No. 15-24

IN THE
Supreme Court of the United States

GARY L. FRANCE,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR *AMICI CURIAE* DISABILITY RIGHTS LEGAL CENTER, CANCER LEGAL RESOURCE CENTER, AND EQUIP FOR EQUALITY IN SUPPORT OF PETITIONER

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Disability Rights Legal Center, the Cancer Legal Resource Center, and Equip for Equality respectfully submit this brief as *amici curiae* in support of petitioner.[1]

[1]No party or counsel for a party authored this brief in whole or in part, and no such counsel or party, or any person other than *amici*, their members, and their counsel, made a monetary contribution intended to fund the brief's preparation or submission. The parties have consented to the filing of this brief. Counsel for *amici curiae* gave petitioner timely notice of intent to file this brief, but gave respondent notice eight days before

INTEREST OF *AMICI CURIAE*

Disability Rights Legal Center (DRLC) is a nonprofit legal organization that was founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle against ignorance, prejudice, insensitivity, and lack of legal protection in their endeavors to achieve fundamental dignity and respect. For forty years, DRLC has assisted people with disabilities in attaining the benefits, protections, and equal opportunities guaranteed to them under the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Individuals with Disabilities Education Improvement Act, and other federal and state laws. DRLC also has submitted *amicus* briefs in significant disability rights cases, including *Forest Grove School District* v. *T.A.*, 557 U.S. 230 (2009).

The Cancer Legal Resource Center (CLRC) is a program of DRLC. Through the CLRC, DRLC addresses specific interests in cancer-related legal issues. The CLRC provides free information and resources to cancer patients, survivors, caregivers, health-care professionals, employers, and others coping with cancer nationwide on cancer-related legal issues, such as access to government benefits and health care, employment and taking time off work, insurance coverage, and estate planning.

Equip for Equality (EFE), founded in 1985, is an independent, not-for-profit organization that admin-

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the due date for this brief. Respondent still consented to the filing of this brief, and obtained an extension of time to file a response to the petition. The parties' consent letters have been lodged with the Clerk.

isters the federally mandated protection and advocacy services in Illinois. EFE's mission is to advance the human and civil rights of children and adults with physical and mental disabilities in Illinois. A major focus of EFE's work is employment and the corresponding benefits associated with employment. Specifically, EFE administers the Protection and Advocacy for Beneficiaries of Social Security program, 42 U.S.C. § 1320b-21, which helps people with disabilities on government benefits understand the impact on their benefits when they seek to return to work. EFE has seen first-hand how crucial government benefits can be for people with disabilities and their families, including disability benefits people receive when they are unable to work because of a disabling condition. Because of EFE's expertise in working with people with disabilities, it has critical information and an important perspective to provide to the Court.

The question presented is of significant interest to *amici*. Many individuals with disabilities rely on private disability insurance benefits to maintain their quality of life. The Seventh Circuit's interpretation of the federal statutes at issue in this case authorizes the Federal Government to garnish such benefits in their entirety. That decision threatens to deprive many disabled Americans of a vital source of income, and treats them less fairly than recipients of other types of benefits. Because the question presented is critically important, this Court should grant review.

SUMMARY OF ARGUMENT

All Americans face a risk that they might one day become disabled and unable to work. To guard

against that risk, many Americans participate in private disability insurance plans, which employers often offer as a benefit of employment. Such plans guarantee that when a beneficiary becomes disabled, she will be paid periodic benefits as a substitute for lost income.

For many disabled Americans, private disability insurance benefits are the only reason they are able to avoid poverty and maintain their quality of life. Without private disability insurance benefits, many Americans report that they would have lost their homes or needed food assistance. And even with benefits, many still struggle to make ends meet.

The Seventh Circuit has held, however, that the Federal Government may garnish *100 percent* of such benefits, eliminating private disability insurance as a source of income entirely. If allowed to stand, the Seventh Circuit's decision will have a devastating effect on these Americans, driving some to financial desperation and even bankruptcy. That decision is wrong. Under the plain text of the statutes at issue in this case, private disability insurance benefits qualify as "earnings," no more than 25 percent of which may be subjected to garnishment by the Federal Government. There is no basis in the statute or in logic to subject private disability insurance benefits to less favorable treatment than pension and retirement benefits; all three types of benefits are "earnings."

