

Nos. 19-2116

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
No. 1:16-cv-09690
Judge Manish S. Shah

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

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* state that no party to this brief is a publicly-held corporation, issues stock, or has a parent corporation.

Pursuant to Seventh Circuit Rule 26.1, *amici curiae* state that Rosen Bien Galvan & Grunfeld LLP is the only law firm that has appeared for *amici curiae* in this Court.

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INTEREST OF AMICI CURIAE¹

Amici American Civil Liberties Union Disability Rights Project, American Association of People with Disabilities, Association of University Centers on Disabilities, 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, Independent Living Research Utilization, Judge David L. Bazelon Center for Mental Health Law, Lighthouse for the Blind and Visually Impaired, 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

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. Counsel for Plaintiffs-Appellants consented to the filing of this brief.

dramatically increase access to employment, work, and social interaction for people with disabilities at a fraction of the cost of traditional paratransit services. *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* 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

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”).

transportation options that bring employment, health care, education, housing, and community life within reach.

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

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 Forum Report, at 6.

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 limited due to ridesharing services pushing out of business the traditional taxi

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

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

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 page 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.

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).

CONCLUSION

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

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APPENDIX:

LIST OF AMICI

American Civil Liberties Union Disability Rights Project

American Association of People with Disabilities

Association of University Centers on Disabilities

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

Independent Living Research Utilization

Judge David L. Bazelon Center for Mental Health Law

Lighthouse for the Blind and Visually Impaired

National Association of the Deaf

National Disability Rights Network

National Federation of the Blind

Paralyzed Veterans of America

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 3,508 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.

Ernest Galvan

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 _____, 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.

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