UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 20-1433

Caption [use short title]
Center for Independence of the v. Metropolitan Transportation Au

Motion for: Leave To File Brief As Amicus Curiae In Support of Appellants and Reversal of the District Court

Set forth below precise, complete statement of relief sought:

Movant seeks leave to file brief as amicus curiae for purposes of supporting Appellants Center for Independence of the Disabled, et. al. and reversal of the district court's order below granting defendants' motion for summary judgment.

MOVING PARTY: National Disability Rights Network **OPPOSING PARTY:** Metropolitan Transportation Authority

☐ Plaintiff ☐ Defendant

☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Josef T. Ansorge **OPPOSING ATTORNEY:** Ira Lipton

[name of attorney, with firm, address, phone number and e-mail]

Quinn Emanuel Urquhart & Sullivan, LLP
1300 I St. NW, Washington D.C., 20005
929-327-2281, josefansorge@quinnemanuel.com

Hoguet Newman Regal & Kenney, LLP
One Gran Central Place, 60 E 42nd St. 48th Floor, NY, 10165
212-689-8808, ilipton@hnrklaw.com

Court- Judge/ Agency appealed from: Hon. George B. Daniels, U.S. District Court for the Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☐ No
Has this relief been previously sought in this court? ☐ Yes ☐ No
Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:

/s/ Josef T. Ansorge **Date:** September 9, 2020 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

20-1433-cv

United States Court of Appeals

for the

Second Circuit

BROOKLYN CENTER FOR INDEPENDENCE OF THE DISABLED, a nonprofit organization, BRONX INDEPENDENT LIVING SERVICES, a nonprofit organization, HARLEM INDEPENDENT LIVING CENTER, a nonprofit organization, CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK a nonprofit organization, DISABLED IN ACTION OF METROPOLITAN, NEW YORK a nonprofit organization, NEW YORK STATEWIDE SENIOR ACTION COUNCIL, a nonprofit organization, SASHA BLAIR-GOLDENSOHN, an individual, CHRIS PANGILINAN, an individual, DUSTIN JONES, an individual, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION OF NATIONAL DISABILITY RIGHTS NETWORK FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS AND REVERSAL OF THE DISTRICT COURT

WILLIAM A. BURCK
JOSEF T. ANSORGE
QUINN EMANUEL URQUHART
& SULLIVAN LLP
1300 I St. NW
Washington, DC 20005
(929) 327-2281

STEPHEN A. BROOME
QUINN EMANUEL URQUHART
& SULLIVAN LLP
51 Madison Avenue, 22nd Fl.
New York, New York 10101
(646) 431-9439

Counsel for Amicus Curiae National Disability Rights Network

– v. –

METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation, VERONIQUE HAKIM, in her official capacity as interim executive director of the Metropolitan Transportation Authority, NEW YORK CITY TRANSIT AUTHORITY, a public benefit corporation, DARRYL C. IRICK, in his official capacity as acting president of the New York City Transit Authority,

Defendants-Appellees,

THE CITY OF NEW YORK,

Defendant.

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), National Disability Rights Network respectfully requests leave of this Court to file the attached brief as amicus curiae in support of plaintiffs-appellants.

The National Disability Rights Network ("NDRN") is the nonprofit 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 Congress to protect the rights of people with disabilities through legal support, advocacy, referral, and education. NDRN is the only legally based advocacy organization established by Congress to protect the rights of all individuals with disabilities. NDRN and its members advocate for people with disabilities to have accessible public transportation services in their communities. NDRN has an interest in vigorous enforcement of the American with Disabilities Act ("ADA") and its prohibitions against discrimination.

This appeal turns on the question of what is required of the NYC subway system to comply with the ADA. In granting defendants' motion for summary judgment, the District Court relied on the theory that the ADA does not require specific procedures for elevator maintenance or

standards for systemwide accessibility. In the proposed brief, NDRN seeks to aid the Court's consideration of this appeal by summarizing relevant legislative history of the ADA. The legislative history shows that Congress foresaw the problem of accessibility elevators not being appropriately maintained. To address this problem, Congress intended compliance with the ADA to require public transit systems to ensure that accessibility elevators were in good working order and available when needed.

