

# 22-2629

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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TRAVIS WOODS,  
*Plaintiff and Appellant,*  
vs.

CENTRO OF ONEIDA, INC., CENTRAL NEW YORK REGIONAL  
TRANSPORTATION AUTHORITY,  
*Defendants and Appellees.*

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On Appeal from the United States District Court,  
Northern District of New York  
Case No. 6:20-CV-539  
Hon. Frederick J. Scullin

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**BRIEF OF DISABILITY RIGHTS EDUCATION AND DEFENSE FUND  
AND SIXTEEN OTHER ORGANIZATIONS AS *AMICI CURIAE*  
IN SUPPORT OF PLAINTIFF-APPELLANT AND  
URGING REVERSAL AND REMAND**

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February 10, 2023

## FULL LIST OF AMICI CURIAE

1. Disability Rights Education and Defense Fund
2. American Association of People with Disabilities
3. The Arc of the United States
4. Autistic Women and Nonbinary Network
5. Civil Rights Education and Defense Fund
6. The Coelho Center for Disability Law, Policy and Innovation
7. Disability Rights Advocates
8. Disability Rights Bar Association
9. Disability Rights California
10. Disability Rights Legal Center
11. National Disability Rights Network
12. National Federation of the Blind Inc.
13. National Council on Independent Living
14. Disability Rights New York
15. United Spinal Association
16. Paralyzed Veterans of America
17. World Institute on Disability

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for *Amici Curiae* certifies that no *Amici* has a parent corporation and that no publicly held corporation owns 10 percent or more of any *Amici's* respective stock.

**CONSENT OF THE PARTIES TO THE FILING**  
**FEDERAL RULE OF APPELLATE PROCEDURE 29(a)(2)**

This motion is filed with the consent of Garret DeReus and Andrew D. Bizer, counsel for Plaintiff-Appellant. Counsel for Defendants-Appellees, W. Bradley Hunt and Christian P. Jones, have indicated that Defendants-Appellees take no position on the filing.

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## IDENTITY AND INTERESTS OF *AMICI CURIAE*<sup>1</sup>

*Amici* are authorities in the field of disability rights and represent and advocate for the rights of people with disabilities. *Amici* have extensive policy and litigation experience and are recognized for their expertise in the interpretation of civil rights laws affecting individuals with disabilities including the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213, and Section 504 of the Rehabilitation Act, (“Section 504”), 29 U.S.C. § 794. Collectively and individually, *Amici* have a strong interest in ensuring that these federal laws are properly interpreted and enforced, consistent with Congress’s broad remedial intent to eliminate discrimination and address segregation and exclusion.<sup>2</sup>

Given the strong interests of *Amici*, the September 19, 2022, Order of the Honorable Frederick J. Scullin, Jr., granting the Motion for Summary Judgment of

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<sup>1</sup> As required by Federal Rules of Appellate Procedure 29(a)(4)(E), the undersigned certifies that no party’s counsel authored this brief in whole or in part, and that no party, party’s counsel, or any other person other than *Amici*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

<sup>2</sup> Because the standards adopted by Title II and § 504 are “nearly identical,” their merits are considered in tandem. *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 196 (2d Cir. 2014). This brief deals with the district court’s treatment of Plaintiff’s ADA claims; his Section 504 claims are not addressed separately herein.

Defendants Centro of Oneida, Inc. and Central New York Regional Transportation Authority (hereinafter “Order”) is of significant concern. Among other errors, he district court fails to appreciate or acknowledge the significance of compliance with ADA accessibility standards in altered facilities and engages in a flawed analysis of the ADA’s program access standard, setting harmful precedent.

The experience, expertise, and unique perspective of *Amici*, all of whom are described in the attached Addendum, make them particularly well suited to assist this Court in resolving the important legal issues presented by this case.

### **SUMMARY OF ARGUMENT**

Accessible, integrated transportation is essential to the lives of disabled people. The ADA’s findings and remedial purpose reflect this fact. The September 19, 2022, Order of the district court frustrates the ADA’s findings and remedial purpose. In disposing of Plaintiff’s claims, the district court made a number of reversible errors. The district court evaluated Plaintiff’s claims under the standards for existing facilities, when the more stringent standards for alterations should have been applied. The court then engaged in a program access analysis that trivialized the multiple differences between paratransit and fixed-route services and inappropriately considered the availability of services and facilities of third parties over which they have no control. The district court’s order endorses the

discrimination to which Plaintiff was subjected and encourages non-compliance with accessibility standards. It must be reversed and remanded.

## **ARGUMENT**

### **1. Accessible Transportation is Critical to People with Disabilities. The ADA’s Findings and Remedial Purpose Reflect this Fact.**

Transportation is essential for people of all ages and backgrounds to live fulfilling and satisfying lives. It plays a vital role in many aspects of daily life including access to employment, education, health care, shopping, and social and recreational activities. Put simply, transportation is a crucial requirement for full participation in a community.<sup>3</sup> Despite its obvious importance, millions of Americans experience transportation barriers.<sup>4</sup> These barriers are exponentially worse for people with disabilities, who have more frequent health care needs,

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<sup>3</sup> Jansuwan, S., Christensen, K.M., & Chen, A. (2013). Assessing the transportation needs of low-mobility individuals: Case study of a small urban community in Utah. *Journal of Urban Planning and Development*, 139(2), 104-114.

<sup>4</sup> Rosso, A. L., A. H. Auchincloss, and Y. L. Michael. 2011. “The Urban Built Environment and Mobility in Older Adults: A Comprehensive Review.” *Journal of Aging Research* 2011; Syed, S. T., B. S. Gerber, and L. K. Sharp. 2013. “Traveling Towards Disease: Transportation Barriers to Health Care Access.” *Journal of Community Health* 38 (5): 976–93; National Council on Disability. 2015. *Transportation Update: Where We’ve Gone and What We’ve Learned*. Washington, DC: National Council on Disability.



require greater accessibility to transportation, and often have lower incomes than the general population.<sup>5</sup>

According to the United States Census Bureau, approximately 41.1 million Americans experience one or more disabilities.<sup>6</sup> Of this 41.1 million, an estimated 25.5 million have disabilities that make traveling outside the home difficult and 3.6 million do not leave their homes at all.<sup>7</sup> Further research indicates 30% of individuals with disabilities in the United States have difficulty accessing transportation.<sup>8</sup> They experience barriers to social participation, especially employment, due to poor transportation access.<sup>9</sup> Insufficient levels of service and

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<sup>5</sup> Syed, S. T., *et al.*, *supra* note 4.

