No. 19-36075

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLARK LANDIS; ROBERT BARKER; GRADY THOMPSON; AND KAYLA BROWN,

***Plaintiffs-Appellants*,**

v.

WASHINGTON STATE MAJOR LEAGUE BASEBALL STADIUM PUBLIC FACILITIES DISTRICT; BASEBALL OF SEATTLE, INC.; MARINERS BASEBALL, LLC; THE BASEBALL CLUB OF SEATTLE, LLLP

***Defendants-Appellees*.**

On Appeal from the United States District Court for the Western District of Washington, Case No. 2:18-cv-01512-BJR The Honorable Barbara J. Rothstein, United States District Judge

BRIEF OF DISABILITY RIGHTS ORGANIZATIONS AS AMICI CURIAE IN SUPPORT OF APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), amici curiae state that none of the amici curiae has a parent corporation, and no publicly held corporation owns 10 percent or more of the stock of any of the amici curiae.

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Pursuant to Federal Rule of Appellate Procedure 29(a)(2), amici curiae state that all parties have consented to the filing of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici curiae state that (1) no "party's counsel authored the brief in whole or in part"; (2) no "party or a party's counsel contributed money that was intended to fund preparing or submitting the brief"; and (3) no "person--other than the amic[i] curiae, its members, or its counsel [has]--contributed money that was intended to fund preparing or submitting the brief."

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STATEMENTS OF INTEREST OF AMICI CURIAE

The 17 disability rights organizations below respectfully submit this brief as amici curiae to guide the court on the purpose and history of the Americans with Disabilities Act ("ADA" or "the Act"). As longtime advocates for rigorous enforcement of the ADA, amici believe the arguments herein are essential to protecting the right of people with disabilities to full and equal enjoyment of public life.

Access Living was founded in 1980 and is one of the nation's largest, most experienced, and most prominent disability rights organizations governed and staffed by people with disabilities. As a Center for Independent Living established under the federal Rehabilitation Act, Access Living's statutorily-mandated mission includes advocacy to ensure the independence, integration, and full citizenship of people with disabilities. Access Living envisions a world free from barriers and discrimination where disability is respected as a natural part of the human experience, and people with disabilities are included and valued. The arguments in this brief support that mission, and protect the rights of people with disabilities under the Americans with Disabilities Act.

The American Association of People with Disabilities ("AAPD") works to increase the political and economic power of people with disabilities. A national cross-disability organization, AAPD advocates for full recognition of the rights of over 61 million Americans with disabilities, and believes the arguments in this brief are critical to achieving that mission.

The American Civil Liberties Union of Washington ("ACLU of WA") is a statewide, nonprofit, nonpartisan organization with over 135,000 members and supporters. It is dedicated to the preservation and defense of civil liberties and civil rights and has a particular interest and expertise in the area of disabilities rights afforded under the Americans with Disability Act. It has long advocated for people with disability to be free from discrimination, including in public accommodations. This case presents an important issue regarding the rights of people with disabilities having full and equal access to public accommodations, and the ACLU of WA believes the arguments in this brief are consistent and important to this end.

The Association on Higher Education and Disability ("AHEAD") is a not-for-profit organization committed to full

participation and equal access for persons with disabilities in higher education. Its membership includes faculty, staff and administrators at approximately 2,000 colleges and universities, not-for-profit service providers and professionals, and college and graduate students planning to enter the field of disability practice. AHEAD members strive to ensure that institutions of higher education comply with applicable disability rights protections and provide reasonable accommodations to both students and employees, including athletic programs, and related facilities. In that regard, AHEAD members are regularly called upon to provide physical and communications access to team sporting events, including providing wheelchair accessible seating at sports stadiums and other arenas. The outcome of this case is of significant importance to AHEAD members and the students they serve.

The Civil Rights Education and Enforcement Center ("CREEC") is a national nonprofit membership organization whose mission is to defend human and civil rights secured by law, including laws prohibiting discrimination on the basis of disability. CREEC's efforts to defend human and civil rights in court often involve the ADA.