For the foregoing reasons, NDRN respectfully requests the Court's permission to file the attached brief.

September 9, 2020

Respectfully submitted,

/s/ *Josef T. Ansorge*

Counsel for Amicus
National Disability
Rights Network

William A. Burck
Josef T. Ansorge
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I St. NW,
Washington, D.C. 20005
929-327-2281

Stephen A. Broome
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
646-431-9439

PROPOSED AMICUS BRIEF

20-1433-cv

United States Court of Appeals

for the

Second Circuit

BROOKLYN CENTER FOR INDEPENDENCE OF THE DISABLED, a nonprofit organization, BRONX INDEPENDENT LIVING SERVICES, a nonprofit organization, HARLEM INDEPENDENT LIVING CENTER, a nonprofit organization, CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK a nonprofit organization, DISABLED IN ACTION OF METROPOLITAN, NEW YORK a nonprofit organization, NEW YORK STATEWIDE SENIOR ACTION COUNCIL, a nonprofit organization, SASHA BLAIR-GOLDENSOHN, an individual, CHRIS PANGILINAN, an individual, DUSTIN JONES, an individual, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF NATIONAL DISABILITY RIGHTS NETWORK AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS AND REVERSAL

WILLIAM A. BURCK
JOSEF T. ANSORGE
QUINN EMANUEL URQUHART
& SULLIVAN LLP
1300 I St. NW
Washington, DC 20005
(929) 327-2281

STEPHEN A. BROOME
QUINN EMANUEL URQUHART
& SULLIVAN LLP
51 Madison Avenue, 22nd Fl.
New York, New York 10101
(646) 431-9439

Counsel for Amicus Curiae National Disability Rights Network

– v. –

METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation, VERONIQUE HAKIM, in her official capacity as interim executive director of the Metropolitan Transportation Authority, NEW YORK CITY TRANSIT AUTHORITY, a public benefit corporation, DARRYL C. IRICK, in his official capacity as acting president of the New York City Transit Authority,

Defendants-Appellees,

THE CITY OF NEW YORK,

Defendant.

CORPORATE DISCLOSURE STATEMENT

Amicus is a nonprofit organization. The National Disability Rights Network has no parent corporation, and no publicly held corporation owns a portion of them.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

TABLE OF AUTHORITIES iii

IDENTITY AND INTEREST OF THE AMICUS 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. Congress Enacted The ADA To Address Discrimination In Public Transportation And Remove Barriers To Integration. 5

A. Congress Intended Title II To End The Exclusion Of Individuals With Disabilities From Public Transportation. 8

B. Congress Intended Title II To Require Public Entities To Ensure Elevators At New And Key Stations Are Available When Needed For Access. 11

II. The ADA Obligates The MTA To Ensure Nondiscrimination In The Provision Of Its Services. 14

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

Bd. of Trustees of Univ. of Alabama v. Garrett,
531 U.S. 356 (2001) 6

Everybody Counts, Inc. v. Indiana Reg'l Planning Comm'n,
2006 WL 2471974 (N.D. Ind. Mar. 30, 2006) 8

Mary Jo C. v. New York State & Local Ret. Sys.,
707 F.3d 144 (2d Cir. 2013) 7

Tennessee v. Lane,
541 U.S. 509 (2004) 6, 7

STATUTES

29 U.S.C. § 794(a) 6

42 U.S.C. § 12101(a)(2) 6

42 U.S.C. § 12101(a)(3) 7

42 U.S.C. § 12101(a)(5) 12

42 U.S.C. § 12101(a)(6) 7

42 U.S.C. § 12101(b) 7

42 U.S.C. § 12101(b)(4) 7

42 U.S.C. § 12132 14

42 U.S.C. § 12142(a) 8

42 U.S.C. § 12162(b)(2)(A) 10

42 U.S.C. § 12162(e)(1), ... 11, 14

42 U.S.C. § 12162(e)(2)(A)(1) 11

Americans With Disabilities Act of 1990,
Pub. L. No. 101-336, 104 Stat 327 ..... 6, 7

Urban Mass Transportation Act of 1964,
Pub. L. No. 91-453, 49 U.S.C. § 1612 6

OTHER AUTHORITIES

49 C.F.R. § 37.161 11

Chicago Transit Authority,
Accessible Transit, www.transitchicago.com/accessibility 15

