

IN THE
**United States Court of Appeals
for the Seventh Circuit**

ACCESS LIVING OF METROPOLITAN CHICAGO, et al.,

Plaintiffs and Appellants,

v.

UBER TECHNOLOGIES, INC., et al.,

Defendants and Appellants.

Appeal From The United States District Court
for the Northern District of Illinois, Eastern Division
No. 1:16-cv-09690
The Honorable Manish S. Shah, Judge Presiding

**BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS - APPELLANTS
ACCESS LIVING OF METROPOLITAN CHICAGO, ET AL., AND
SUPPORTING REVERSAL OF THE DECISION BELOW**

Michael W. Bien
Ernest Galvan
Kara Janssen
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
Telephone: (415) 433-6830
Facsimile: (415) 433-7104

Counsel for *Amici Curiae*

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-2116

Short Caption: Access Living of Metropolitan Chicago, et al. v. Uber Technologies, Inc. et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Full list of the thirteen amici is contained in the appendix to the brief of amici curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Rosen Bien Galvan & Grunfeld LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

n/a

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

n/a

Attorney's Signature: s/ Michael Bien Date: 8/23/2019

Attorney's Printed Name: Michael Bien

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes No X

Address: 101 Mission Street, 6th Floor San Francisco, CA 94105

Phone Number: (415) 433-6830 Fax Number: (415) 433-7104

E-Mail Address: mbien@rbgg.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-2116

Short Caption: Access Living of Metropolitan Chicago, et al. v. Uber Technologies, Inc. et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Full list of the thirteen amici is contained in the appendix to the brief of amici curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Rosen Bien Galvan & Grunfeld LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

n/a

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

n/a

Attorney's Signature: s/ Ernest Galvan Date: 8/23/2019

Attorney's Printed Name: Ernest Galvan

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes No X

Address: 101 Mission Street, 6th Floor San Francisco, CA 94105

Phone Number: (415) 433-6830 Fax Number: (415) 433-7104

E-Mail Address: egalvan@rbgg.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-2116

Short Caption: Access Living of Metropolitan Chicago, et al. v. Uber Technologies, Inc. et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Full list of the thirteen amici is contained in the appendix to the brief of amici curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Rosen Bien Galvan & Grunfeld LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

n/a

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

n/a

Attorney's Signature: s/ Kara Janssen Date: 8/23/2019

Attorney's Printed Name: Kara Janssen

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes [X] No

Address: 101 Mission Street, 6th Floor San Francisco, CA 94105

Phone Number: (415) 433-6830 Fax Number: (415) 433-7104

E-Mail Address: kjanssen@rbgg.com

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. Transportation Services are Critical to Allowing People with Disabilities to Access Employment, Education, Recreation, and Public Services.....	4
II. Ridesharing Services Have Become a Critical Part of Local Communities’ Transportation Networks.	7
III. Most Traditional Transportation Systems are Inaccessible or Unavailable to People with Disabilities.	9
IV. Organizational Plaintiffs Are A Critical Piece of the Enforcement System Established by Congress.	11
CONCLUSION	12
APPENDIX	14
CERTIFICATE OF COMPLIANCE.....	22
CERTIFICATE OF SERVICE	23

TABLE OF AUTHORITIES

CASES

Armstrong v. Schwarzenegger,
622 F. 3d 1058, 1066 (9th Cir. 2010)12

Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg, 290 F.R.D. 409,
(S.D.N.Y. 2012).....12

James v. Peter Pan Transit Mgmt., Inc.,
No. 97-747, 1999 WL 735173 (E.D.N.C. Jan. 20, 1999).....12

National Association of the Deaf v. Netflix, Inc.,
869 F. Supp. 2d 196 (D. Mass. 2012).....12

National Federation of the Blind v. Target Corp.,
452 F. Supp. 2d 946 (N.D. Cal. 2006).....12

National Federation of the Blind, et al. v. Uber Technologies, Inc, et al.,
103 F. Supp. 3d 1073 (N.D. Cal. 2015).....5

Paralyzed Veterans of America v. Ellerbe Becket Architects and Engineers,
950 F. Supp. 393 (D.D.C. 1996).....12