<sup>6</sup> U.S. Census Bureau. (2021). *2017- 2021 American Community Survey 5-Year Estimates Data Profile*. Retrieved from: <https://data.census.gov/table?y=2021&d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2021.DP02&g=0100000US>.

<sup>7</sup> Bureau of Transportation Statistics (2018). *Travel Patterns of Adults with Disabilities*. <https://www.bts.gov/sites/bts.dot.gov/files/2022-01/travel-patterns-american-adults-disabilities-updated-01-03-22.pdf>.

<sup>8</sup> U.S. General Accounting Office. (2003). *Transportation – disadvantaged populations: Some coordination efforts among programs providing transportation services, but obstacles persist*. Retrieved from: <http://www.gao.gov/new.items/d03697.pdf>.

<sup>9</sup> There is an estimated employment gap of more than 41% between those with and without disabilities in the United States. Kraus, L. 2017. *2016 Disability Statistics Annual Report*. Institute on Disability/UCED. Durham, NH: University of New Hampshire.

inaccessible routes are two of the primary public transportation barriers experienced.<sup>10</sup> These barriers quickly and critically impact the ability of people with disabilities to fully experience the social, economic, and political environments of their communities.<sup>11</sup>

In analyzing the need for the ADA, Congress explicitly acknowledged the importance of access to transportation for disabled people, finding that “discrimination against individuals with disabilities persists in such critical areas as . . . transportation” and includes “outright intentional exclusion, the discriminatory effects of architectural [and] transportation . . . barriers, . . . [the] failure to make modifications to existing facilities and practices, . . . segregation, and relegation to lesser services, programs, activities, benefits, . . . or other opportunities.” 42 U.S.C. § 12101(a)(3) and (5). Congress further found that this discrimination, exemplified by exclusion, discriminatory policies and barriers, segregation, and relegation to lesser services, has resulted in disabled people being forced to occupy an “inferior

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<sup>10</sup> Bezyak, J. L., S. A. Sabella, and R. H. Gattis. 2017. “Public Transportation: An Investigation of Barriers for People with Disabilities.” *Journal of Disability Policy Studies* 28 (1): 52–60.

<sup>11</sup> Christensen, K. M. (2014). Socially equitable community planning: Including individuals with disabilities in democratic association of place. *Review of Disability Studies*, 5(3), 49-52.

status in society” and to experience a “severe[] disadvantage[] socially, vocationally, economically, and educationally.” *Id.* § 12101(a)(5)-(6).

In response to these findings, the far-reaching purpose of the ADA was pronounced boldly and unequivocally by Congress: “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” *Id.* § 12101(b)(1)-(2). *See also, PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001) (“Congress enacted the ADA in 1990 to remedy widespread discrimination against disabled individuals.”). As a remedial statute, the ADA must be broadly construed to effectuate this purpose. *Noel v. New York City Taxi & Limousine Comm'n*, 687 F.3d 63, 68 (2d Cir. 2012). As discussed herein, the Order of the district court frustrates the ADA’s purpose, as well as its express terms, by failing to acknowledge the barriers in Defendants’ fixed-route system and address them as intended and authorized by Congress.

## **2. The District Court Failed to Consider or Apply the Heightened Standards for ADA Liability Applicable to Altered Facilities.**

Ensuring the accessibility of altered facilities through enforcement of ADA’s accessibility guidelines is one of the most critical and uncompromising purposes of the ADA. *See* 42 U.S.C. § 12101(b); *Tennessee v. Lane*, 541 U.S. 509, 531 (2004).

Plaintiff's claims must be considered within this context of this important purpose. Here, the district court erred when it evaluated Plaintiff's claims under the standards for existing facilities (42 U.S.C. § 12148; 28 C.F.R. § 35.150; 49 C.F.R. § 37.61) when it should have utilized the more stringent and demanding standards for altered facilities (42 U.S.C. § 12147; 28 C.F.R. § 35.151; 49 C.F.R. § 37.43). These two sets of standards are different by design, reflecting an important regulatory compromise. The district court's failure to utilize the proper standards when analyzing Plaintiff's claims dictates that its Order be reversed and remanded.

**a. The ADA and its implementing regulations establish different standards for existing facilities and new construction and alterations.**

Title II's general rule is that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. An individual is excluded from participation in or denied the benefits of a public program in violation of the ADA if "a public entity's facilities are inaccessible to or unusable by individuals with disabilities." *Daubert v. Lindsay Unified Sch. Dist.*, 760 F.3d 982, 985 (9th Cir. 2014) (quoting 28 C.F.R. § 35.149).

Public entities that provide designated public transportation are subject to regulations promulgated by both the Department of Justice ("DOJ") and the

Department of Transportation (“DOT”). Both sets of regulations apply; one does not override the other. 49 C.F.R. § Pt. 37, App. D § 37.21; 49 C.F.R. § 37.21. In defining accessibility, both sets of regulations distinguish between *altered facilities* (28 C.F.R. § 35.151 and 49 C.F.R. § 37.43), and *existing facilities* (28 C.F.R. § 35.150 and 49 C.F.R. § 37.61).<sup>12</sup>

*i. Existing facilities*

With respect to existing facilities –*i.e.*, facilities constructed *prior to* January 26, 1992– a public entity need only “operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a).<sup>13</sup> To comply with this mandate, a public entity may make structural changes to its existing facilities, but it need not do so if other methods would be effective. 28 C.F.R. § 35.150(b)(1); *Daubert*, 760 F.3d at 986. These “methods” may include the “delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, ... or any other methods that result in making its

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<sup>12</sup> In discussing program access, Plaintiff’s Opening Brief focuses on Part B of Title II and relevant DOT regulations (42 U.S.C. § 12141 *et seq.* and 49 C.F.R. § Pt. 37). *Amici’s* brief focuses on Part A of Title II and relevant DOJ regulations (42 U.S.C. § 12131 *et seq.* and 28 C.F.R. § Pt. 35), which also apply. DOT regulations are not discussed in detail herein due to the coverage in the Opening Brief.