H.R. Rep. No. 101-485, pt. 2 (1990) ..... passim

H.R. Rep. No. 101-485, pt. 5, (1990) 9, 10

Massachusetts Bay Transportation Authority,
Subway Access Guide, www.mbta.com/accessibility/subway-guide.... 15

National Council on Disability,
20 Years of Independence (Jul. 26, 2004) 9

National Council on Disability,
Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities - With Legislative Recommendations (Feb. 1986). 9

Scott M. Stringer,
Service Denied: Accessibility and the New York City Subway System, (July 2018) 15

Timothy M. Cook,
The Americans with Disabilities Act: The Move to Integration,
64 Temp. L. Rev. 393 (1991)..... 9

U.S. General Accounting Office,
Status of Special Efforts To Meet Transportation Needs Of the Elderly and Handicapped (Apr. 15, 1982) 15

CITATIONS TO THE RECORD

Plaintiffs.' Statement of Undisputed Facts, Dkt. No. 150..... 15

IDENTITY AND INTEREST OF THE *AMICUS*[1]

Amicus is a nonprofit organization committed to the wellbeing, equality, independence, and dignity of people throughout the United States. The National Disability Rights Network ("NDRN") is the nonprofit 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 Congress to protect the rights of people with disabilities 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 U.S. Virgin Islands), and ones 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

[1] *Amicus* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

with disabilities in the United States. NDRN and its members advocate for people with disabilities to have accessible public transportation services in their communities. NDRN has an interest in vigorous enforcement of the American with Disabilities Act ("ADA") and its prohibitions against discrimination.

SUMMARY OF ARGUMENT

This case concerns accessibility of the largest public transportation network in North America. New York City has 665 miles of subway track, yet half of its neighborhoods are transit deserts, with no accessible station. Less than 25 percent of New York City's 472 subway stations are accessible to persons with mobility disabilities. Because the Metropolitan Transportation Authority ("MTA") does not provide alternative transportation as a reasonable accommodation during an elevator outage, when a critical elevator at an accessible station is unavailable, that station, and the connected subway system, are rendered inaccessible for a segment of the population. Because the MTA has failed to institute an appropriate maintenance regime, critical elevators are frequently and unpredictably unavailable when they are needed to access and exit subway stations.

A class of New Yorkers with mobility disabilities is thereby deterred from using, unable to rely on, and denied meaningful access to, a key public transportation service. This is precisely the type of discriminatory effect the Americans with Disabilities Act ("ADA") was intended to eliminate. More than 30 years ago, Congress recognized

existing laws were inadequate to address disability discrimination in the provision of public transportation. Congress enacted Title II of the ADA—prohibiting discrimination by a public entity and prescribing requirements for accessible vehicles and facilities—with the intention that, to comply with the law, a public entity would keep accessibility elevators at subway stations in good working order, and readily available when needed for access.

The ADA does not have to enumerate maintenance regimes or median elevator-availability percentages for a court to find that a class of New Yorkers are denied "meaningful access" to the subway—but the lower court improperly assumed otherwise, a clear error at the motion for summary judgment stage. As a remedial statute, the ADA must be broadly construed to serve its purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

The statutory text, as well as its structure, legislative history, and context make clear that Congress enacted the ADA to address and end the exclusion of individuals with disability from public transportation systems. Congress intended Title II to facilitate the transition to

accessible public transportation systems, which individuals with mobility disabilities could depend on. Congress also intended Title II's nondiscrimination requirements to apply to the operation and maintenance of accessible elevators. The ADA obligates public entities, like the MTA, to ensure that they provide and operate their transportation services in a nondiscriminatory manner.

The judgment should be reversed.

ARGUMENT

I. Congress Enacted The ADA To Address Discrimination In Public Transportation And Remove Barriers To Integration.

For 50 years Federal legislation has stated that individuals with disabilities shall not be discriminated against in public transportation. In 1970 Congress declared the "national policy" that "handicapped persons have the same rights as other persons to utilize mass transportation facilities and services." Urban Mass Transportation Act of 1964, *amended* by Act of Oct. 15, 1970, Pub. L. No. 91-453, 49 U.S.C.