FEDERAL CASES

42 U.S.C. § 12101(3), (8)5

42 U.S.C. § 12143(a).6

MISCELLANEOUS

American Association of People with Disabilities and The Leadership
Conference Education Fund, *Equity in Transportation for People with
Disabilities* (2016) available at [https://www.aapd.com/wp-
content/uploads/2016/03/transportation-disabilities.pdf](https://www.aapd.com/wp-content/uploads/2016/03/transportation-disabilities.pdf) 2, 6, 10

Benner, R., Transportation for America, *Using New Mobility Models to
Increase Access*, June 28, 2018, available at
[http://t4america.org/2018/06/28/using-mobility-services-to-increase-
access/](http://t4america.org/2018/06/28/using-mobility-services-to-increase-access/)9

Brumbaugh, S., U.S. Department of Transportation, Bureau of
Transportation Statistics, *Travel Patterns of American Adults with
Disabilities* (2018) available at
[https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-
geography/topics/passenger-travel/222466/travel-patterns-american-
adults-disabilities-9-6-2018_1.pdf](https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-geography/topics/passenger-travel/222466/travel-patterns-american-adults-disabilities-9-6-2018_1.pdf)..... 4, 5, 6

James des Cognets & Greg Rafert, Ph. D., *Assessing the Unmet Transportation Needs of Americans with Disabilities*, The Analysis Group (2019) available at https://www.analysisgroup.com/globalassets/content/news_and_events/news/assessing_unmet_transportation_needs.pdf, 4, 10, 11

National Council on Disability, *Transportation Update: Where We've Gone and What We've Learned*, (2015) available at <https://ncd.gov/publications/2015/05042015>10, 11

Perry, R., et al., *Forum on Disability and Transportation Forum Report*, (2018) available at <https://www.ilru.org/sites/default/files/FODAT-report.pdf>6, 8

Shaheen, S., Move Forward, *Late-Night Transportation: How Two Public Agencies Are Filling Service Gaps Through Mobility on Demand*, Jan. 11, 2019, available at <https://www.move-forward.com/late-night-transportation-how-two-public-agencies-are-filling-service-gaps-through-mobility-on-demand/>9

Valley Regional Transit, Shared Mobility – VRT Late Night Service, <https://valleyregionaltransit.org/shared-mobility/vrt-late-night/>9

Vock, D., Governing The States and Localities, *Buses, Yes Buses Are 'the Hottest Trend in Transit'*, September 2017, available at <https://www.governing.com/topics/transportation-infrastructure/gov-big-city-bus-systems.html>10

INTEREST OF AMICI CURIAE¹

Amici American Association of People with Disabilities, American Civil Liberties Union Disability Rights Program, Center for Public Representation, Civil Rights Education and Enforcement Center, Disability Rights Advocates, Disability Rights Education and Defense Fund, Equip for Equality, Houston Commission on Disabilities, Judge David L. Bazelon Center for Mental Health Law, National Association of the Deaf, National Disability Rights Network, National Federation of the Blind, and the Paralyzed Veterans of America are non-profit disability rights organizations focused on advancing the inclusion of persons with disabilities in all areas of life. The missions of *amici* include ensuring that people with disabilities have equal access to transportation services to allow them to access employment, education, and to fully participate in activities in their communities with their nondisabled peers. *Amici* are deeply familiar with the long-standing barriers to transportation and to the streets, intersections, and sidewalks of our cities. If operated in an accessible manner, ride-sharing services have the potential to dramatically increase access to employment, work, and social interaction for people with disabilities at a fraction of the cost of traditional paratransit services.

¹ *Amici* state that no counsel for a party authored this brief in whole or in part and no person other than *amici* or its counsel made a monetary contribution to the brief's preparation or submission. All parties have consented to the filing of this brief.

Amici have a strong interest in ensuring ride-sharing services are accessible and file this brief to provide the Court with information regarding the critical importance of access to ride-sharing services, such as Uber, for people with disabilities and how increasing their accessibility benefits society as a whole.

A full list of *amici* including a description of each *amici* and their interests appears in the Appendix.

SUMMARY OF ARGUMENT

The accessibility of ridesharing services is of great concern to the disability community. People with disabilities are twice as likely as those without disabilities to have inadequate transportation.² This lack of transportation imposes real costs on communities. Without equal and reliable access to transportation services, people with disabilities are unable to get to work, school, medical care, community events, restaurants, and shopping, thereby preventing them from making valuable contributions to their communities as workers, consumers, and taxpayers. People with disabilities—particularly in rural areas— need accessible, affordable transportation options that bring employment, health care, education, housing, and community life within reach.