<sup>13</sup> *See also* 49 C.F.R. § 37.61.

services, programs, or activities readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(b)(1). When choosing among methods of compliance, public entities must prioritize those methods that enable it to provide services to people with disabilities in “the most integrated setting appropriate.” *Id.*

***ii. New construction and alterations***

The obligations imposed on new construction and alterations –*i.e.*, facilities constructed or altered *after* January 26, 1992– are considerably more demanding. *See*, 28 C.F.R. § 35.151(a)(1) (new construction); 28 C.F.R. § 35.151(b)(1) (alterations).<sup>14</sup> New construction must fully comply with ADA accessibility standards unless the public entity can demonstrate compliance would be “structurally impracticable.” 28 C.F.R. § 35.151(a)(2).<sup>15</sup> The provisions for the alteration of existing facilities are similar, requiring that “each facility or part of a facility altered by, on behalf of, or for the use of” a public entity be, to the “maximum extent feasible”, altered so that it is “readily accessible to and usable by individuals with disabilities.” 29 C.F.R. § 35.151(b)(1).<sup>16</sup> A transportation facility is considered to be “readily accessible to and usable by individuals with

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<sup>14</sup> *See also* 49 C.F.R. § 37.41(a); 49 C.F.R. § 37.43(a)(1).

<sup>15</sup> *See also* 49 C.F.R. § 37.41(b).

<sup>16</sup> *See also* 49 C.F.R. § 37.43(a)(1).

disabilities” if it meets the requirements set forth in 36 C.F.R. § Pt. 1191, Apps. B and D, as modified by 49 C.F.R. § Pt. 37, App. A (hereinafter “ADAAG”). 49 C.F.R. § 37.9.

**b. The difference between the obligations for existing facilities and the obligations for new construction and alterations represents an important regulatory compromise.**

The distinction between existing facilities and new construction and alterations “was intended to ensure broad access to public services, while, at the same time, providing public entities with the flexibility to choose how best to make access available.” *See Parker v. Universidad de Puerto Rico*, 225 F.3d 1, 6 (1st Cir. 2000). The regulations emphasize that “[a] public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance.” 28 C.F.R. § 35.150(b)(1). As the Supreme Court has acknowledged, for older facilities “structural change is likely to be more difficult.” *Tennessee v. Lane*, 541 U.S. at 532. *See also*, Earl B. Slavitt & Donna J. Pugh, *Accessibility Under the Americans with Disabilities Act and Other Laws: A Guide to Enforcement and Compliance* 53–54 (2000); 28 C.F.R. § Pt. 35, App. A § 35.150 (under Title II, “the concept of program access will continue to apply with respect to facilities now in existence, because the cost of retrofitting existing facilities is often prohibitive.”). Thus, these different obligations represent an important regulatory compromise: public entities are not required to retrofit

existing facilities if there are less costly ways in which to provide access *so long as facilities constructed or altered after January 26, 1992, are built to be accessible.*

**c. Plaintiff’s claims involve altered boarding and alighting areas and should have been evaluated using the more stringent standards for altered facilities.**

In its Order, the district court failed to apply the standards for altered facilities, despite evidence that Defendants’ bus boarding and alighting areas (hereinafter “bus stops”) were “altered by, on behalf of, or for the use of” Defendants “in a manner that affects or could affect the[ir] usability” after January 26, 1992.<sup>17</sup> *See* 28 C.F.R. § 35.151(b)(1).<sup>18</sup> Rather, the district court looked at whether Defendants’ transit system was meaningfully accessible when looked at in its entirety, a standard only applicable to *existing facilities*. *See* 28 C.F.R. § 35.150(a).<sup>19</sup> Had the district court applied the correct standards, it would have found that Defendants’ bus stops violate the ADA *as a matter of law*.

To comply with the ADA, the construction or alteration of facilities owned or maintained by a public entity must comply with the technical standard set forth

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<sup>17</sup> Record Appendix (“R.A.”) at 76-77 (Defendants altered signage; installed bus shelters.)

<sup>18</sup> *See also* 49 C.F.R. § 37.43(a)(1).

<sup>19</sup> *See also*, 49 C.F.R. § 37.61(a).



in ADAAG. *Feltenstein v. City of New Rochelle*, 254 F. Supp. 3d 647, 655-656 (S.D.N.Y. 2017); *Brown v. Cnty. of Nassau*, 736 F.Supp.2d. 602, 611 (E.D.N.Y. 2010) (“Whether a facility is accessible is determined by whether the facility complies with . . . ADAAG.”). ADAAG is the reference point for ADA compliance when public entities construct new facilities or make alterations to existing facilities to meet program accessibility requirements. *See Mote v. City of Chelsea*, 391 F. Supp. 3d 720, 731 (E.D. Mich. 2019) (“The sidewalks and curb ramps at intersections must comply with certain federal regulations enacted under the ADA and the Rehabilitation Act, known as the . . . ADAAG.”). Defendants altered their bus stops without complying with the requirements of ADAAG.<sup>20</sup> This violates the ADA (28 C.F.R. § 35.151(b)(1)); the ADAAG violations *must be removed*. 28 C.F.R. § 35.151(c)(5) (noncomplying alterations “shall be made accessible” with ADAAG).

Additionally, the district court considered the availability of other methods for providing program access, a consideration that only applies to existing facilities.<sup>21</sup> The availability of other methods does not obviate a public entity’s obligation to make its altered facilities accessible to and useable by people with

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<sup>20</sup> Experts for both parties confirm this fact. R.A. at 85-87.

<sup>21</sup> As discussed in Section 3, *infra*, the court also erred in its consideration of other methods in the existing facilities context.

disabilities through compliance with ADAAG. *See e.g. Guadagnini v. SamTrans*, No. 21-CV-02613-AGT, 2021 WL 5894892, at \*2 (N.D. Cal. Oct. 1, 2021) (“The Court is not persuaded by defendants’ conclusory arguments that the availability of SamTrans’s paratransit service obviates their statutory obligations under the ADA to ensure that newly altered bus stops are readily accessible.”). Ignoring the ADA’s mandate for altered facilities renders the ADA’s regulatory scheme meaningless and violates cardinal principles of construction.<sup>22</sup>

**3. The “Other Methods” Considered by the District Court are Neither Effective Nor Integrated and Fail to Meet the ADA’s Program Access Standards for Existing Facilities.**

Although a public entity is permitted to use “other methods” to achieve compliance with the requirements for *existing* facilities, this flexibility is not without limit. Any other methods utilized must be “effective”, and priority must be given to methods that enable the public entity to provide services in the “most integrated setting appropriate.” 28 C.F.R. § 35.150(b)(1). Assuming that it was appropriate to apply the standards for existing facilities in this case, for the reasons detailed below it was wrong for the district court to find that the availability of

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<sup>22</sup> *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 26 (2012) (“If possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*). None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.”).

paratransit and flexibility in where disabled riders board and alight were sufficient to meet those standards.<sup>23</sup>

**a. The availability of paratransit is insufficient to meet the program access standards for existing facilities.**

In concluding that the availability of paratransit meets the program access standards for existing facilities, the district court trivialized the significant differences between paratransit and fixed-route services and failed to acknowledge the ongoing barriers to and significant costs of paratransit.

