

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO

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1437 Bannock Street
Denver, CO 80202

Plaintiffs: SPENCER KONTNIK, and
COLORADO CROSS-DISABILITY
COALITION, a Colorado Corporation,

v.

Defendant: DENVER COUNTY COURT

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Case Number: 2022CV32599

Div: Ctrm: 466

AMENDED COMPLAINT

Plaintiffs Spencer Kontnik and the Colorado Cross-Disability Coalition (“CCDC”), by and through undersigned counsel, hereby file this Amended Complaint and allege as follows:¹

INTRODUCTION

1. As the Supreme Court of Colorado has determined:

Jury service is both a duty and a privilege of citizenship. *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 224 . . . (1946). Broad participation in the justice system is desirable because it reinforces public confidence in the system’s fairness. *See Balzac v. People*, 258 U.S. 298, 310 . . . (1922) (“The jury system postulates a conscious duty of participation in the machinery of justice One of its greatest benefits is in the security it gives the people that they, as jurors actual or possible, being part of the judicial system of the country, can prevent its arbitrary use or abuse.”). In addition, jury service provides individuals with an opportunity to participate in the civic life of our nation. *See Powers v. Ohio*, 499 U.S. 400, 407 . . . (1991) (“[W]ith the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process.”). Discrimination during jury selection undermines these important values.

Cerrone v. People, 900 P.2d 45, 51-52 (Colo. 1995) (reasoning that administrative convenience is not a non-discriminatory and neutral explanation for the systematic exclusion of hourly wage earners, protected as a class by Colorado statute, from a jury).

2. On July 15, 2021, the Denver County Court excluded Mr. Kontnik from jury service by reason of his disability and in doing so unlawfully excluded Mr. Kontnik from participation in the services, programs, and activities provided by Denver County Court and subjected him to discrimination by reason of disability.

3. As set forth in the written transcript from the July 15, 2021, Denver County Court proceedings, Mr. Kontnik was excused from jury service before having any opportunity to explain how he could render satisfactory jury service with the accommodations already made available to him by the court.

4. As explained more fully below, for the reasons explicitly stated by Denver County Court on the record during a court proceeding for which Mr. Kontnik was a potential juror and in proceedings before the Colorado Civil Rights Division (“CCRD”), Denver County Court prevented Mr. Kontnik from participating in the important duty and privilege of serving as a juror by reason of Mr. Kontnik’s disability.

¹ Pursuant to Colo. R. Civ. P. 15(a) (allowing amendment of a pleading once as a matter of course at any time before a responsive pleading is filed), Plaintiffs hereby amend and add certain allegations in the Complaint filed on September 9, 2022.

5. Plaintiffs Spencer Kontnik and CCDC seek a declaratory judgment from this Court finding Denver County Court violated Part 8, specifically Colo. Rev. Stat. §§ 24-34-801 to -802, of the Colorado Anti-Discrimination Act (“CADA”). Colo. Rev. Stat. §§ 24-34-301- to -805.

6. In addition, as also permitted by the CADA, Plaintiffs seek an injunction from this Court preventing Denver County Court from engaging in the unlawful discriminatory practices as set forth in this Amended Complaint.

7. Spencer Kontnik seeks damages as permitted under the CADA.

8. Lastly, Plaintiffs seek recovery of their reasonable attorneys’ fees and costs as permitted by the CADA.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Colo. Rev. Stat. § 24-34-802(2)(a) with respect to injunctive relief and damages.

10. Declaratory relief is authorized pursuant to Colo. Rev. Stat. § 13-51-106 and Colo. R. Civ. P. 57.

11. Injunctive relief is authorized pursuant to Colo. R. Civ. P. 65 and Colo. Rev. Stat. § 24-34-802(2)(a)(I).

12. Venue is proper within this District pursuant to Colo. R. Civ. P. 98(c).

PARTIES

13. Plaintiff Spencer Kontnik is and was at all times material hereto a resident of the City and County of Denver, Colorado. His address is c/o Colorado Cross-Disability Coalition, Civil Rights Legal Program, 1385 S. Colorado Boulevard, Suite 610-A, Denver, Colorado 80222.

14. Mr. Kontnik is a CCDC member.

15. Mr. Kontnik is an attorney licensed to practice and who is actively practicing in Colorado.

16. Mr. Kontnik was born with a profound hearing loss in his right ear. A profound hearing loss is most often described as the inability to hear any speech and only very loud sounds. *See, e.g.*, Ctrs. for Disease Control and Prevention, *Hearing Loss in Children, Types of Hearing Loss*, <https://www.cdc.gov/ncbddd/hearingloss/types.html> (July 18, 2022). At the age of

six, Mr. Kontnik lost all of his hearing in his left ear after he was hit in the head with a baseball bat. Mr. Kontnik uses a cochlear implant and hearing aids. With the use of his cochlear implant and hearing aids Mr. Kontnik is able to participate in one-on-one conversations and some other conversations. However, because of his substantial hearing loss, in settings like courtrooms in which there are multiple speakers in multiple locations, Mr. Kontnik relies on communication access realtime translation (“CART”) as his preferred auxiliary service for oral communication.

17. As a result, Mr. Kontnik is an individual with a disability as defined under the CADA. Colo. Rev. Stat. § 24-34-301(2.5) (“‘Disability’ has the same meaning as set forth in the federal ‘Americans with Disabilities Act of 1990’, 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.”); *see also* 42 U.S.C. §§ 12102(1)(A) (defining disability as a “physical or mental impairment that substantially limits one or more major life activities of such individual”), 12102(2)(A) (including “hearing” as a major life activity).

18. Plaintiff CCDC is a non-profit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code. CCDC’s principal office is located in the City and County of Denver, Colorado. Its address is 1385 S. Colorado Boulevard, Suite 610-A, Denver, Colorado, 80222.

19. Plaintiff CCDC is Colorado’s only statewide membership organization run by and for people with disabilities.

20. CCDC was formed in 1990 by people with disabilities who wanted to ensure the promises of the newly enacted Americans with Disabilities Act (“ADA”) became a reality in Colorado. Since that time, CCDC has expanded its staff, board of directors and membership and includes many more employees than when it started as a volunteer grassroots advocacy organization.

21. CCDC’s mission is to ensure social justice for people with all types of disabilities.

22. CCDC bases its activities on the value of cross-disability to assure a diversity of disability and to include people with all types of disabilities, including individuals who are deaf or substantially limited in the major life activity of hearing.

23. CCDC achieves its mission through education, individual advocacy, systems advocacy, legislative advocacy, legal advocacy and other means.

