

**In The  
Supreme Court of the United States**

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DONNIKA IVY, ET AL.,

*Petitioners,*

v.

MIKE MORATH,  
TEXAS COMMISSIONER OF EDUCATION,

*Respondent.*

—◆—  
**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Fifth Circuit**

—◆—  
**BRIEF OF AMICI CURIAE  
TEXAS BUSINESS WOMEN, INC.,  
TEXAS FREELANCE ASSOCIATION, AND  
HIREDTEXAS IN SUPPORT OF PETITIONERS**

—◆—  
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TABLE OF CONTENTS

	Page
Table of Authorities .....	ii
Interest of Amici Curiae .....	1
Summary of Argument .....	2
Argument .....	4
I. Driving Is Different .....	4
A. Obtaining a Driver’s License Has Unique Importance.....	5
B. Driver Education Is a Benefit Aimed at Young Texas Drivers .....	10
II. Texas’ Driver Education Program Is A Public Service .....	13
A. Texas’ Limited Definition of “Public Services” Ignores The Fundamental Purpose of the ADA .....	13
B. The Texas Program Does More Than License Driving Schools .....	17
C. A Public Program Can Serve More Than One “Client” .....	18
Conclusion.....	22

## TABLE OF AUTHORITIES

Page

## CASES

<i>Abrahams v. MTA Long Island Bus</i> , 644 F.3d 110 (2d Cir. 2011) .....	15
<i>Ariz. Dream Act Coal. v. Brewer</i> , 818 F.3d 901 (9th Cir. 2016).....	6, 7
<i>Castle v. Eurofresh</i> , 731 F.3d 901 (9th Cir. 2013).....	22
<i>Ivy v. Williams</i> , 791 F.3d 250 (5th Cir. 2015) .....	<i>passim</i>
<i>Noel v. N.Y.C. Taxi &amp; Limousine Comm'n</i> , 687 F.3d 63 (2d Cir. 2012) .....	15, 16
<i>PGA Tour, Inc. v. Martin</i> , 532 U.S. 661 (2001)....	3, 19, 20
<i>Pilling v. BART</i> , 881 F. Supp. 2d 1152 (N.D. Cal. 2012) .....	15, 16
<i>Tyler v. City of Manhattan</i> , 849 F. Supp. 1429 (D. Kan. 1994) .....	14

## STATUTES AND RULES

29 U.S.C. § 701 .....	1
29 U.S.C. § 794 .....	4, 21
29 U.S.C. § 794(b).....	18
42 U.S.C. § 12101 .....	1
42 U.S.C. § 12101(a)(3) .....	13
42 U.S.C. §12101(a)(7) .....	10
42 U.S.C. § 12132 .....	4, 18, 21
42 U.S.C. § 12182(b)(1)(A)(iv) .....	19

## TABLE OF AUTHORITIES – Continued

	Page
28 C.F.R. § 35.130(b)(1).....	21
Sup. Ct. R. 37.6 .....	1
Tex. Educ. Code Ann. § 1001.055 .....	10, 17
Tex. Educ. Code Ann. § 1001.101(a) .....	4, 19
Tex. Transp. Code Ann. § 521.1601 .....	4, 10, 19
Tex. Acts 2015, 84th Leg., R.S. Ch. 1044 (2015) ....	4, 12
Tex. Acts 2009, 81st Leg., R.S. Ch. 1253 (2009).....	<i>passim</i>

## OTHER AUTHORITIES

Dep't of Justice, <i>The Americans with Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services</i> , § II-1.3000 (1993).....	18
<i>Joint Hearing on S.2345 Before the Subcommittee on the Handicapped of the Committee on Labor and Human Resources, United States Senate, and the Subcommittee on Select Education of the Committee on Education and Labor, House of Representatives</i> , 100th Cong. 28 (1988).....	13, 14
President George H. W. Bush, Remarks at the Signing of the Americans with Disabilities Act, July 26, 1990 .....	14
Tex. C.S.H.B. 339 Bill Analysis, Senate Research Center Committee Report 81R35936E (2009) .....	11

