No. 06-55390

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

AMC ENTERTAINMENT, INC.,
and AMERICAN MULTI-CINEMA, INC.,

Defendants-Appellants.

On Appeal from the
United States District Court for the Central District of California
The Honorable Florence-Marie Cooper, Judge
Case No. CV-99-01034 FMC

BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE

DISABILITY RIGHTS LEGAL CENTER
(formerly WESTERN LAW CENTER FOR DISABILITY RIGHTS)
Paula D. Pearlman
Shawna L. Parks
919 Albany Street
Los Angeles, CA 90015-1211
Telephone: (213) 736-1031
Facsimile: (213) 736-1428

MUNGER, TOLLES & OLSON LLP
Charles D. Siegal
Paul J. Watford
Teri-Ann E.S. Nagata
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

Attorneys for Amici Curiae
Disability Rights Legal Center,
Disability Rights Education and Defense Fund,
Legal Aid Society – Employment Law Center,
and National Disability Rights Network

IDENTITY AND INTEREST OF AMICI CURIAE

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, amici curiae respectfully submit this brief with the consent of all parties. As described below, amici are advocacy groups with significant experience and expertise in litigating claims under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213. Amici respectfully request that the Court affirm the nationwide scope of the district court's injunction. The ability to secure nationwide relief is critical to amici's interests in securing relief for more clients, establishing more consistent standards, and making more efficient use of limited resources.

Disability Rights Legal Center (formerly Western Law Center for Disability Rights) ("DRLC") is a non-profit organization that promotes the rights of people with disabilities and the public interest in and awareness of those rights by providing legal and related services. DRLC accomplishes this mission through several programs, including the Cancer Legal Resource Center (a joint program with Loyola Law School Los Angeles), Disability Mediation Center, Education Advocacy Project, Options Counseling, Lawyer Referral Service, and Civil Rights Litigation Project. Since 1975, DRLC has handled disability rights cases, including numerous employment, housing, and access cases, under California and federal civil rights laws. DRLC has been class counsel in numerous cases on

behalf of individuals with disabilities, and works to ensure the advancement of the rights of persons with disabilities on both a state and national level.

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. Throughout its history DREDF has represented the legal interests of people with disabilities through class action litigation. DREDF has experience with and an interest in ensuring availability of class action advocacy, including the opportunity to obtain nationwide injunctive or settlement relief as appropriate.

The Legal Aid Society – Employment Law Center ("LAS-ELC") is a public interest legal organization that advocates on behalf of the rights of individuals with disabilities and other underrepresented communities. Since 1970, the LAS-ELC has represented clients in cases covering a broad range of employment- and education-related issues including discrimination on the basis of race, gender, age, disability, pregnancy, and national origin. The LAS-ELC has represented and continues to represent clients faced with discrimination on the basis on their disabilities, including those with physical access claims brought under federal and

state disability rights laws. The LAS-ELC has also drafted legislation and filed amicus briefs regarding the construction and interpretation of the Americans with Disabilities Act, and California statutes including the Fair Employment and Housing Act, the Unruh Civil Rights Act, and the Disabled Persons Act.

The National Disability Rights Network ("NDRN") is the membership association of protection and advocacy ("P&A") agencies located in all fifty states, the District of Columbia, Puerto Rico, and the U.S. territories (Virgin Islands, Guam, American Samoa, and Northern Marianas Islands). P&A agencies ("P&As") are authorized under various federal statutes to provide legal representation and related advocacy services on behalf of persons with all types of disabilities in a variety of settings. In fiscal year 2005, P&As served over 73,000 persons with disabilities through individual case representation and systemic advocacy. The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities. The P&As have been actively involved in assisting persons with disabilities in gaining equal access to Title III entities, including movie theaters with stadium seating.