24. One example of CCDC’s legislative advocacy culminated in amendments to Part 8 of the CADA, the claim under which Plaintiffs seek relief in this case. *See* 2021 Colo. Sess. Laws, ch. 402, p. 2675 (amending relevant Colorado statutes related to persons with disabilities to strengthen protections against discrimination on the basis of disability and to clarify that public entities are covered under Part 8 of the CADA). Governor Polis signed this bill on June 30, 2021. The amendments to Part 8 of the CADA resulting from the passage of the bill took effect upon the date of the Governor’s signature.

25. CCDC is a membership organization.

26. CCDC has members who are individuals who are deaf or substantially limited in the major life activity of hearing. With the appropriate auxiliary aids or accommodations, most of these CCDC members are capable of serving as jurors without any difficulty.

27. CCDC has members who are individuals who are deaf or substantially limited in the major life activity of hearing and who, with the appropriate auxiliary aids or accommodations, are capable of serving as jurors without the need for an alternate juror.

28. CCDC's motto is "Nothing about us without us." This means that the decisions made by public entities and other businesses and institutions that affect the lives of people with disabilities must include people with disabilities in that decision-making process.

29. CCDC has specific policies in place encouraging people with disabilities to serve as jurors because it is concerned that too many people with disabilities are either excluded from or dismissed from jury service based on discriminatory attitudes not reflecting the actual abilities of such persons to serve on juries. CCDC strongly supports the position that in order for a jury to represent a fair cross-section of the community, individuals with disabilities must be represented on juries. Lastly, because CCDC has a Civil Rights Legal Program that represents people with disabilities in discrimination cases by reason of their disabilities, to the extent that jurors with disabilities are excluded from the available jury panel by reason of their disabilities, this results in a strong possibility of unfair proceedings in which only nondisabled jurors are permitted to make decisions about whether disability civil rights have been violated.

30. Defendant Denver County Court is organized and administered by the City and County of Denver, Colo. Const. art. VI, § 19; Denver's charter and municipal code control the Denver County Court's administration, powers, and procedures. Denver, Colo. Charter art. IV; Denver Revised Municipal Code ch. 14.

31. General powers and duties prescribed for the Denver County Court under the Denver Charter include the performance of

all acts and duties required by the Constitution or general laws of the State of Colorado now or hereafter required to be performed by County Courts, and all acts and duties required by the constitution or general laws of the State of Colorado or the Charter or ordinances of the City and County of Denver now or hereafter required to be performed by the Municipal Court. The County Court of the City and County of Denver in the exercise of the jurisdiction described in Section 4.2.5 hereof shall be a court of record if so provided by the general laws of the State of Colorado, and in the exercise of the jurisdiction described in Section 4.2.6 hereof may be a court of record if so provided by ordinance.

Denver, Colo. Charter art. IV, § 4.2.1.

32. “The County Court of the City and County of Denver shall have such civil, criminal and appellate jurisdiction as now or hereafter may be provided by the Constitution or general laws of the state of Colorado to be had or exercised by County Courts.” *Id.* § 4.2.5.

33. The Denver County Court also handles city municipal cases:

The County Court of the City and County of Denver shall have original jurisdiction of all cases arising under the Charter or of the City and County of Denver with full power to enforce the same and to punish violations thereof by the imposition of such fines and penalties as may be thereby provided, and all proceedings in such cases shall be in accordance with the procedure established by ordinance, or, with respect to matters of procedure not so established by ordinance, as may be established by rules of said court.

Id. § 4.2.6.

ALLEGATIONS

34. As noted above, Plaintiff Spencer Kontnik is a practicing attorney licensed to practice in the State of Colorado and in the United States District Court for the District of Colorado.

35. Even though Mr. Kontnik has the disability described above and has experienced discrimination throughout his life as a result of his disability, Mr. Kontnik received a bachelor’s degree from the University of Colorado and his juris doctorate degree from the University of Denver Sturm College of Law long after his hearing loss.

36. At the time of his graduation, Mr. Kontnik was one of only three individuals, in the history of the University of Denver Sturm College of Law, to receive the prestigious “Directors Award” for his work as a leading member of the National Trial Team.

37. Mr. Kontnik is a founding partner in his own law firm, Kontnik Cohen, LLC.

38. Mr. Kontnik’s law firm practices in the areas of family law, employment law, deaf and hard of hearing representation, civil litigation and criminal law.

39. In his law practice, Mr. Kontnik is “an experienced trial attorney who specializes personally in employment and disability law.” Kontnik | Cohen, *Spencer Kontnik, Partner-Attorney*, <https://www.kontnikcohen.com/spencer-kontnik> (last visited August 31, 2022). Mr. Kontnik’s “disability practice focuses primarily on working with Deaf^{f21}, and deaf and hard of

² Individuals who are deaf “use the lowercase deaf when referring to the audiological condition of not hearing, and the uppercase Deaf when referring to a particular group of deaf people who share a language—

hearing individuals. [His] employment practice focuses on discrimination claims involving age, race, gender, sex and disability discrimination . . . [and] includes wage and hour claims including claims for unpaid minimum wage, overtime and rest/break periods.” *Id.* “His practice also includes contract and business litigation.” *Id.* He is an experienced trial attorney and has practiced “before juries, the Equal Employment Opportunity Commission and the Colorado Civil Rights Division.” *Id.*

40. Mr. Kontnik is a member of the Colorado Trial Lawyers Association, the Plaintiff Employment Lawyers Association, the Deaf and Hard of Hearing Bar Association, the Disability Rights Bar Association and the newly formed Colorado Disability Bar Association.

41. Mr. Kontnik is also “involved in several charities in the Denver[, Colorado] area. He is the co-founder of The Smile and Nod Project, a non-profit that is dedicated to bridging communication barriers for those with hearing loss. He also [is] a member of the Denver Active 2030 Children’s Foundation, which donates over \$1 million per year to at-risk youth and the Colorado community.” *Id.*

42. As explained above, Mr. Kontnik was born with a profound hearing loss in one ear and lost his hearing in his other ear when he was six years old. Nevertheless, through the use of a cochlear implant and hearing aids, Mr. Kontnik has excelled as a trial attorney. As a result of his significant hearing loss, his disability requires him to use CART services as an accommodation during court proceedings.

43. Pursuant to the Charter of the City and County of Denver, also known as the Constitution of the City and County of Denver, the Denver City Council created the Agency for Human Rights and Community Partnerships, Denver Revised Municipal Code § 28-16, and a Commission for People with Disabilities. *Id.* § 28-20. Also, within the Agency for Human Rights and Community Partnerships is the Division of Disability Rights, which oversees the Office of Sign Language Services. *See Denver, Office of Sign Language Servs.*, <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Human-Rights-Community-Partnerships/Divisions-Offices/Office-of-Sign-Language-Services> (last visited August 31, 2022).