§ 1612(a).[2] In 1973 Congress enacted section 504 of the Rehabilitation Act to prohibit that individuals with disabilities "be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).

In the late 1980s, Congress found that the existing laws were insufficient to address discrimination against persons with disabilities. After "13 hearings" and gathering "evidence from every State in the Union," *Tennessee v. Lane*, 541 U.S. 509, 516 (2004),[3] Congress concluded that discrimination "continue[d] to be a serious and pervasive social problem." Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat 327, § 12101(a)(2). As a group, people with disabilities

[2] "Special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured." Urban Mass Transportation Act of 1964, *amended* by Act of Oct. 15, 1970, Pub. L. No. 91-453, 49 U.S.C. § 1612(a) (repealed 1994).

[3] *See also* Appendix to Opinion of Justice Breyer in *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 389 (2001) (listing Congressional hearings on the ADA and summarizing evidence gathered of hundreds of examples of states discriminating against persons with disabilities in the provision of public services).

were "severely disadvantaged socially, vocationally, economically, and educationally." *Id.* § 12101(a)(6). Discrimination was persisting in critical areas including "employment," "public accommodations," "transportation," "recreation," and "access to public services." *Id.* § 12101(a)(3). Congress identified transportation as one of "the major areas of discrimination faced day-to-day by people with disabilities." *Id.* § 12101(b)(4).

Large majorities in both Houses of Congress passed the ADA in 1990. Its stated purposes included providing "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"; providing "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities"; and "invok[ing] the sweep of congressional authority … to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b).[4]

[4] *See* also *Mary Jo C. v. New York State & Local Ret. Sys.*, 707 F.3d 144, 160 (2d Cir. 2013). "As a remedial statute, the ADA must be broadly construed to effectuate its purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."

A. Congress Intended Title II To End The Exclusion Of Individuals With Disabilities From Public Transportation.

One of Congress's primary purposes in enacting Title II was to address the problem of widespread discrimination in the provision of public transportation. *See Tennessee v. Lane*, 541 U.S. at 524 (Title II was enacted "against a backdrop of pervasive unequal treatment in the administration of state services and programs); *Everybody Counts, Inc. v. Indiana Reg'l Planning Comm'n*, 2006 WL 2471974, at *11 (N.D. Ind. Mar. 30, 2006) ("Title II addressed a history of discrimination in the provision of public services including public transportation.") Congress intended Title II to facilitate the mobility of individuals with disabilities and eliminate transportation barriers. *See, e.g.*, 42 U.S.C. §§ 12101(a)(5), 12142(a).

Legislative history shows Congress focused on public transportation because it recognized inaccessible transportation as a barrier to integration, to accessing public services, and to realizing the other provisions of the ADA.[5] House Reports noted that "the extent of non-

[5] Congress also focused on public transportation because of a mounting number of conflicting court decisions in that area. *See*

participation of individuals with disabilities in social and recreational activities is alarming." H.R. Rep. No. 101-485, pt. 2, at 34. "An overwhelming majority of individuals with disabilities lead isolated lives and do not frequent places of public accommodation." *Id*. at 34; H.R. Rep. No. 101-485, pt. 5, at 25 (1990) ("absence of adequate and accessible transportation can present a serious barrier to … integration").

Volumes of testimony, reports, and surveys [6] confirmed transportation barriers hindered participation and equal opportunity. *Id*. at 37. "People who cannot get to work or to the voting place cannot exercise their rights and obligations as citizens." *Id*. at 37.[7] "It makes little sense to protect an individual from discrimination in employment

---

Timothy M. Cook, *The Americans with Disabilities Act: The Move to Integration*, 64 Temp. L. Rev. 393, 419–20 (1991).

[6] 49% of 1000 individuals with disabilities surveyed in 1986 identified lack of transportation as a barrier to social and community participation. *See* National Council on Disability, *20 Years of Independence*, at 14 (Jul. 26, 2004), *available at* http://bit.ly/NCD2004.