CREEC lawyers have extensive experience with the Act and the protections it provides, and believe the arguments in this brief are essential to realize the statute's full promise.

Disability Rights Advocates ("DRA") is a non-profit legal center whose mission is to ensure dignity, equality, and opportunity for people with all types of disabilities throughout the United States and worldwide. Making facilities throughout the country accessible to individuals with disabilities through negotiation and litigation is one of DRA's primary objectives.

The Disability Rights Bar Association ("DRBA") was founded in 2006 by a group of disability counsel, law professors, legal nonprofits and advocacy groups who share a commitment to effective legal representation of individuals with disabilities. Members of DRBA commonly believe that the fundamental civil rights of people with disabilities are inadequately represented in our society and that litigation and other legal advocacy strategies play a highly effective and necessary role in enforcing and advancing the rights of people with disabilities. DRBA strongly supports full accessibility to all public accommodations throughout the land.

Disability Rights California ("DRC") is the non-profit Protection and Advocacy agency mandated under state and federal law to advance the legal rights of Californians with disabilities. DRC was established in 1978 and is the largest disability rights legal advocacy organization in the nation. DRC works to ensure a barrier-free, inclusive, diverse world that values each individual, their voice, and their right to equal opportunity. In 2019 alone, DRC assisted more than 24,000 Californians with disabilities. DRC supports this case because DRC's clients, many of whom use wheelchairs, face barriers this case challenges.

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 and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in

the interpretation of federal civil rights laws protecting persons with disabilities.

Disability Rights Oregon ("DRO") is federally mandated to provide protection and advocacy services to individuals with disabilities in Oregon. Congress established protection and advocacy programs to protect and advocate for the rights, safety and autonomy of people with disabilities. In order to effectuate the rights of people with disabilities, Congress provided DRO with broad authority to pursue "administrative, legal, and other appropriate remedies" on behalf of our constituents. 42 U.S.C. § 10805(a)(1)(B). For nearly thirty years, DRO has used its federal mandates to enforce the ADA and the rights of people with disabilities to have equal access to the places of public accommodation including stadiums, theatres, and museums.

Disability Rights Washington ("DRW") is the non-profit Protection and Advocacy agency mandated under state and federal law to advance the legal rights of Washingtonians with disabilities. DRW was incorporated in 1974 and has worked on promoting inclusive communities from day one and has engaged in legal and policy advocacy to remove barriers for people with disabilities including accessibility of

sporting venues and numerous other places of public accommodations and government programs and services. In 2019 alone, DRW provided rights training and individual advocacy to thousands of people and systemic litigation that benefit tens of thousands of class members and constituents, and legislative advocacy that benefited hundreds of thousands of people and secured hundreds of millions dollars in new funding for disability supports and services. DRW supports this case because DRW's constituents, many of whom use wheelchairs, face barriers this case challenges and frequent this particular venue.

Don't DismyAbilities, Inc. ("DDMA") is a non-profit organization that develops and employs strategies aimed at addressing barriers to accessibility in communities via outreach, education, advocacy, and ADA-related action in order to make lasting impacts in the lives of individuals with disabilities, their families, and the neighborhoods in which they live. One way DDMA does this is by informing people of their rights under Title III, giving them basic information on ADA standards, and providing a simple avenue for requesting barrier removal (currently within the state of Texas) that empowers and enables people with disabilities to improve accessibility

in their own communities. Barriers to accessibility exist in many forms and don't have to be physical. DDMA supports this appeal because it believes that the pricing, seating distribution, and lines of sight at sporting venues must provide an equal opportunity for individuals with disabilities to enjoy events to the extent of their non-disabled peers.

The National Council on Independent Living ("NCIL") is the longest running national, cross-disability, grassroots organization run by and for people with disabilities. NCIL works to advance independent living and the rights of people with disabilities. NCIL's members include individuals with disabilities, Centers for Independent Living, Statewide Independent Living Councils, and other disability rights advocacy organizations. Members of NCIL's leadership helped draft the ADA and NCIL has advocated and will continue to advocate for courts to enforce the law's intent of providing full and equal opportunities to enjoy everyday activities for people with disabilities, including recreational ones that make up the fabric of American life.