**i. Paratransit is a segregated and specialized service not intended for long-term use by individuals who can use an accessible fixed-route system.**

“Under the ADA, paratransit functions as a ‘safety net’ for people with disabilities who are unable to make use of the fixed-route – e.g. ‘mainstream’ – transit system []. It is not intended to be a comprehensive system of transportation that meets all of the travel needs of persons with disabilities.”<sup>24</sup> Fixed-route public transit is the goal of the ADA for those who are able to use it, and those services

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<sup>23</sup> “Reasonable accommodations” provided by public entities to achieve “program access” under the DOT regulations (49 C.F.R. § 37.5(i)(3)), are “other methods” contemplated by and for purposes of 28 C.F.R. § 35.150(b)(1).

<sup>24</sup> Federal Transit Administration, “‘Premium Charges’ for Paratransit Services” (updated February 27, 2020), available at: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/premium-charges-paratransit-services> (viewed on February 5, 2023).

must be made *independently* accessible.<sup>25</sup> “[A]n important part of the program access requirement ... is whether *all services* available for the use of non-disabled patrons also are available for use of disabled patrons.” *Pascuiti v. New York Yankees*, 87 F. Supp. 2d 221, 224 (S.D.N.Y. 1999) (emphasis added).

Although individuals may be found conditionally eligible for paratransit on otherwise accessible routes due to the presence of inaccessible boarding or disembarking locations (*see* 49 C.F.R. § 37.123(e)(2)), regulatory guidance from the DOT cautions that in cases involving “architectural barrier problems, assertions of eligibility should be given tight scrutiny.” 49 C.F.R. § Pt. 37, App. D § 37.123. The DOT guidance also makes clear that conditional, route-based paratransit eligibility “should be reduced over time as transit systems become more accessible.” *Id.* *See also* 49 C.F.R. § 37.5(b) (“Notwithstanding the provision of any special transportation service to individuals with disabilities, an entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service.”). Thus, it is clear that paratransit is not intended to be an ongoing alternative for persons otherwise eligible to use the

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<sup>25</sup> *Amici* join in Plaintiff’s argument that Defendants fixed-route and paratransit must be independently accessible to and usable by people with disabilities. *See* Opening Brief at 28-39.

mainstream fixed-route system. It is a segregated and specialized stopgap measure until the fixed-route system is made accessible. Importantly, such accessibility will only be achieved through compliance with the ADA's accessibility requirements. The district court's refusal to enforce such requirements thwarts this objective.

**ii. The nature of paratransit demonstrates how ineffective it is for meaningful access, a fact Defendants themselves acknowledge.**

Defendants' paratransit is a "ride sharing" program. *See* Central New York Regional Transportation Authority's Call-A-Bus 2022-23 Rider's Guide ("Rider's Guide") at pp. 4, 5, 11.<sup>26</sup> Unlike fixed-route bus service, paratransit vehicles do not follow a specific and fixed-route. *Id.* Rather, they follow uncertain routes, determined by demand on a ride-by-ride basis. *Id.* at p. 4. These routes "may or may not follow the most direct route" between a rider's origin and destination. *Id.* at 11. Additionally, there may be "several" pick-ups and drop-offs before a rider reaches their destination. *Id.* at 4, 5, 11. As a result, ride times are indeterminant, unpredictable, and can vary widely, making travel for people with disabilities burdensome and difficult.

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<sup>26</sup> The Rider's Guide is attached as Exhibit 1 to *Amici's* concurrently filed Request for Judicial Notice.

Travel times are frequently excessive, as confirmed by published estimated travel times for Defendants services. *Id.* at p. 11 and below.

<b>Distance Travelled</b>	<b>Length of Paratransit Ride</b>
1-5 miles	Up to 1 hour
5-10 miles	Up to 1 and ½ hours
10+ miles	Up to 2 hours

Paratransit fares can also be excessive. By law, transit agencies can charge twice as much for paratransit as for fixed-route service. 49 C.F.R. § 37.131(c). Factor in the federally guaranteed 50% fare discount available to seniors and people with disabilities who use fixed-route transit, and the cost of paratransit can be four times as much as the same trip on a fixed-route bus. Because disabled people experience higher rates of unemployment<sup>27</sup> and poverty<sup>28</sup> than their non-disabled counterparts, this fare differential is significant.

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<sup>27</sup> Recent data from the Bureau of Labor Statistics showed that persons with disabilities were much less likely to be employed (19.1%) than those with no disabilities (63.7%). U.S. Department of Labor, Bureau of Labor Statistics Persons with a Disability: Labor Force Characteristics – 2021 (2022). <https://www.bls.gov/news.release/pdf/disabl.pdf> (Last viewed February 6, 2023).

<sup>28</sup> Data from 2021 revealed that 25% of people with disabilities live below poverty levels. This number is significantly lower for people without disabilities (9%). Creamer, Shrider, Burns and Chen, Poverty in the United States: 2021 (Issued September 2022). Available at:

Additionally, the process eligible riders must follow to request a paratransit ride is time consuming and oppressive. Rides must be requested at least one day in advance. 49 C.F.R. § 37.131(b); Rider’s Guide at p. 8. Hours for requesting rides can be, and in Defendant’s case are, limited to business hours. 49 C.F.R. § 37.131(b)(1); Central New York Regional Transportation Authority’s Call-A-Bus Trip Request Telephone Tips brochure at p. 2.<sup>29</sup> If trips are made more than one day in advance, individuals are provided an “estimated” pick up time and expected to call back the day before their trip to secure a “more defined pick-up and drop-off time window.” Rider’s Guide at p. 9. As Defendants’ paratransit vehicles will only wait 5 minutes for riders before deeming them “no-shows” and abandoning the pick-up location (*Id.* at p. 16), this extra call to secure a more defined pick-up time is essentially required.

Defendants’ paratransit utilizes a one-hour reservation window, meaning it can offer riders a pick-up time up to one hour before or after their requested time. 49 C.F.R. § 37.131(b)(2); Rider’s Guide at p. 9. This presents difficulties and uncertainties in planning travel.

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<https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-277.pdf> (Last viewed February 6, 2023).

<sup>29</sup> The Trip Request Telephone Tips brochure is attached as Exhibit 2 to *Amici’s* concurrently filed RJN.