INTRODUCTION

In *Oregon Paralyzed Veterans of America v. Regal Cinemas, Inc.*, 339 F.3d 1126 (9th Cir. 2003), this Court held that providing wheelchair seating only in a movie theater's "objectively uncomfortable" front rows, from which "patrons must

. . . crane their necks and twist their bodies in order to see the screen," violates the ADA. In so holding, this Court expressly rejected the contrary conclusion reached by the Fifth Circuit in *Lara v. Cinemark USA, Inc.*, 207 F.3d 783 (5th Cir. 2000). *See Regal Cinemas*, 339 F.3d at 1132 & n.9. Following this Court's holding in *Regal Cinemas*, the district court here granted a nationwide injunction against Appellants AMC Entertainment, Inc. and American Multi-Cinema, Inc. (collectively "AMC"), owners of numerous movie-theater complexes nationwide that violated the ADA by providing wheelchair seating only in their front rows. AMC challenges the scope of the injunction on appeal, arguing that the district court erred in granting nationwide relief consistent with this Court's holding in *Regal Cinemas* in light of the Fifth Circuit's contrary holding in *Lara*.

Amici submit that the district court properly exercised its discretion in granting the nationwide relief necessary to remedy AMC's nationwide violations of the ADA. If AMC's argument to the contrary were accepted, the availability of nationwide relief would be greatly restricted, a result that would be not only inequitable, but also inefficient, for courts, parties, and particularly for advocacy groups such as amici. If the availability of nationwide relief were limited by circuit splits, securing such relief would require substantial increases in amici's initiation of and participation in litigation. First, amici would be forced to join a "race to courthouse" to file actions and litigate issues before an unfavorable ruling

precluded nationwide relief. Second, amici would be forced to try to monitor and intervene in actions pending in circuits across the country to ensure that clients in those circuits would not later be barred from receiving injunctive relief. These unfair and inefficient results are contrary to both law and policy.

QUESTION PRESENTED

Did the district court, presented with a circuit split in interpreting the ADA, abuse its discretion by granting nationwide relief consistent with the interpretation of this Court?

SUMMARY OF THE ARGUMENT

The district court properly exercised its discretion in granting the nationwide relief necessary to remedy AMC's nationwide violations of the ADA. AMC concedes that, as a general rule, district courts have authority to grant nationwide injunctive relief to remedy established violations. *See* Appellants' Br. at 46. Circuit splits, a common and accepted result of federal litigation, do not warrant an exception to this general rule. Rather, district courts may continue to grant nationwide relief consistent with the structure of the federal courts and the principles of federal comity. If AMC's argument to the contrary were accepted, the availability of nationwide relief would be greatly restricted, imposing undesirable burdens on courts, parties, and, in particular, on advocacy groups such as amici.

ARGUMENT

I. THE DISTRICT COURT HAD THE AUTHORITY AND DISCRETION TO GRANT NATIONWIDE INJUNCTIVE RELIEF.

AMC concedes that, as a general rule, district courts have authority and discretion to grant nationwide injunctive relief. *See* Appellants' Br. at 46. As the Supreme Court made clear in *Califano v. Yamasaki*, 442 U.S. 682 (1979), the scope of authorized injunctive relief is determined not by the extent of a district court's governing circuit, but by the "extent of the violation established." *See id.* at 702. There, the Supreme Court concluded that a district court did not abuse its discretion by certifying a nationwide class of Social Security recipients because the uniform procedures for recoupment of overpayments made "nationwide relief . . . indeed appropriate." *Id.*

This Court has applied *Yamasaki* to reject a challenge to the broad scope of an injunction, confirming that even in an individual action, "[t]he district court has the power to order nationwide relief where it is required." *Bresgal v. Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987). In *Bresgal*, the district court granted "what [wa]s in effect nationwide relief": an injunction requiring the Secretary of Labor to enforce the Migrant and Seasonal Workers Protection Act, 29 U.S.C. § 1802, throughout the forestry industry. *Id.* This Court affirmed. *Id.* The Court observed that an injunction limited to the Ninth Circuit would not provide full relief because the migrant laborer plaintiffs "may be involved with contractors whose operations

are concentrated elsewhere," or "may travel to forestry jobs in other parts of the country." *Id.*