The National Disability Rights Network ("NDRN") is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP)

agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all fifty states, the District of Columbia, Puerto Rico, and the U.S. Territories, and there are a P&A and a CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

Parent Project Muscular Dystrophy ("PPMD") is the nation's leading patient advocacy organization dedicated to ending Duchenne. Duchenne muscular dystrophy is a universally fatal, rare genetic disorder that affects approximately 1 in 5,000 live male births. People with Duchenne face a relentless deterioration of muscle strength leading to loss of mobility followed by severe cardiac and respiratory compromise in early adulthood. Part of PPMD's mission is to advocate on behalf of all those living with Duchenne muscular Dystrophy, which

includes speaking out against actions that promote discrimination toward Americans with disabilities. The ADA was signed into law prohibiting discrimination based on disability including barring "public accommodations and services operated by private entities" from discriminating on the basis of disability. Access includes physical access described in the ADA Standards for Accessible Design and programmatic access that might be obstructed by discriminatory policies or procedures of the entity. We support the arguments in this amicus brief, and ask that you consider the views of our community as you reach a decision.

Paralyzed Veterans of America ("PVA") is a national, congressionally chartered veterans service organization headquartered in Washington, D.C. PVA's mission is to employ its expertise on behalf of armed forces veterans who have experienced spinal cord injury or a disorder ("SCI/D"). PVA seeks to improve the quality of life for veterans and all people with SCI/D through its medical services, benefits, legal, advocacy, sports and recreation, architecture, and other programs. PVA advocates for quality health care, for research and education addressing SCI/D, for benefits based on its members' military service and for civil

rights, accessibility, and opportunities that maximize independence for its members and all veterans and non-veterans with disabilities. PVA has nearly 17,000 members, all of whom are military veterans living with catastrophic disabilities. To ensure the ability of its members to participate in their communities, PVA strongly supports the opportunities created by and the protections available through the Americans with Disabilities Act.

The Washington Attorneys with Disabilities Association ("WADA") is a minority bar association that serves attorneys and law students with disabilities in the state of Washington. WADA's mission is to promote the meaningful inclusion of people with disabilities throughout the legal profession; to eliminate the barriers to inclusion in the legal profession experienced by people with disabilities; and to promote the careers and professional development of WADA's membership through mentorship, networking, alliances, and cultivation of a strong and vibrant community. WADA supports defending the civil rights of people with disabilities and minorities with hopes of promoting equality and greater access to justice. Joining this brief supports that interest.

INTRODUCTION

The question is whether the Seattle Mariners can provide fans with disabilities a second-class experience through inferior seating and obstructed lines of sight. The District Court deemed this permissible, relying on a flawed and formalist analysis of the applicable standards and guidance. That was reversible error.

The Americans with Disabilities Act imposes a "clear and comprehensive national mandate" on public arenas to eliminate discrimination against people with disabilities. 42 U.S.C. § 12101(b)(1). During the legislative debate, the ADA's chief sponsor emphasized that arenas often featured segregated, back-row wheelchair seating that isolated people with disabilities from public life, barring millions from seeing movies, shows, and sporting events. *See* 135 Cong. Rec. S4985 (daily ed. May 9, 1989).

To remedy this problem, Congress required arenas to provide people with disabilities a "full and equal" experience, and directed the Attorney General to carry out its command. 42 U.S.C. §§ 12182(a), 12186(b). The Department of Justice duly proceeded to adopt the ADA Accessibility Guidelines ("ADAAG"), which in Section 4.33.3 require

that wheelchair seating be "an integral part of any fixed seating plan" and "provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public."

