

No. 20-60372

**In the United States Court of Appeals
for the Fifth Circuit**

Scott Crawford,
Plaintiff-Appellant,

v.

Hinds County Board of Supervisors;
Hinds County, Mississippi,
Respondents-Appellees.

From the United States District Court for Southern District of Mississippi,
No. 3:17-cv-118-TSL-RHW, Honorable Tom S. Lee, Presiding

BRIEF AMICI CURIAE OF DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND, PUBLIC JUSTICE, AMERICAN ASSOCIATION FOR
JUSTICE, AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL
LIBERTIES UNION OF LOUISIANA, AMERICAN CIVIL LIBERTIES
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), amici through their counsel certify that they have no parent corporations nor any publicly held corporations owning 10% or more of their stock.

Dated: August 26, 2020

By: /s/ Claudia Center
Counsel for *Amici Curiae*

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons as described in the fourth sentence of 5th Circuit Rule 28.2.1 have an interest in the outcome of this appeal.

American Association for Justice (AAJ) – Amicus Curiae
American Civil Liberties Union (ACLU) – Amicus Curiae
American Civil Liberties Union of Louisiana – Amicus Curiae
American Civil Liberties Union of Mississippi – Amicus Curiae
American Civil Liberties Foundation of Texas – Amicus Curiae
Civil Rights Education and Enforcement Center (CREEC) – Amicus Curiae
Coalition of Texans with Disabilities – Amicus Curiae
Disability Rights Advocates (DRA) – Amicus Curiae
Disability Rights Education and Defense Fund (DREDF) – Amicus Curiae
Disability Rights Louisiana (DRLA) – Amicus Curiae
Disability Rights Mississippi (DRMS) – Amicus Curiae
Disability Rights Texas (DRTX) – Amicus Curiae
National Association of the DEAF (NAD) – Amicus Curiae
National Federation of the Blind (NFB) – Amicus Curiae
Paralyzed Veterans of America (PVA) – Amicus Curiae
Public Justice – Amicus Curiae
Claudia Center – Counsel for Amici Curiae
Karla Gilbride – Counsel for Amici Curiae
Stephanie K. Glaberson – Counsel for Amici Curiae

Dated: August 26, 2020
Counsel for *Amici Curiae*

By: /s/ Claudia Center

IDENTITY OF AMICI CURIAE

This brief is submitted on behalf of nine national advocacy organizations, and seven state advocacy organizations within the jurisdiction of this Court, that advocate for full inclusion of people with disabilities in society and/or that advocate for an open and accessible judicial system. This case sits at the intersection of physical courthouse accessibility and the ability to seek redress in federal court through a proper interpretation of Article III standing. Accordingly, amici have an interest in providing additional information to this Court to contextualize the gravity of the errors in the opinion below. Individual statements of interest for each amicus are presented in an addendum at the end of this brief.

RULE 29(a)(4)(E) STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici certify that no party's counsel offered this brief in whole or in part, no party and no person, other than amici and their counsel, contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION

The district court took an unduly narrow view of standing that is at odds both with Article III of the U.S. Constitution and the Congressional objectives animating the Americans with Disabilities Act ("ADA"). As Appellant's brief explains, Dr. Crawford has demonstrated an intent to return to the Hinds County

courthouse for a myriad of plausible, nonspeculative reasons and a high likelihood of again encountering the same barriers on those future visits, satisfying the standard for an imminent injury that gives him standing to seek injunctive relief. Moreover, Hinds County's discrimination against him, which has been established by the court below as a matter of law, constitutes a separate, continuing actual injury cognizable under Article III, based on the harms Congress recognized when it enacted the ADA 30 years ago.

Title II of the ADA was intended to ensure for people with disabilities their fundamental right to access the government, and in particular the judiciary. These goals cannot be fully realized through a damages remedy – only injunctive relief can ensure access to justice for disabled people. And integrating disabled people into juries furthers the rights of all litigants including criminal defendants who have a right to trial by a jury that represents a cross-section of their communities and that includes their disabled peers. There is nothing conjectural or hypothetical about the injury a person with a disability experiences when physical access to the courts, and the fundamental rites of citizenship that take place inside of courthouses, are denied.

ARGUMENT

I. A Discriminatory Interference with the Fundamental Right to Access the Courts is a Concrete and Particularized Injury Conferring Standing.

