No. 09-529

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IN THE
SUPREME COURT OF THE UNITED STATES

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COMMONWEALTH OF VIRGINIA, BY ITS OFFICE FOR PROTECTION AND ADVOCACY,
Petitioner,

v.

JAMES W. STEWART, III, IN HIS OFFICIAL CAPACITY AS COMMISSIONER, DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES OF THE COMMONWEALTH OF VIRGINIA, DENISE D. MICHELETTI, IN HER OFFICIAL CAPACITY AS DIRECTOR, CENTRAL VIRGINIA TRAINING CENTER, AND VICKI Y. MONTGOMERY, IN HER OFFICIAL CAPACITY AS ACTING DIRECTOR, CENTRAL STATE HOSPITAL,
Respondents,

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On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

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BRIEF AMICUS CURIAE OF AARP, THE NATIONAL SENIORS CITIZENS LAW CENTER, THE ARC OF THE UNITED STATES, THE NATIONAL HEALTH LAW PROGRAM AND UNITED CEREBRAL PALSY IN SUPPORT OF THE PETITIONER

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AARP

AARP is a nonpartisan, nonprofit organization dedicated to representing the needs and interests of people age 50 and older. AARP's members include residents of nursing homes and other long-term care facilities, their spouses, and other relatives. AARP supports enactment and enforcement of laws that ensure that all people in long term care facilities and other institutional settings are protected from abuse and neglect. AARP often allies with state Protection and Advocacy ("P&A") systems to promote the welfare and safety of older persons and persons with disabilities in the community and in facilities.

National Senior Citizens Law Center

The National Senior Citizens Law Center ("NSCLC") is a non-profit organization that advocates nationwide to promote the independence and well-being of low-income older persons and people with disabilities. For more than 35 years, NSCLC has served these populations through

[1] No counsel for a party authored this brief in whole or in part nor did any counsel or party make a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae,* its members, or its counsel, made such a monetary contribution. Amici state that counsel of record for all parties received notice of its intention to file an *amicus curiae* brief at least 10 days prior to the due date for the *amicus curiae* brief. Said consent was granted.

litigation, administrative advocacy, legislative advocacy, and assistance to attorneys in legal aid programs and P&A agencies. NSCLC's *Federal Rights Project* works to ensure access to the federal courts to enforce safety net and civil rights statutes. NSCLC has participated as counsel in numerous lawsuits regarding court access for people with disabilities. NSCLC is profoundly concerned about the impact that the Court's decision may have on its clients' access to the federal courts.

The Arc of the United States

The Arc of the United States ("The Arc"), through its 730 state and local chapters, is the largest national voluntary organization in the United States devoted solely to the welfare of the more than seven million children and adults with intellectual and developmental disabilities (I/DD) and their families. Since its inception, The Arc has participated actively in the formulation of public policy with respect to the rights of, and services and supports for, people with intellectual and related developmental disabilities. The Arc has partnered often with State Protection and Advocacy systems to preserve these rights and supports for our constituents.

National Health Law Program

The National Health Law Program ("NHeLP") has represented thousands of families and children, elderly people, and people with disabilities in federal court cases when state Medicaid programs are not

acting consistent with the federal Medicaid Act. Believing that the ability of private citizens to enforce their federal rights against states in court is absolutely essential if social justice is to have meaning in daily life, through its Health Activist Court Watch Project NHeLP has worked to ensure that Medicaid beneficiaries receive the statutory and constitutional due process protections to which they are entitled and that program beneficiaries have avenues for redress when their requests for services are denied or not acted on.

United Cerebral Palsy

United Cerebral Palsy ("UCP") is comprised of approximately 100 affiliates interspersed throughout the country. These affiliates serve more than 170,000 children and adults with disabilities every day, with more than one half having disabilities other than cerebral palsy. UCP's mission is to advance the independence, productivity and full citizenship of people with disabilities through their affiliate network. UCP affiliates often work directly with state Protection and Advocacy Systems in relationship to achieving its mission.

SUMMARY OF THE ARGUMENT

The Fourth Circuit utilized a far-reaching rationale to improperly deny access to federal court. The decision below unduly amplifies the exception to prospective injunctive relief under *Ex parte Young*, 209 U.S. 123 (1908), expansively interpreting the concepts of state sovereignty interests and dignity to

immunize states from suit. By so doing, the appellate court's opinion threatens to undermine the supremacy of federal law, not only for civil rights and safety-net statutes but also for a wide-range of federal statutes of great importance to business interests.