Similarly, here, an injunction limited to the Ninth Circuit would not provide the government with full relief. Evidence presented to the district court established that AMC violated the ADA in various movie-theater complexes nationwide. *See United States v. AMC Entertainment, Inc.*, 232 F. Supp. 2d 1092, 1096, 1112 (C.D. Cal. 2002). The government's interest in remedying those violations was not limited to movie theaters located in the Ninth Circuit, but rather, extended to movie theaters located in all circuits. *See* 42 U.S.C. § 12101(b) (listing among the ADA's purposes to provide a "*national* mandate for the elimination of discrimination against individuals with disabilities" (emphasis added)). "A geographically narrow injunction would be insufficient to advance this interest." *United States v. Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996) (affirming a nationwide injunction in light of the government's "significant interest . . . in protecting the staff and patients of other reproductive-health facilities" as well as those of the facility at issue). Accordingly, the district court had the authority and discretion to order the nationwide relief required.

II. THE DISTRICT COURT'S DECISION TO EXERCISE ITS DISCRETION NOTWITHSTANDING A SPLIT IN THE CIRCUITS' INTERPRETATIONS OF FEDERAL LAW WAS CONSISTENT WITH THE FEDERAL JUDICIAL STRUCTURE AND FEDERAL COMITY.

The district court's authority and discretion to grant nationwide relief was not limited by the Fifth and Ninth Circuit's contrary interpretations of the ADA. If a circuit split, a common and accepted result of federal litigation, limited district courts' discretion to order nationwide relief, the courts would frequently find themselves unable to grant full relief for nationwide violations. Contrary to AMC's assertions, neither the federal judicial structure nor the doctrine of federal comity requires this inequitable result.

A. Splits in the Circuits' Interpretations of Federal Law Are Tolerated as Part of the Federal Judicial Structure and Commonly Result From the "Standard Practice" of Government Litigation.

A central feature of the federal judicial structure is the "freedom of the circuits to come each to its own conclusion." *Nw. Forest Res. Council v. Dombeck*, 107 F.3d 897, 900 (D.C. Cir. 1997) (internal quotation marks omitted); *accord Hart v. Massanari*, 266 F.3d 1155, 1173 (9th Cir. 2001). Commentators have derived from this freedom "a basic premise that disuniformity, at least in the short run, may be tolerable." Samuel Estreicher & John E. Sexton, *A Managerial Theory of the Supreme Court's Responsibilities*, 59 N.Y.U. L. Rev. 681, 716 (1984).

Cases support that premise, permitting the "independent evaluation of a legal issue by different courts" in spite of the possibility that such evaluation may produce disuniformity. *Id.* In *United States v. Mendoza*, 464 U.S. 154 (1984), for example, the Supreme Court held that the government may not be precluded from relitigating "an issue . . . adjudicated against it in an earlier lawsuit brought by a different party." *Id.* at 155. There, the Supreme Court explained that "[g]overnment litigation frequently involves legal questions of substantial public importance" and that "[a]llowing only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants certiorari." *Id.* at 160.

In *Railway Labor Executives' Ass'n v. Interstate Commerce Commission*, 784 F.2d 959 (9th Cir. 1986), this Court cited the "persuasive and powerful" reasoning of *Mendoza* in permitting a government agency to assert an argument that purportedly had been rejected by the Tenth Circuit. *Id.* at 964. The Court observed that a government agency need not "accept an adverse determination of the agency's statutory construction by any of the Circuit Courts of Appeals as binding on the agency for all similar cases throughout the United States." *Id.* Rather, it is "standard practice for an agency to litigate the same issue in more than one circuit." *Id.*

The "standard practice" of agency litigation predictably leads to splits in the

circuits' interpretations of federal law. *Id.* As the courts of appeals independently explore difficult questions, *see Mendoza*, 464 U.S. at 160, differences in opinion inevitably arise. For this reason, if district courts' discretion to order nationwide relief were limited by the existence of a circuit split, the courts would find themselves frequently unable to grant full relief for nationwide violations. Although AMC argues otherwise, neither the federal judicial structure nor federal comity requires this inequitable result.

B. A District Court Presented With a Circuit Split May Grant Nationwide Injunctive Relief Consistently With the Federal Judicial Structure and Federal Comity.