Defendants could, but do not, offer subscription service to their paratransit-eligible riders. 49 C.F.R. § 37.133; *see generally* Rider's Guide. With subscription service, a paratransit-eligible rider who makes the same trip on a repeated or recurring basis can set up an on-going reservation for a set period of time, obviating the need for riders to call daily to make trip-by-trip reservations. Without subscription service, the burdensome process for requesting paratransit rides must be followed for *every ride taken*. This makes reliance on paratransit for reoccurring travel to places like school, work, religious services, and medical appointments extremely burdensome.

There is no flexibility or spontaneity with travel by paratransit. Everything must be planned out at least one day in advance. Rider's Guide at 8. Riders are generally limited to traveling with no more than one companion.<sup>30</sup> 49 C.F.R. § 37.123; Rider's Guide at p. 7. Such a limit is not imposed on riders of fixed-route.

Finally, Defendants' paratransit service is not available on Defendant's fixed bus commuter routes, which provide service during morning and afternoon rush hours with limited stops between an origin and destination. 49 C.F.R. § 37.121; Rider's Guide at 6. This is another limitation on travel by paratransit.

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<sup>30</sup> In addition to a personal care attendant, if needed. 49 C.F.R. § 37.123; Rider's Guide at p. 7.



Defendants do not deny the limitations of their paratransit services. In fact, Defendants affirmatively acknowledge them in their Rider's Guide. Defendants explicitly "encourage" individuals to ride fixed-route and list the multitude of ways in which fixed-route is preferable to paratransit, including: (1) fixed-route "does not require an advance reservation"; (2) fixed-route "enables you to change trip plans on short notice"; (3) fixed-route allow riders to "travel with a larger group of friends and family"; (4) fixed-route "travels a specific and fixed-route" while paratransit "is a ride sharing service"; (5) paratransit routes are "determined by demand" and "others may be picked up and dropped off before you"; and (6) fixed-route serves suburban locations while paratransit does not serve those areas at all. Rider's Guide at p. 4.

For the aforementioned reasons, it will always be a struggle for disabled people to get to work, school, medical appointments, and social events if forced to rely on paratransit as their primary means of transportation, regardless of how diligent their efforts may be or how "compliant" the service may be. Accordingly, the district court's conclusion that the availability of paratransit services provides disabled people with meaningful access to Defendants' transit system must be deemed erroneous.

**iii. Forcing people who can use fixed-route to use paratransit is not cost efficient and will only make existing barriers to paratransit worse.**

Complementary paratransit services are a lifeline for many individuals with disabilities. Despite its importance, performance-related barriers are widespread and prevent individuals who really need the service from having necessary transportation to meet daily needs.<sup>31</sup> Increasing ridership unnecessarily will only make this bad situation worse.

A 2017 survey of over 1500 paratransit users found that a large majority of respondents experienced some type of barrier to the service.<sup>32</sup> Scheduling and negotiation of reservations was reported as a barrier for 54.7 percent, long wait times by 49.8 percent, missed pick up windows by 36 percent, long ride times by 35.1 percent, times of service by 32.2 percent and inappropriate driver attitude by

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<sup>31</sup> In fact, almost every major metropolitan transit operator has been sued by disability advocates and aggrieved riders over system failure to meet the ADA paratransit requirements. Rosenbloom, S. (2007). Transportation patterns and problems of people with disabilities. In M.J. Field and A.M. Jette (Eds.), *The future of disability in America* (pp. 519-560). Washington, D.C.: National Academic Press. This necessary and important enforcement work to address system failures is ongoing. See e.g., December 2022 Settlement Agreement entered into between the United States and New Jersey Transit over lengthy paratransit delays and denials of service, available at <https://www.justice.gov/usao-nj/press-release/file/1559156/download> (last viewed February 5, 2023).

<sup>32</sup> Bezyak, J. L., *et al.*, *supra* note 10.

29.4.<sup>33</sup> These results are consistent with previous reports indicating that travelers often experience untimely pickups, excessive trip lengths, missed trips, eligibility denials, excessive reservation hold times, attitudinal barriers among drivers, and a lack of driver training pertaining to the provision of accommodations.<sup>34</sup>

Individually and collectively, these problems prevent individuals with disabilities who are eligible for paratransit from obtaining adequate and necessary transportation. As a result, they may fail to engage in social events, obtain or maintain employment, attend to health care needs, or participate in recreational activities.<sup>35</sup>

The source of ongoing performance issues with paratransit may be inadequate funding, resulting in providers being understaffed, lacking the sophistication to manage door to door service in a consistent and effective manner, and being overloaded with passengers. Paratransit is the most expensive form of accessible transportation for transit agencies to provide.<sup>36</sup> The average paratransit

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<sup>33</sup> Bezyak, J. L., *et al.*, *supra note 10*.

<sup>34</sup> National Council on Disability. (2015). *Transportation update: Where we've gone and what we've learned*. Washington, D.C.: Author.

<sup>35</sup> Jansuwan, S., *et al.*, *supra note 3*.

<sup>36</sup> GAO (Government Accountability Office). 2012. *ADA Paratransit Services: Demand Has Increased, but Little is Known about Compliance*. GAO-13-17 Report to the Committee on Banking, Housing, and Urban Affairs, U.S. Senate. Washington, DC: US Government Accountability Office. <http://www.gao.gov/products/GAO-13-17>; Lesh, M. C. 2013. "Innovative

trip costs transit agencies 3.5 times more than a fixed-route trip.<sup>37</sup> By 2030, required annual funding for paratransit services is expected to grow by \$3.3 billion for operating expenses and \$598 million for capital costs.<sup>38</sup> Cost containment, and ensuring that paratransit is available for those who actually need it, is a concern.

**b. Allowing bus drivers flexibility in where to pick up and drop off disabled riders is insufficient to meet the program access standards for existing facilities.**

In concluding that allowing bus drivers flexibility in determining where disabled riders board and alight meets the program access standards for existing facilities, the district court ignored case precedent and failed to consider the impact of driver attitudes and behaviors.

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Concepts in First-Last Mile Connections to Public Transportation.” In *Urban Public Transportation Systems 2013: Proceedings of the Third International Conference on Urban Public Transportation Systems*, edited by S. Jones, 63–74. Reston, VA: American Society of Civil Engineers.

<sup>37</sup> Dickens, M., and J. Neff. 2010. *2010 Public Transportation Fact Book*. Washington, DC: American Public Transportation Association.

<sup>38</sup> Dickens, M., and J. Neff, *supra* note 37.