Many Americans may rarely or never travel to their state's capital or to Washington, D.C. Therefore, local governmental institutions, particularly local courthouses, are the physical spaces where these individuals are most likely to interact with and participate in activities of government, whether it be serving on a jury, obtaining a marriage license, registering to vote, voting, or engaging in any number of other civic activities. Since moving back to Mississippi in December 2006, Scott Crawford, Ph.D.,¹ has visited his local courthouse in Hinds County in connection with each of these important civic functions. He also has established, in the context of a motion for summary judgment², that he intends to return to the courthouse in the future for similar reasons, including to attend meetings of the Hinds County Election Commission, of which he is a member, or when he is called

¹ Scott Crawford, Ph.D., is a retired clinical psychologist who uses a power wheelchair due to his multiple sclerosis. In December 2006, as his symptoms began progressing, plaintiff, who was living in Florida at the time, decided to move back to Mississippi so that he could have help from his family in Mississippi. Promptly upon returning to Mississippi, Dr. Crawford went to the Hinds County Courthouse (the courthouse) to register to vote. He found that he could not enter the main entrance at the front of the building because of multiple steps leading to the entrance. There was no sign directing him to an accessible entrance, but after looking around, he found a floor-level entrance on the east side of the building. However, he required assistance to enter the building because the doors were heavy and the door handles were of a type that required tight grasping and twisting to operate, which he was unable to do. *See* Record Excerpts of Appellant ("REA") at 29-30.

² *See* REA at 53.

yet again for jury duty.³ But the district court impermissibly narrowed its focus to considering one specific reason Dr. Crawford might return to the courthouse (testing it for accessibility), discounting evidence about the many government programs and activities occurring there and the likelihood Dr. Crawford would return to the courthouse again to participate in one of those programs or activities.

The district court's decision to "revisit" standing, after having already granted summary judgment in Plaintiff's favor on the issue of standing earlier in the litigation, was erroneous for two reasons. First, as discussed in Appellant's brief, Dr. Crawford demonstrated a sufficiently high probability of repeated future injury: alleging in his complaint, stating in his summary judgment motion, and testifying at the trial about his fears of encountering the same barriers to access when he visited the courthouse again for jury service or other purposes.⁴ Second, and not discussed in detail by Appellant, Dr. Crawford suffers a continuing actual injury for Article III purposes as long as Hinds County fails to remedy the known barriers to program access that led him to file this suit in the first place. Every day

³ Prior to filing his case, Dr. Crawford was called to the courthouse twice for jury duty. During the pendency of the litigation, he was called twice more. As a Hinds County resident and registered voter, he continues to be on the jury rolls and may be called, yet again, at any time. At all times, and despite the immense barriers he faces in participating in this vital civic function, Dr. Crawford has remained ready and willing to serve on a Hinds County jury. REA at 67. In September of 2019, he also visited the courthouse to cast an absentee ballot. *Id.*

⁴ Appellant Br. at 25-29. *See also Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019) (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)) (when standing is based on threat of future injury, there must be a "substantial risk" that future injury will occur).

those barriers go unaddressed, Dr. Crawford must contend with the fact that the courthouse four miles from his home remains inaccessible to him as a wheelchair user and that all of the important governmental functions that take place there—from voting to court proceedings—remain difficult or impossible for him to access. This knowledge affects, “in some concrete way,” his feelings about and interactions with the government that treats him and other people with disabilities as less valuable members of society.⁵

In order to invoke the federal courts’ jurisdiction, a plaintiff must have suffered an invasion of a legally protected interest that is “actual or imminent, not conjectural or hypothetical” and that is both “concrete and particularized.”⁶ The injury must also be fairly traceable to the defendant’s conduct and redressable by the court.⁷ A plaintiff, like Dr. Crawford, who seeks injunctive relief cannot establish standing based on past injuries but may do so in one of two other ways. First, standing may be established based on threatened future injury, the so-called “imminence” prong of the injury-in-fact requirement.⁸ On this record, Dr. Crawford has clearly done so, as Appellant’s brief explains. Second, a plaintiff can

⁵ See *Frame v. City of Arlington*, 657 F.3d 215, 235-6 (5th Cir. 2011) (“Similarly, a disabled individual need not engage in futile gestures before seeking an injunction; the individual must show only that an inaccessible sidewalk actually affects his activities in some concrete way”).

⁶ *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016).

⁷ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)

⁸ *Stringer*, 942 F.3d at 720; see also *Frame*, 657 F.3d at 235 (noting that “‘imminence’ is an ‘elastic concept’”).

establish standing to seek injunctive relief by alleging a continuing, actual injury.⁹

And based on the purposes animating the ADA, Dr. Crawford has also satisfied this second path to demonstrating standing and remaining in court.

Dr. Crawford testified at the trial in this action about how his inability to serve on a Hinds County jury made him feel, discussing the “double bind” of attending court proceedings and facing barriers and consequent embarrassment or not participating, which “has consequences too.”¹⁰ These injuries are particularized to Dr. Crawford, as they affect him personally and relate to his personal circumstances and connections to Hinds County court functions. And these psychic and dignitary harms are also concrete, despite not being “tangible.”¹¹ Knowing that his local courthouse remains inaccessible to him eight years after he asked his county government to address the problem (*and* almost 30 years after the ADA’s program access regulation came into effect) causes him harm in the same way that walking past a sign on a government building in your hometown with your name

⁹ *Id.* (“[P]laintiffs seeking injunctive and declaratory relief can satisfy the redressability requirement only by demonstrating a continuing injury **or** threatened future injury.”) (emphasis added).