T-Mobile Park does not comply with Section 4.33.3. Of the 180 wheelchair-accessible seats in the section closest to the field—the "100 Level"—172 are in the last row, while just 8 are in the first. This forces fans with disabilities to choose between the 100 Level's worst seats, and its best and most expensive ones. Nor do fans with disabilities have lines of sight comparable to the general public's. Appellants have presented undisputed evidence that fans who use wheelchairs see less of the field than nearby standing fans.

This outcome conflicts with the letter and spirit of the ADA. Because the ADA is a remedial law, it must be liberally construed to further its goals. *Hason v. Med. Bd. of Cal.*, 279 F.3d 1167, 1172–73 (9th Cir. 2002). Nonetheless, the District Court employed a narrow construction, finding that Section 4.33.3 was satisfied because the percentage of accessible seats in the front row (8.6 percent) equaled or exceeded the percentage of overall seats in the front row (2.4 percent).

This ignores that *95.6 percent* of the seats at issue—172 of 180—are in the back row. And the District Court's equally narrow reading of the sight-lines requirement ensures that fans with disabilities now relegated to the back will see substantially less of the field than their nondisabled counterparts. This is the antithesis of the "full and equal" experience the ADA guarantees.

The panel should reverse the District Court's narrow, formalist analysis, and direct it to honor Congress' intent by construing Section 4.33.3 to provide Americans with disabilities the equality the ADA demands.

BACKGROUND

A. Before the ADA: From Exclusion to Inclusion

For centuries, people with disabilities have faced pervasive prejudice and discrimination. The Thirteen Colonies barred them from entering, and newly formed states forbade them from marrying or having children.[1] Even into the 20th Century, a widespread view of

[1] U.S. Comm. on Civil Rights, *Accommodating the Spectrum of Individual Abilities* 29 (Sept. 1983), https://files.eric.ed.gov/fulltext/ED236879.pdf ("U.S. Comm. on Civil Rights"); Andrea Faville, *A Civil Rights History: Americans with Disabilities*, Knight Chair in Political Reporting,

people with disabilities as "poor, blighted creatures" needing protection from the world led to an expansive school and hospital system that effectively incarcerated hundreds of thousands of people.[2]

Change began in the wake of the Civil Rights Movement. In 1973, Congress passed amendments to the Rehabilitation Act that explicitly protected people with disabilities from discrimination.[3] And in the years that followed, Congress repeatedly overrode court decisions limiting the Rehabilitation Act's reach.[4] But more needed to be done.

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https://knightpoliticalreporting.syr.edu/?civilhistoryessays=a-civil-rights-history-americans-with-disabilities.

[2] U.S. Comm. on Civil Rights 35; *see* Fred Pelka, *What We Have Done: An Oral History of the Disability Rights Movement* 11 (Univ. of Mass. Press, 2012).

[3] The 1973 amendments were not Congress' first foray into this area. The landmark Architectural Barriers Act of 1968 ("ABA") created physical accessibility requirements for federal and federally-financed buildings. *See* Pub. L. No. 90-480, 82 Stat. 718; 42 U.S.C. § 4151. As one of the first disability-related federal statutory protections of the Civil Rights Era, the ABA confirms Congress' longstanding view that access to the built environment is a core component of disability nondiscrimination.

[4] *See, e.g.*, Air Carrier Access Act of 1986 ("ACAA"), Pub. L. No. 99-435, 100 Stat. 1080 (overruling *Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597 (1986)); Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, 100 Stat. 1807 (overruling *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985)); Civil Rights Restoration Act of 1987, Pub

Government reports found that people with disabilities continued to encounter not only intentional discrimination, but also barriers—ranging from steps at building entrances to a lack of closed captioning—that blocked their access to opportunities. The prevalence of such barriers, these reports explained, effectively relegated people with disabilities to second-class status.[5]

B. The ADA: A Bill of Rights for Persons with Disabilities

Against this backdrop, the ADA was signed into law on July 26, 1990. Pub. L. No. 101-336, 104 Stat. 327. Its purpose was clear: to shift from the "custodial" system that had isolated people with disabilities from society, to an "integrative" model that emphasized their right to "full participation as equals in the social and economic life of the community." U.S. Comm. on Civil Rights 78 (citation omitted); *see* 42 U.S.C. § 12101. President George H.W. Bush described the law as a

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L. No. 100-259, 102 Stat. 28 (overruling *Grove City Coll. v. Bell*, 465 U.S. 555 (1984)).