AMC asserts that the district court's grant of nationwide relief somehow violated the structure of the federal courts and the doctrine of federal comity.[1] *See* Appellants' Br. at 44-57. Its assertion is unpersuasive.

1. Under the Federal Judicial Structure, the District Court Was Bound by This Court's Decision in *Regal Cinemas*, but Not by the Fifth Circuit's Contrary Decision in *Lara*.

The district court's grant of nationwide relief was consistent with the federal judicial structure. Within that structure, decisions of the courts of appeals "'bind' only within a vertical hierarchy." *United States v. Glaser*, 14 F.3d 1213, 1216 (7th Cir. 1994). "*The district courts, like the courts of appeals, owe no obedience . . . to the decisions of the courts of appeals in other circuits.*" *Nw. Forest Res. Council*,

[1] AMC's equal protection and due process arguments are addressed in the brief of the United States. *See* Appellee's Br. at 55-56.

107 F.3d at 900 (internal quotation marks omitted). Accordingly, the district court here was obligated to follow this Court's decision in *Regal Cinemas*, but was in no way obligated to follow or accommodate the contrary decision of the Fifth Circuit in *Lara*. *See Hart*, 266 F.3d at 1170, 1172-73 (stating, with respect to non-binding authority, that "[s]o long as the earlier authority is acknowledged and considered, courts are deemed to have complied with their common law responsibilities").

2. The Doctrine of Federal Comity Did Not Apply Because There Was No Pending or Prior Litigation to Which the Government Was a Party.

The district court's grant of nationwide relief was also consistent with the doctrine of federal comity. "In its classic formulation, the comity doctrine permits a district court to decline jurisdiction over a matter if a complaint has already been filed in another district." *Church of Scientology of Cal. v. U.S. Dep't of Army*, 611 F.2d 748, 749 (9th Cir. 1980). In *Yamasaki*, for example, the Supreme Court advised courts to ensure that "certification of such a [nationwide] class would not improperly interfere with the litigation of similar issues in other judicial districts." *Id.* at 702.

In this case, however, there was no "ongoing litigation of the same issue in other districts." *Id.* at 703. Nor was there an existing injunction with which the district court's injunction might have conflicted. *See* Appellee's Br. at 50-51. There was only the concluded litigation in the Fifth Circuit, to which the

government had not been a party. Whatever else it may contemplate, the doctrine of federal comity "surely does not contemplate that fundamental rights of citizens will be adjudicated in forums from which they are absent." *Nw. Forest Res. Council*, 107 F.3d at 901. It follows that the government's rights may not be determined by a case to which it was not a party. [2]

3. Even If It Applies, the Doctrine of Federal Comity Is Discretionary, and Contrary Authority and the ADA's Purpose to Provide Consistent Standards and Enforcement Weigh Against its Application Here.

Moreover, even where federal comity applies, it is a "discretionary doctrine." *Church of Scientology of Cal.*, 611 F.2d at 749. At least two factors weigh against its application here. First, the Fifth Circuit was the first and only court of appeals to refuse to defer to the government's interpretation of the relevant regulation. *See Lara*, 207 F.3d at 789. Each of the circuits to consider the issue after *Lara* rejected its reasoning. *See United States v. Hoyts Cinemas Corp.*, 380 F.3d 558, 575 (1st Cir. 2004); *United States v. Cinemark USA, Inc.*, 348 F.3d 569, 579 (6th Cir. 2003); *Regal Cinemas,* 339 F.3d at 1133; *see also* Michael D. Driver, Note, *Is the ADA Short-Sighted?*, 8 Vanderbilt J. Ent. & Tech. L. 399, 409-10

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[2] While it would be inappropriate to permit *Lara* to determine the government's rights in the Fifth Circuit because the government was not a party to that action, it is entirely appropriate to permit this action to determine AMC's obligations in the Fifth Circuit because AMC is a party to this action. *See Bresgal*, 843 F.2d at 1171 ("Because the Secretary is a party to this suit, an injunction against him requiring enforcement of the Act as to the [nationwide] forestry-related activities identified in the district court's declaratory judgment is appropriate.").