This Court should grant certiorari to reverse the Seventh Circuit on this issue of immense practical importance to individuals with disabilities across the Nation.

ARGUMENT

I. MANY AMERICANS RELY ON PRIVATE DISABILITY INSURANCE AS A VITAL SOURCE OF INCOME.

1. Nearly 40 percent of all private-sector employees in the United States have some form of private disability insurance. U.S. Dep't of Labor, Bureau of Labor Statistics, *Insurance Benefits: Access, Participation, and Take-Up Rates* (Mar. 2014).[2]

It is easy to understand why. "Just over 1 in 4 of today's 20 year-olds will become disabled before they retire." Council for Disability Awareness, *Chances of Disability*.[3] For a 20-year-old male doing physical labor, the risk is even higher—over 50 percent. America's Health Ins. Plans (AHIP), *Guide to Disability Income Insurance* 3 (2014).[4]

Most Americans realize that missing work for even a short time because of disability will cause financial hardship. Zeeshan Haider, *Disability Insurance in the U.S.* 8 (Mar. 2015) (citing a report that "77.0% of the United States workforce believes that missing work for three months because of a disability will result in financial hardship"). And though they cannot predict when they might become disabled, they can insure against that risk. That is the purpose of private disability insurance: "to replace a major portion of income when sickness or injury prevents a person from earning a living." AHIP, *supra*, at 2.

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[2] *Available at* http://goo.gl/GmnAU2.

[3] *Available at* http://goo.gl/1YrUzP.

[4] *Available at* https://goo.gl/Y8DDqM.

2. For many Americans, private disability insurance is a benefit of employment. *Id.* at 5. Nearly 40 percent of U.S. private-sector employees have access to employer-sponsored disability insurance. Haider, *supra*, at 8. And in 2012, more than 2 million Americans received benefits through employer-sponsored disability coverage. Consumer Fed'n of Am. & Unum, *Employer-Sponsored Disability Insurance: The Beneficiary's Perspective* 2 (2013);[5] *see also Couch on Insurance* § 146:7 (3d ed. 2014) (noting that "[m]ost disability insurance is afforded on a group basis through employers").

Employer-sponsored disability insurance plans work in the following way. An employee performs services for an employer. In exchange, the employer allows the employee to participate in a private disability insurance plan, as a benefit of employment. "The employer often pays for all, or part, of the premiums for the coverage." AHIP, *supra*, at 5; *see also id.* at 6 ("Often, group long-term disability insurance coverage is fully paid for by employers without any payments being made by employees.").

If the employee becomes disabled, she is paid disability benefits pursuant to the plan. Under a short-term plan, benefits could start as soon as a week after disability and last for up to six months. *See* Haider, *supra*, at 5; AHIP, *supra*, at 5. Under a long-term plan, benefits could start within two or three months of disability and last for years. *See* Haider, *supra*, at 5; AHIP, *supra*, at 5-6.

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[5]*Available at* http://goo.gl/zvsl0m.

Under either type of plan, the employee receives periodic payments, usually as a percentage of her salary. Haider, *supra*, at 14. On average, the benefits amount to about 60 percent of the employee's pre-disability income. U.S. Dep't of Labor, Bureau of Labor Statistics, *Short-Term Disability Plans: Fixed Percent of Annual Earnings* (Mar. 2011);[6] U.S. Dep't of Labor, Bureau of Labor Statistics, *Long-Term Disability Plans: Fixed Percent of Annual Earnings* (Mar. 2011).[7] In this way, private disability insurance helps replace the income that an employee would have otherwise earned. *See* AHIP, *supra*, at 5; Haider, *supra*, at 2 ("Disability insurance insures the beneficiary's earned income against the risk that a disability will render them unable to find full-time work in their chosen field.").

3. The income provided by private disability insurance is crucial: It "enables employees who are disabled to pay bills and maintain their lifestyle." AHIP, *supra*, at 5. Without it, many Americans with disabilities would have nowhere else to turn. Workers' compensation, for example, is typically available only to those injured on the job. *Id.* at 9. But "three times as many disabilities occur because of non-work-related accidents as compared with work-related accidents." *Haider*, supra, at 8. Thus, for most Americans with disabilities, workers' compensation is not an option.