[7] National Council on Disability, *Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities - With Legislative Recommendations*, at 33 (Feb. 1986), *available at* http://bit.ly/NCD_1986.

if … they have less than adequate accessible public transportation services." *Id.* at 37.[8]

Drawing on this evidence, Congressional Committees described transportation as "the linchpin which enables people with disabilities to be integrated and mainstreamed into society." *Id.* at 37; *see also* H.R. Rep. No. 101-485, pt. 5, at 25 (transportation "is a veritable lifeline to the economic and social benefits our Nation offers its citizens").

Congress recognized that when individuals with disabilities "are ***able to depend on*** an ***accessible transportation system***, one major barrier is removed." *Id.* at 87 (emphasis added). Congress therefore included requirements in Title II to "ensure that an accessible transportation system is phased-in." *Id.* at 87; *see*, *e.g.*, 42 U.S.C. § 12162(b)(2)(A) (requiring all new commuter rail cars be "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs"). Because transportation was a "linchpin" and a "lifeline," inaccessible transportation systems had to be addressed. "It makes no sense, at this point in time, to perpetuate

[8] Jay Rochlin, Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101–51, p. 29.

continued inaccessibility and to exclude persons with disabilities from the opportunity to use a key public service—transportation." H.R. Rep. No. 101-485, pt 2, at 87.

B. Congress Intended Title II To Require Public Entities To Ensure Elevators At New And Key Stations Are Available When Needed For Access.

Title II.B of the ADA requires existing key stations and new stations to be "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs." 42 U.S.C. §§ 12162(e)(1), 12162(e)(2)(A)(1).[9] The Committee on Education and Labor's House Report—published to accompany enactment of the ADA in 1990—explains that the phrase "readily accessible to and usable by individuals with disabilities" is intended to "address the degree of ease with which an individual with a disability can enter and use a facility;

[9] *See also* 49 C.F.R. § 37.161. ("Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities.")

it is access and usability which must be 'ready.'" H.R. Rep. No. 101-485, pt. 2, at 110 (1990).[10]

Congress recognized that facilities could be inaccessible for different reasons. Individuals with disabilities "encounter various forms of discrimination," including discriminatory effects of architectural barriers and discriminatory effects from a "failure to make modifications to existing facilities and practices." 42 U.S.C. § 12101(a)(5).[11] Title II was intended to address both: (i) the built transportation environment, and (ii) the operation and provision of transportation services. *See* H.R. Rep. No. 101-485, pt. 2, at 87 ("[a]s a general rule all requirements for nondiscrimination" in Title II "apply not only to the design of vehicles and facilities but to their operation as well").

---

[10] *See also* H.R. Rep. No. 101-485, pt. 2, at 88 ("The term 'readily accessible to and usable by' is a term of art that means the ability of individuals with disabilities, including individuals using wheelchairs, to enter into and exit and safely and effectively use a vehicle used for public transportation.")

[11] *See also* H.R. Rep. No. 101-485, pt. 2, at 29 ("Discrimination … includes harms resulting from the construction of transportation … barriers or the adoption or application of standards, criteria, practices or procedures that are based on thoughtlessness or indifference—that discrimination resulting from benign neglect.")

The Committee explained that elevators were necessary but insufficient for a facility to be accessible, and an entity to comply with Title II.

> "New and key stations must have elevators … for a transit authority to be in compliance with the provisions of this title of the legislation. Merely installing the access equipment is never sufficient by itself, however; the … elevators must also operate, be in good working order, and be available when needed for access in order for an entity to be in compliance with the law."

Id. at 87. The Congressional Committee foresaw that elevator maintenance could function as a barrier to access 15 years before the National Council on Disability reported that it was "the operational issue that imposes the most significant barriers at rail stations already designated as accessible."[12]

As in other parts of the ADA, Congress provided some flexibility and decision-making to the transportation provider. *See*, *e.g.*, *id.* at 88 ("These minimum guidelines should be consistent with the Committee's desire for flexibility and decision-making by the provider.") Congress left it to the management of the transit authority to determine the

[12] National Council on Disability, *The Current State of Transportation for People with Disabilities in the United States*, at 40 (Jun. 13, 2005), available at http://bit.ly/NCD2005.

practicalities of how to "ensure nondiscrimination in the provision of transportation." *Id.* at 87. But there was no question of whether a transit authority had to ensure nondiscrimination in the provision of transportation. The Congressional Committee made it clear that, to comply with the law, it expected "a strong commitment" including "adequate training of maintenance personnel" would be required. *Id.*

II. The ADA Obligates The MTA To Ensure Nondiscrimination In The Provision Of Its Services.

The ADA requires the MTA's new and key stations to be "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs." 42 U.S.C. §§ 12162(e)(1), 12162(e)(2)(A)(1). The ADA also requires the MTA to ensure nondiscrimination in the provision of transportation. 42 U.S.C. § 12132. The discriminatory effects of the MTA's provision of its transportation services need to be considered in the context of the physical barriers in its system.