## TABLE OF AUTHORITIES – Continued

	Page
Tex. C.S.H.B. 339 Bill Analysis, Public Education Committee Report (2009) .....	11
Evelyn Blumenberg, et al., <i>A Driving Factor in Mobility? Transportation’s Role in Connecting Subsidized Housing and Employment Outcomes in the Moving to Opportunity (MTO) Program</i> , 80 J. Am. Plan. Ass’n 1, 52 (2014) .....	8, 9, 10
Robert Cervero, et al., <i>Transportation as a Stimulus of Welfare-to-Work: Private versus Public Mobility</i> , 22 J. Plan. Educ. & Res. 1 (2002) .....	8
Neil K. Chaudhary, et al., <i>Driver Education Practices in Selected States</i> , Nat’l Highway Traffic Safety Admin. Office of Behavioral Safety Res. Rep. No. DOT HS 811 420 (2011) .....	17
Tami Gurley, et al., <i>The effects of car access on employment outcomes for welfare recipients</i> , 58 J. Urb. Econ. 250 (2005) .....	9
Andrea Lubin, et al., <i>Role of Public Transportation as Job Access Mode, Lessons from Survey of People with Disabilities in New Jersey</i> , 2277 Transp. Res. Rec.: J. Transp. Res. Bd. 90 (2012) .....	7, 10
J.S.O. Sandoval, et al., <i>The transition from welfare-to-work: How cars and human capital facilitate employment for welfare recipients</i> , 31 Applied Geography 352 (2011) .....	9

## TABLE OF AUTHORITIES – Continued

	Page
D.F. Shell, et al., <i>Driver Education and Teen Crashes and Traffic Violations in the First Two Years of Driving in a Graduated License System</i> , 82 <i>Accident Analysis and Prevention</i> 45 (2015) .....	12
Michael Smart, et al., <i>A Longitudinal Analysis of Cars, Transit, and Employment Outcomes</i> , Mineta Nat'l Transit Res. Consortium Rep. 12-49 (2015).....	8, 9
East Texas Council of Governments, You Can GoBus!, <a href="http://www.etcog.org/default.aspx?c=475">http://www.etcog.org/default.aspx?c=475</a> (last visited August 24, 2016) .....	5, 6
SPARTAN Public Transportation, Routes, <a href="https://spartanpublictransit.com/index.php?option=com_content&amp;view=article&amp;id=3&amp;Itemid=112">https://spartanpublictransit.com/index.php?option=com_content&amp;view=article&amp;id=3&amp;Itemid=112</a> (last visited August 24, 2016) .....	6
U.S. Census Bureau, American Fact Finder Report S1811, <i>Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status, 2010-2014 American Community Survey 5-Year Estimates (Texas)</i> , <a href="https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1811&amp;prodType=table">https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1811&amp;prodType=table</a> (last visited August 24, 2016) .....	5
U.S. Dept. Transp., Nat'l Highway Traffic Safety Admin., <i>Traffic Safety Facts, 2014 Data: Young Drivers</i> , DOT HS 812 278, <a href="https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812278">https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812278</a> (last visited August 24, 2016) .....	12

TABLE OF AUTHORITIES – Continued

Page

U.S. Dept. Transp., Nat’l Highway Traffic Safety  
Admin., *Traffic Safety Facts, 2009 Data: Young  
Drivers*, DOT HS 811 400, [https://crash  
stats.nhtsa.dot.gov/Api/Public/ViewPublication/  
812278](https://crash<br/>stats.nhtsa.dot.gov/Api/Public/ViewPublication/<br/>812278) (last visited August 24, 2016) .....12

## INTEREST OF AMICUS CURIAE<sup>1</sup>

Amici represent a diverse group of working Texans from all walks of life. **Texas Business Women, Inc.** (TBW) unites working women in Texas through education and community outreach. The **Texas Freelance Association** (TFA) is a support system for freelancers that provides a community of peers, qualified mentors, and a voice of advocacy. **HIREDTexas** is a federally recognized nonprofit organization that provides free job search help to people looking for career opportunities in Central Texas. We are Texans who understand the value of standing together to make independence attainable.

Amici are deeply concerned that the decision below will have the effect of denying young, deaf and hard of hearing Texans access to the driver education that is required to obtain a driver's license in Texas, thereby preventing them from participating in the workforce to the fullest extent of their abilities.

Independence, mobility, and employment are core mandates of the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 701 *et seq.* Therefore, amici respectfully

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<sup>1</sup> Pursuant to Sup. Ct. R. 37.6, amici curiae and its counsel state that none of the parties to this case nor their counsel authored this brief in whole or in part, and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief. Amicus curiae files this brief with the written consent of all parties, copies of which are on file in the Clerk's Office. All parties received timely notice of amicus curiae's intention to file this brief.



ask the Court to hold that Texas cannot avoid its obligation to ensure equal access to state-mandated driver education and driver's licenses by artificially defining its mandatory driver education program as a mere licensing scheme.