**i. The availability of services or facilities from unobligated<sup>39</sup> third parties is not an appropriate consideration and will result in confusion and avoidance of responsibility.**

The district court’s finding that “[giving] bus drivers and passengers flexibility in where to stop the bus for boarding and alighting within the vicinity of the designated bus stop sign” provides Plaintiff with “meaningful access” to Defendants’ fixed-route system is flawed.<sup>40</sup> Defendants argue that their inaccessible fixed route system does not violate the ADA because bus drivers routinely permit passengers to board and alight near street corners, driveways, or other curb cuts. However, the availability of such locations as alternative boarding and alighting areas is irrelevant to whether Plaintiff has meaningful access to Defendants’ fixed-route system.

There is nothing in the statutory language of the ADA or its implementing regulations to suggest that a public entity can rely on facilities operated and maintained by a third party, not under its control, as a “method” to fulfill its program access requirements. Similarly, there is no case precedent to support the conclusion that a public entity can escape its affirmative obligation to ensure the accessibility and usability of its services, programs, and activities by relying on the

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<sup>39</sup> By “unobligated”, *Amici* means without any legal or contractual obligation to Plaintiff or Defendants vis-à-vis Defendants’ fixed-route system.

<sup>40</sup> *See* R.A. 30.

availability of the services or facilities of a third party that the public entity neither contracts with nor controls. In fact, quite the opposite. *See e.g., Sarfaty v. City of Los Angeles*, No. 2:17-CV-03594-SVW-KS, 2020 WL 4697906, at \*6 (C.D. Cal. Aug. 12, 2020) (holding that the availability of accessible parking spaces in private parking lots was not a relevant factor in determining whether the City’s public parking met program access requirements).

However, *there is precedent* holding that “conditioning access upon arduous or costly coping mechanisms and on the assistance of strangers is anathema to the stated purpose of the Rehabilitation Act and the ADA.” *Am. Council of Blind of New York, Inc. v. City of New York*, 495 F. Supp. 3d 211, 235 (S.D.N.Y. 2020) (internal quotes omitted) (citation omitted). As this Circuit has recognized, access to a public entity’s services, programs, and activities “should not be contingent on the happenstance that others are available to help.” *Disabled in Action v. Bd of Elections in the City of New York*, 752 F.3d at 200 (2d Cir. 2014). Federal laws’ “emphasis on independent living and self-sufficiency ensures that, for the disabled, the enjoyment of a public benefit is not contingent upon the cooperation of third persons” *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1269 (D.C. Cir. 2008). *See also Wright v. New York State Dep't of Corr.*, 831 F.3d 64, 74 (2d Cir. 2016) (finding correctional facility’s mobility assistance program to be

fundamentally in tension with the ADA because it required an inmate to “seek out and rely upon the cooperation” of other inmates).

In light of this precedent, it was erroneous for the district court to have considered the availability of adjacent corners, driveways or curb cuts when assessing whether there was meaningful access to Defendants’ transit system, *even if* those locations provide disabled people some incidental or occasional benefit.<sup>41</sup> There is no evidence in the record establishing that the corners, driveways, or curb cuts considered by the district court are part of Defendants’ fixed-route transit system. Nor is there any evidence that these locations are maintained or controlled by Defendants.

In addition to being an improper consideration, allowing a public entity to rely on the services and facilities of unobligated third parties for the provision of meaningful access thwarts public policy and will result in finger-pointing and an avoidance of responsibility. There is no question that Defendants are ultimately responsible for maintaining the infrastructure of their fixed route bus system in a manner that ensures its physical accessibility and useability. *See* 28 C.F.R. § 35.149. This obligation is an affirmative one. *Id.*, 28 C.F.R. § 35.150(a); *Toledo v. Sanchez*, 454 F.3d 24, 32 (1st Cir.2006) (“Title II imposes an affirmative

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<sup>41</sup> *For e.g.*, during periods of inclement weather or brief times of inoperability, construction or repair.

obligation on public entities to make their programs accessible to qualified individuals with disabilities, except where compliance would result in a fundamental alteration of services or impose an undue burden.”). Therefore, Defendants cannot sit by passively, leaving responsibility for the accessibility of their fixed route system up to third parties it does not direct or control. Nor can Defendants rely on the availability, accessibility and maintenance of services or facilities it does not, directly or indirectly, control or maintain to fulfill their affirmative obligations.

The district court’s rationale is thus concerning. If permitted to stand, it will allow public entities to evade their affirmative obligations and deflect responsibility for program accessibility to other parties who may have different obligations, or no obligations at all, to disabled people. If such an avoidance of responsibility and accountability is permitted, people with disabilities will be burdened with having to figure out access to public services, programs, and activities on their own by analyzing the respective roles and responsibilities of an assortment of unrelated public and private parties. Such an outcome could not be further from the “clear and enforceable” standards Congress envisioned when enacting the ADA.



**ii. Driver attitudes and behaviors remain a significant barrier to access.**

Allowing bus drivers flexibility in where they pick-up and drop-off disabled passengers is not a tenable solution to the inaccessibility of Defendants' bus stops and transit system because it burdens people with disabilities with having to negotiate pick-up and drop-off locations with bus drivers every time they use the fixed-route service. Bus drivers often work on unforgiving schedules and, as studies have revealed, are generally unwilling to provide individualized accommodations to disabled riders. Moreover, bus drivers frequently lack disability sensitivity training, and do not possess the knowledgeable required to determine what constitutes an "accessible" drop off or pick up location. Reliance on bus driver approachability, knowledge and compliance to provide program access is a recipe for disaster.

A 2017 study revealed that three of the top barriers to public transportation experienced by people with disabilities were related to characteristics of the driver, including not calling out stops, inappropriate attitudes, and lack of knowledge.<sup>42</sup> An inappropriate driver attitude was a significant barrier reported by more than a quarter of participants.<sup>43</sup> These results are consistent with an earlier study on

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<sup>42</sup> Bezyak, J. L., *et al.*, *supra* note 10.

<sup>43</sup> Bezyak, J. L., *et al.*, *supra* note 10.

obstacles people with disabilities encounter in the fixed-route transit environment, in which participants reported encountering more bus drivers with negative and uninformed attitudes (17.6%) than positive and helpful attitudes (15.3%).<sup>44</sup> In this study, 18.4% of participants also reported experiencing drivers who were simply unwilling to assist them. Many reported being passed by at a bus stop on a frequent (8.1%) or occasional (23.0%) basis. Discomfort asking for accommodations was a particular theme and concern. The leading reason provided for not requesting wheelchair securement was that the bus driver seemed unwilling to take the time.<sup>45</sup>

Research has also shown that many bus drivers expected people with disabilities to be “difficult passengers” and admitted to feeling insecure when interacting with them.<sup>46</sup> These negative attitudes contribute to behaviors which are discriminatory<sup>47</sup> and are experienced as barriers by bus riders with disabilities.