² American Association of People with Disabilities and The Leadership Conference Education Fund, *Equity in Transportation for People with Disabilities* (2016) available at <https://www.aapd.com/wp-content/uploads/2016/03/transportation-disabilities.pdf> (hereinafter “AAPD Equity in Transportation Report”).

Ridesharing services such as Uber and Lyft were created within the past decade but have already changed the landscape of public transportation in pivotal ways. These services allow users to get a ride within minutes, 24 hours a day, using only their cell phone. Uber and Lyft have supplanted, and in some locations entirely replaced, traditional taxi service throughout the country. They have also created new opportunities to improve access to public transportation through the use of public-private partnerships to allow local governments to fill gaps in their public transportation networks. Unfortunately, these ridesharing services are frequently inaccessible and therefore unavailable to people with disabilities, particularly wheelchair users.

Increasing the accessibility of ridesharing services benefits not only riders with disabilities, but also their communities as a whole. Access to reliable on-demand service allows riders with disabilities to get into the workforce and to spend the money they earn at local restaurants, shops, and cultural centers. Additionally, improving the accessibility of ridesharing services has the added benefit of saving taxpayer money by reducing the need for paratransit, which is a costly system for local governments to operate and an incredibly burdensome and inefficient method of transportation for people with disabilities.

ARGUMENT

I. Transportation Services are Critical to Allowing People with Disabilities to Access Employment, Education, Recreation, and Public Services.

Access to transportation is critical to ensuring that people with disabilities have an equal opportunity to fully participate in society. According to a 2018 report from the U.S. Department of Transportation, an estimated 25.5 million Americans have disabilities that make traveling outside the home difficult and a significant number of those individuals do not own vehicles.³ To address mobility impairments alone, a private sector assessment of unmet needs estimated that there are 5.7 million wheelchair users in the United States, 1.4 million of whom use a motorized wheelchair.⁴ The wheelchair-using population is projected to reach up to 12.4 million by the year 2022, and the motorized wheelchair-using population is expected to grow to 3.2 million in the same period.⁵ Ridesharing access is also

³ Brumbaugh, S., U.S. Department of Transportation, Bureau of Transportation Statistics, *Travel Patterns of American Adults with Disabilities* (2018) available at https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-geography/topics/passenger-travel/222466/travel-patterns-american-adults-disabilities-9-6-2018_1.pdf (hereinafter “2018 DOT Report”)

⁴ James des Cognets & Greg Rafert, Ph. D., *Assessing the Unmet Transportation Needs of Americans with Disabilities*, The Analysis Group (2019) at 2, available at https://www.analysisgroup.com/globalassets/content/news_and_events/news/assessing_unmet_transportation_needs.pdf, (hereinafter “Assessing Unmet Needs”).

⁵ *Id.* at 4.

important to people with sensory disabilities, as evidenced by recent litigation over the ability of blind people with service animals to access ridesharing services.⁶

In drafting the Americans with Disabilities Act (ADA), Congress found that transportation is one of the “critical areas” where “discrimination against individuals with disabilities persists” and that such discrimination “denies people with disabilities the opportunity to compete on an equal basis” and “costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.”⁷ These costs are incurred in part because, due to a lack of reliable access to transportation, people with disabilities reduce travel outside their home. According to the above cited 2018 Department of Transportation report, 70% of individuals who self-identified as having “travel-limiting” disabilities reduce their day-to-day travel because of their disabilities.⁸ Another 3.6 million individuals with travel-limiting disabilities do not leave their homes at all due to their disabilities.⁹

Lack of access to transportation services significantly impedes the ability of people with disabilities to enter the work force. Approximately 13.4 million persons who report having travel-limiting disabilities are aged 18-64, an age group

⁶ See *National Federation of the Blind, et al. v. Uber Technologies, Inc, et al.*, 103 F. Supp. 3d 1073 (N.D. Cal. 2015);

⁷ 42 U.S.C. § 12101(3), (8).

⁸ 2018 DOT Report, at 1.