### **SUMMARY OF ARGUMENT**

By failing to ensure equal access to its mandatory driver education curriculum, Texas prevents young, deaf and hard of hearing Texans from obtaining driver's licenses. Texas further denies them the benefit of a comprehensive, state-created driver training program meant to ensure the safety of new drivers.

These state-created benefits are substantial. In the appellate court, whatever their differences over the finer points, all of the justices agreed that obtaining a driver's license is an "important state benefit." *Ivy v. Williams*, 781 F.3d 250, 258 (5th Cir. 2015). The dissent further recognized the ability to drive has "unique and indispensable importance in the[] daily lives" of modern Americans. *Id.* at 259, Wiener, J., concurring in part and dissenting in part. Justice Wiener's assessment is borne out by over a decade of social science. Multiple studies have shown the ability to drive leads to higher rates of employment and longer lasting employment. *See infra*, Section I.A.

Access to a driver's license is not the only state benefit at issue here. Texas' substantive driver education curriculum is the product of a legislative policy determination that young Texans were dying in car crashes at an alarming rate. Texas passed the Less Tears, More Years Act in 2009 with the express purpose of putting a state agency in charge of a mandatory driver education curriculum in order to improve the safety of young Texas drivers. Tex. Acts 2009, 81st Leg., R.S. Ch. 1253, §§ 5, 11 (2009).

Texas' driver education program has the effect of outsourcing two key public benefits: access to a driver's license, which is demonstrably necessary for employment and independence, and access to substantive driver education, which Texas requires all new drivers under the age of 25 to obtain in order to keep them safe on the roads. Texas' justification for failing to ensure equal access to these twin benefits is that the agency in charge of the state's driver education program is not providing driver education; it is merely licensing driving schools.

Texas is engaging in semantics, not legal reasoning. Over a decade ago, this Court reasoned an ADA service provider can have two classes of "clients," those who pay to play and those who pay to consume the end product created by the service provider and the players. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 679-80 (2001). It certainly seems like common sense to recognize Texas' comprehensive, mandatory driver education program as a public benefit not only for licensed

driving schools, but for those students who must complete the program in order to obtain a driver’s license. The Court should not let Texas’ overly technical definition of “services, programs, or activities of a public entity” insulate the State’s violation of Title II and Section 504. 42 U.S.C. § 12132; 29 U.S.C. § 794.

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## ARGUMENT

### I. Driving Is Different.

This case is not about licensed liquor stores, shuttle buses, or taxi cabs. It is about a state agency that licenses driver education schools, provides a state-specified curriculum to those schools, and provides the schools with individually numbered certificates that are, by state law, required to obtain a driver’s license. Tex. Transp. Code Ann. § 521.1601; Tex. Educ. Code Ann. § 1001.101(a).<sup>2</sup>

The distinction is important. As Justice Wiener pointed out, “Liquor stores, buses to gambling and ski resorts, and taxi cabs are not services of the state.” *Id.* at 263 (Wiener, J., concurring in part and dissenting in part). In contrast, regulating the means by which drivers are licensed is a core function of the state. *Id.* at

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<sup>2</sup> As the parties have noted, Texas has amended its statutory scheme to substitute the Texas Department of Licensing and Regulation (TDLR) for the Texas Education Agency (TEA). Tex. Acts 2015, 84th Leg., R.S. Ch. 1044 (2015). The substantive features of the mandatory driver education program are unchanged. *Id.*

258 (majority opinion). And in Texas, driver licensing is not only inextricably entwined with state-mandated driver education, but is also a “uniquely important, pervasive, and indispensable entitlement.” *Id.* at 263 (Wiener, J. concurring in part and dissenting in part).

### **A. Obtaining a Driver’s License Has Unique Importance.**

Texans drive. From 2010 to 2014, only 1.5% of non-disabled, employed Texans used public transit. U.S. Census Bureau, American Fact Finder Report S1811, *Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status, 2010-2014 American Community Survey 5-Year Estimates (Texas)*, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_14\\_5YR\\_S1811&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1811&prodType=table) (“American Fact Finder Report S1811 (Texas, 2010-2014)”)<sup>3</sup>. Only 2.5% of employed Texans with disabilities used public transit. *Id.* This may be because, in many Texas counties, the only public transportation available requires users to “[c]all before 2:00 P.M. for next day service” and warns them they should expect to be picked up before 7:00 a.m. in order to arrive at their destination by 10:00 a.m. East Texas Council of Governments, *You Can GoBus!*,

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<sup>3</sup> All internet materials cited were last visited on August 24, 2016, and are on file with the author in hard copy format.