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<sup>44</sup> Mary Ellen Buning PhD and OTR/L and ATP, C. A. Getchell MS, Gina E. Bertocci PhD & Shirley G. Fitzgerald PhD (2007) Riding a Bus While Seated in a Wheelchair: A Pilot Study of Attitudes and Behavior Regarding Safety Practices, *Assistive Technology*, 19:4, 166-179.

<sup>45</sup> Buning *et al.*, *supra* note 44.

<sup>46</sup> Tillman, V., Haveman, M., Stoppler, R., Kvas, S., & Monninger, D. (2013). Public bus drivers and social inclusion: Evaluation of their knowledge and attitudes toward people with intellectual disabilities. *Journal of Policy and Practice in Intellectual Disabilities*, 10(14), 307-313.

<sup>47</sup> Chan, F., Livneh, H., Pruett, S., Wang, C., & Xi Zheng, L. (2009). Societal attitudes toward disability: Concepts, measurements, and interventions. In E. D. Cardoso and J. A. Chronister (Eds.), *Understanding psychosocial adjustment to*

#### **4. The District Court Did Not Consider Defendants’ Ongoing Violation of Their Notice Obligations Under 28 C.F.R. § 35.163.**

Regardless of whether Defendants’ bus stops are subject to the ADA’s regulations for altered facilities or existing facilities, Defendants have notice requirements under the ADA, applicable to all facilities, with which they failed to comply. *See* 28 C.F.R. § 35.163(a) (“A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.”); *Clarkson v. Coughlin*, 898 F.Supp. 1019, 1044 (S.D.N.Y.1995) (“[A] public entity ... is obligated by the ADA to make available ... information regarding ... the existence and location of accessible services, activities and facilities.”). *See also Brooklyn Ctr. for Indep. of Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 656 (S.D.N.Y. 2013) (“The failure to provide information about which evacuation centers or shelters were actually accessible plainly deprives people with disabilities of the ability to ‘obtain information as to the existence and location of accessible services, activities, and facilities.’” citing 28 C.F.R. § 35.163(a)).

Defendants have violated, and continue to violate, the ADA by failing to fulfill their obligation to ensure disabled people have access to information as to

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*chronic illness and disability: A handbook for evidence-based practitioners in rehabilitation* (pp. 333-367). New York: Springer Publishing Company.

the existence and location of accessible bus stops. Defendants have intentionally and affirmatively provided Plaintiff and other members of the public with *misinformation* about the existence and location of accessible bus stops by designating and signing inaccessible stops as accessible and providing erroneous information on transit maps.<sup>48</sup> Defendants' active misrepresentation of the accessibility of their fixed-route system is harmful to disabled people who rely on that information to travel within their community. They could end up stranded, injured or worse. This fact was not considered by the district court.

**5. The District Court Did Not Consider Defendants' Ongoing Violation of Their Maintenance Obligations Under 28 C.F.R. § 35.133.**

Public entities have an obligation to “maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities” by the ADA. 28 C.F.R. § 35.133(a). Section 35.133 recognizes that it is not sufficient to provide accessible features, if those features are not maintained in a manner that enables individuals with disabilities to use them. 28 C.F.R. § Pt. 35, App. B § 35.133.

When Defendants altered their bus stops to designated them as accessible features of their fixed-route system, it triggered the affirmative maintenance

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<sup>48</sup> R.A. at 76-77.

obligation under section 35.133. Defendants' ongoing failure to maintain the stops so that they are actually accessible violates this section and the ADA. This fact was also not considered by the district court.

### CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the judgment of the district court be reversed, and this matter remanded.

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

By: s/ Michelle Uzeta  
Michelle Uzeta  
*Attorney for Amici Curiae*

Dated: February 10, 2023

## CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word limit of Local Rule 32.1(a)(4), the type-volume limitation of Fed. R. App. P. 29(a)(5), and the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6). The brief contains 6889 words, excluding the items exempted by Fed. R. App. P. 32(f), as counted using Microsoft Word for Mac, Version 16.57, and uses a proportionally spaced typeface and 14-point font.

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

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## **ADDENDUM**

**Disability Rights Education and Defense Fund:** 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.

**American Association for People with Disabilities:** The American Association of People with Disabilities (AAPD) works to increase the political and economic power of people with disabilities, and to advance their rights. A national cross-disability organization, AAPD advocates for full recognition of the rights of over 60 million Americans with disabilities.

**The Arc of the United States:** The Arc of the United States (The Arc), founded in 1950, is the Nation's largest community-based organization of and for people with intellectual and developmental disabilities (IDD). Through its legal advocacy and public policy work, The Arc promotes and protects the human and civil rights of people with IDD and actively supports their full inclusion and participation in the community throughout their lifetimes.

**Autistic Women and Nonbinary Network:** The Autistic Women and Nonbinary Network (AWN) is a national nonprofit organization, run by and for

autistic people who experience gender-based discrimination, oppression, and violence. AWN focuses on challenging societal ideas about the value of disabled people's lives and participation in society and providing a supportive and affirming community for autistic people experiencing marginalization due to gender, sexual orientation, and race. AWN's advocacy activities include collaboration on research studies on reproductive health care, diagnostic access, and gender-based disparities; publishing resources focused on autism and race, and autism and gender, including autistic transgender people; hosting educational and community-building programs for autistic youth and adults; and raising public consciousness of prejudice, discrimination, oppression, and violence affecting autistic and other disabled people.

**Civil Rights Education and Defense Fund:** The Civil Rights Education and Enforcement Center ("CREEC") is a national nonprofit organization. CREEC's mission is to defend human and civil rights secured by law, including laws prohibiting discrimination on the basis of disability. Consistent with CREEC's mission, it is critical that people with disabilities have access to all programs, services, and benefits of public entities, including the pedestrian right-of-way. CREEC has extensive experience in the enforcement of Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) including repeatedly engaging in litigation to ensure accessibility of



cities' pedestrian rights-of-way to people with mobility disabilities. CREEC believes the arguments in this brief are essential to realize the full promise of the ADA and Section 504.

**The Coelho Center for Disability Law, Policy and Innovation:** The Coelho Center for Disability Law, Policy and Innovation collaborates with the disability community to cultivate leadership and advocate innovative approaches to advance the lives of people with disabilities. We envision a world in which people with disabilities belong and are valued, and their rights are upheld. The Coelho Center was founded in 2018 by former Congressman Anthony “Tony” Coelho, original sponsor of the Americans with Disabilities Act.