(2005). Indeed, this Court not only rejected the Fifth Circuit's reasoning in *Lara*, but described it as "particularly specious in light of the Supreme Court's recent pronouncement on attempts to circumvent plain meaning in construing administrative interpretations." *See Regal Cinemas*, 339 F.3d at 1132 n.9 (citing *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Danny Keffeler*, 537 U.S. 371 (2003)).

Second, deference to the Fifth Circuit's "minority position," Driver, *supra*, at 409-10, would have frustrated the ADA's purposes to provide consistent standards and enforcement nationwide. Enacted in 1990, the ADA was intended to serve as a "comprehensive national mandate for the elimination of discrimination against individual disabilities." 42 U.S.C. § 12101(b)(1; *see PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001). It was also among the ADA's "sweeping" purposes "to provide clear, strong, consistent, enforceable standards" and "to ensure that the Federal Government plays a central role in enforcing the standards." *PGA Tour*, 532 U.S. at 675; 42 U.S.C. § 12101(b)(2)-(3) . Together, the statutory references to a "national" mandate, "consistent" standards, and "Federal" enforcement provide strong support for the district court's exercising its discretion to apply a uniform standard to all AMC theaters.

III. LIMITING DISTRICT COURTS' DISCRETION IN THE MANNER SUGGESTED BY AMC WOULD IMPOSE UNDESIRABLE BURDENS ON THE COURTS, PARTIES, AND ADVOCACY GROUPS.

As described above, if circuit splits indeed limited district courts' discretion to order nationwide relief, the courts would frequently find themselves unable to grant full relief for nationwide violations. The result would be not only inequitable, but also inefficient, imposing increased burdens on courts, parties, and advocacy groups such as amici.

Frank v. United Airlines, Inc., 216 F.3d 845 (9th Cir. 2000), illustrates the types of circumstances in which nationwide relief would no longer be available.[3] In *Frank*, this Court confronted a split in the circuits' interpretations of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-634. *Id.* at 856. The district court there granted summary judgment in favor of the defendant on the plaintiffs' disparate impact claims based on a Tenth Circuit decision holding such claims foreclosed under the ADEA. *See id.* at 856 (citing *Ellis v. United Airlines, Inc.*, 73 F.3d 999 (10th Cir. 1996), *overruled by Smith v. City of Jackson*, 544 U.S. 228 (2005)). This Court reversed, citing an intervening decision in which it split

[3] For another example, see *Earth Island Institute v. Ruthenbeck*, Nos. 05-16975, 05-17078, 2006 WL 2291168 (9th Cir. Aug. 10, 2006). There, this Court affirmed a nationwide injunction against enforcement of an invalid regulation. *Id.* at *10. If AMC's argument were accepted, such an injunction would be improper if any other circuit had disagreed with this Court's conclusion that the regulation was "manifestly contrary to both the language and the purpose of the [relevant statute]." *Id.* at *9.

with the Tenth Circuit and "squarely decided that a disparate impact claim is cognizable in an ADEA case." *Id.* Applying its precedent nationwide, this Court permitted "all female flight attendants, age 40 or above, employed by United" to pursue a disparate impact claim on a classwide basis. *Id.* at 848-49, 856.

If AMC's argument were accepted, certification of a nationwide class in such circumstances would be presumptively improper. Under AMC's view, absent a stipulation by the defendant (as occurred in *Frank*), a district court seeking to certify a nationwide class would be required to carve out all members of the class who happened to reside in circuits whose controlling law differed from that of the circuit in which the district court sat. Such a result would forfeit much of the "efficiency and economy of litigation" provided by class actions, *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553 (1974), and other procedures for securing nationwide relief, at the expense of both the courts and the parties.

Abandoning the efficiency of nationwide relief would have a particularly harmful impact on disability advocacy groups such as amici. Disability advocates frequently seek nationwide injunctive relief against nationwide actors. *See, e.g.*, *Bates v. United Parcel Serv., Inc.*, No. C99-2216 TEH, 2004 WL 2370633, at *1, *40 (N.D. Cal. Oct. 21, 2004) (granting a nationwide class of deaf applicants and employees an injunction against a noncompliant employer). This litigation strategy secures relief for more clients, establishes more consistent standards, and

makes more efficient use of amici's limited resources than would a strategy of limiting the relief sought to a single circuit. If the availability of nationwide relief were limited by circuit splits, however, securing these benefits would require amici to substantially increase their initiation of and participation in litigation.