<http://www.etcog.org/default.aspx?c=475>.<sup>4</sup> These services do not run on weekends and stop running as early as 5:30 each weekday. *Id.*

Under the circumstances, it is not surprising that, from 2010 to 2014, approximately 80.5% of employed, non-disabled Texans drove to work alone. American Fact Finder Report S1811 (Texas, 2010-2014). Over that same period, approximately 74.4% of all employed Texans with a disability drove to work alone. *Id.*

These statistics give context to “[t]he indisputable truism that virtually every adult, including those between 17 and 25 years old, must have the opportunity to be licensed to drive a car (or, in Texas, a truck), given driving’s unique and indispensable importance in their daily lives. . . .” *Ivy*, 781 at 259 (Wiener, J., concurring in part and dissenting in part). Justice Wiener is not the only jurist to acknowledge the central importance of a driver’s license in modern daily life. In *Ariz. Dream Act Coal. v. Brewer*, 818 F.3d 901, 919-20 (9th Cir. 2016), the Ninth Circuit observed:

Plaintiffs’ inability to obtain drivers’ licenses hinders them in pursuing new jobs, attending

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<sup>4</sup> The GoBus service provides public transit based on 24-hour advance reservations to Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood Counties. *Id.* Similarly, SPARTAN Public Transportation, which serves 17 Texas counties, requires 24-hour advance reservations “on a first call, first served basis.” SPARTAN Public Transportation, Routes, [https://spartanpublictransit.com/index.php?option=com\\_content&view=article&id=3&Itemid=112](https://spartanpublictransit.com/index.php?option=com_content&view=article&id=3&Itemid=112).

work, advancing their careers, and developing business opportunities. They thus suffer financial harm and significant opportunity costs. And as we have previously found, the irreparable nature of this injury is exacerbated by Plaintiffs' young age and fragile socioeconomic status.

*Id.* at 919.

The same can be said of the 16-to-25 year-old, deaf and hard of hearing Petitioners in this case. As a result of unnecessary delays in obtaining driver's licenses, they experienced limited employment opportunities and outright unemployment. Pet. Br. at 7-8. Petitioner Prosper had to turn down specific job opportunities at an amusement park and in his church because he could not drive. *Id.* at 8.

Petitioners are not alone in this experience. "Transportation is often perceived to have a critical role in enhancing access to jobs for people with disabilities." Andrea Lubin, et al., *Role of Public Transportation as Job Access Mode, Lessons from Survey of People with Disabilities in New Jersey*, 2277 Transp. Res. Rec.: J. Transp. Res. Bd. 90, 90 (2012) (internal citations omitted), <http://dx.doi.org/10.3141/2277-11> ("Lubin"). In a 2010 study, when a cohort of workers with disabilities were asked "whether they left or refused a job offer because of travel difficulties, 25% mentioned leaving a job and 40% mentioned refusing a job offer because of travel difficulties." *Id.*

Workers, including workers with disabilities, simply cannot rely on public transportation because “[a]n estimated 40 percent of suburban, entry level jobs in the United States are not on public transit routes.” Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work: Private versus Public Mobility*, 22 J. Plan. Educ. & Res. 1, 50, 51 (2002) (“Cervero”), [https://www.researchgate.net/publication/37183877\\_Transportation\\_as\\_a\\_Stimulus\\_of\\_Welfare-to-Work\\_Private\\_versus\\_Public\\_Mobility](https://www.researchgate.net/publication/37183877_Transportation_as_a_Stimulus_of_Welfare-to-Work_Private_versus_Public_Mobility); see also Michael Smart, et al., *A Longitudinal Analysis of Cars, Transit, and Employment Outcomes*, Mineta Nat’l Transit Res. Consortium Rep. 12-49, 31 (2015), <http://transweb.sjsu.edu/PDFs/research/1244-cars-transit-employment-outcomes-longitudinal-analysis.pdf> (“Smart”). (“Those who lack access to an automobile may be at a disadvantage in the labor market in many places in the United States, where transit service may not provide a reliable connection to jobs, particularly in the suburbs.”). Even in areas with robust public transit systems, “average transit travel times remain much longer than automobile travel times.” Evelyn Blumenberg, et al., *A Driving Factor in Mobility? Transportation’s Role in Connecting Subsidized Housing and Employment Outcomes in the Moving to Opportunity (MTO) Program*, 80 J. Am. Plan. Ass’n 1, 52, 54 (2014), <http://dx.doi.org/10.1080/01944363.2014.935267> (“Blumenberg”). Therefore, “[i]n almost all metropolitan areas, individuals lacking reliable access to automobiles reach far fewer opportunities within a reasonable travel time compared with those who travel by car.” *Id.*