⁹ *Id.*

that should have high labor force participation.¹⁰ However, only approximately 20% of those individuals report working full time compared to over 75% of individuals without disabilities.¹¹

People with disabilities who live in rural areas are particularly hard hit by the lack of accessible transportation options.¹² Where there is no bus service there is also no paratransit service.¹³ This leaves rural residents with disabilities who do not own cars or cannot drive due to their disabilities with no reliable means of getting from place to place. As of 2017, Lyft operated in forty states, including in “hard to reach rural areas” and Uber provided “near-statewide coverage” throughout thirteen states.¹⁴ Although service in rural areas is less extensive than in urban areas, increasing access to these services can open up significant opportunities to people in these areas.¹⁵ Leaving out people with disabilities imposes real costs on society by preventing people with disabilities from fully

¹⁰ 2018 DOT Report, at 2.

¹¹ *Id.*, at 3.

¹² AAPD Equity in Transportation Report, at 4.

¹³ 42 U.S.C. § 12143(a).

¹⁴ Pierson, D., Los Angeles Times *Lyft now picks up anywhere in 40 states, grabbing areas Uber doesn't cover*, Aug. 31, 2017 available at <https://www.latimes.com/business/la-fi-lyft-uber-statewide-20170831-story.html>.

¹⁵ Perry, R., et al., *Forum on Disability and Transportation Forum Report*, (2018) at 6, available at <https://www.ilru.org/sites/default/files/FODAT-report.pdf>, (hereinafter “Forum Report”).

participating in civic life and contributing as workers, consumers, taxpayers, and individuals.

II. Ridesharing Services Have Become a Critical Part of Local Communities' Transportation Networks.

Ridesharing services such as Uber and Lyft have effectively replaced traditional taxi service in many communities and are becoming a key part of our public transportation networks through the use of public-private partnerships. These services operate through the use of a cell phone and are marketed as a cheaper, more flexible, and more convenient alternative to taxis, buses, and trains. Drivers use their own cars to provide the service or can rent a car from one of Uber's "vehicle solutions" partners.¹⁶

The availability of Uber and Lyft has filled gaps in transportation access for some people with disabilities while widening gaps in access for others. Riders who do not need wheelchair accessible vehicles now have access to true on-demand service that allows them to travel to meetings, appointments, work, school, and social engagements. Ridesharing services have brought transportation services to rural communities that may have never had such services before.

Wheelchair users have been left out of this increase in access. In many cities, wheelchair users have actually seen their transportation options become more

¹⁶ <https://www.uber.com/us/en/drive/vehicle-solutions/>

limited due to ridesharing services pushing out of business the traditional taxi companies that had offered wheelchair accessible vehicles.¹⁷ In markets where ridesharing services operate, there has been a significant decline in the numbers of taxis and taxi drivers.¹⁸ Additionally, as riders who would otherwise have used bus or train services migrate to ridesharing services, there is a decrease in ridership, which can cause funding cuts to services. Those funding cuts increase reliance on ridesharing services, making the accessibility of those services imperative.

Moreover, public transit agencies are increasingly providing services through partnerships with ridesharing services. These partnerships are used as a cost saving measure and to fill gaps, address interruptions in, or as an alternative to, traditional bus, subway, and paratransit service. The Federal Transit Authority's Mobility on Demand Sandbox program encourages transit agencies to explore partnerships with ridesharing services and has awarded over eight million dollars for eleven agency pilots nationwide.¹⁹ Examples of such partnerships are all over the country. The City of Detroit has incorporated ridesharing services into a pilot

¹⁷ Forum Report at 8 *citing* Di Caro, M., *Wheelchair Accessible Taxis in D.C. Go Unused, Setting Back Efforts To Improve Transportation Equity*, Feb. 17, 2017, available at <https://wamu.org/story/17/02/17/wheelchair-accessible-taxis-d-c-go-unused-setting-back-efforts-improve-transportation-equity/>.

¹⁸ *Id.* *citing* The Phantom Cab Driver Phites Back, "Just Say No" – Chris Hayashi's Letter to the Seattle City Council on TNCs, April 15, 2014 available at <http://phantomcabdriverphites.blogspot.com/2014/04/just-say-no-chris-hayashis-letter-to.html?m=1>.

¹⁹ *Id.*

program to provide transportation in areas and at times that are underserved by the public transit systems.²⁰ In Florida, Pinellas County has started a public-private partnership with Uber to fill gaps in late night and early morning public transit services.²¹ In Idaho, the Valley Regional Transit agency operating in Boise is using a public-private partnership with Lyft to provide low-income persons with access to job-related transportation during night and morning hours when the regular buses are not running.²² These programs are the future of transportation and it is vitally important that they are accessible to people with disabilities.²³

III. Most Traditional Transportation Systems are Inaccessible or Unavailable to People with Disabilities.

Significant barriers to public transportation persist and options remain limited for people with disabilities almost thirty years after the passage of the

²⁰ Benner, R., Transportation for America, *Using New Mobility Models to Increase Access*, June 28, 2018, available at <http://t4america.org/2018/06/28/using-mobility-services-to-increase-access/>.