¹⁰ REA at 78 (“[I]t’s a double bind, what we called in psychology a double bind. It’s a no-win scenario. If I ask everybody to move, I feel like I’m imposing and I’m being difficult. If I don’t ask, then I don’t participate, and that has consequences too.”). *See also id.* (“For 28 years, people with mobility impairments have not been able to sit next to their peers in an integrated way, get into the courtroom proceedings areas in an integrated way, and that, in my opinion, creates a systemic bias in our jury pools.”).

¹¹ *See Spokeo*, 136 S. Ct. at 1549-50 (recognizing violations to First Amendment rights of free exercise and freedom of speech, and violations of an advocacy organization’s statutory right to access information, as concrete, standing-conferring injuries).

above the words “NOT WANTED” would cause harm. The method Hinds County has used to communicate this message to Dr. Crawford may be more subtle, but the message of exclusion is the same.

Moreover, in determining whether an injury is concrete, “the judgment of Congress” is one of the touchstones for courts to consider.¹² And as part II below will explain, the legislative history leading to enactment of the ADA leaves no doubt that Congress recognized the dignitary harm caused to people with disabilities who are systematically prevented from participating in governmental functions on equal terms with their nondisabled peers. Through the ADA, Congress sought to address that dignitary harm by creating a private right of action for people with disabilities like Dr. Crawford to remedy such dignitary harms by seeking injunctive relief. No more is needed to establish standing here.

II. Title II of the ADA Was Intended to Ensure Access to the Judicial System for People with Disabilities.

The right to access the courts and other governmental services, programs and activities is fundamental. But the justice system itself can present tremendous barriers to people with disabilities. Congress enacted Title II against a backdrop of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, including systematic deprivations of fundamental

¹² *Spokeo*, 136 S. Ct. at 1549.

rights. *Tennessee v. Lane*, 541 U.S. 509, 524 (2004). Congress found that “discrimination against individuals with disabilities persists in such critical areas as ... access to public services,” and stated that the Act’s purpose is “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. § 12101(a)(3), (b)(2). Yet as this case demonstrates, disability discrimination persists in the justice system, including against litigants, witnesses, lawyers, and jurors with disabilities. The enforcement of the injunctive relief remedy contained in Title II of the ADA and its predecessor statute Section 504 is critical to the ability of persons with disabilities to exercise their fundamental rights of citizenship, including the right to access the courts. Prospective disabled jurors—including people like Dr. Crawford who have repeatedly shown their willingness and desire to serve, and who have a record of regularly needing to access the courthouse—must be granted injunctive relief under federal disability rights laws. Damages without injunctive relief do not allow disabled individuals to exercise their fundamental right to access and participate in their governments.

A. In Enacting Title II of the ADA, Congress Responded to a Long History of Disability Discrimination in Government Services, Including By State and Local Courts, and Adopted a Remedial Scheme Designed to Eliminate Such Discrimination.

The ADA was passed by large majorities in both Houses of Congress after decades of deliberation and investigation into the need for comprehensive legislation to address discrimination against persons with disabilities. *Tennessee v. Lane*, 541 U.S. 509, 516 (2004). Title II of the ADA was enacted in response to a long history of state-sponsored discrimination against disabled people, including exclusion from the judicial system. *Id.* at 524. This history included state statutes that explicitly excluded people with disabilities from jury service.¹³

As a part of this process, Congress heard testimony from persons with disabilities who described the physical inaccessibility of local courthouses, and learned that many individuals in many states across the country were being

¹³ *Tennessee v. Lane*, 541 U.S. 509, 524 n.9 (2004) (citing Mich. Comp. Laws Ann. § 729.204 (West 2002) (persons selected for inclusion on jury list may not be “infirm or decrepit”); Tenn. Code Ann. § 22-2-304(c) (1994) (authorizing judges to excuse “mentally and physically disabled” persons from jury service)); *see also* Brief of Over 100 Historians and Scholars in Support of Respondent, *Univ. of Ala. v. Garrett*, No. 99-1240, 2000 U.S. S. Ct. Briefs LEXIS 411 **55-56 (Aug. 11, 2000) (“New York law excluded ‘infirm and decrepit’ jurors for more than 150 years. In 1984, an Alabama county ‘conceded that Shelby County is not equipped to accommodate jurors who have severe disabilities, and that Shelby County courts routinely excuse such persons from jury service, as do all of the State’s courts.’ ... In 1978, an Arkansas federal judge found that ‘impairment of the senses, particularly the senses of sight and hearing, vitiates a person’s ability to serve effectively as a juror.’ ... In 1985, the Missouri Supreme Court held that the categorical exclusion of ‘deaf, mute, deaf-mute, and blind persons from inclusion in the jury pool’ was constitutional. ... The District of Columbia Superior Court continued to exclude all blind persons from jury service through 1993.”) (case citations omitted).

excluded from courthouses and court proceedings by reason of their disabilities.¹⁴