The Social Security Administration also provides benefits to those who become disabled. But the eligibility requirements for such benefits are strict;

[6]*Available at* http://goo.gl/nYv8gG.

[7]*Available at* http://goo.gl/5jlk7u.

workers are eligible "only if a disability is expected to last for at least 12 months or result in death." AHIP, *supra*, at 8. It also can take months, sometimes years, for the Social Security Administration to approve a claim for disability benefits. *Id.* And even after a claim has been approved, the "benefits often are not enough to maintain an average lifestyle" for those receiving them. *Id.* at 9. Indeed, relying on Social Security disability benefits alone "would leave many families near or below poverty." *Id.*; *see also* Robert W. Beal, *Group Long-Term Disability Benefit Offset Study* 10 (2009) (reporting that Social Security disability benefits typically replace only between about 30 and 40 percent of an employee's prior income level).[8] Thus, where other benefits are unavailable or insufficient, workers rely on private disability insurance to fill the gap.

The importance of that insurance cannot be overstated. In a recent survey of households receiving long-term disability benefits through private insurance, nearly half—48 percent—reported income of less than $30,000. Consumer Fed'n of Am. & Unum, *supra*, at 4 tbl.1. More than two-thirds—71 percent—reported income of less than $50,000. *Id.* These households earn less than the U.S. median, and private disability insurance is necessary to their financial security. *See* U.S. Census Bureau, *Income and Poverty in the United States: 2013*, at 6 (2014) (estimating median household income to be $51,939).[9]

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[8] *Available at* http://goo.gl/JurzJ2.

[9] *Available at* http://goo.gl/zu9V9Y.

Indeed, many beneficiaries of long-term disability payments reported that "their employer-sponsored benefits were critical in sparing them and their families from great loss." Consumer Fed'n of Am. & Unum, *supra*, at 6. Forty-four percent of recipients of long-term disability benefits believe that without those payments, they would have lost their homes. *Id.* at 7. A third say that they would have needed food assistance. *Id.* And even when receiving benefits, many beneficiaries of long-term disability payments still report having to make hard choices—cutting back on how much they spend on their children (85 percent); delaying medical, dental, or vision care for themselves or their family (58 percent); missing payments on bills and loans (42 percent); and turning to extended family or friends to borrow money (49 percent). *Id.* at 8.

In short, many Americans rely on private disability insurance to help replace their income in the event that they become disabled. And when they do experience disability, that insurance plays a crucial role in allowing them to maintain their quality of life and stay out of poverty.

II. THE SEVENTH CIRCUIT'S DECISION WILL HAVE A DEVASTATING EFFECT ON AMERICANS WHO RELY ON PRIVATE DISABILITY INSURANCE.

1. The Mandatory Victims Restitution Act empowers the Federal Government to enforce a judgment by garnishing an individual's earnings. 18 U.S.C. § 3613(a). The MVRA, however, places limits on that power. One of those limits is found in the Consumer Credit Protection Act, 15 U.S.C. § 1673. *See* 18 U.S.C. § 3613(a)(3). The CCPA provides, as a gen-

eral matter, that no more than 25 percent of an individual's "aggregate disposable earnings" in a given week may be subjected to garnishment. 15 U.S.C. § 1673(a). And the CCPA defines "earnings" to mean "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." *Id.* § 1672(a).

Private disability insurance benefits fall squarely within that definition of "earnings." As explained above, private disability insurance benefits replace income that an individual loses because of disability; indeed, payments usually are calculated as a percentage of income. *See supra* at 7; *Rousey* v. *Jacoway*, 544 U.S. 320, 331 (2005). And like the income they replace, employer-sponsored disability insurance benefits constitute "compensation * * * for personal services." 15 U.S.C. § 1672(a). After all, employers offer their employees private disability insurance as a benefit of employment, in exchange for the services their employees provide. *See supra* at 6; *United States* v. *Ashcraft*, 732 F.3d 860, 864 (8th Cir. 2013). The fact that payment is deferred until the employee becomes disabled does not matter; it is still "compensation" for those services. Nor does it matter that payment is not "denominated as wages"; the CCPA deems such labels immaterial. 15 U.S.C. § 1672(a).