**Disability Rights Advocates:** Disability Rights Advocates (“DRA”) is a non-profit public interest center that specializes in high-impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA has long championed the rights of people with disabilities to use sidewalks as essential to independence and integration, including in *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002) and *American Council of the Blind of New York v. City of New York*, 495 F. Supp. 3d 211 (S.D.N.Y. 2020). DRA has also engaged in systemic litigation to ensure that people with disabilities have full and equal access to public transportation, including in *Center for Independence of the Disabled, New York, et al. v. Metropolitan Transportation*

Authority, et al. No. 153765/2017 (N.Y. Sup. Ct. N.Y. Co.) and De La Rosa, et al. v. Metropolitan Transportation Authority, et al. Case No. 19-cv04406 (ER) (S.D.N.Y.), which has resulted in a historic class-action settlement agreement to dramatically improve the accessibility of the New York City subway system, among several other cases.

**Disability Rights Bar Association:** The Disability Rights Bar Association (“DRBA”) was started by a group of disability rights counsel, law professors, legal nonprofits and advocacy groups who share a commitment to effective legal representation of individuals with disabilities. Members of DRBA commonly believe that the fundamental civil rights of people with disabilities are inadequately represented in our society and that litigation and other legal advocacy strategies play a highly effective and necessary role in enforcing and advancing the rights of people with disabilities. DRBA strongly supports this case because it believes the regulations promulgated by the Department of Justice under the Americans with Disabilities Act should be given deference to realize Congress’s intent that individuals with disabilities be permitted full access to the public rights of way through the removal of artificial barriers as clearly mandated by those DOJ regulations.

**Disability Rights California:** Disability Rights California is the state and federally designated protection and advocacy system for California, with a mission

to advance the legal rights of people with disabilities pursuant to Welf. & Inst. Code § 4900 et seq. Disability Rights California was established in 1978 and is the largest disability rights advocacy group in the nation. It has represented people with disabilities in litigation and individual advocacy regarding their rights to equal access to the public right of way and other public places. In the past fiscal year alone, Disability Rights California assisted more than 23,000 disabled individuals throughout California.

**Disability Rights Legal Center:** Disability Rights Legal Center (DRLC) is a non-profit legal organization that was founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle with ignorance, prejudice, insensitivity, and lack of legal protections in their endeavors to achieve fundamental dignity and respect. DRLC assists people with disabilities in obtaining 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 Act, the Unruh Civil Rights Act, and other state and federal laws. DRLC's mission is to champion the rights of people with disabilities through education, advocacy and litigation. DRLC is generally acknowledged to be a leading disability public interest organization. DRLC also participates in various amici curie efforts in a number of cases affecting the rights of people with disabilities.

**The National Disability Rights Network:** 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. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

**National Federation of the Blind Inc.:** The National Federation of the Blind (NFB) is the oldest, largest and most influential membership organization of blind people in the United States. With tens of thousands of members, and affiliates in all fifty states, the District of Columbia, and Puerto Rico, the ultimate purpose of the NFB is the complete integration of the blind into society on an equal basis. Since its founding in 1940, the NFB has devoted significant resources toward advocacy, education, research, and development of programs to ensure that

blind individuals enjoy the same opportunities enjoyed by others. The NFB is keenly interested in this case because the organization believes the regulations promulgated by the Department of Justice under the Americans with Disabilities Act should be given deference to realize Congress's intent that individuals with disabilities be permitted to live the lives they want through the removal of artificial barriers. In particular, the NFB believes that the blind and all others with disabilities should have full and equal access to the public rights of way.

**National Council on Independent Living:** The National Council on Independent Living (NCIL) is the longest-running national cross-disability, grassroots organization run by and for people with disabilities. NCIL works to advance independent living and the rights of people with disabilities. NCIL's members include individuals with disabilities, Centers for Independent Living, Statewide Independent Living Councils, and other disability rights advocacy organizations.

**Disability Rights New York:** As the federally authorized Protection and Advocacy System for people with disabilities in New York, Disability Rights New York ("DRNY") has an interest in pursuing legal remedies for people with disabilities who face discrimination, abuse, neglect, and other rights violations. DRNY provides free advocacy to advance and protect the rights of people with disabilities, including those denied access to public programs and services. DRNY

provides these services to over 4,000 individuals per year under federal grant-funded mandates established by Congress to protect and advocate for the rights, safety, and autonomy of people with disabilities. DRNY also uses its federal statutory authority to investigate and monitor service providers to ensure people with disabilities are free from abuse and neglect. These activities have prompted the successful litigation of numerous individual and class action disability-related matters in state and federal court since 1989.

**United Spinal Association:** United Spinal Association, founded by paralyzed veterans in 1946, is dedicated to enhancing the quality of life of all people living with spinal cord injuries and disorders (SCI/D), including veterans, and providing support and information to loved ones, care providers and professionals. United Spinal Association is a VA-accredited veterans service organization (VSO) serving veterans with disabilities of all kinds.

**Paralyzed Veterans of America:** Paralyzed Veterans of America (PVA) is a national, congressionally-chartered veterans service organization headquartered in Washington, DC. PVA's mission is to employ its expertise, developed since its founding in 1946, on behalf of armed forces veterans who have experienced spinal cord injury or a disorder (SCI/D). PVA seeks to improve the quality of life for veterans and all people with SCI/D through its medical services, benefits, legal, advocacy, sports and recreation, architecture, and other programs. PVA advocates

for quality health care, for research and education addressing SCI/D, for benefits based on its members' military service and for civil rights, accessibility, and opportunities that maximize independence for its members and all veterans and non-veterans with disabilities.

PVA has nearly 16,000 members, all of whom are military veterans living with catastrophic disabilities. To ensure the ability of our members to participate in their communities, PVA strongly supports the opportunities created by and the protections available through the Americans with Disabilities Act.

**World Institute on Disability:** World Institute on Disability is an internationally recognized public policy center organized by and for people with disabilities, which works to strengthen the disability movement through research, training, advocacy, and public education so that people with disabilities throughout the world enjoy increased opportunities to live independently.

## CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2023, I electronically filed the foregoing AMICUS CURIAE BRIEF OF THE DISABILITY RIGHTS EDUCATION AND DEFENSE FUND AND SIXTEEN OTHER ORGANIZATIONS AS *AMICI CURIAE* AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT AND URGING REVERSAL AND REMAND with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

I certify that all the participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

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