

No. 19-1514

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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QUINTON HARRIS, *et al.*,  
*Plaintiffs-Appellees*,

v.

UNION PACIFIC RAILROAD COMPANY,  
*Defendant-Appellant*.

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On Appeal from the United States District Court  
for the District of Nebraska  
No. 8:16-CV-00381-JFB-SMB

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**UNOPPOSED MOTION OF PUBLIC JUSTICE, IMPACT FUND,  
AARP, AMERICAN DIABETES ASSOCIATION, DISABILITY  
RIGHTS ADVOCATES, DISABILITY RIGHTS ARKANSAS,  
DISABILITY RIGHTS EDUCATION & DEFENSE FUND,  
DISABILITY RIGHTS IOWA, DISABILITY RIGHTS LEGAL  
CENTER, DISABILITY RIGHTS NEBRASKA, DISABILITY  
RIGHTS TEXAS, LEGAL AID AT WORK, MID-MINNESOTA  
LEGAL AID, MISSOURI PROTECTION & ADVOCACY  
SERVICES, AND THE PROTECTION & ADVOCACY PROJECT  
FOR LEAVE TO FILE AS AMICI CURIAE IN SUPPORT OF  
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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Pursuant to Federal Rule of Appellate Procedure 29(a)(3), proposed *amici curiae* move for leave to file the attached brief in support of Plaintiffs-Appellees and affirmance.

1. Proposed *amici curiae* are well positioned to submit a brief in this case. *Amici* are legal organizations committed to combatting discrimination against people with disabilities in the workplace and other areas of life. *Amici* have an interest in robust enforcement of the Americans with Disabilities Act (“ADA”) to effectuate the statute’s purpose of eliminating discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1). This includes ensuring that class actions remain available as a mechanism for challenging employer policies and practices that disadvantage workers with disabilities.

**Public Justice, P.C.**, is a national public interest law firm specializing in civil litigation that combats social and economic injustice, protects the Earth’s sustainability, and challenges predatory corporate conduct and government abuses. Its Access to Justice Project seeks to ensure that workers with disabilities, and anyone else harmed by corporate misconduct, can vindicate their rights through the civil

justice system, including, where appropriate, through the use of the class action device.

**Impact Fund** is a non-profit legal foundation that provides strategic leadership and support for impact litigation to achieve economic and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for civil rights impact litigation across the country. Through its work, the Impact Fund seeks to use and support impact litigation to achieve social justice for all communities.

**AARP** is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on financial stability, health security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty by helping vulnerable older adults build economic opportunity and social connectedness.

Approximately one-third of AARP's members are employed full-time or part-time, and still others seek employment. Disproportionate numbers of older workers have one or more actual "disabilities," and/or a record thereof, and/or are "regarded as" having a disability by their employers (or prospective employers), 42 U.S.C. § 12102(1); the ADA protects all such persons.

Briefs by amici have been received in numerous ADA cases, including a recent matter before this Court. *See Morriss v. BNSF Ry. Co.*, 817 F.3d 1104 (8th Cir. 2016); *Summers v. Altarum Inst.*, 740 F.3d 325 (4th Cir. 2014); *Hohider v. UPS*, 574 F.3d 169 (3d Cir. 2009); *Adams v. Rice*, 531 F.3d 936 (D.C. Cir. 2008); *Rodriguez v. ConAgra Grocery Prods. Co.*, 436 F.3d 468 (5th Cir. 2006); *Conroy v. N.Y.S. Dep't of Corr. Servs.*, 333 F.3d 88 (2d Cir. 2003).

The **American Diabetes Association** ("Association") is a nationwide, nonprofit, voluntary health organization founded in 1940 made up of persons with diabetes, healthcare professionals who treat persons with diabetes, research scientists, and other concerned individuals. The Association's mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes. The

Association is the largest non-governmental organization that deals with the treatment and impact of diabetes.<sup>1</sup> The Association reviews and authors the most authoritative and widely followed clinical practice recommendations, guidelines, and standards for the treatment of diabetes<sup>2</sup> and publishes the most influential professional journals concerning diabetes research and treatment.<sup>3</sup> Among the Association's principal concerns is the equitable and fair treatment of persons with diabetes in employment. Presently, there are over 29,000,000 Americans with diabetes, and 86,000,000 more have prediabetes.<sup>4</sup> The Association knows through long experience that employers commonly

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<sup>1</sup> The Association has over 485,000 general members, over 15,000 health professional members and over 1,000,000 volunteers.

<sup>2</sup> American Diabetes Association: Clinical Practice Recommendations 2016, *Diabetes Care* 39: Supp. 1 (2016).

<sup>3</sup> The Association publishes five professional journals with widespread circulation: (1) *Diabetes* (original scientific research about diabetes); (2) *Diabetes Care* (original human studies about diabetes treatment); (3) *Clinical Diabetes* (information about state-of-the-art care for people with diabetes); (4) *Diabetes Reviews* (invited reviews on selected topics for research-oriented health professionals); and (5) *Diabetes Spectrum* (review and original articles on clinical diabetes management).

<sup>4</sup> Centers for Disease Control and Prevention: 2014 National Diabetes Statistics Report (2014).

restrict opportunities for persons with diabetes based on prejudices, stereotypes, unfounded fears, and misinformation concerning diabetes.<sup>5</sup>

**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 Arkansas (“DRA”)** is an independent, non-profit legal services and advocacy organization. We are the federally mandated protection and advocacy system for individuals with disabilities in the state of Arkansas. DRA’s mission is to vigorously advocate for and enforce the legal rights of people with disabilities in Arkansas. As part of this mission, DRA provides legally based advocacy

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<sup>5</sup> American Diabetes Association Position Statement: Diabetes and Employment, *Diabetes Care* 37:S112 (2014).

on behalf of Arkansans with disabilities to remove barriers to work and challenge employment discrimination due to disability. DRA shares an interest in the appropriate and necessary enforcement of the ADA.