44. One of the specific duties of the Office of Sign Language Services is to work in conjunction with the Denver County Court Interpreter Coordinator and Denver County Court Americans with Disabilities Act (ADA) Coordinator to schedule a legally qualified CART interpreters for Denver City and County Courts. *See Office of Sign Language Servs., Sign Language Interpreter/CART Request Denver City & County Courts*, <https://www.denvergov.org/files/assets/public/human-rights-amp-community->

American Sign Language—and a culture.” *See Nat’l Ass’n of the Deaf, Community and Culture -- Frequently Asked Questions*, <https://www.nad.org/resources/american-sign-language/community-and-culture-frequently-asked-questions/> (last visited August 31, 2022).

partnerships/offices/office-of-sign-language-services/documents/interpreter-cart-request-for-denver-city-county-courts-copy.pdf (Sept. 2021).

45. Mr. Kontnik received a summons to report for jury service on July 15, 2021, at the Lindsey-Flanigan Courthouse. He reported on that date.

46. Mr. Kontnik was familiar with and followed the procedures for obtaining a CART interpreter for the July 15, 2021, appearance date and appeared on that date prepared to serve as a juror if selected.

47. Based on Mr. Kontnik's prior request for a CART interpreter, the Denver County Court provided such an interpreter for the July 15, 2021, proceedings.

48. When Mr. Kontnik arrived at the courthouse, the CART interpreter that Mr. Kontnik had requested was already there. The CART interpreter was at the courthouse in the large jury room on the first floor where all of the potential jurors waited to be assigned to a courtroom. The CART interpreter provided captioning services for the introduction speech to potential jury pool.

49. After a short wait, Mr. Kontnik was selected as Juror Number 1 for a potential trial in Courtroom 3C, a criminal case before the Honorable Judith A. Smith in Denver County Court. As Juror Number 1, Mr. Kontnik would have been one of the jurors in the jury box for jury selection rather than simply an alternate.

50. All of the jurors were escorted up to the third floor and asked to wait outside of Courtroom 3C in a single-file line. Mr. Kontnik was at the front of the line with the remaining potential jurors lined up behind him.

51. There were twenty-one potential jurors waiting outside the courtroom.

52. The CART interpreter asked Mr. Kontnik if she could enter the courtroom to begin setting up equipment. The courthouse staff and Mr. Kontnik agreed, and Mr. Kontnik waited outside the courtroom with the other potential jurors to be summoned into the courtroom.

53. Patricia Messinger was the CART interpreter hired to provide CART services for the proceedings.

54. Ms. Messinger was at all times material hereto an employee of Visible Voices.

55. Visible Voices is an agency exclusively engaged in the business of providing CART services.

56. On information and belief, on July 15, 2021, Visible Voices had a contract with the City and County of Denver to provide CART services for the Denver County Court.

57. On the morning of July 15, 2021, a brief proceeding took place in Judge Smith's courtroom during which Judge Smith made a record that was recorded and later transcribed regarding the fact that Judge Smith excluded Mr. Kontnik as a juror and provided the reasons Judge Smith asserted for doing so.

58. Mr. Kontnik was not present for this proceeding. He was waiting outside Courtroom 3C with the other potential jurors.

59. The on-the-record, recorded proceeding on July 15, 2021, was transcribed by Sherrie O'Brien, a licensed court reporter.

60. The transcript of the July 15, 2021, proceeding shows that the case at issue was *People of the State of Colorado vs. Mukhtaar Aadan*, Case No. 20M2897.

61. Mr. Kontnik was not aware of the case name prior to waiting in the hallway with other jurors to be escorted into Judge Smith's courtroom.

62. The referenced transcript states "JULY 15, 2021 JURY TRIAL (EXCERPT ONLY PER REQUEST)".

63. Ms. O'Brien certified that the transcription was "a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter."

64. The final transcript of the proceeding bears the name "Transcribing Solutions, 3758 E. 104th Ave. Suite 524, Thornton, CO 80233, 720-389-9420."

65. The written transcript of Judge Smith's statements made during the referenced proceeding that occurred during the morning of July 15, 2021, states in full the following:

THE COURT: All right. So, an issue's come up with a juror who is hearing impaired and under the ADA we have a Court Interpreter who's here and present and all set up to help him.

But the parties have approached and stipulated to allowing him to be excused just on the grounds that things might be tough for him and also THE COURT would be required to have alternate just in the event there's -- there's issues with the interpretation or with the juror's ability to serve.

So, just based on that and given that this will likely be a one-day trial I'll agree with the stipulation and allow for that juror to be excused.

And I want to say thank you so much to the Interpreter for being here. But it would have been a cool experience but.

INTERPRETER: (Inaudible).

THE COURT: Yes. Okay.

INTERPRETER: Out in the hallway?

THE COURT: Yes. Thank you, so much. Okay. Turn on the white noise I want to talk to the Interpreter when she's just when you have a sec. (inaudible)

Transcript of FTR proceedings at 2, *People of the State of Colorado vs. Mukhtaar Aadan*, Case No. 20M2897 (emphasis added), Exhibit 1, p.24.

66. Although the information in the transcript provided above accurately reflects the fact that Judge Smith referred to the action she took in excluding Mr. Kontnik from jury service as “excusing” him as a juror, that terminology is inaccurate. What Judge Smith did was exclude Mr. Kontnik from jury service. Mr. Kontnik did not seek to be excused. As explained in this Amended Complaint, Judge Smith’s choice of the verb inaccurately depicts the process that should have occurred before Denver County Court excluded Mr. Kontnik from jury service that day without providing the appropriate determination of Mr. Kontnik’s qualifications to serve.

67. On July 15, 2021, Mr. Kontnik had no way of knowing whether the Denver County Court was acting in its capacity under section 4.2.5 or section 4.2.6 of the Denver Charter. *See supra* ¶¶ 32-34.

68. In its response to a charge filed by Mr. Kontnik with the CCRD, Denver County Court relied on Colo. R. Crim. P. 24 and its provisions regarding challenges for cause, which are based in statute, *see* Colo. Rev. Stat. §§ 13-71-104–105, and peremptory challenges.

69. The Denver City Attorney’s Office stated subsequently that the case for which Mr. Kontnik was called as a prospective juror was conducted not pursuant to the Colorado Municipal Court Rules of Procedure but by the Colorado Rules of Criminal Procedure.

70. Regardless of which type of jurisdiction the Denver County Court was exercising in the underlying case, Denver County Court failed to follow the procedures set forth under either the Colorado Municipal Court Rules of Procedure or the Colorado Rules of Criminal Procedure when it excluded Mr. Kontnik from further jury service.

71. In a case conducted pursuant to either set of rules of procedure in in Denver County Court, a juror may be challenged for cause if the person cannot render satisfactory jury service. Colo. R. Crim. P. 24(b)(1)(I) (“The court shall sustain a challenge for cause on one or more of the following grounds: (I) Absence of any qualification prescribed by statute to render a person competent as a juror”). *See also* C.M.C.R. 224(d) (“Challenges for cause may be taken” on the ground of “[a]bsence of any qualification prescribed by statute to render a person

competent as a juror.”); *id.* 224(c)(1) (relying on “the statutory qualifications for jury service” in excusing or postponing jury service).