Over the last decade, numerous studies have found that access to an automobile improves access to jobs and increases the likelihood of continued employment. *See, e.g.*, Tami Gurley, et al., *The effects of car access on employment outcomes for welfare recipients*, 58 J. Urb. Econ. 250, 269 (2005), <http://web.utk.edu/~dbruce/jue05.pdf> (“Gurley”); J.S.O. Sandoval, et al., *The transition from welfare-to-work: How cars and human capital facilitate employment for welfare recipients*, 31 Applied Geography 352, 361 (2011), <http://www.sciencedirect.com/science/article/pii/S0143622810000822> (“Sandoval”); Blumenburg at 53; Smart at 31. Driving allows for “generally more reliable transportation, shorter commute times, and the ability to work during hours not supported by the mass transit system.” Gurley at 252. It is little wonder, then, that longitudinal studies show access to a car not only means an individual is more likely to find a job, but to remain employed over time. Blumenburg at 62; *see also* Sandoval at 359; Smart at 31.

For example, in a 2005 study, unemployed job seekers who had access to a car at the beginning of the study were approximately 16% more likely than job seekers without a car to find employment over the extended term of the study. Gurley at 259. The correlation between car access and continued employment was even more dramatic. Study participants who were employed and had access to a car at the beginning of the study were 88% more likely to remain employed over the duration of the study than those who started the study with jobs, but without cars. *Id.* at 262. A



similar 2014 study found “[t]he presence of a car raises the probability of finding a job by a factor of two and of being employed at both time points by a factor of four.” Blumenberg at 60.

The ability to drive independently gives individuals an undeniable advantage in the workforce. “Automobiles make it easier to search for and regularly commute to jobs and, in so doing, increase employment rates.” *Id.* at 54. For workers with disabilities, employment not only provides economic stability, but also “can have a positive effect on self-esteem and feelings of connection to one’s community.” Lubin at 90. This increased economic independence and community integration is exactly what the ADA seeks to protect. 42 U.S.C. § 12101(a)(7).

Texas law states unequivocally that Texans under the age of 25 cannot obtain a driver’s license – and therefore cannot realize any of these benefits – without first obtaining a certificate of completion from a licensed driver education course. Tex. Transp. Code Ann. § 521.1601; Tex. Educ. Code Ann. § 1001.055. Thus, access to driver education certificates is a service of the state agency; the state has simply outsourced delivery of the certificates to the driving schools. *Id.*

### **B. Driver Education Is a Benefit Aimed at Young Texas Drivers.**

The certificates conferring eligibility for a driver’s license are not the only public benefit created by the state but administered by the driving schools. In 2009,

Texas passed the Less Tears More Years Act to require driver education for all first-time driver's license applicants under the age of 25. Tex. Acts 2009, 81st Leg., R.S. Ch. 1253, § 11 (2009). The Senate Committee Report on the pending legislation acknowledged "Texas has one of the highest accident rates among teen drivers in the nation. Changes are needed to enhance the effectiveness of teen driver education programs." Tex. C.S.H.B. 339 Bill Analysis, Senate Research Center Committee Report 81R35936E, 1 (2009) <http://www.legis.state.tx.us/tlodocs/81R/analysis/html/HB00339S.htm>. To effectuate this goal, the Less Tears More Years Act "adds a provision not in the original specifying that the commissioner of education is required either to establish or approve by rule the curriculum and designate the textbooks used in a driver education course. . . ." Tex. C.S.H.B. 339 Bill Analysis, Public Education Committee Report, 3 (2009), <http://www.legis.state.tx.us/tlodocs/81R/analysis/pdf/HB00339H.pdf#navpanes=0>.