The plain text of the statute is therefore controlling: Private insurance disability benefits are "earnings" under the CCPA. And because they are "earnings," the Government may not garnish more than 25 percent of such benefits under the MVRA.

2. The Seventh Circuit nevertheless reached a contrary conclusion, holding that payments pursuant to a private disability insurance plan do not qualify as "earnings." Pet. App. 9a-11a. What that means is that there is no limit on how much of an individual's private disability insurance benefits the Government may garnish; the Government may garnish 100 percent of them.

That holding conflicts with the Eighth Circuit's decision in *Ashcraft*, as the Seventh Circuit itself acknowledged. *Id.* at 11a n.1. And if allowed to stand, the Seventh Circuit's decision will have a severe and harmful effect on Americans who rely on private disability insurance benefits. For those Americans, such benefits are an essential source of income; indeed, they are often the only reason they can still afford their homes, pay their bills, and meet the needs of their families. *See supra* at 9. By garnishing all of that away, the Government threatens to leave these households financially insecure. Many recipients of long-term disability benefits already struggle to make ends meet. *See supra* at 8-9. And if the Government were to garnish 100 percent of their benefits, many would face "financial desperation"—and possibly even be forced to declare bankruptcy. Consumer Fed'n of Am. & Unum, *supra*, at 8-9.

The question in this case thus presents an issue of immense practical importance for the many Americans who rely on private disability insurance benefits to maintain their standard of living. And yet, the Seventh Circuit did not so much as acknowledge that fact in deciding this case. Instead, it concluded that private disability insurance benefits are not actually "earnings" because of the so-called *expressio unius*

canon. Pet. App. 9a. That canon holds that "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied." *Id.* at 10a (internal quotation marks omitted). Applying that canon here, the Seventh Circuit reasoned that because Congress specifically exempted workers' compensation and military-related disability payments from garnishment *altogether*, 18 U.S.C. § 3613(a)(1), Congress could not have intended to restrict garnishment to 25 percent of other types of disability payments (including private disability insurance payments). Pet. App. 9a-10a.

But the *expressio unius* canon works only when construing congressional intent about a single issue. *See Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (explaining that the canon "has force only when the items expressed are members of an *associated* group or series" (emphasis added) (internal quotation marks omitted)). In the statutory provisions involved here, Congress addressed two distinct issues: (1) what payments should be exempt from garnishment entirely, *see* 18 U.S.C. § 3613(a)(1); and (2) what payments should be subjected only to garnishment of 25 percent, *see id.* § 3613(a)(3); 15 U.S.C. § 1673(a). The fact that Congress specified that some types of disability payments fall within the *first* category—complete exemption—says nothing about whether it intended other types of disability payments to fall within the *second*—limited exemption. Rather, the best indication of what Congress intended to fall within the second (25 percent) category is the CCPA's definition of "earnings." And as already explained, that definition plainly encompasses private disability insurance benefits. The *expressio*

unius canon cannot justify exposing those benefits—on which so many disabled Americans rely—to total garnishment.

3. The Seventh Circuit's decision is flawed for another reason: It means that recipients of private disability insurance benefits will be treated differently—and far worse—than recipients of pension and retirement benefits.

Under the CCPA, "earnings" include "periodic payments pursuant to a pension or retirement program." 15 U.S.C. § 1672(a). That makes sense. Employers allow employees to participate in pension and retirement programs as a benefit of employment. Payment of benefits is deferred until a specified occurrence—namely, retirement. And when retirement occurs, payments are made periodically as a substitute for wages.

Payments pursuant to a private disability insurance plan are no different. Employers offer private disability insurance plans as a benefit of employment. *See supra* at 6. Payment of benefits is deferred until a specified occurrence—namely, disability. And when disability occurs, payments are made periodically as a substitute for wages. *See supra* at 7.

In all relevant respects, recipients of retirement benefits and recipients of disability benefits are similarly situated. And yet, the Seventh Circuit's decision requires that they be treated differently. Because that disparate treatment will have a serious adverse effect on countless disabled Americans, this Court should intervene to decide this important question presented.

CONCLUSION

For the foregoing reasons and those in the petition, the petition should be granted.

Respectfully submitted,

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