her request outright. Public accommodations cannot condition their services on an individual forfeiting the assistive devices they are guaranteed by the ADA except in the most narrow, well-supported circumstances. The ADA is intended to prevent discrimination based on reflexive assumptions about an individual's disability. To achieve this, deference should be given to the methods that individual has determined best enable them to overcome their unique day-to-day challenges.

CONCLUSION

For these reasons, the decision of the district court should be reversed.

July 29, 2022.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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