And Congress's appointed task force reported numerous examples of the exclusion of persons with disabilities from state judicial services and programs, including: the exclusion of persons with visual and hearing disabilities from jury service, the failure of state and local governments to provide interpretive services for deaf and hard of hearing people, the failure to permit the testimony of adults with developmental disabilities, and the failure to make courtrooms accessible to witnesses with physical disabilities.¹⁵

At hearings leading up to the enactment of the ADA, Congress heard testimony from witnesses stating that the rights guaranteed by the ADA would be meaningless without effective enforcement provisions.¹⁶ Congress thereafter adopted an enforcement scheme for Title II that includes a private right of action permitting disabled individuals to seek the full panoply of remedies, including

¹⁴ *Tennessee v. Lane*, 541 U.S. at 524 (citing Oversight Hearing on H. R. 4468 before the House Subcommittee on Select Education of the Committee on Education and Labor, 100th Cong., 2d Sess., 40-41, 48 (1988), and report before Congress showing that 76% of public services and programs housed in state-owned buildings were inaccessible to and unusable by persons with disabilities).

¹⁵ *Id.* at 527 (citing Government's Lodging in Garrett, O. T. 2000, No. 99-1240 and Task Force on the Rights and Empowerment of Americans with Disabilities, From ADA to Empowerment (Oct. 12, 1990)).

¹⁶ Sen. Comm. on Lab. & Hum. Res., Rep. 101-116, 13 (Aug. 30, 1989) ("Several witnesses emphasized that the rights guaranteed by the ADA are meaningless without effective enforcement provisions."); House Comm. on Educ. & Lab., H.R. Rep. No. 485(II), 101st Cong. 2d Sess. (May 15, 1990), 1990 WL 10079988 *18 (same).

injunctive relief. 42 U.S.C. § 12133.¹⁷ In this matter, the District Court’s overly narrow view of standing—allowing Dr. Crawford damages but no access to the courthouse—unnecessarily undermines Congress’s objectives in enacting the ADA.¹⁸

B. Injunctive Relief is Necessary to Remedy Dr. Crawford’s Injuries, and the “Program Access” Standard is Fair to the Appellees.

The ADA incorporates by reference the balanced “program access” standard developed under Section 504 for existing buildings. 42 U.S.C. § 12134(b). Under this standard, the covered entity is *not* necessarily required to make each of its existing facilities accessible to and usable by persons with disabilities. Rather, the covered entity is required to ensure that each “service, program, or activity, *when viewed in its entirety*, is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a) (1991) (emphasis added); *accord* 28 CFR § 41.57 (1978) (Section 504). Relatedly, when a covered entity alters an existing

¹⁷ See also House Comm. on the Judiciary, H.R. Rep. No. 485(III), 101st Cong. 2d Sess., at 52 (May 15, 1990), reprinted in 1990 U.S. Code Cong. and Admin. News, 445, 475 (“Section 205 incorporates the remedies, procedures and rights set forth in Section 504 of the Rehabilitation Act of 1973. ... The Rehabilitation Act provides a private right of action, with a full panoply of remedies.”); House Comm. on Educ. & Lab., H.R. Rep. No. 485(II), , 101st Cong. 2d Sess. (May 15, 1990), 1990 WL 10079988 *77 (“As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies.”).

¹⁸ The U.S. Department of Justice (“DOJ”) has an initiative called Project Civic Access to work with state and local government entities, including courts, to ensure access. See <https://www.ada.gov/civicac.htm> However, the DOJ cannot reach every municipality. It lists six settlements with cities and counties in Mississippi, four of which cover courthouses. See *id.* Mississippi has 82 counties.

building, the existing building shall “to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.” 28 CFR § 35.151(b); *accord* 28 C.F.R. § 41.58 (1978). The ADA “program access” standard includes additional defenses for covered entities: it does not require the public entity “to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.” 28 C.F.R. § 35.150(a)(3).

In this matter, while the original courthouse construction predates the enactments of Section 504 and the ADA, the courthouse became covered by Section 504’s “program access” standard in 1978—42 years ago. The 1987 renovation was covered by Section 504 and any access-design standards applicable at that time.¹⁹ And the courthouse became covered by the ADA’s “program access” regulation 29 years ago in 1991. Yet in October 2012, while at the courthouse for jury selection, Dr. Crawford had to urinate in his pants because there were no readily accessible restrooms. REA at 31.²⁰

¹⁹ *See, e.g.*, 49 Fed. Reg. 31528 (Aug. 7, 1984); American National Standards Institute Standard A117.1—1961 (R 1971) (ANSI).

²⁰ Essential to compliance with the program access standard is accurate and visible signage to direct disabled persons to readily accessible restrooms and other accessible components of an existing facility. In December 2012, while waiting for jury selection to begin, plaintiff went to the second floor men’s restroom which had a sign on the door falsely indicating that it was an accessible restroom. REA at 31.