[5] U.S. Comm. on Civil Rights 51–52; Nat'l Council on Disability, *Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities - With Legislative Recommendations* (Feb. 1986), https://ncd.gov/publications/1986/February1986#6.

"Declaration of Independence" for persons with disabilities.[6] Senator Tom Harkin, the Act's chief sponsor, touted it as a "20th Century Emancipation Proclamation" that would "make the promise of equal opportunity a reality for 43 million Americans."[7]

But achieving the ADA's goals would be difficult. Congress recognized that discrimination resulting from isolation and segregation was a "serious and pervasive" problem that was especially acute "in such critical areas as ... public accommodations ... [and] recreation." 42 U.S.C. § 12101(a)(2)–(3); *see McGann v. Cinemark USA, Inc.*, 873 F.3d 218, 229–30 (3d Cir. 2017).

The legislative record reveals the enormity of the challenge. Senator Harkin summarized poll findings that Americans with disabilities "have much less social life, have fewer amenities and have a lower level of life satisfaction than other Americans." *See* 135 Cong. Rec. S4985 (citing 1987 Harris Survey of Americans with Disabilities). He noted in particular the conclusion that they "participate much less

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[6] Michael Kranish, *Senate Passes Disabilities Act*, Boston Globe, July 14, 1990, at 1.

[7] Robert Greene, *Senate Passes Disabilities Act*, The Associated Press, Sept. 7, 1989, at 1.

often in a host of social activities that other Americans regularly enjoy, including going to movies, plays, sports events, and restaurants." *Id.*

Senator Harkin actually understated the point. The poll found nearly two-thirds of Americans with disabilities had not been to a movie in the past year, compared with 22 percent among all adults. Three-fourths had not attended a live theater or music performance, compared with 40 percent of the general public. People with disabilities were *three times* more likely to avoid restaurants entirely, and 16 percent less likely to have attended a sports event in the past year. Arnold & Porter, LLP, Legislative History of the Americans with Disabilities Act of 1990 ("ADA Legislative History") at 368 ("Prepared Statement of Robert L. Burgdorf, Jr., Vice President for Project ACTION of the National Easter Seal Society).

C. The Legislative Purpose in Enacting the Seating Requirement: Equal Access

To eliminate the alarming disparities above, the ADA bars public accommodations from discriminating on the basis of disability. 42 U.S.C. § 12182. Consistent with this command, the Act requires that stadiums like T-Mobile Park be "design[ed] and construct[ed]" to be

"readily accessible to and usable by individuals with disabilities." *Id.* § 12183(a)(1).

These provisions bar stadiums from giving fans with disabilities a second-class experience. Seating dispersion is a critical part of this mandate. The House Conference Report explained that persons with disabilities had historically been "relegated to separate and often inferior" seating in the "back of auditoriums." H. R. Rep. No. 101-485, pt. 2 at 102, *reprinted in* 1990 U.S.C.C.A.N. 303, 385. Because such segregation consigned "persons with disabilities to second-class citizen status," the Report stressed that seating integration is "fundamental to the purposes of the ADA" and made clear that it would "be a violation of this Act to segregate seating for persons using wheelchairs to the back of auditoriums or theaters." H. R. Rep. No. 101-485, pt. 3 at 56–57, *reprinted in* 1990 U.S.C.C.A.N. 445, 479–80.