²¹ Shaheen, S., Move Forward, *Late-Night Transportation: How Two Public Agencies Are Filling Service Gaps Through Mobility on Demand*, Jan. 11, 2019, available at <https://www.move-forward.com/late-night-transportation-how-two-public-agencies-are-filling-service-gaps-through-mobility-on-demand/>.

²² Valley Regional Transit, Shared Mobility – VRT Late Night Service, <https://valleyregionaltransit.org/shared-mobility/vrt-late-night/> (last visited Aug. 16, 2019)

²³ Recognizing the impact of transportation network companies like Uber is not intended to diminish the importance of traditional public transit in the lives of people with disabilities. Public transit must be made accessible under the ADA. At the same time, people with disabilities must have the option of choosing to use new technologies free from unlawful disability discrimination.

ADA. Many cities operate subway and train systems that were built long before the ADA and which include many inaccessible stations.²⁴ The ADA took a gradual approach to rail and subway systems, requiring affirmative construction only at “key” stations, which has caused persistent gaps in accessibility.²⁵ For instance, in Chicago, where this litigation was initiated, 42 train stations remain inaccessible. Although the Chicago Transit Agency (CTA) has launched an initiative to make all train stations accessible, that project will not be completed for 20 years, and that timeline is assuming that the CTA can secure adequate funding.²⁶

While bus service has become significantly more accessible over the last thirty years, during the same period, bus routes and schedules have not kept up with changing employment and residential growth patterns in many metropolitan areas.²⁷ Most taxi fleets across the country offer limited services for persons with disabilities.²⁸

²⁴ AAPD Equity in Transportation Report, at 2; National Council on Disability, *Transportation Update: Where We’ve Gone and What We’ve Learned*, (2015) at 51, available at <https://ncd.gov/publications/2015/05042015> (hereinafter “NCD Transportation Update”).

²⁵ *Id.*

²⁶ available at <https://www.transitchicago.com/accessibility/asap/>

²⁷ Vock, D., *Governing The States and Localities, Buses, Yes Buses Are ‘the Hottest Trend in Transit’*, September 2017, available at <https://www.governing.com/topics/transportation-infrastructure/gov-big-city-bus-systems.html>.

²⁸ *Assessing Unmet Needs*, at 13.

A private sector assessment has found that even in the nation’s largest metropolitan areas, where paratransit resources should be the most developed, paratransit systems do not have enough vehicles in operation to meet the needs of people with disabilities.²⁹ While paratransit services are generally affordable, they offer little flexibility, often requiring 24-hour advance reservations, and require that the user set aside a wide window of time to wait for the paratransit vehicle to arrive,³⁰ which can be particularly problematic for people who rely on paratransit to get to work. Additionally, paratransit service is not typically available in rural areas because the ADA only requires paratransit services where there is corresponding public transportation offered.³¹ Even where public transportation exists, local authorities are not required to run paratransit parallel to routes designated for “commuter” service, thus taking paratransit off the table as a means of integrating persons with disabilities in the workforce.³²

IV. Organizational Plaintiffs Are A Critical Piece of the Enforcement System Established by Congress.

There is a massive asymmetry between corporate defendants, such as Uber, and the many individuals with disabilities who seek access to Uber and other transportation network companies. During the almost three decades since its

²⁹ *Id.* at 12.

³⁰ *Id.*

³¹ 42 U.S.C. § 12143(a).

³² NCD Transportation Update, at 76.

enactment, enforcement of Title III of the ADA has relied in large part on organizations like Plaintiff-Appellant Access Living and *amici* to pursue systemic change through litigation efforts that would be far too expensive and time-consuming for individuals.³³ *See, e.g., Paralyzed Veterans of America v. Ellerbe Becket Architects and Engineers*, 950 F. Supp. 393 (D.D.C. 1996); *National Federation of the Blind v. Target Corp.*, 452 F. Supp. 2d 946 (N.D. Cal. 2006); *National Association of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012). This Court should reject the district court's strained reading of 42 U.S.C. Section 12188 and reverse the ruling below to avoid impairing organizational enforcement of Title III in ways contrary to the intent of Congress. At a minimum, this Court should reverse the denial of leave to amend to allow full consideration of Access Living's organizational standing based on the additional facts that the organization has included in its proposed amended complaint.