Today, the Hinds County Courthouse, including its bathrooms and courtrooms, remains inaccessible. After hearing the evidence at trial, the District Judge found that “Plaintiff has demonstrated that there are no readily accessible restrooms for wheelchair users and that various architectural barriers in most, if not all, of the eight courtrooms impede ready access by wheelchair users to program access.” REA at 36. Despite this abysmal noncompliance with federal disability laws, Dr. Crawford has continued to visit the courthouse as a prospective juror and as an engaged citizen. *See* Brief of Appellant. He has continued to experience the same barriers. The Congress that enacted the ADA thirty years ago intended and adopted an injunctive remedy for Dr. Crawford and others in his situation.

III. It is Critical to a Fair and Inclusive Judiciary to Ensure Access and Inclusion for Prospective Jurors and Other Court Users Who Are Disabled.

In addition to the congressional purposes underlying the ADA, it is critical to the judiciary itself to ensure access and inclusion for disabled people who are prospective jurors as well as for other disabled court users such as disabled witnesses, lawyers, and members of the public who want to observe proceedings. The civic duty of jury service provides among “the most significant opportunit[ies] to participate in the democratic process.” *Powers v. Ohio*, 499 U.S. 400, 407 (1991). Juries “afford ordinary citizens a valuable opportunity to participate in a process of government, an experience fostering, one hopes, a respect for law.” *Id.*

(citation omitted). Further, as the National Center on State Courts recently stated, “in the vast majority of situations disabled persons can be accommodated, and ... it can be done without fundamentally altering jury service.”²¹ Yet discrimination persists against prospective jurors with disabilities. Deaf people continue to be denied the sign language interpreting and other auxiliary services they need to participate in juries, and are instead “excused” from service.²² And blind prospective jurors face a *de facto* system of exclusion.²³ Wheelchair users like Dr. Crawford commonly face systemic access barriers in courthouses.²⁴

²¹ National Center on State Courts and State Justice Institute, *Jurors with Disabilities* 4 (2018) (hereinafter “NCSC Report”), <https://ncsc.contentdm.oclc.org/digital/collection/juries/id/300>.

²² See *Koplitz v. Superior Court of D.C.*, No. 1:14-cv-01435-CKK (D.D.C., filed Aug. 22, 2014) (describing experiences of Michelle Koplitz, a deaf District of Columbia resident who was summoned in April 2014 for grand jury service in Superior Court, but was then not permitted to serve because the court refused to pay for an interpreter), http://www.ncsc-jurystudies.org/data/assets/pdf_file/0013/6151/koplitz-complaint-3.pdf; cf. *State v. Speer*, 124 Ohio St. 3d 564, 569, 925 N.E.2d 584, 589 (2010) (reversing conviction based on judge’s failure to excuse hard of hearing juror where defendant’s counsel argued that she could not hear defendant’s tone of voice during 911 call, but stating: “A hearing impairment by itself does not render a prospective juror incompetent to serve on a jury, but when the accommodation afforded by the court fails to enable the juror to perceive and evaluate the evidence, an accused cannot receive a fair trial.”); *id.* at 574-75 (Lanzinger, J., dissenting) (reviewing procedural history and accommodations granted juror, including transcript of 911 call, and opining that trial judge did not abuse discretion in retaining juror).

²³ See Brief of National Federation of the Blind et al. as *Amicus Curiae* in *Massachusetts v. Heywood* (Aug. 19, 2019) at 14-17 (describing experiences of blind prospective jurors), http://masscases.com/briefs/sjc/484/484mass43/SJC-12724_05_Amicus_Disability_Law_Center_and_Others_Brief.pdf

²⁴ U.S. Department of Justice, Civil Rights Division, Disability Rights Section, *The ADA and City Governments: Common Problems* (Feb. 24, 2020) (“City governments often have failed to ensure that the whole range of the city’s services, municipal buildings, and programs meet Title II’s program access requirements. ... If a municipal building such as a courthouse is inaccessible, people with disabilities who use wheelchairs are unable to participate in jury duty, attend hearings, and gain access to other services, because doorways are too narrow, restroom facilities are inaccessible, and steps are the only way to get to all or portions of a facility.”), <https://www.ada.gov/comprob.htm>; see *id.* (chart entitled *Common Problems with Courtrooms*,