This broad view of the Act's seating dispersion requirement is no accident. Congress considered the issue in detail, particularly through the lens of movie-theater seating. It heard extensive testimony from the National Association of Theatre Owners in favor of an undemanding seating dispersion requirement. The group argued Congress should

disregard claims it was "discriminatory to limit wheelchair seating to the front and back of a motion picture theatre," on the grounds that more inclusive seating would create a (vaguely defined) "safety hazard" and would be financially ruinous for (as the group's Chairman put it) "inner city theaters." ADA Legislative History at 96, 363 (Prepared Statement of Robert L. Burgdorf, Jr., Vice President for Project ACTION of the National Easter Seal Society).

These attacks were soundly defeated. The House Conference Report rejected the safety theory in explicit terms:

> The purported safety hazard is largely based on inaccurate assumptions and myths about the ability of people with disabilities to get around in such circumstances. People who use wheelchairs vary greatly (as does the general public) in their individual ability to move quickly or slowly. More "safety hazard" is created by a slow-moving ambulatory person than by a fast-moving wheelchair athlete.

H.R. Rep. No. 101-485, pt. 2 at 103, *reprinted in* 1990 U.S.C.C.A.N. 303, 386. The cost argument—a leitmotif of ADA opposition—fared no better. Senator Harkin challenged the theatre owners to explain why costs would not be offset by greater patronage from people with disabilities, arguing on the Senate floor that costs "ha[ve] been exaggerated" and "do not provide the basis for an exemption from the

basic principles in a civil rights statute." 135 Cong. Rec. S4986 (daily ed., May 9, 1989). It is clear, then, that Congress heard every argument for a narrow seating mandate. And it is equally clear that it roundly rejected those arguments.

D. The Regulatory Purpose: Equal Access

The Act's regulatory history underscores this point. Congress instructed the Attorney General to implement regulations consistent with the command for "full and equal" participation. 42 U.S.C. §§ 12182(a), 12186(b). "In no event," the House Conference Report explained, should those regulations "reduce, weaken, [or] narrow" existing accessibility standards. H. R. Rep. No. 101-485, pt. 2 at 139, *reprinted in* 1990 U.S.C.C.A.N. 303, 422.

And so in July 1991, shortly after the ADA was signed into law, the Department of Justice adopted the standard at issue here:

> Wheelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public.

ADAAG § 4.33.3 (1991).

In adopting this standard, the Department emphasized its intent "to promote integration and equality in seating" to remedy the fact that

"[i]ndividuals who use wheelchairs historically have been relegated to inferior seating in the back of assembly areas." 56 Fed. Reg. 35544, 35571 (July 26, 1991).

Neither the Department nor the Access Board has wavered in broadly construing these requirements. In 2004, the Access Board revised and clarified the standard to require "choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices … available to all other spectators." 69 Fed. Reg. 44084, 44104 (July 23, 2004) (citation omitted) (adopted as ADAAG § 221.2.3 (2010)). The Board explained that:

> Consistent with the overall intent of the ADA, individuals who use wheelchairs must be provided equal access so that their experience is substantially equivalent to that of other members of the audience. Thus, while individuals who use wheelchairs need not be provided with the best seats in the house, neither may they be relegated to the worst.[8]

The Access Board similarly clarified that the required line of sight depends on what is offered to nearby standing fans. If standing spectators can see over the heads of people in front of them, fans who

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[8] Dep't of Justice, 2010 Standards for Accessible Design 79 (Sept. 15, 2010), https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards.pdf; *see* 69 Fed. Reg. 44084, 44198 (July 23, 2004) (original promulgation of 2010 standard).

use wheelchairs must have that ability, too. If standing spectators have a less optimal view, such a view is also acceptable for fans who use wheelchairs. ADAAG § 802.2.2 (2010).

Although these newer standards are not directly at issue here, the Department of Justice has repeatedly explained that the revisions did not fundamentally change existing law. In 2004, it stated that the revisions did not "represent[] a substantive change" from the "requirements of Standard 4.33.3." 69 Fed. Reg. 58768, 58776 (Sept. 30, 2004). In 2008, it stated that the "guideline is merely the codification of longstanding Department policy." 73 Fed. Reg. 34508, 34534 (June 17, 2008). And in 2010, when it finally adopted the standards, the Department stated that the revisions would "have minimal impact since they are consistent with the Department's longstanding interpretation of the 1991 Standards and technical assistance." 75 Fed. Reg. 56236, 56334 (Sept. 15, 2010).