CONCLUSION

Access to transportation services is critical to ensuring equal opportunity for people with disabilities and fulfilling the promise of the ADA. Increasing the

³³ Organizational plaintiffs also enforce Title II. *See e.g., Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 290 F.R.D. 409, 416 (S.D.N.Y. 2012). Title II of the ADA, while not at issue here, is available in instances where public entities contract with private entities to provide a public service, including a public transit service. *See*, 28 C.F.R. § 35.130(b)(1); *Armstrong v. Schwarzenegger*, 622 F. 3d 1058, 1066 (9th Cir. 2010); *James v. Peter Pan Transit Mgmt., Inc.*, No. 97-747, 1999 WL 735173, at *8-9 (E.D.N.C. Jan. 20, 1999).

accessibility of ridesharing services benefits not only riders with disabilities but their communities as a whole and has the potential to help local governments save money by reducing reliance on costly paratransit service. For the foregoing reasons, the amicus organizations request that the Court handle this and similar appeals in a manner that would allow full development of these important factual issues in district courts. In the instant appeal, such factual development is best served by reversing the decision below and allowing the Appellant/Plaintiff organization to pursue the merits of the underlying litigation.

Respectfully submitted,

s/ Kara Janssen

Michael Bien

Ernest Galvan

Kara Janssen

ROSEN BIEN GALVAN &
GRUNFELD LLP

101 Mission Street, Sixth Floor

San Francisco, CA 94105

(415) 433-6830

egalvan@rbgg.com

Counsel for Amici Curiae

Dated: August 23, 2019

APPENDIX

LIST OF *AMICI* and Statements of Interest

The American Association of People with Disabilities (AAPD) works to increase the political and economic power of people with disabilities. A national cross-disability organization, AAPD advocates for full recognition of the rights of over 56 million Americans with disabilities.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit nonpartisan organization dedicated to protecting the fundamental rights guaranteed by the Constitution and laws of the United States. With more than 2 million members, activists, and supporters, the ACLU fights to protect every individual's rights under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, disability, national origin, or record of arrest or conviction. The ACLU and its Disability Rights Program work to ensure that individuals with disabilities are able to participate in their communities without barriers. Accessible transportation is key to the integration of people with disabilities in employment, education, recreation and public services. As the "brave new world" of ridesharing begins to replace public transit, and as technology changes the way we do everything, we must include people with disabilities in that change.

The Center for Public Representation is a public interest law firm that has been assisting people with disabilities for more forty years. It is both a statewide and national legal backup center that provides assistance and support to public and private attorneys who represent people with disabilities in Massachusetts, and to the federally-funded protection and advocacy agencies in each of the fifty States. It has litigated systemic cases on behalf of person with disabilities in more than twenty states, and authored *amici* briefs to the United States Supreme Court and many the courts of appeals, in order to enforce the constitutional and statutory rights of persons with disabilities, including the right to be free from discrimination under the ADA.

The Civil Rights Education and Enforcement Center (CREEC) is a national nonprofit membership organization whose mission is to defend human and civil rights secured by law, including laws prohibiting discrimination on the basis of disability. CREEC's efforts to defend human and civil rights extend to all walks of life, including ensuring that people with disabilities have full and equal access to places of public accommodation as required by Title III of the ADA, 42 U.S.C. § 12181 *et seq.* ("Title III"). It is essential to this mission that CREEC and other disability and civil rights organization have standing to enforce Title III.

Disability Rights Advocates (DRA) is a non-profit, public interest law firm that specializes in high impact civil rights litigation and other advocacy on behalf of

persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, employment, transportation, education, and housing. DRA's clients, staff and board of directors include people with various types of disabilities. With offices in New York City and Berkeley, California, DRA strives to protect the civil rights of people with all types of disabilities nationwide.

The Disability Rights Education & Defense Fund (DREDF), based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by the community it represents. DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities. DREDF has substantial expertise in transportation access issues, including access implications related to Transportation Network Companies (TNCs) that offer ride-sharing or ride-hailing services via digital applications.