In making the policy choice to bring driver education curriculum under state control and to mandate driver education for all first-time licensees under 25, Texas relied on "testimony from educators, parents, professional driving instructors, law enforcement, first responders, the Home School Coalition, the Texas Transportation Institute, the Department of Public Safety (DPS) and the Texas Education Agency (TEA)." *Id.* at 1. While the effectiveness of driver education is difficult to measure, at least one recent study has shown that mandatory driver education in conjunction with supervised time behind the wheel (such as Texas

requires for young, new drivers) is more effective than supervised driving time alone in preventing crashes during the first years of driving. D.F. Shell, et al., *Driver Education and Teen Crashes and Traffic Violations in the First Two Years of Driving in a Graduated License System*, 82 *Accident Analysis and Prevention* 45, 51 (2015) <http://www.ncbi.nlm.nih.gov/pubmed/26043429>. Indeed, 2014 traffic fatality statistics show that Texas' young driver fatalities decreased between 2009 and 2014. Compare U.S. Dept. Transp., Nat'l Highway Traffic Safety Admin., *Traffic Safety Facts, 2009 Data: Young Drivers*, DOT HS 811 400, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812278> with U.S. Dept. Transp., Nat'l Highway Traffic Safety Admin., *Traffic Safety Facts, 2014 Data: Young Drivers*, DOT HS 812 278, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812278>.

Even after amending the driver education statutes to substitute a different state agency in the TEA's original oversight role, Texas has kept the structure requiring state control of the curriculum for the mandatory driver education program. Tex. Acts 2015, 84th Leg., R.S. Ch. 1044 (2015). In other words, Texas continues to not only mandate, but make the substantive driver education curriculum envisioned by the Less Tears, More Years Act. Given the public safety benefit to young drivers inherent in the legislative history and actual application of these driver education statutes, it is frankly illogical to characterize Texas' driver education program as the mere licensing of driver education schools.

## **II. Texas' Driver Education Program Is A Public Service.**

### **A. Texas' Limited Definition of "Public Services" Ignores The Fundamental Purpose of the ADA.**

The text of the ADA specifically seeks to remedy discrimination against individuals with disabilities in "critical areas" including employment and transportation. 42 U.S.C. § 12101(a)(3). The legislative history of the ADA highlights how central those particular concerns are. In 1988, Sandra Parrino testified to the House and Senate committees evaluating an early version of the ADA:

People with disabilities represent America's greatest untapped resource of employables who want to work. As we all know, in America, jobs are a major source of status, dignity, and self-esteem. 'What do you do,' is a conversational staple. To contribute to society and support yourself is a cherished precept of our American vision.

*Joint Hearing on S.2345 Before the Subcommittee on the Handicapped of the Committee on Labor and Human Resources, United States Senate, and the Subcommittee on Select Education of the Committee on Education and Labor, House of Representatives, 100th Cong. 28 (1988) (statement of Sandra Parrino, Chairperson, National Council on the Handicapped), [https://www.law.georgetown.edu/archiveada/documents/ada9-27-1988\\_000.pdf](https://www.law.georgetown.edu/archiveada/documents/ada9-27-1988_000.pdf) ("Joint Hearing").*

Representative Tony Coelho made a similar statement: “People with disabilities want to work.” *Id.* at 14. He noted that transportation barriers are one of the biggest impediments to employment for workers with disabilities. *Id.* The testimony of W Mitchell echoed Representative Coelho’s statement:

It is often said that you can’t get there from here. That seems to be the situation facing millions of Americans with disabilities. It isn’t that once they get there they can’t do the job. Often [due to] a lack of adequate training, transportation, communications, or other factors – discrimination being one of them – perfectly capable and talented, but disabled, people are unable to get to a place from which they can lead productive lives.

*Id.* at 84. These statements are more than rhetoric. They are the underpinnings of “legislation which takes a sledgehammer” to the legacy of discrimination against disabled Americans. President George H. W. Bush, Remarks at the Signing of the Americans with Disabilities Act, July 26, 1990 [https://www.eeoc.gov/eeoc/history/35th/videos/ada\\_signing\\_text.html](https://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html).

Against this backdrop, comparing access to driver’s licenses to access to liquor stores is a non-starter. *Tyler v. City of Manhattan*, 849 F. Supp. 1429 (D. Kan. 1994). The difference between this case and the many “licensing” cases cited by the Fifth Circuit, *Ivy*, 791 F.3d at 256-57, is that in this case, the state is providing significant public benefits through the

licensed private driving schools, not simply licensing the driving schools to operate as private businesses.