The decision below sought to relegate the claims in this case to state court. Yet, it is far more likely that Petitioner, the Virginia Office of Protection and Advocacy ("VOPA"), would obtain a just result ensuring the supremacy of federal law in the federal court forum. For resolution of federal issues, federal courts have many structural advantages over state courts, including uniform interpretation and expertise in federal law.

Without access to federal court, the investigative power of federally funded Protection and Advocacy ("P&A") organizations, such as VOPA, is compromised. P&A organizations are essential to remedying and preventing abuse and neglect of older persons and people with disabilities. Because significant numbers of people with disabilities and older persons, especially those in institutional facilities, are at risk for abuse and neglect, the Court should not limit court access for VOPA to enforce its right to investigate abuse and neglect.

ARGUMENT

I. THE CIRCUIT COURT'S LIMITATION OF *EX PARTE YOUNG* BASED ON AN EXPANSIVE VIEW OF STATE SOVEREIGNTY INTERESTS AND "DIGNITY" THREATENS THE SUPREMACY OF FEDERAL LAW

The decision below creates a nebulous exception to *Ex parte Young* which could undermine a century of precedent. VOPA sued Virginia state officials in federal court to obtain medical records pursuant to the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act), Pub. L. No. 99-319, 100 Stat. 478 (1986) (codified as amended at 42 U.S.C. § 10801 *et seq*.) to investigate possible abuse and neglect of people with disabilities. State officials refused to provide the records, based on state law that bars the release of records involving peer review privilege. The Fourth Circuit held that ordering the state to comply with federal law would encroach on Virginia's "dignity" and sovereignty interests. App. 18a. The circuit court's expansive reliance on the subjective standard of sovereign "dignity" jeopardizes case law in which the supremacy of federal law has been secured by *Ex parte Young*.

Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 287 (1997), held that "special sovereignty interests" barred application of *Ex parte Young* to a suit which was the functional equivalent of a quiet title suit, referencing the "dignity" of states. Shortly

thereafter, in the context of a telecommunications suit, the Fourth Circuit sought to vastly expand the immunity of states from suit, holding that it would be a "serious offense to the dignity of a State's quasi-official body" to permit a federal court to review the claim that a state agency's telecommunications decision was not in compliance with federal law. *Bell Atlantic MD, Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 298 (4th Cir. 2001). This Court unanimously reversed, finding no offense to state dignity or sovereign interests in a federal court's review of whether "state officials be restrained from enforcing an order in contravention of controlling federal law." *Verizon Maryland Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002). The Fourth Circuit's attempt in the instant case to insulate states from suit based on a broad interpretation of state sovereign "dignity" should likewise be reversed.

Many states have cited *Coeur d'Alene* in arguing for immunization from suit under *Ex parte Young* based on a virtually limitless notion of states' sovereign interests and dignity. Numerous decisions of courts of appeals, including other decisions of the Fourth Circuit, have correctly rejected states' attempts to eviscerate *Ex parte Young* under states' boundless view of their sovereign dignity and core interests. The instant case conflicts with numerous correctly decided appellate cases which have upheld the supremacy of federal law.

A. The Supremacy of Federal Safety-Net and Civil Rights Statutes Could be Jeopardized by an Unbounded Exception to *Ex parte Young* for State Sovereign Interests and "Dignity"

In 1974, in a decision by then-Associate Justice Rehnquist, the Court held that *Ex parte Young* permitted suit against a state to enjoin a state law which conflicted with a federal welfare statute. *Edelman v. Jordan*, 415 U.S. 651 (1974). The Court explained:

> *Ex parte Young* was a watershed case in which this Court held that the Eleventh Amendment did not bar an action in the federal courts seeking to enjoin the Attorney General of Minnesota from enforcing a statute claimed to violate the Fourteenth Amendment of the United States Constitution. This holding has permitted the Civil War Amendments to the Constitution to serve as a sword, rather than merely as a shield, for those whom they were designed to protect.