The **Disability Rights Education & Defense Fund (“DREDF”)**, based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil rights of people with disabilities. Founded in 1979, DREDF remains board- and staff-led by people with disabilities and parents of children with disabilities. DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal and California disability civil rights laws. 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 Iowa (“DRI”)**, an independent, non-profit law firm, is the federally mandated protection and advocacy system for individuals with disabilities in the state of Iowa. DRI’s mission is to defend and promote the human and legal rights of Iowans with disabilities. As part of this mission, DRI provides legally based advocacy

on behalf of Iowans with disabilities to remove barriers to work and challenge employment discrimination due to disability. DRI shares an interest in the appropriate and necessary enforcement of the ADA.

**Disability Rights Legal Center (“DRLC”)** is a non-profit legal organization that was founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle with ignorance, prejudice, insensitivity, and lack of legal protections in their endeavors to achieve fundamental dignity and respect. DRLC assists people with disabilities in obtaining the benefits, protections, and equal opportunities guaranteed to them under the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and other state and federal laws. DRLC’s mission is to champion the rights of people with disabilities through education, advocacy and litigation. DRLC is generally acknowledged to be a leading disability public interest organization. DRLC also participates in various *amici curie* efforts in cases affecting the rights of people with disabilities.

**Disability Rights Nebraska** has been designated by the Governor as the Protection and Advocacy System for the State of Nebraska. We



are a private, non-profit organization. The focus of our program is to protect and advocate for the human and legal rights of people with disabilities. Disability Rights Nebraska approaches protection and advocacy through a four-tier system that includes legal advocacy and representation, public policy, self-advocacy, and citizen advocacy.

Disability Rights Nebraska has a strong interest in enforcement of the Americans with Disabilities Act to assure full inclusion of people with disabilities.

**Disability Rights Texas (“DRTX”)** is a nonprofit organization designated to serve as the Protection and Advocacy System 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 safeguarding the employment rights of people with disabilities. DRTX also contributed its time and expertise to the drafting of the ADA Amendments Act of 2008 (ADAAA) and its implementing regulations and has filed numerous amicus briefs to ensure that courts and litigants follow this law.

**Legal Aid at Work (“LAAW”)** is a non-profit public interest law firm whose mission is to protect, preserve, and advance the rights of individuals from traditionally under-represented communities. LAAW has represented clients in cases covering a broad range of civil rights issues including discrimination on the basis of race, gender, age, disability, pregnancy, sexual orientation, and national origin. LAAW has represented, and continues to represent, numerous clients faced with discrimination on the basis of their disabilities, including those with claims brought under the Title I of the Americans with Disabilities Act. LAAW has also filed amicus briefs in cases of importance to people with disabilities.

**Mid-Minnesota Legal Aid (“MMLA”)** has provided free legal services in civil matters to income-eligible Minnesotans in 20 counties across central Minnesota since 1913. MMLA’s representation and advocacy focus on the legal problems of low-income families and individuals. Additionally, MMLA is designated by the Governor of Minnesota, pursuant to federal statutes, including the Protection and Advocacy of Individual Rights Act, 29 U.S.C. § 794e, *et. seq.*, to serve as the Protection and Advocacy System for persons with disabilities in Minnesota. MMLA performs this function through its Minnesota Disability Law Center (“MDLC”), a statewide project. MDLC has advised many individuals with disabilities about their employment rights under the Americans with Disabilities Act.

**Missouri Protection & Advocacy Services (“Mo P&A”)**, an independent, non-profit law firm, is the federally mandated protection and advocacy system for individuals with disabilities in the State of Missouri. Mo P&A promotes and defends the human and legal rights of Missourians with disabilities through legally-based advocacy, including, but not limited to, class action litigation. Through its participation in this matter, Mo P&A seeks to preserve and protect the right to

classwide relief from civil rights violations for people with disabilities under federal disability civil rights laws.

The **Protection & Advocacy Project** is an independent, North Dakota state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities. Among these disability-related rights is the right to engage in integrated, competitive employment free of discrimination based upon disability.

2. The proposed brief would aid the Court by (1) summarizing the history of the ADA and the intended role of private enforcement, including class actions, in achieving its goal of eliminating workplace discrimination against people with disabilities; (2) describing the standing analysis under the ADA and its consistency with other remedial civil rights statutes; and (3) emphasizing the primacy of Federal Rule of Civil Procedure 23 in the class certification analysis and clarifying the role of *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), as a mechanism for resolving common questions of liability.

3. Proposed amici have contacted the parties' counsel to request consent to filing of the attached amici curiae brief. Plaintiff-Appellees Quinton Harris, *et al.*, consent to a filing from the proposed amici. Defendant-Appellant Union Pacific Railroad Company does not consent but has informed counsel for proposed amici that it does not oppose this motion.

WHEREFORE, proposed amici curiae respectfully request that the Court grant this motion for leave to file the attached brief in support of Plaintiff-Appellees and affirmance.

Dated: June 28, 2019

Respectfully submitted,

/s/ Karla Gilbride

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that:

1. This motion complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2)(A) because it contains 2,069 words, excluding the parts of the brief exempted by Rule 32(f); and
2. This motion complies with the typeface and type style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word, Century Schoolbook, in 14-point font.

June 28, 2019

/s/ Karla Gilbride  
Karla Gilbride

## **CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Karla Gilbride

Karla Gilbride