This continued discrimination undermines the integrity of the judiciary, reduces the accuracy and fairness of judicial decisions, and harms not only members of the excluded communities, but also the public at large. “[T]he requirement of a jury’s being chosen from a fair cross section of the community is fundamental to the American system of justice.” *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975). “[T]he exclusion from jury service of a substantial and identifiable class of citizens has a potential impact that is too subtle and too pervasive to admit of confinement to particular issues or particular cases[.]” *Id.* at 532 n.12 (quoting from *Peters v. Kiff*, 407 U.S. 493, 502-504 (1972) (opinion of Marshall, J., joined by Douglas and Stewart, JJ.)). Exclusion of “any large and identifiable segment of the community ... from jury service ... remove[s] from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable.” *Commonwealth v. Arriaga*, 438

and listing: “Doors are too heavy to open. No assistive listening systems are provided for people who are hard of hearing. Fixed seats or benches for courtroom spectators are positioned to leave little room for people who use wheelchairs; wheelchair placement in aisles can violate fire codes. Jury toilet rooms are not accessible. Jury boxes and witness stands can only be accessed by climbing a step.”); *cf. Trotman v. State*, 466 Md. 237, 218 A.3d 265 (2019) (in case assigned to courtroom up 25 stairs with no elevator, appellate court found no abuse of discretion where judge excused four prospective jurors with disabilities, as inaccessible courtroom was only one available, and judge directed each prospective juror to return to the jury assembly room in contemplation that the prospective juror could be seated as a juror at another trial); *see id.* at 261, 264 (“We begin with our conclusion that a trial court may not summarily excuse for cause prospective jurors with disabilities. ... Maryland and federal statutes protect prospective jurors from disability discrimination. ... The takeaway is that, generally, the Americans with Disabilities Act prohibits a trial court from reaching the blanket conclusion that a certain disability would necessarily preclude jury service at any given trial.”).

Mass. 556, 562 (2003) (citation omitted).²⁵ A group’s exclusion “deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented.” *Id.*

Excluding disabled individuals from jury service deprives both the litigants and the members of the jury of unique perspectives and life experiences that enhance deliberations and ensure a just verdict is reached. By its very design, jury deliberation is meant to be a collaborative process in which individuals with varying perspectives, strengths and challenges reach a fair outcome based on their collective wisdom. Disabled jurors bring into the jury room perspectives and experiences that may not be shared by most nondisabled jurors. *See, e.g.,* Valerie P. Hans & Neil Vidmar, *The Verdict on Juries*, 91 *Judicature* 226, 227 (2008) (“Heterogeneous juries have an edge in fact finding, especially when the matters at issue incorporate social norms and judgments, as jury trials often do.”).²⁶ When

²⁵ *See also* *Dixon v. Rackley*, No. 1:14-cv-01149 AWI MJS (HC), 2017 U.S. Dist. LEXIS 58377, at **274-79 (E.D. Cal. Apr. 14, 2017) (assuming for purposes of analysis, that physically disabled prospective jurors are a cognizable class, but finding disability-neutral reasons for exclusion of two prospective jurors with disabilities); *People v. Guay*, 18 N.Y.3d 16, 19, 23-24, 935 N.Y.S.2d 567 (2011) (finding that trial court did not abuse its discretion in dismissing hard of hearing prospective juror for cause where judge perceived prospective juror as having difficulty hearing, and reasoned that child witnesses tend to speak more softly than adults, and where no accommodations were discussed, but noting: “We must emphasize, however, that a better course would have been for Supreme Court to take steps on its own accord to inquire about the prospective juror’s auditory limitations and discuss possible accommodation. It is imperative that the privilege and duty of jury service be made available to all eligible individuals--regardless of disability--who are capable of performing this civic function.”).

²⁶ *Accord* NCSF Report, *supra* n. 21, at 4 (“[W]ell-run court systems anticipate requests from disabled persons and find that their participation is beneficial to ensuring jury panels are a fair

jurors with disabilities, like Dr. Crawford, are excused as a consequence of access barriers and not permitted to serve, juries are less representative and their deliberations suffer.

Moreover, when people with disabilities cannot observe public court proceedings or participate in them as jurors, witnesses, or advocates on equal terms with their nondisabled peers, the government reinforces the message that they are second-class citizens, thwarting both the spirit and letter of the ADA and other civil rights laws and undermining the legitimacy of the judicial process. As this Court well knows, the Constitution and the common law guarantee to the public a qualified right to access the country's court proceedings. U.S. Const. amend. I; *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). This right to observe court functions plays a number of vital roles, enhancing “both the basic fairness” of judicial proceedings and “the appearance of fairness so essential to public confidence in the system.” *Press-Enter. Co. v. Superior Court of California, Riverside Cty.*, 464 U.S. 501, 508 (1984). And it allows for the “community catharsis” that flows from the effective administration of justice. *Richmond Newspapers*, 448 U.S. at 571. Where segments of the populace—such as those

cross section of the community and to improving the quality of justice that juries deliver daily in our nation's courtrooms.”); Samuel R. Sommers, On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations, *Journal of Personality and Social Psychology*, Vol. 90, No. 4, 597-612 (2006) (finding that racially diverse mock juries engaged in more thorough and accurate deliberations than more homogeneous juries).

with disabilities—are categorically excluded from observing the workings of their courts, this exclusion undermines their confidence that the system is working well and fairly. *Id.* at 572 (“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”).