415 U.S. at 664. Decades later, Chief Justice Rehnquist made clear that even when damages are not available in a civil rights case, people with disabilities have "federal recourse against discrimination" by filing "actions for injunctive relief

under *Ex parte Young*." *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 n.9 (2001).

Yet, attempting to expand *Coeur d'Alene*, several states argued strenuously that suits filed by individuals for prospective relief to enforce federal statutes encroached upon states' sovereign interests and "dignity." The examples below demonstrate that states have sought to avoid individual enforcement of safety-net and civil rights statutes under *Ex parte Young* by claiming offense to state sovereign interests and "dignity." Indeed, the states' vision of their core interests and sovereign "dignity" is so broad as to completely eviscerate *Ex parte Young's* protection of the supremacy of federal law.

In a suit alleging that New Mexico violated the federal Medicaid statute by placing low-income disabled and older individuals on a waiting list for as many as seven years without providing services, the state argued that an action for prospective equitable relief under the Medicaid statute "invades special sovereignty interests." *Lewis v. N.M. Dep't of Health*, 261 F.3d 970, 978 (10th Cir. 2001). Rejecting that contention, the Tenth Circuit held that the state's administration of a program that is partially funded by the federal government does not implicate a core sovereign interest and does not strike at a state's fundamental power. *Id.* In a subsequent case alleging that New Mexico failed to provide abused and neglected children with adoption services, the state continued to assert that "*Coeur d'Alene* bars the application of *Ex parte Young*." *Joseph A. ex rel. Wolfe v. Ingram*, 275 F.3d 1253,

1260 (10th Cir. 2002). The Tenth Circuit held that while "a state's administration of federally-funded welfare programs for children in its custody involves important state interests, those interests do not implicate the 'essential attribute[s] of sovereignty' with which *Coeur d'Alene* was concerned." *Id.* at 1261. North Carolina similarly argued that it had a "special sovereignty interest" in deciding how to spend Medicaid funds. *Antrican v. Odom*, 290 F.3d 178, 189 (4th Cir. 2002). The Fourth Circuit noted that Medicaid is a federally designed and funded health care program. The court concluded: "[a]lthough North Carolina may retain a special sovereignty interest in choosing whether to participate in the Medicaid program, once it elects to participate, it is not entitled to assert that interest to insulate itself from the requirements of the federal program." *Id.* at 190.

States have likewise unsuccessfully claimed that prospective relief under the Constitution and civil rights laws would encroach on their special sovereignty interests. In a case involving the education of minority students and students with disabilities that alleged violations of the Fourteenth Amendment, the Rehabilitation Act, and Title VI of the Civil Rights Act, Kansas asserted that prospective relief under *Ex parte Young* would "implicate special sovereignty interests similar to those set out in *Coeur d'Alene*." *Robinson v. Kansas*, 295 F.3d 1183, 1191 (10th Cir. 2002). The court held that an order enjoining the state from enforcing a state education financing law that conflicts with federal law would not "not come close" to the

sovereignty interests in *Coeur d'Alene*. *Id*. at 1191. New Mexico similarly argued that an employment discrimination claim under the Age Discrimination in Employment Act (ADEA) "presents an impermissible affront to New Mexico's special sovereign interests or its political autonomy." *Gill v. Pub. Employees Ret. Bd. of Pub. Employees Ret. Ass'n of N.M.*, 90 P.3d 491, 501 (N.M. 2004). Citing numerous Tenth Circuit cases, the New Mexico Supreme Court held that a claim for prospective, injunctive relief under the ADEA did not implicate special state sovereign interests. *Id*. The Seventh Circuit also held that a suit to obtain Illinois's compliance with the federal Individuals with Disabilities Education Act in the education of infants with disabilities "implicates no important sovereignty interests such as those at stake in" *Coeur d'Alene*. *Marie O. v. Edgar*, 131 F.3d 610, 617 n.13 (7th Cir. 1997).

Thus, states have attempted to evade multiple suits by asserting the claim of special sovereignty interests in important civil rights and safety net cases. While appellate courts have rejected those claims in the past, the Court risks undermining more than just the P&A statutes if it denies VOPA federal court access to enjoin state law preempted by the federal PAIMI Act. This Court should not expand the exception to *Ex parte Young* based on the unbounded concept of state sovereign interests and "dignity," because this will threaten the supremacy of federal law, including laws seeking to protect people with disabilities.