First, amici would be forced to join what would become a "race to courthouse" to file actions and litigate issues before an unfavorable ruling precluded national injunctive relief. If the ruling of single circuit could bar nationwide relief, both plaintiffs and defendants would have strong incentives to be the first to litigate their positions in a sympathetic circuit and thus to preserve or preclude the availability of nationwide relief. Amici would have particularly strong incentives in light of their significant expertise and broad objectives. To ensure that clients nationwide received the benefit of their expertise, amici would be forced to race to litigate issues while nationwide injunctive remained available.

Second, amici would be forced to try to monitor and intervene in actions pending in circuits across the country or risk the possibility that clients in those jurisdictions would later be barred from receiving injunctive relief. This result would be grossly inefficient for the courts and parties as well as for amici. *See, e.g.*, Alex Kozinski, "The Wrong Stuff," 1992 B.Y.U. L. Rev. 325, 327 (observing that appellate judges already read "3,500 pages of briefs a month"). The prospect of unfavorable rulings would inevitably urge amici toward greater participation in

litigation at the expense of other services such as mediation, education, and outreach. But even with resources diverted from other services, it would be virtually impossible for amici to maintain a nationwide network of monitoring and intervention and thus to ensure the availability of nationwide injunctive relief for their clients.

The facts presented here illustrate the burdens that AMC's arguments would place on amici. In *Lara*, a small group of plaintiffs, consisting of "a group of disabled individuals and two advocacy groups," brought suit challenging the design of a single complex of theaters located in El Paso, Texas. 207 F.3d at 785. The plaintiffs did not seek nationwide relief. *Id.* The majority of amici did not participate in the action. *Id.* at 784.[4] AMC nevertheless seeks to apply *Lara* to bar the application of injunctive relief to non-compliant theaters in Louisiana, Mississippi, and Texas. *See, e.g.*, Appellants' Br. at 51-52. This result would prompt amici to intervene in all similar actions in the future, no matter how limited in scope or how distant in location.

More than a decade after enactment of the ADA, discrimination against individuals with disabilities continues to "persist[] in . . . critical areas." 42 U.S.C. § 12101(a)(3) . This is particularly true in the area of recreation, where a

[4] Advocacy Incorporated, the Texas P&A, served as counsel for the plaintiffs, but no other P&As or amici participated in the action. *See Lara*, 207 F.3d at 784.

"significant gap" remains between the activities of individuals with disabilities and those of individuals without disabilities. Nat'l Org. on Disability, *Life Outside the Home – Socializing and Going Out* (July 24, 2001), http://www.nod.org (follow "Statistics & Surveys" hyperlink) (summarizing the 2000 National Organization on Disability/Harris Survey of Americans with Disabilities). With regard to "one of the most universal and least expensive activities – going to the movies – less than one-quarter of people with disabilities (22%) go to the movies 4 or more times per year, compared to almost half of their non-disabled counterparts (48%)." *Id.* Accepting AMC's limits on nationwide relief and the burdens they would place on amici clearly would not serve the ADA's "national mandate" for the elimination of such discrimination and disparity. *Id.* § 12101(b)(1) .

CONCLUSION

For the reasons stated above, amici respectfully request that this Court affirm the geographic scope of the district court's injunction.

Dated: September 15, 2006

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP

By:____________________________________

TERI-ANN E.S. NAGATA

Attorneys for Amici Curiae
Disability Rights Legal Center, Disability Rights Education and Defense Fund, Legal Aid Society – Employment Law Center, and National Disability Rights Network

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 29(d) and 32(a)(7)(C) of the Federal Rules of Appellate Procedure, and Rule 32-1 of the Rules of the United States Court of Appeals for the Ninth Circuit, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more, and contains 4,133 words.

Dated: September 15, 2006

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TERI-ANN E.S. NAGATA

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