Perhaps the most superficially similar of the “licensing” cases mentioned by the Fifth Circuit is that of the taxi cabs in *Noel v. N.Y.C. Taxi & Limousine Comm’n*, 687 F.3d 63 (2d Cir. 2012). In that case, the state regulated taxi cabs, which provide important transportation services to members of the general public, including people with disabilities. *Id.* at 66. The *Noel* court declined to find the taxi licensing agency liable under Title II because taxi cabs are private businesses providing transportation services – not private businesses providing public transit. *Id.* at 72 (finding “the public entity is merely the entity charged with licensing and regulating private industry.”).

To highlight the difference between state-regulated private industry and the provision of state services through private industry, it is instructive to compare the taxi cabs in *Noel* with true state-provided public transit services. It is beyond dispute that, when a state engages private transportation companies to provide public transit services, the state remains responsible for ensuring those public transit services are accessible to all. *See, e.g., Abrahams v. MTA Long Island Bus*, 644 F.3d 110, 118 (2d Cir. 2011) (finding Title II confers a private right of action to enforce equal access to public transit services); *Pilling v. BART*, 881 F. Supp. 2d 1152, 1161 (N.D. Cal. 2012) (finding Title II applies to public entity/private entity’s joint venture providing public transit services). To illustrate, in *Pilling v. BART*, a state transportation agency entered a

“joint venture” with a private bicycle company to provide public transit services. *Id.* The Court found that, because the services provided were a public benefit, BART was liable under Title II for Alameda Bicycle’s failure to accommodate a disabled patron. *Id.*

The distinguishing factor in the Title II “contract, licensing, or other arrangements” analysis is not whether the service is heavily regulated by the state, nor whether the service provider has a formal contract with the state. *Ivy*, 781 F.3d at 259-60 (Wiener, J., concurring in part and dissenting in part). The key is whether the service provider is delivering “a ‘program or activity’ of a public entity.” *Noel*, 687 F.3d at 72 (internal citation omitted); compare *Pilling*, 881 F. Supp. 2d at 1161 (BART subject to Title II liability for rules promulgated by Alameda Bicycle). As Justice Wiener put it in his well-reasoned dissent:

The critical issue is not whether a contract exists, but (1) whether a private party services the beneficiaries of the public entity’s program, and (2) how extensively the public entity is involved in the functions and operations of the private entity.

*Ivy*, 781 F.3d at 260 (Wiener, J., concurring in part and dissenting in part).

In this case, Texas is not merely licensing private driver education providers to teach members of the general public. Texas is licensing private driver education providers to teach a state-made, state-mandated curriculum and provide state-made, state-mandated

certificates that are prerequisites to obtaining a driver's license. Texas is delivering key public benefits through private providers. Moreover, Texas maintains strict and detailed control over the public benefits being delivered through those private providers.

### **B. The Texas Program Does More Than License Driving Schools.**

There are plenty of states that do merely license driving schools. Texas is not one of them. In many states, young drivers are not required to take driver education courses to obtain a license, and the state exercises no control over the driver education curriculum. Neil K. Chaudhary, et al., *Driver Education Practices in Selected States*, National Highway Traffic Safety Administration Office of Behavioral Safety Research Report No. DOT HS 811 420, 3 (2011), [www.nhtsa.gov/staticfiles/nti/pdf/811420.pdf](http://www.nhtsa.gov/staticfiles/nti/pdf/811420.pdf) (“Chaudhary”). In contrast, Texas is one of only 12 states that both require driver education and control the driver education curriculum.<sup>5</sup> *Id.* Not only does Texas require the course and control the curriculum; the state provides individual government records (course certificates) to track completion. Tex. Educ. Code Ann. § 1001.055.

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<sup>5</sup> The states requiring driver education and controlling the curriculum are California, Colorado, Florida, Hawaii, Illinois, Louisiana, Maine, Michigan, New Hampshire, Rhode Island, Texas, and Virginia. *Id.* at 6.



As the dissent below pointed out, “Chapter 1001 does not merely establish TEA’s authority over driver education – and consequently, its role as gatekeeper to the uniquely pervasive and indispensable state function of licensing its drivers – but also the agency’s role in ensuring driving safety.” *Ivy*, 781 F.3d at 261 (Wiener, J., concurring in part and dissenting in part). The State does not just license private driving schools. Through those schools, the state delivers comprehensive, mandatory driver education to young Texas drivers. *Id.* Thus, the State “ha[s] a close relationship to private entities that are covered by Title III, with the result that certain activities may be at least indirectly affected by both [Title III and Title II].” Dep’t of Justice, *The Americans with Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services*, § II-1.3000 (1993), <http://www.ada.gov/taman2.html>.