B. The Supremacy of Numerous Laws Important to Businesses Could be Threatened by an Expansion of the State "Dignity" Exception to *Ex parte Young*

States' attempts to enlarge the exception to *Ex parte Young* based on their "special sovereignty interests" and "dignity" have not been confined to suits under safety-net and civil rights statutes. Indeed, states have argued for a vast expansion of this exception in many suits brought by businesses involving a wide range of laws.

For instance, in a suit brought by a railroad company alleging state law conflicted with federal law regarding constructing and repairing railroad lines, South Dakota argued that the suit encroached on its "core sovereign interest" emanating from its police power. *Dakota, Minnesota & Eastern Railroad Corp. v. South Dakota*, 362 F.3d 512, 516-17 (8th Cir. 2004). Rejecting the state's attempt to amplify sovereign immunity, the Eighth Circuit explained, "*Coeur d'Alene Tribe* cannot apply to every suit for injunctive relief against a state official's exercise of the police power-that would effectively overrule the *Ex parte Young* doctrine." *Id*.

California similarly argued that its police powers trumped *Ex parte Young* in a case brought by an energy supplier alleging that the state's commandeering of contractual rights to deliver electricity violated the Federal Power Act. *Duke Energy Trading and Marketing, L.L.C. v. Davis*, 267

F.3d 1042, 1052-53 (9th Cir. 2001). The court agreed that during an electricity crisis, the state's "emergency powers to take private property for the public's benefit and safety" constituted a "core state sovereignty area." *Id.* at 1053. But the court found that the suit would not divest the state's sovereign power. The Ninth Circuit explained that "an injunction against a specific executive order in an area preempted by federal law … falls squarely under *Ex parte Young*," and this relief would not "deprive Governor Davis of his regulatory authority and police power to deal with the electricity crisis." *Id.* at 1053-54.

States' sovereignty arguments have not been limited to their police powers. In an antitrust suit brought by a liquor retailer challenging price controls, Maryland asserted that it had a special sovereignty interest "in liquor regulation," relying on *Coeur d'Alene*. *TFWS v. Schaefer*, 242 F.3d 198, 205 (4th Cir. 2001). The Fourth Circuit rejected the state's contention that the state's authority to regulate liquor constituted a special sovereign interest. The court further noted that even if a special sovereign interest was implicated, *Coeur d'Alene's* exception applies only when an injunction would completely eliminate a state's regulatory authority. *Id.* at 206. The court explained that the liquor retailer was "not seeking to strip Maryland of its authority to regulate liquor under the Twenty-first Amendment; it simply seeks to require the Comptroller to regulate in a way that is consistent with [federal law]." *Id.*

In the telecommunications context, Illinois and Wisconsin argued that *Ex parte Young* suits brought by private carriers to invalidate state laws conflicting with the federal Telecommunications Act would "trammel 'special sovereignty interests.'" *MCI Telecommunications Corp. v. Illinois Bell Telephone Co.*, 222 F.3d 323, 347-48 (7th Cir. 2000). The Seventh Circuit held that the states' interest in the regulation of telecommunications providers was not comparable to the fundamental state interest in land ownership in *Coeur d'Alene*. The court noted that the states' interests were "derived solely from the regulatory role Congress has bestowed upon the states" and did not "strike at core functions or core powers." *Id*. at 348. The Third Circuit likewise held that Pennsylvania's interest in making and carrying out telecommunications regulatory decisions "cannot be viewed as a core or fundamental matter of state sovereignty comparable to the ability of a state to maintain ownership of and title to its submerged lands." *MCI Telecommunciations Corp. v. Bell Atlantic Pennsylvania*, 271 F.3d 491, 514-15 (3d Cir. 2001).

In sum, states have argued in numerous contexts that suits to obtain compliance with federal law offend their sovereign interests and dignity. Far from being a narrow decision, the Fourth Circuit's emphasis on state sovereign "dignity" in the instant case has the potential to nullify *Ex parte Young* and thereby undermine the supremacy of federal law.