Equip for Equality (EFE) is a private, nonprofit, civil rights organization for people with disabilities and is also the governor-designated protection and advocacy system for the State of Illinois. Among the most important of the civil rights that EFE protects are those provided by the Americans with Disabilities Act,

42 U.S.C. § 12101, including the right to accessible transportation. Without accessible transportation, people with disabilities are often confined to their homes and are unable to participate in community life, including education, employment, recreation, and worship. EFE has long advocated for transportation services that allow people with disabilities full access to their communities. In *Access Living v. Chicago Transit Authority*, 00 C 0770 (N.D. Ill. Holderman, J.), EFE represented the Appellant-Plaintiff herein, Access Living, and nine individuals with disabilities in a case against the Chicago Transit Authority (CTA) to address the CTA's failure to provide equal access to people with disabilities on its trains and buses. The lawsuit led to a far-reaching settlement agreement, which improved access in train stations, on buses, and on trains.

The Houston Commission on Disabilities is a commission of 14 members and alternates appointed by Houston's mayor. The commission is charged with advancing the rights of Houstonians with disabilities, ensuring they secure community supports and equal access consistent with their right to access to and full participation in all aspects of daily life in the community. Among the most important of the civil rights the commission protects are those provided by the Americans with Disabilities Act, 42 U.S.C. § 12101, including the right to accessible transportation. This statement of support is presented in the interest of Houston's citizens who need and use demand responsive service. Without

accessible transportation, people with disabilities are often confined to their homes and are unable to participate in community life, including education, employment, recreation, and worship. The commission has long advocated for transportation services that allow people with disabilities full access to their communities.

The Judge David L. Bazelon Center for Mental Health Law is a national public interest organization founded in 1972 to advance the rights of individuals with mental disabilities. Through litigation, public policy advocacy, education, and training, the Bazelon Center works to advance the rights and dignity of individuals with mental disabilities in all aspects of life, including community living, employment, education, health care, housing, voting, parental and family rights, and other areas.

The National Association of the Deaf (NAD), founded in 1880, is the oldest civil rights organization in the United States, and is the nation's premier organization of, by and for deaf and hard of hearing individuals. The NAD is a non-profit membership organization with a mission of preserving, protecting, and promoting the civil, human and linguistic rights of 48 million deaf and hard of hearing individuals in the country. The NAD endeavors to achieve true equality for its constituents through systemic changes in all aspects of society including but not limited to education, employment, and ensuring equal and full access to programs and services. Serving all parts of the USA, the NAD is based in Silver Spring, MD.

Within the past decade, the NAD has engaged in litigation to successfully fulfill its mission and increase accessibility for deaf and hard of hearing individuals, including by serving as an organizational plaintiff in several landmark cases such as: *NAD v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012); *NAD v. District Hospital Partners*, 2014-cv-01122 (D.D.C. 2014); *NAD v. Harvard*, 2015-cv-30023 (D. Mass. 2015); *NAD v. Massachusetts Inst. of Tech.*, 2015-cv-30024 (D. Mass. 2015); *NAD v. TD Ameritrade Holding Corp.*, 2016-cv-10120 (N.D. Ill. 2016); and *NAD v. State of Florida*, 2018-cv-21227 (S.D. Fla. 2018).

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 Piute 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.

The National Federation of the Blind (NFB) is the nation's oldest and largest organization of blind persons. The NFB has affiliates in all fifty states, Washington, DC, and Puerto Rico. The NFB and its affiliates are widely recognized by the public, Congress, executive agencies of state and federal governments, and the courts as a collective and representative voice on behalf of blind Americans and their families. The organization promotes the general welfare of the blind by assisting the blind in their efforts to integrate themselves into society on terms of equality and by removing barriers that result in the denial of opportunity to blind persons in virtually every sphere of life, including education, employment, family and community life, transportation, and recreation.

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 almost 17,000 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.

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limitation of Fed. R. App. P. 32 (a)(7)(B), and Circuit Rule 32(c) because this document contains 4,392 words. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5), the type-style requirements of Fed. R. App. P. 32(a)(6), and Circuit Rule 32(b) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman Font.

Executed this 23rd day of August, 2019.

s/ Kara Janssen

Kara Janssen

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system on August 23, 2019.

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

Executed this 23rd day of August, 2019.

s/ Kara Janssen

Kara Janssen

Counsel for Amici Curiae