CONCLUSION

In passing the ADA, Congress acknowledged Dr. Crawford’s fundamental right to access the government activities that take place at the Hinds County Courthouse and created a benchmark—the program access standard—for determining when those fundamental rights have been abridged. The trial court determined that the county violated those rights here, but deprived Dr. Crawford of any remedy for that violation, based on an erroneous application of Article III standing. This gross legal error compounded the harm Dr. Crawford has already suffered, and continues to suffer, every day that the Hinds County Courthouse remains inaccessible to him in violation of the ADA. And though not relevant to the standing analysis, it should also concern this Court that when Dr. Crawford is summoned for jury duty for a fifth time, if he is again unable to serve because of the county’s continued noncompliance with the law, the litigants in that future case will suffer as well through a jury less representative of the local citizenry.

Dr. Crawford began experiencing the effects of Hinds County's noncompliance with Title II of the ADA when he moved back home in 2006 and registered to vote—14 years ago, and 15 years after the law went into effect. His injuries from Defendants' systemic noncompliance, in the form of frustration and trepidation around future visits to the courthouse, continue every day that the barriers remain in place. This Court should respect the judgment of Congress in passing the ADA and recognize Dr. Crawford's injuries as sufficient to confer standing under Article III.

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Respectfully submitted,

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STATEMENTS OF INTEREST OF AMICUS PARTIES

The **American Association for Justice** (“AAJ”) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. AAJ’s members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including disability discrimination cases. Throughout its more than 70-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

The **American Civil Liberties Union** is a nationwide, nonprofit nonpartisan organization of more than 1.5 million members dedicated to protecting the fundamental rights guaranteed by the Constitution and laws of the United States. Since its founding, the ACLU has sought to ensure that the protections of the Constitution and the Bill of Rights apply equally to all persons. The ACLU’s Disability Rights Program envisions a society in which discrimination against people with disabilities no longer exists, and in which people understand that disability is a normal part of life. This means a country in which people with disabilities are valued, integrated members of the community; where people with disabilities have jobs, homes, education, healthcare, and families. This means a

country in which people with disabilities – including disabled lawyers, litigants, criminal defendants, witnesses, and members of the public – have equal access to our justice systems. Such access requires that state and local courthouses meet the “program access” standard of the Americans with Disabilities Act.

The **American Civil Liberties Union of Louisiana** (“ACLU of LA” or “ACLU-LA”) is a statewide nonprofit, nonpartisan organization with more than 5,680 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution and our nation’s civil rights laws. ACLU-LA is currently engaged in two class-action lawsuits asserting Americans with Disabilities Act claims against Louisiana prisons, including its largest, known as Angola. ACLU-LA strives for an America free of discrimination against people with disabilities; where people with disabilities are valued, integrated members of society who have full access to courts, education, homes, health care, jobs, families, voting, and civic engagement—including jury service. The proper resolution of this case is thus a matter of substantial interest to ACLU-LA and its members.

The **American Civil Liberties Union of Mississippi** (“ACLU of MS”) is a statewide nonprofit, nonpartisan organization with nearly 1500 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution and our nation’s civil rights laws. A core mission of the ACLU of MS is fighting to ensure that all Mississippians, including individuals with disabilities, are free from

discrimination and enjoy the same rights and opportunities as everyone else. The proper resolution of this case is thus a matter of substantial interest to the ACLU of MS and to its members.

The **American Civil Liberties Union Foundation of Texas** (“ACLU of Texas”) is a nonpartisan, nonprofit organization with approximately 56,000 members across the State of Texas. Founded in 1938, the ACLU of Texas is the State’s foremost defender of the civil liberties and civil rights of all Texans, including individuals with disabilities, as guaranteed by the U.S. Constitution and our nation’s civil rights laws.

The **Civil Rights Education and Enforcement Center** (“CREEC”) is a national nonprofit membership organization based in Colorado 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 and receive equal treatment in the judicial system. The decision under review threatens those efforts by permitting state and local courts including the courthouse in Hinds County, Mississippi, to evade their responsibility for compliance with anti-discrimination statutes.

The **Coalition of Texans with Disabilities** (“CTD”) is a statewide, cross-disability advocacy organization founded by people with disabilities in 1978 with a

mission to ensure that people may live, learn, work, play and participate fully in their community of choice. CTD has a long history of advocacy in matters related to the Americans with Disabilities Act (ADA), including state legislation. Key figures in the early history of the ADA including the Texans Justin Dart, Lex Frieden and Bob Kafka were/are members of CTD. The signer of the ADA, President George H. W. Bush, was himself a Texan.

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.

Disability Rights Education and Defense Fund ("DREDF"), based in Berkeley, California, is a national nonprofit law and policy center dedicated to protection and advancing the civil and human 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 members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy

and law reform efforts. DREDF is nationally recognized for its expertise in the interpretation of federal disability civil rights laws. From 1988 to 1990, DREDF coordinated the coalition to write, negotiate and pass the Americans with Disabilities Act (ADA), the first comprehensive national civil rights law for people with disabilities. Following the enactment of the ADA, and the promulgation of implementing regulations by the U.S. Department of Justice (DOJ) and the U.S. Equal Employment Opportunity Commission (EEOC), DREDF submitted comments on behalf of more than 500 disability rights organizations. As part of its mission, DREDF works to ensure that people with disabilities have the legal protections, including broad legal remedies, necessary to vindicate their right to be free from discrimination.