II. THE STATE COURT FORUM IS NOT EQUIVALENT TO THE FEDERAL COURT FORUM FOR A SUIT TO ENJOIN ENFORCEMENT OF A STATE LAW WHICH CONFLICTS WITH FEDERAL LAW

The Fourth Circuit opined that VOPA would be able to obtain "a just resolution of its claims" by bringing suit in state court to enforce federal law. App. 28a. Yet, the federal courts have many structural advantages over state courts for resolution of federal issues, including "the desirability of uniform interpretation, the expertise of federal judges in federal law, and the assumed greater hospitality of federal courts to peculiarly federal claims." *Gulf Offshore Co. v. Mobile Oil Corp.,* 453 U.S. 473, 483-484 (1981) (footnotes omitted). See also *Matsushita Elec. Indus. Co. v. Epstein,* 516 U.S. 367, 383 (1996)(federal courts provide "greater uniformity of construction and more effective and expert application of [federal] law".) The American Law Institute observed: "The federal courts have acquired a considerable expertness in the interpretation and application of federal law which would be lost if federal questions were given to state courts." ALI, Study of the Division of Jurisdiction Between State and Federal Courts 164-165 (1969) (hereinafter "ALI Study"). This Court has referred to "the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." *Grable & Sons Metal Products, Inc. v. Darue Engineering*, 545 U.S. 308, 312, 310 (2005) (holding "the national interest in providing a federal forum

for federal tax litigation" to be sufficient to support federal-question jurisdiction over a claim-of-title dispute). *See also* Martin H. Reddish, *Judicial Parity, Litigant Choice, and Democratic Theory: A Comment on Federal Jurisdiction and Constitutional Rights*, 36 UCLA L. Rev. 329 (1988) (greater familiarity of federal judges with federal law).

There are significant barriers to VOPA obtaining justice in state court, particularly for the type of claim at issue in this case. The protection and advocacy system is a federally-funded network of entities that fulfill a critical federal mandate. "The core requirement of the federal P&A statutes is that, in order to receive federal funding, each state must establish an effective protection and advocacy system to respond to allegations of abuse and neglect and generally to protect the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A)(i); 42 U.S.C. § 10805(a)(1); 29 U.S.C. § 794e(f)(3)." *Disability Rights Wisconsin, Inc. v. Wisconsin Dept. of Public Instruction*, 463 F.3d 719 (7th Cir. 2006). VOPA's federal mandate requires that it, on occasion, challenge state and administrative practices that have a discriminatory or otherwise negative impact on people with disabilities in the state. The American Law Institute has warned, "[s]uits in which it is claimed that state legislative or administrative action is invalid because contrary to controlling federal law present an especially appealing case for original federal jurisdiction. The danger of state court hostility to the federal claim is greatest in such suits." ALI Study, *supra*, at 282.

Congress has been concerned that "state instrumentalities could not protect" federally created rights and "realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts." *Mitchum v. Foster,* 407 U.S. 225, 242 (1972). Due to possible state court hostility toward the enforcement of federal law, "this Court long ago recognized" the importance of "federal injunctive relief against a state court proceeding." *Id*., citing *Ex parte Young*. *See also Monroe v. Pape,* 365 U.S. 167, 180 (1961). This Court recently observed in a unanimous decision: "State-court proceedings may reflect 'local prejudice' against unpopular federal laws or federal officials." *Watson v. Phillip Morris Cos.*, 551 U.S. 142, 150 (2007).

The political affiliations of state judges can lead to undue deference to state officials and a heightened concern for the state treasury, especially in regard to a claim against state officials to enforce federal law. *See* James Leonard, *A Damaged Remedy: Disability Discrimination Claims Against State Entities Under the Americans With Disabilities Act After Seminole Tribe and Flores*, 41 Ariz. L. Rev 651, 658 (1991). As Justice O'Connor noted, "If the state has a problem with judicial impartiality, it is largely one the state brought upon itself by continuing the practice of popularly electing judges." *Republican Party of Minn. v. White*, 536 U.S. 765, 792 (2002) (O'Connor, J., concurring).

It is far more likely that VOPA would obtain a just, impartial resolution of its claims in federal

court. The circuit court's refusal to permit federal court access to resolve whether Virginia's privilege law conflicted with the PAIMI Act does not adequately protect the supremacy of federal law.