72. The state qualifications for service set forth that a “person with a disability shall serve” unless such person meets the statutory criteria in Colo. Rev. Stat. § 13-71-105 or “the court finds that such person’s disability prevents the person from performing the duties and responsibilities of a juror.” Colo. Rev. Stat. § 13-71-104(3)(b) (emphasis added).³

73. Defense counsel did not phrase its challenge to Mr. Kontnik’s service as a juror using any of the statutory criteria found in Colo. Rev. Stat. § 13-71-105; e.g., that Mr. Kontnik could not “render satisfactory juror service.”⁴

74. Defense counsel did not phrase its challenge to Mr. Kontnik’s service as a juror using the statutory criteria in Colo. Rev. Stat. § 13-71-104(3)(b)(II); e.g., Mr. Kontnik’s disability prevented him “from performing the duties and responsibilities of a juror.” *Id.*

75. Under either set of rules of procedure, a juror may be challenged for cause on additional grounds, none of which is present here nor which was raised before the court or on the record. *See* Colo. R. Crim. P. 24(b)(1)(II)-(XII); C.M.C.R. 224(d)(1)(II)-(XII).

76. That a potential juror be able to perform satisfactory jury service is the core requirement of jury service and is reflected in state statute. *See* Colo. Rev. Stat. § 13-71-104(1) (“every qualified person has an obligation” to perform jury service).

77. Under either set of rules of procedure, the judge shall question potential jurors to evaluate their qualification to serve. Colo. R. Crim. P. 24(a)(3) (“The judge shall ask prospective jurors questions concerning their qualifications to serve as jurors.”). *See also* C.M.C.R. 224(c)(3) (same). Evidence regarding the qualification of a juror shall be heard outside the presence of the jury panel. Colo. R. Crim. P. 24(b)(2). *See also* C.M.C.R. 224(d)(2) (same). There should be “an intelligent exercise of challenges for cause and peremptory challenges.” Colo. R. Crim. P. 24(a). *See also id.* 224(c) (same).

78. The court is to evaluate the qualification of potential jurors because the determination of whether a juror is qualified to serve must be supported by the record. The disability-related qualifications prescribed by statute require it. Colo. Rev. Stat. § 13-71-104(3)(c) (“Before dismissing a person with a disability pursuant to paragraph (b) of this subsection (3), the court shall interview the person to determine the reasonable accommodations,

³ The statute also excuses a juror from service based on disability. Colo. Rev. Stat. § 13-71-104(3)(b)(I) (citing Colo. Rev. Stat. § 3-71-119.5(2)(a)(I), which provides for temporary excusal from service if service “would cause undue or extreme physical hardship to him or her”). This provision is inapplicable here: Mr. Kontnik did not request to be excused from service and his exclusion from jury service was not temporary.

⁴ This provision was unavailable here: Mr. Kontnik did not claim this disqualification.

if any, consistent with federal and state law, that the court may make available to permit the person to perform the duties of a juror.”) (emphasis added).

79. Counsel also is permitted to ask questions of the potential jurors. Colo. R. Crim. P. 24(a)(3).

80. Neither counsel nor the court directed questions to potential juror Mr. Kontnik to determine whether the stipulation or challenge was well taken.

81. The court did not question potential juror Mr. Kontnik to determine his qualifications to serve as a juror and whether he could perform satisfactory jury service.

82. The court made no inquiry into or finding regarding any need, perceived or real, for an alternate juror should Mr. Kontnik serve. More to the point, there is no statutory or other legal requirement that impaneling an alternate juror is required in case there is a need for disqualification of the initial juror. In fact, doing so would be an absurd result; disqualification of the initial juror renders the alternate juror a nullity.

83. After making her on-the-record statements provided in the transcript, Judge Smith spoke with Ms. Messinger.

84. On information and belief, Judge Smith offered to Ms. Messinger a different and additional rationale for the exclusion of Mr. Kontnik as a juror: that the defense counsel believed that Mr. Kontnik’s participation as a juror with CART services would “slow down” the proceedings which were expected to be concluded in a one-day trial, that opposing counsel stipulated to dismissal of Mr. Kontnik based on this “belief,” and the court granted the stipulation.

85. Ms. Messinger then went out into the hallway and informed Mr. Kontnik that he had been excluded as a juror and that Ms. Messinger had been discharged as a CART interpreter for the proceedings.

86. On information and belief, Ms. Messinger told Mr. Kontnik he had been excluded as a juror by Judge Smith for the reasons set forth in the excerpt of the transcript of the proceedings as set forth above.

87. On information and belief, Ms. Messinger also informed Mr. Kontnik that Judge Smith made a comment to Ms. Messinger regarding the court’s granting of the stipulation to exclude Mr. Kontnik based on counsels’ belief that Mr. Kontnik’s participation would slow down the proceedings. On information and belief, Ms. Messinger explained to Mr. Kontnik he had been excluded because the district attorney and the defense attorney stipulated to dismiss him because they wanted to finish the trial as quickly as possible.

88. There is no court record that defense counsel believed that Mr. Kontnik's participation would slow down the proceedings and requested disqualification on this ground, that opposing counsel stipulated to disqualification on this ground, and that the court granted this stipulation based on this ground.

89. There is no court record of the court's evaluation of the juror's qualifications in response to a challenge or stipulation on this ground. *See People v. Orozco*, 49 P.3d 1212, 1213 (Colo. App. 2002) ("trial court's determination of the issue [of a juror's qualification to serve] will not be disturbed on appeal unless it is unsupported by the record").

90. Finally, the one thing that is clear is that Judge Smith made no effort to interview Mr. Kontnik regarding his abilities to use CART services or serve as a juror and instead, sent the CART interpreter out into the hallway to tell Mr. Kontnik he had been excluded from the jury selection process.

91. Based on the information provided by Ms. Messinger, Mr. Kontnik, who knew both the applicable law regarding discrimination against individuals with disabilities under the circumstances and also that he was able to meet all of the qualifications to serve as a juror, was very confused regarding the reasons provided as to why the court excluded him as a juror.

92. Mr. Kontnik is very accustomed to using CART interpreters in court proceedings and other legal settings.

93. Because Mr. Kontnik has the ability to hear in one-on-one conversations using his cochlear implant and hearing aids, Ms. Messinger spoke to him face-to-face in the hallway in the presence of all of the other jurors.

94. Judge Smith denied Mr. Kontnik the right to be interviewed by the court on the record, as required by the rules of procedures and the underlying state statute to establish whether he was qualified to serve. Colo. R. Crim. P. 24(a)(3) ("The judge shall ask prospective jurors questions concerning their qualifications to serve as jurors."); Colo. Rev. Stat. § 13-71-104(3)(c). *See also* C.M.C.R. 224(c)(3) (same). Judge Smith instead had an off-the-record communication with Ms. Messinger, the CART interpreter, and requested that she inform Mr. Kontnik that he was excluded from the jury.