A 1982 survey conducted by the U.S. General Accounting Office showed 2 percent of NY MTA stations accessible, close to 9 percent in Boston, 7 percent Chicago, but a contrast to 100 percent in Atlanta,

Washington D.C., and San Francisco.[13] Today, more than 70 percent of stations in Chicago[14] and Boston[15] are accessible, as opposed to less than 25 percent of New York City.[16]

The two most comparable subway systems by age—Chicago and Boston—have thereby made vastly more progress in providing meaningful access to a higher percentage of their systems. In addition, the MTA does not have a policy or practice of providing paratransit shuttles as an accommodation to passengers during elevator outages. (Pls.' Statement of Undisputed Facts, Dkt. No. 150, ¶ 109.) Other subway systems, including Washington Metropolitan Area Transit Authority ("WMATA") and Massachusetts Bay Transportation

---

[13] U.S. General Accounting Office, *Status of Special Efforts To Meet Transportation Needs Of the Elderly and Handicapped*, at 20 (Apr. 15, 1982), available at http://bit.ly/GAO_1982_Report.

[14] Chicago Transit Authority, *Accessible Transit*, (last visited Sep. 8, 2020), available at www.transitchicago.com/accessibility.

[15] Massachusetts Bay Transportation Authority, *Subway Access Guide*, (last visited Sep. 8, 2020), available at www.mbta.com/accessibility/subway-guide.

[16] Scott M. Stringer, *Service Denied: Accessibility and the New York City Subway System*, (July 2018), available at https://on.nyc.gov/3ha3746.

Authority ("MBTA") provide shuttle service in the event of an elevator outage. (*Id.* ¶ 111.)

Because the MTA does not have a high percentage of accessible stations, and does not have a practice of providing paratransit shuttles as accommodation to passengers during elevator outages, how it operates and maintains its elevators has more significant discriminatory effects on wheelchair users than the same practice would in Washington D.C., or Boston. Wheelchair users are simply less likely to be stranded far from their destination, or unable to escape a subway station, in a system with more elevators and paratransit shuttles as accommodation to passengers during elevator outages.

Congress had the wisdom to not *prescribe* required elevator maintenance regimes or availability percentages because the same maintenance practice can have a discriminatory effect in one transportation system, and not have a discriminatory effect in another. But Congress did *proscribe* maintenance regimes that have discriminatory effects. To comply with Title II of the ADA, the MTA must ensure that the specific maintenance practices it implements in its system do not have a discriminatory effect.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the district court and make clear that the ADA's broad promise to protect individuals with disability from discrimination in public transportation still applies.

What a Congressional Committee declared more than 30 years ago remains relevant today: "It makes no sense, at this point in time, to perpetuate continued inaccessibility and to exclude persons with disabilities from the opportunity to use a key public service—transportation." H.R. Rep. No. 101-485, pt 2, at 87.

Dated: September 9, 2020

Counsel for Amicus
National Disability
Rights Network

/s/ *Josef T. Ansorge*

William A. Burck
Josef T. Ansorge
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I St. NW,
Washington, D.C. 20005
929-327-2281

Stephen A. Broome
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
646-431-9439

CERTIFICATE OF COMPLIANCE

(i) In accordance with Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), the undersigned certifies that this brief:

(ii) complies with the type-volume limitations of Federal Rules 29(a)(4)(G) and 32(a)(7)(B)(i) and Second Circuit Rule 29.1(c) because it contains 3,739 words including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(iii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2016 and is set in Century Schoolbook font in a size measuring 14 points or larger.

/s/ *Josef T. Ansorge*

CERTIFICATE OF SERVICE

I certify that on this 9th day of September, 2020, the foregoing brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ *Josef T. Ansorge*