III. THE INVESTIGATIVE POWERS OF P&A ORGANIZATIONS ARE OF VITAL IMPORTANCE TO PREVENT THE ABUSE AND NEGLECT OF OLDER PERSONS AND PEOPLE WITH DISABILITIES

Abuse and neglect in community and institutional settings is a serious and often hidden problem for older persons and people with disabilities. The federal government relies upon states to both uncover problems and sanction noncompliance. Yet, states have proved inadequate at both quantifying and remedying deficiencies. The independent investigative power of P&A organizations is of crucial importance to the protection of residents of institutional facilities.

Despite more than thirty years of federal regulation under nursing home legislation, the residents of most nursing facilities continue to be subject to substandard care at shocking levels. The federal Office of the Inspector General has found that most nursing facilities do not comply with federal standards, based on statistics reported by states. In 2007, more than 90 percent of nursing homes in the country were cited by state surveys for violations of federal health and safety standards, with 17 percent cited for deficiencies that caused

residents "actual harm or immediate jeopardy." Dept. of Health and Human Services, Office of Inspector General, OEI-02-08-00140, *Memorandum Rept.: Trends in Nursing Home Deficiencies and Complaints* at 1 (Sept. 2008) at 1, 9-10, *available at* http://oig.hhs.gov/oei/reports/oei-02-08-00140.pdf. Thus, the vast majority of nursing facilities do not meet federal standards, and these substandard conditions result in harm to residents.

The scope of abuse and neglect is far greater than this federal report shows, because state surveys of compliance with federal quality standards repeatedly understate serious deficiencies. The federal Government Accountability Office ("GAO") has documented that state surveys undercount harmful conditions in nursing facilities. According to the GAO, "[f]rom fiscal year 2002 through 2007, about 15 percent of federal comparative surveys nationwide identified state surveys that failed to cite at least one deficiency at the most serious levels of noncompliance – the actual harm and immediate jeopardy levels." U.S. Gov't Accountability Office, GAO-08-517, *Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses* at 11 (2008), *available at* http://www.gao.gov/new.items/d08517.pdf. Statistics of the incidence of abuse and neglect of older people, for example, are believed to represent only a fraction of the true crisis because of varying state definitions of abuse and under reporting. *See e.g.* Brian K. Payne & Randy R. Gainey, *The Criminal Justice Response to Elder Abuse in Nursing Homes: A*

Routine Activities Perspective, 7(3) Western Criminology Review, 67 (2006). These statistics demonstrate the inadequacy of state efforts to uncover and eradicate abuse and neglect. Despite best efforts by regulators and ombudsmen, the problems are pervasive. Congress wisely saw the need for an independent entity, backed by federal legislative authority, to access the hallways and backwards of institutions, examine records with a trained eye and offer legal advocacy when people have unjustly suffered harm. This advocacy is designed not only to assist those who have been injured but also to improve conditions in order to protect future residents. Reasonable, unfettered access to people and records is essential for the P&A to perform the kind of individual and systemic advocacy Congress envisioned.

In addition, the P&A organizations' access to medical records is of vital importance to remedying violations of federal law for people with disabilities residing in the community. For example, in *Ball v. Rogers*, 492 F.3d 1094 (9th Cir. 2007), older persons and people with disabilities alleged that the state had failed to timely provide Medicaid home and community based health services. The "on the ground" ability of the Arizona P&A organization to gain access to persons and their records from the state agency contributed to the basis for this suit alleging violations of the federal Medicaid statute, the Americans with Disabilities Act, and the Rehabilitation Act. Similarly, in *Lankford v. Sherman*, 451 F.3d 496 (8th Cir. 2007), wherein the state refused to provide durable medical equipment

to adults with disabilities, the Missouri P&A organization played a vital role in the litigation through its access to injured persons and their records.

Organizations such as VOPA fulfill a critical role in investigating and seeking to address the systemic failures that give rise to the abuse and neglect of people with disabilities and older people. The decision below blocks VOPA from performing its duties based on the purported "sovereign interests and dignity" of the Commonwealth of Virginia. Yet, this ruling threatens the well-being and dignity of older persons and those with disabilities not only in Virginia but also in the seven other states and territories that have "independent" state agencies which have been designated as the states' P&A systems.

CONCLUSION

For the reasons stated, *amici* urge the Court to reverse the decision below.

Respectfully Submitted,

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