95. Because the jurors were lined up in a single-file line behind Mr. Kontnik, on information and belief, some or all of the other jurors overheard the Ms. Messinger's comments to Mr. Kontnik.

96. Because Ms. Messinger told Mr. Kontnik that he had been excluded and Ms. Messinger had been discharged as the CART interpreter, Mr. Kontnik left the courthouse without having the opportunity to have participated as a juror.

97. The other jurors stared at Mr. Kontnik as he walked away from the courtroom.

98. Although Mr. Kontnik is a confident individual and accustomed to being treated as a professional attorney, Mr. Kontnik felt embarrassed and ashamed.

99. Mr. Kontnik was humiliated by this experience.

100. Mr. Kontnik takes the civic duty and opportunity to participate in jury service seriously. Mr. Kontnik is aware that some people may view jury service as a burden, but Mr. Kontnik has always believed it would be both interesting and meaningful to have an opportunity to participate in the jury selection process with the possibility of serving on a jury because his legal practice involves litigation.

101. Mr. Kontnik was frustrated because the City and County of Denver expected him to show up to do his civic duty, but the Denver County Court was unwilling to extend to him the basic courtesy of following the law and allowing him to proceed through the jury selection process like his nondisabled counterparts who were also potential jurors.

102. After Ms. Messinger informed Mr. Kontnik that the Court had excluded him for the reasons given, Mr. Kontnik was angry because what the Denver County Court did undermines the purposes of the ADA, CADA and similar laws protecting the civil rights of people with disabilities, the very laws he himself enforces as part of his law practice.

103. Mr. Kontnik was very upset because it was obvious that people waiting as prospective jurors were sent a message by the Denver County Court that it is acceptable to discriminate against someone by reason of disability and any related need for accommodations.

104. Defending the rights of individuals who are deaf and hard of hearing is an important part of Mr. Kontnik's legal practice, and Denver County Court discriminated against him for the reasons given that relate specifically by reason of his disability and need for accommodations.

105. Mr. Kontnik was insulted by the notion that his use of a CART interpreter would somehow slow down the proceedings. Mr. Kontnik disagrees with the statement because he has used CART interpreters in his legal practice before without having any aspect of the proceedings delayed due to his use of this particular accommodation.

106. Mr. Kontnik was further insulted because the district attorney, the public defender and the Denver County Court judge made the determination that somehow the use of a CART interpreter would slow down the proceedings without even discussing the issue with Mr. Kontnik. He could have explained that he is an attorney who uses the specific accommodation on a regular basis without it slowing down any proceedings whatsoever if he had been questioned as required before dismissing him for cause.

107. Mr. Kontnik was extremely frustrated by the apparent lack of knowledge on the part of the district attorney, the public defender and the Denver County Court regarding CADA's legal requirements as well as the fact that it is unlawful to discriminate against individuals with disabilities under both the CADA that, in turn, references the standards applicable under the ADA, a law that was enacted in 1990.

108. Mr. Kontnik could not understand how practicing attorneys and judges appeared to fail to understand the legal requirements applicable to Mr. Kontnik's ability to go through the process of jury service and the possibility of serving as a juror. At the very least, Mr. Kontnik hoped that such attorneys and judges would know how to comply with the applicable provisions of the ADA as they are incorporated in the CADA.

109. Mr. Kontnik was frustrated even further by the apparent lack of training given the need for practicing attorneys and judges to be aware of the requirements of the ADA and the CADA with respect to nondiscrimination against people with disabilities and the requirements regarding the necessity to provide accommodations or auxiliary aids and services.

110. As an individual with a disability, Mr. Kontnik has experienced discrimination because of his disability throughout his life.

111. Mr. Kontnik's hearing loss at the age of six was traumatic for him.

112. The following are examples of the types of discrimination Mr. Kontnik experienced throughout his life because of his hearing loss: growing up, Mr. Kontnik was excluded from many activities that he previously enjoyed; teachers, coaches, other children, and other adults repeatedly excluded him from many of the activities that other children regularly enjoyed; and he was excluded from academic trips, sporting events, and social activities to which many of his peers were routinely invited.

113. Mr. Kontnik has experienced many other types of discrimination throughout his life because of his hearing loss.

114. Denver County Court's exclusion of Mr. Kontnik for the reasons provided by Judge Smith and condoned by the presiding judge in the CCRD proceedings described herein exacerbated Mr. Kontnik's emotional distress as an individual with a disability who has spent a lifetime experiencing discrimination because of his substantial hearing loss and who was aware that he was perfectly capable of serving as a juror on the case with the assistance of a CART interpreter who was already available to perform interpreting services.

115. Denver County Court's exclusion of Mr. Kontnik for the reasons it provided was even more humiliating for Mr. Kontnik because of his many accomplishments while living with a substantial hearing loss. There was no basis, rational or otherwise, provided to Mr. Kontnik by Denver County Court for dismissing him as a juror other than Denver County Court's purported acceptance of the district attorney's and public defender's unfounded assumptions about his

limitations associated with his hearing loss and the process of using a CART interpreter. Denver County Court had obligations with respect to the rules governing its conduct under the circumstances, failed to comply with those obligations and perpetuated the discrimination based on the court's own unfounded assumptions about Mr. Kontnik's abilities to proceed through the jury selection process.

116. The court must not dismiss or excuse a juror for any reason other than one provided by the court rules. There is no finding by the court that Mr. Kontnik was not qualified, and there is no evidence in the record that would support such a finding. Furthermore, it is clear from the evidence that does exist that the court never interviewed Mr. Kontnik to give him an opportunity to address any concerns about his ability to proceed through the jury selection process. Therefore, Denver County Court was required to allow Mr. Kontnik to proceed through the process of jury selection. It did not do so.

117. Mr. Kontnik wrote a letter to the Denver District Attorney's office, the Denver Public Defender's office and the Colorado Judicial Department trying to resolve his complaints regarding the discrimination he experienced and the need for these entities to engage in training and to change their policies, practices and procedures to ensure that they do not discriminate against individuals who are deaf or who have significant hearing loss.

118. Mr. Kontnik's letter described above was sent by U.S. mail on August 17, 2021, to the entities described above.

119. Although Mr. Kontnik did receive some responses, he had a deadline for filing a charge with the CCRD, and he needed to meet that deadline because he wanted to use the CCRD process to resolve his complaints. As a result, on September 10, 2021, Mr. Kontnik filed Charges of Discrimination against the Denver District Attorney's Office, the Office of the Colorado State Public Defender and Denver County Court with the CCRD asserting disability-based discrimination under the CADA.