Disability Rights Louisiana (“DRLA”). The State of Louisiana receives funding from the federal government and in return must designate a protection and advocacy (P&A) system for people with disabilities pursuant to multiple federal statutes.²⁷ Disability Rights Louisiana or DRLA (formerly known as the Advocacy Center) is the Louisiana’s P&A system. Consistent with federal law, DRLA has authority to pursue legal and administrative remedies to protect and advocate for

²⁷ The statutes are: the Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI Act”), 42 U.S.C. §§ 10801 et seq.; the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“PADD Act”), 42 U.S.C. §§ 15001 et seq.; and the Protection and Advocacy of Individual Rights Program (“PAIR Act”), 29 U.S.C. § 794e.

the rights of persons with disabilities. Like many other P&As, DRLA considers that an integral part its work involves educating policy makers about issues that impact the rights of people with disabilities. Also, like many other P&As, every year DRLA provides legal assistance to hundreds of persons with disabilities and their families throughout Louisiana in order to ensure that they are not discriminated against on account of their disability and that they have equal access to the activities of all of the functions of state and local governments, including the courts.

Disability Rights Mississippi (“DRMS”) is the federally mandated protection and advocacy agency designated for the State of Mississippi. Pursuant to Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15041 et seq.; Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. §§ 10801 et seq.; and Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e, DRMS is tasked with protecting the rights for Mississippians with disabilities and, accordingly, has extensive authority to pursue administrative, legal, and other avenues of advocacy for those individuals. DRMS’ prioritizes the enforcement of laws, regulations, and policies which were constructed to remedy and eliminate discrimination of individuals with disabilities, including denial of access to public services and facilities. DRMS has participated in litigation on

both the state and federal level as well as provides extensive advocacy services to ensure that the legal and human rights of all persons with disabilities are protected.

Disability Rights Texas (“DRTX”) is a nonprofit organization designated to serve as the Protection and Advocacy System (“P&A”) for the State of Texas. See Tex. Gov. Exec. Order No. DB-33, 2 Tex. Reg. 3713 (1977); Tex. Att’y Gen. Op. No. JC-0461 (2002). Its purpose is to protect and advocate for the legal and human rights of individuals with disabilities, and it is authorized to do so under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15041 et seq.; Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. §§ 10801 et seq.; and Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e. In accordance with its federal mandate, Disability Rights Texas has the authority, among other things, to pursue administrative, legal, and other appropriate remedies to ensure the protection of rights of persons with disabilities. 29 U.S.C. § 794e(f)(3); 42 U.S.C. § 10805(a)(1)(B). One of DRTX’s priority areas is ensuring that federal laws and policies are enforced so that governmental agencies do not discriminate against people with disabilities. DRTX has filed numerous amicus briefs to ensure that courts and litigants follow the antidiscrimination mandates in the Americans with Disabilities Act (ADA).

The **National Association of the Deaf** (“NAD”), founded in 1880 by deaf and hard of hearing leaders, is the oldest national civil rights organization in the

United States. As a non-profit serving all within the USA, the NAD has as its mission to preserve, protect, and promote the civil, human, and linguistic rights of 48 million deaf and hard of hearing people in this country. The NAD is supported by affiliated state organizations in 49 states and D.C. as well as affiliated nonprofits serving various demographics within the deaf and hard of hearing community. Led by deaf and hard of hearing people on its Board and staff leadership, the NAD is dedicated to ensuring equal access in every aspect of life: health care and mental health services, education, employment, entertainment, personal autonomy, voting rights, access to professional services, legal and court access, technology, and telecommunications. This work also includes advocacy to ensure that all aspects of the judicial system are accessible to deaf and hard of hearing, including the drafting of the *Court Access for Individuals Who Are Deaf or Hard of Hearing*, which was published and disseminated by the American Bar Association.

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 veterans of the armed forces 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, research and education addressing SCI/D, benefits based on its members’ military service, and for civil rights, accessibility, and opportunities that maximize independence for its members and all veterans and non-veterans with disabilities. PVA has nearly 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, the Fair Housing Act, and other federal and state disability and civil rights laws.

Public Justice is a national non-profit, public interest legal organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting to preserve access to justice for victims of corporate and governmental misconduct. As part of this work, Public Justice regularly litigates issues of Article III standing and has presented amicus briefs in cases around the country on the standing doctrine, including an amicus brief submitted in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). Public Justice seeks to ensure that the courthouse doors remain open to all injured plaintiffs with meritorious claims and that people with disabilities can participate in all aspects of the civil justice system on terms of equality, including as litigants, witnesses, court observers or jurors.

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Dated: August 26, 2020

By: /s/ Claudia Center