### **C. A Public Program Can Serve More Than One “Client.”**

Texas argues that, to the extent it delivers a public service or benefit through its driver education program, its only beneficiaries are the driver education schools licensed by the state agency. This is an overly strained reading of the phrase “program, service, or activity.” 42 U.S.C. § 12132; *see also* 29 U.S.C. § 794(b).

It is beyond question that Texas licenses driver education schools. That simple fact in no way negates the additional fact that, by providing a driver’s education

curriculum and individualized certificates to prove each student has mastered that curriculum, Texas is also making a program of substantive driver education available to young Texans, and further requiring young Texans to complete that driver education program in order to obtain a driver's license. Tex. Transp. Code Ann. § 521.1601; Tex. Educ. Code Ann. § 1001.101(a).

Over fifteen years ago, another defendant tried to argue that the people affected by its refusal to accommodate their disabilities were not “clients or customers of the covered accommodation.” *PGA Tour, Inc.*, 532 U.S. at 678. Though the case turned on Title III, not Title II, of the ADA, the Court noted, “[t]he reference to ‘clients or customers’ that petitioner quotes appears in U.S.C. § 12182(b)(1)(A)(iv) [Title II of the ADA], which states: ‘ . . . the term “individual or class of individuals” refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.’” *Id.* The Court reasoned that, in the original Title II context, “Those clauses make clear on the one hand that their prohibitions cannot be avoided by means of contract, while clause (iv) makes clear on the other hand that contractual relationships will not expand a public accommodation’s obligations under the subparagraph beyond its own clients or customers.” *Id.*

That is essentially the argument Texas proffers here: the only “clients” of the state’s driver education program are the private driving schools the agency licenses. But, as the *PGA Tours* Court reasoned,

“petitioner’s argument falters even on its own terms” because it is eminently possible to offer “at least two ‘privileges’ to the public.” *Id.* at 679-80. In the case of the PGA Tour, the golf course offered “the privilege of watching the golf competition and that of competing in it.” *Id.* Thus, both the general public and the golfers in the tournament were its “clients.” *Id.* The golfers paid for the privilege of playing on the golf course created by the PGA and in the tournament governed by the PGA’s rules, just as the driving schools in this case pay for the privilege of distributing the Texas driver education certificates and teaching the Texas driver education curriculum. In the *PGA* case, the general public consumed the golf tournament created by the PGA and delivered by the pro golfers on the course, just as the young Texans in this case consume the driver education curriculum created by Texas and delivered by the driving schools in order to obtain the certificates created by Texas and delivered by the driving schools.

Like the PGA, in this case Texas offers benefits to two different clients. The driving schools obtain the benefit of licensing, while Texans under the age of 25 obtain the benefit of the state-mandated, state-designed driver education curriculum, which is required to obtain the further benefit of a Texas driver’s license. Texas’ argument that it does nothing more than license driver education schools simply ignores this reality.

Recognizing this reality will not expand the scope of the ADA or negate the statutory limitations of Title II liability for private licensees. Petitioners in this case

seek relief that falls squarely within the plain language of the statutes and their implementing regulations. *See* 42 U.S.C. § 12132 (“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity . . . .”); 29 U.S.C. § 794 (“No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .”). The state of Texas both makes and mandates the driver education curriculum and certificates being delivered by the private driving schools. It is no stretch to say that “[*this*] public entity, in providing [*this*] aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, discriminate against individuals with disabilities.” 28 C.F.R. § 35.130(b)(1).

The State of Texas, in enacting the Less Tears More Years Act, extended a public safety benefit to young Texas drivers. In making the completion of driver education a prerequisite to obtain a driver’s license, Texas made this public safety benefit a gatekeeper to one of the most important state-regulated privileges available in modern society – the ability to drive independently. The fact that Texas outsources the actual classroom teaching of its comprehensive, mandatory driver education program in no way diminishes the importance of the twin public benefits provided by the program. “Title II’s obligations apply to

public entities regardless of how those entities chose to provide or operate their programs and benefits.” *Castle v. Eurofresh*, 731 F.3d 901, 910 (9th Cir. 2013). Texas may outsource the provision of driver education instruction, but it cannot outsource its responsibility to make sure that its driver education program is accessible to all Texans.

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## CONCLUSION

For these reasons, amici curiae respectfully submit that the judgment of the court of appeals should be REVERSED.

Respectfully submitted,  
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