120. Mr. Kontnik was able to resolve his complaints against the Denver District Attorney's Office and the Office of the Colorado State Public Defender.

121. In the settlement agreements with the Denver District Attorney's Office and the Office of the Colorado State Public Defender, the Respondents agreed to provide training for all staff required to be knowledgeable about the ADA and the CADA, among other obligations. Mr. Kontnik and/or the entities involved made settlement payments under these agreements to the Deaf and Hard of Hearing Bar Association and other charitable organizations.

122. In contrast to the other two Respondents referenced above, Denver County Court refused to reach an agreement with Mr. Kontnik.

123. Instead, the then-presiding judge of the Denver County Court, the Honorable Theresa Spahn, filed a response on behalf of the Denver County Court that incorporated

statements made by Ms. Messinger as well as Judge Smith. In that response, Presiding Judge Spahn condoned the conduct of Judge Smith as described in this Amended Complaint.

124. Mr. Kontnik received the response submitted by Denver County Court from the CCRD investigator. Letter from Jesse Astrinos, Investigator, CCRD, to Spencer Kontnik (Dec. 28, 2021) (“Response”), attached hereto as Exhibit 1.

125. In the Response, Judge Spahn raised additional arguments attempting to justify the conduct by Judge Smith and why Denver County Court believed it was appropriate for it to excuse or disqualify Mr. Kontnik from jury service without even interviewing or meeting with him. Ex. 1, pp. 3, 20-22.⁵

126. Judge Spahn’s answers submitted in the CCRD proceedings provided a “Legal Summary” of the arguments on behalf of the Denver County Court. *Id.*

127. In that Legal Summary, Judge Spahn stated, “This does not include information about the Colorado Anti-discrimination Act.” *Id.* at 20.

128. Judge Spahn further stated, “There is no case law in Colorado addressing whether striking a person from a jury due to a disability violates the Colorado Anti-Discrimination Act.” *Id.*

129. As set forth below in the Claim for Relief, whether Judge Spahn was aware of case law addressing the issue of excluding a person from a jury due to a disability pursuant to the CADA has no bearing on Denver District Court’s duty to comply with the nondiscrimination mandate of the CADA in effect on July 15, 2021. Colo. Rev. Stat. § 24-34-802(1)(b).

130. It is also the responsibility of the court to adhere to the statutory requirements and protections of eligible jurors. Colo. Rev. Stat. § 13-71-104(4) (“The court shall strictly enforce the provisions of this article [71.]”).

131. The statements made by Judge Spahn dismissing the application of the CADA indicate that Denver County Court was either not familiar with or unwilling to comply with Section 802(1)(b) of Part 8 of the CADA, its application to public entities like County Court, and its specific provisions related to the unlawful denial of an individual with a disability by reason of his disability from the benefits of services, programs and activities provided by Denver County Court.

⁵ All references to page numbers in the Response refer to the PDF page number in Exhibit 1 as filed. Because the exhibit contains several different documents that were all sent to Mr. Kontnik by email in the format produced for this Court provided with this Complaint, those documents bear different page numbers from the actual PDF page numbers submitted as 1.

132. Furthermore, Judge Spahn neglected to determine whether the court established any grounds on which the juror could be legitimately challenged for cause given its failure to interrogate the potential juror.

133. Judge Spahn's Legal Summary sanctioned the conduct of Judge Smith and her on-the-record statement accepting the parties' attorneys' stipulation without making an on-the-record determination of Mr. Kontnik's qualifications to serve as a juror as well as Judge Smith's failure to interview Mr. Kontnik regarding his ability to use the CART services provided, sending the message that the conduct and statement were permissible actions by Denver County Court.

134. In direct violation of the rules applicable to the Denver County Court, Judge Spahn stated that there was no reason for Judge Smith to meet with Mr. Kontnik to discuss possible accommodations based on the following:

Here, the Court did not interview the potential juror. However, the thrust of the statutory right is aimed at reasonable accommodations. Such accommodations were clearly available so that was simply not the issue. Instead, the parties jointly stipulated that the prospective juror would be unable to serve by reason of a physical disability.

Ex. 1, p. 22 (emphasis added).

135. Judge Spahn was incorrect regarding the "thrust" of the right as described above; instead, as set forth in both sets of rules of procedure and the statutory grounds for qualifications for jury service, the right is aimed at discerning the juror's qualifications, which the excerpted transcript demonstrates did not occur. *Id.* at 24-26. Judge Smith's uninformed adherence to the discriminatory stipulation reached by the parties' attorneys cannot serve as a justification for discriminating against individuals with disabilities who "shall serve" except under narrow circumstances and after the court performs its obligations. Colo. Rev. Stat. § 13-71-104(3)(a)-(b).

136. Furthermore, as set forth in the Judge Spahn's statement above, there was no reason for concern regarding the availability of the accommodations sought by Mr. Kontnik because "such accommodations were clearly available." Ex. 1, p. 22. The concerns expressed by the attorneys and accepted by the court on the record were "on the grounds that things might be tough" for Mr. Kontnik and an alternate juror would be needed for some unknown reason as expressed by Judge Smith as "just in the event there's -- there's issues with the interpretation or with the juror's ability to serve." *Id.* at 25. These supposed "grounds" for excluding Mr. Kontnik have no rational basis and could have been explained if Judge Smith and simply discussed these issues with Mr. Kontnik as required.

137. In fact, the on-the-record statement made by Judge Smith demonstrates the same with respect to any needed accommodations being available. Judge Smith stated on the record,

“an issue’s come up with a juror who is hearing impaired and under the ADA we have a Court Interpreter who’s here and present and all set up to help him.” *Id.*

138. Likewise, Judge Smith did not provide any reason for her unfounded belief that “THE COURT would be required to have alternate just in the event there’s -- there’s issues with the interpretation or with the juror’s ability to serve.” *Id.*

139. There is no reason why the court would need an alternate juror.

140. CART interpreters made available by the Denver Office of Sign Language Services (“DOSLS”) are subject to very specific obligations under state law as well as by the DOSLS. *See, e.g.*, Colo. Rev. Stat. § 13-71-137 (explaining the instruction required for interpreters for jurors who are hard of hearing as well as orders and admonitions the interpreter must follow in proceedings governed by the state court); *see also* Ex. 1 pp. 14-15 (setting forth the duties, procedures, protocols and requirements for all CART interpreters provided by the DOSLS pursuant to state law and regulations “for all Municipal and Denver County Court matters”).

141. As a result, if Denver County Court had followed court rules of procedure and had questioned Mr. Kontnik about his qualifications and/or abilities to serve as a juror, the court would have been able to determine whether he was qualified and or able to serve and make a finding on the record, if necessary. By failing to do so, the court did not have evidence before it regarding Mr. Kontnik’s qualifications, such as his background as a trial attorney who uses CART interpreters in the courtroom and other settings related to his law practice on a regular basis, or regarding its assumptions that the proceeding would be “tough” for him or that an alternate juror would be needed to ensure there would be no issues with the interpretation or with Mr. Kontnik’s ability to serve. *Cf. People v. Janes*, 942 P.2d 1331, 1334-35 (Colo. App. 1997) (upholding trial court’s excusal of juror after colloquy revealed that juror requested excusal because she “felt her arthritic condition, combined with her age, would prevent her from completing jury service” in courthouse with no elevator and three flights of stairs); *People v. Pigford*, 17 P.3d 172, 177 (Colo. App. 2000) (upholding trial court’s denial of challenge to hard-of-hearing juror where “the trial court’s inquiry, and the prospective juror’s responses, do not indicate an ‘[i]nability, by reason of a physical or mental disability, to render satisfactory juror service.’”) (citation omitted); *People v. Pineda*, 40 P.3d 60, 63 (Colo. App. 2001), *as modified on denial of reh’g* (May 24, 2001) (“the better practice would be for the trial court to interview the juror [with a disability] and enter findings pursuant to the statute”). This brief discussion would have established whether there were any grounds for a legitimate, non-discriminatory challenge to Mr. Kontnik’s service and qualification as a juror. Judge Smith chose not to assess the juror, carefully weigh the evidence, and make a finding on the record.

142. Finally, even if the foregoing does not establish that there is no need for proof of a “legitimate, non-discriminatory reason” for the unlawful dismissal of Mr. Kontnik from jury service, Judge Spahn stated the reason for the unlawful discrimination with absolute clarity in the CCRD Response: “the parties jointly stipulated that the prospective juror would be unable to

serve by reason of a physical disability.” Ex. 1 p. 22 (emphasis added). Judge Smith made an on-the-record acceptance of that stipulation “just based on that.” *Id.* at 25. Judge Spahn, on behalf of Denver County Court, sanctioned that unlawful reason with no further explanation regarding Mr. Kontnik’s rights under the CADA.

143. On July 7, 2022, Mr. Kontnik requested that the CCRD issue a Notice of Right to Sue since his charge had been pending for more than 180 days. The CCRD issued that notice on July 20, 2022, noting that such issuance “shall terminate all further processing of any charge by the Division; shall cause jurisdiction to cease; and shall constitute final agency action”

144. This Amended Complaint is not brought on behalf of the alleged criminal defendant regarding whether striking a juror with a disability is constitutionally permissible. Instead, this Amended Complaint is brought by the juror himself to protect his rights and fulfill his civic duty to perform jury service pursuant to the CADA.

145. Judge Spahn’s Legal Summary focuses much attention on the rights of the parties to strike jurors preemptively—not for cause—in criminal cases, including the rights of the criminal defendant in the case and the level of scrutiny an appellate court must apply in cases in which the criminal defendant challenges the makeup of the jury; Judge Spahn states that these arguments are related to the “scope of the parties’ rights to strike jurors in criminal cases[] and relevant Colorado statutes.” Ex. 1 p. 4 (emphasis added).

146. Judge Spahn’s Legal Summary also addresses the doctrine of “absolute immunity.” Ex. 1 pp. 4, 20-21. As is thoroughly explained by Judge Spahn on behalf of Denver County Court, absolute immunity would apply if Mr. Kontnik had been seeking to bring claims of discrimination against the lawyers or judges in their individual capacities because “judges are immune from civil liability for their judicial acts.” *Id.* p. 21 (internal quotations omitted). Judge Spahn ignored the fact that Mr. Kontnik’s charges of discrimination filed with the CCRD were brought pursuant to CADA against the offices of the attorneys representing the parties as well as against Denver County Court. Much like the Claim for Relief set forth in this case, absolute immunity simply does not apply. The claim brought in this Amended Complaint is against Denver County Court, a public entity, and not individual judges.

147. The arguments made by Denver County Court in defending against Mr. Kontnik’s CADA claims in the CCRD proceedings demonstrate that Denver County Court is likely to defend CADA claims in the same way in the future instead of fulfilling its obligations to jurors with disabilities as the CADA and the applicable rules regarding jury selection complaint exclusion require.

148. CCDC joins Mr. Kontnik as a Plaintiff because of CCDC’s strong opposition to the improper exclusion of jurors by reason of their disabilities.

149. Plaintiffs make no constitutional claims in this Amended Complaint because there is no reason to do so. The Colorado General Assembly has made clear that public entities shall

not discriminate against individuals with disabilities and that public entities must not exclude individuals with disabilities from participation in their programs, services and activities under the CADA.

150. Even if this Amended Complaint was brought as a constitutional challenge, Denver County Court did not and has not provided any basis for excluding Mr. Kontnik other than the unfounded prejudices and stereotypes regarding Mr. Kontnik's ability to serve as a juror using the available CART services as an accommodation. Such unfounded prejudices and stereotypes were made by counsel for the parties and sanctioned by Denver County Court.

CLAIM FOR RELIEF

(Violations of the CADA, Colo. Rev. Stat. § 24-34-802)

151. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Amended Complaint as fully set forth herein.

152. Plaintiffs bring this case pursuant to the CADA and specifically under Colo. Rev. Stat. § 24-34-802, "Persons with Disabilities--Civil Rights Violations--penalties—immunity (hereinafter "CADA Part 8").

153. Under CADA Part 8, "[a] court that hears civil suits pursuant to this section shall apply the same standards and defenses that are available under the federal 'Americans with Disabilities Act of 1990'["ADA"], 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations." Colo. Rev. Stat. § 24-34-802(4).

154. Furthermore, under CADA Part 8, "An agency in the state with the authority to promulgate rules related to protections for persons with disabilities shall not promulgate a rule that provides less protection than that provided by the federal 'Americans with Disabilities Act of 1990', 42 U.S.C. sec. 12101 et seq., as amended." Colo. Rev. Stat. § 24-34-802(5).

155. The ADA was enacted, in part, "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," 42 U.S.C. § 12101(b)(1), based on findings made by Congress that "physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination." *Id.* § 12101(a)(1). Congress further found that "discrimination against individuals with disabilities persists in such critical areas as . . . voting . . . and access to public services," *id.* § 12101(a)(3), and "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of . . . communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits . . . or other opportunities." *Id.* § 12101(a)(5).

156. When initially enacting the ADA,⁶ Congress found that “individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment . . . based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.” *See* Americans with Disabilities Act of 1990, Pub. L. No. 101–336, § 2(a)(7), 104 Stat. 327, 329 (originally codified at 42 U.S.C. § 12101(a)(7)).

157. Mr. Kontnik wanted to experience the process of jury selection and to serve as a juror in this case and would have been able to do so using the CART interpreters who were available.

158. Denver County Court denied Mr. Kontnik that experience and opportunity by reason of his disability.

159. For the reasons set forth in this Amended Complaint, Plaintiff CCDC is a proper plaintiff pursuant to the doctrine of associational standing. *See, e.g., Colorado Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 510 (Colo. 2018) (holding “an organization has associational standing when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members of the lawsuit.”).

160. Under CADA Part 8,

An individual with a disability, as defined in section 24-34-301(5.6), must not, by reason of the individual's disability, be excluded from participation in or be denied the benefits of services, programs, or activities provided by a public entity, as defined in section 24-34-301, or a state agency, as defined in section 24-37.5-102, or be subjected to discrimination by any such public entity or state agency.

Colo. Rev. Stat. § 24-34-802(1)(b).

161. Mr. Kontnik is an individual with a disability as defined under the CADA. Colo. Rev. Stat. § 24-34-301(2.5) (“‘Disability’ has the same meaning as set forth in the federal ‘Americans with Disabilities Act of 1990’, 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.”); *see also* 42 U.S.C. § 12102(1)(A) (defining

⁶ Congress amended the ADA in 2008, making certain changes to the findings and purposes section of the statute. *See* ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553, 3554-55 (codified at 42 U.S.C. § 12101). Nevertheless, the provisions set forth in this paragraph were reasons for which Congress determined there was a need for the enactment of the ADA. These findings have been quoted in numerous court opinions interpreting the ADA. *See, e.g., Martin v. Kansas*, 190 F.3d 1120, 1127 n.6 (10th Cir. 1999); *Cisneros v. Wilson*, 226 F.3d 1113, 1135 (10th Cir. 2000). They serve to demonstrate the precise types of discrimination Denver County Court engaged in by reason of Mr. Kontnik’s disability.

disability as a “physical or mental impairment that substantially limits one or more major life activities of such individual”), § 12102(2)(A) (including “hearing” as a major life activity).

162. Denver County Court is a public entity. Colo. Rev. Stat. § 24-34-301(5.4) (“Public entity’ means: [a]ny state or local government; or [a]ny department, agency, special district, or other instrumentality of a state or local government.”).

163. Denver County Court is required to provide auxiliary aids, including CART interpreters to prospective jurors with hearing impairments, because the ADA requires public entities to ensure effective communication with individuals with disabilities. *See* Colo. Rev. Stat. § 24-34-802(4) (applying ADA standards to CADA claims); 28 C.F.R. § 35.160(b)(1) (in implementing ADA requirements, “A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.”). *See also* Ex. 1 pp. 13-17 (demonstrating Denver County Court’s awareness of the duties and obligations of the DOSLS).

164. On July 15, 2021, when the Denver County Court excluded Mr. Kontnik from jury service, it was fully aware of its obligations to provide a CART interpreter and, in fact, did so when Mr. Kontnik appeared prepared to serve as a juror. *See, e.g., id.* p. 25 (“we have a Court Interpreter who’s here and present and all set up to help him”).

165. Denver County Court demonstrated its awareness of the legal requirements and need to provide CART services during its court proceedings and the procedures for doing so through the Denver Office of Sign Language Services. *See, e.g., id.* pp. 14-17.

166. On July 15, 2021, there was nothing in the record about serving as a juror with a CART interpreter that would have made Mr. Kontnik have a “tough” time participating in the proceedings.

167. Denver County Court had no duty, obligation or reason to impanel an alternate juror had Mr. Kontnik been permitted to proceed through the jury selection process or to serve as a juror.

168. Denver County Court failed to comply with Colorado law, City and County of Denver ordinance, and court rules regarding communicating with Mr. Kontnik in order to determine if Mr. Kontnik was qualified to serve as a juror with CART services.

169. Mr. Kontnik would be willing to and is able to serve as a juror in Denver County Court proceedings if Denver County Court is ordered to cease its discriminatory practices on the basis of Mr. Kontnik’s disability.

170. Denver County Court condoned the discriminatory practices engaged in by Judge Smith during Mr. Kontnik's appearance as a prospective juror on July 15, 2021, demonstrating that it will do so again in the future unless enjoined by this Court not to do so.

171. Plaintiffs do not seek any relief against any individual judge. Instead, all claims are brought against Denver County Court as a public entity.

172. As set forth herein in this Amended Complaint, Denver County Court asserted numerous inapplicable reasons for its exclusion of Mr. Kontnik as a juror, rather than focusing on its actual obligations, demonstrating the likelihood it would do so again in similar proceedings before the CCRD or this court.

173. As set forth in this Amended Complaint, Denver County Court excluded Mr. Kontnik from participation as a juror by reason of Mr. Kontnik's disability.

174. As a result, Plaintiffs seek a declaration from this court that Denver County Court discriminated against Mr. Kontnik.

175. Plaintiffs also seek injunctive relief in the form of a court order requiring Denver County Court to comply with Colorado law, City and County of Denver ordinance, and court rules and ensure that prospective jurors with disabilities, and, in particular, hearing disabilities, are not discriminated against for the reasons Denver County Court discriminated against Mr. Kontnik. *See* Colo. Rev. Stat. § 24-34-802(2)(a)(I) (authorizing injunctive relief).

176. Mr. Kontnik seeks damages for the humiliation and embarrassment and other emotional distress as set forth in this Amended Complaint. Colo. Rev. Stat. § 24-34-802(2)(a)(II)-(III) (authorizing monetary damages and fine).

177. Plaintiffs seek an award of attorneys' fees and costs. Colo. Rev. Stat. § 24-34-802(3) (authorizing attorney fees).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

1. A declaration that Defendant's conduct as alleged here violated, and continues to violate CADA Part 8, the standards set forth in the ADA made applicable by CADA Part 8, and any implementing regulations under the statutes;

2. Issuance of a permanent injunction requiring Defendant to undertake measures to remediate Defendant's past and ongoing violations of CADA Part 8, the incorporated applicable standards set forth under the ADA, and the regulations promulgated under the statutes, and to ensure that such violations do not occur in the future;

3. Award of damages to Plaintiff Spencer Kontnik as permitted by CADA Part 8 for the reasons set forth in this Amended Complaint;
4. Award of Plaintiffs' reasonable attorneys' fees and costs, as provided by law; and
5. Such other relief as the Court finds just and proper.

Plaintiff Spencer Kontnik seeks a jury trial on all issues that may be heard by a jury.

Respectfully submitted this 23rd day of September, 2022,

/s/ Kevin W. Williams

Kevin W. Williams

Andrew C. Montoya

Civil Rights Legal Program

Colorado Cross-Disability Coalition

Attorneys for Plaintiffs

Pursuant to C.R.C.P. 121, § 1-26(7), the original of this document with the original signature is maintained in the offices of CCDC, Empire Park, 1385 S. Colorado Blvd., Suite 610-A, Denver, CO 80222, and available for inspection by other parties or the Court upon request.