That "longstanding" interpretation is clear. At heart, the seating and sight-lines requirements are not rigid or technical, but are rather based on common sense. In response to a comment requesting clarity, the Department said merely that "venue operators understand which

seats are better" and can "distinguish easily" between good and bad seats. *Id.* at 56334–35. The primary guidance the Department offered was simple. "This performance standard," the Department explained, "is based upon the underlying principle of equal opportunity for a good viewing experience for everyone." *Id.*

ARGUMENT

A. The ADA Is a Remedial Statute that Must Be Liberally Construed

The ADA is a remedial statute that invokes "the sweep of congressional authority" to eliminate discrimination against people with disabilities. 42 U.S.C. § 12101(b)(1)–(4). Because of this remedial purpose, courts must construe the Act "with all the liberality necessary" to serve its goals. *Disabled in Action of Pa. v. Se. Pa. Transp. Auth.*, 635 F.3d 87, 94 (3d Cir. 2011); *accord Hason*, 279 F.3d at 1172–73. It follows that where the Act is ambiguous or susceptible to multiple interpretations, "its 'broad remedial purpose' provides a compelling justification for an inclusive interpretation." *De La Rosa v. Lewis Foods of 42nd St., LLC*, 124 F. Supp. 3d 290, 293–94 (S.D.N.Y. 2015) (citation omitted) (applying remedial statute canon to ADAAG standards).

Section 4.33.3 is susceptible to multiple interpretations. *United States v. AMC Entm't, Inc.*, 549 F.3d 760, 769 (9th Cir. 2008). As the District Court explained, case law on the subject is "sparse," *Landis v. Wash. State Major League Baseball Stadium Pub. Facilities Dist.*, 2019 WL 7157165, at *18 (W.D. Wash. Dec. 3, 2019), and the Supreme Court itself has noted the "lines of sight" rule "create[s] real uncertainties" about its meaning. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2410, 2413 (2019).

To resolve these uncertainties, the Department of Justice has made clear that Section 4.33.3 must be broadly construed. The Department has emphasized that "the underlying principle" of the seating and sight-lines requirements is "equal opportunity for a good viewing experience for everyone." 75 Fed. Reg. 56236, 56334–35 (Sept. 15, 2010). The newer standards—which are consistent with Section 4.33.3—confirm this, providing that fans with disabilities must have choices "substantially equivalent to, or better than, the choices … available to all other spectators." ADAAG § 221.2.3 (2010).

Congress has also consistently urged broad constructions of disability rights statutes, repeatedly rebuking courts that ignore its wishes. In the 1980s, Congress overrode multiple Supreme Court

decisions that narrowly construed the Rehabilitation Act of 1973 and other statutes protecting persons with disabilities. William N. Eskridge, Jr., *Reneging on History? Playing the Court / Congress / President Civil Rights Game*, 79 Cal. L. Rev. 613, 630–36 (1991). It has followed the same pattern with the ADA. In 2008, by unanimous consent in the Senate and voice vote in the House, Congress amended the ADA to expressly reject Supreme Court cases narrowly interpreting the Act's definition of "disability." 154 Cong Rec. H8287–88 (daily ed. Sept. 17, 2008); 154 Cong. Rec. S8342 (daily ed. Sept. 11, 2008); ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2, 122 Stat 3553 (2008). On the day of the vote, Representative Steny H. Hoyer, who introduced the bill, assailed the Court for "chip[ing] away" at the ADA and "clos[ing] the door of opportunity for millions of Americans." 154 Cong Rec. H8293 (daily ed. Sept. 17, 2008). In supporting the bill, Representative Christopher Van Hollen lambasted the Court for creating "a new set of barriers for those with disabilities." *Id.* at H8296.

The ADA Amendments Act of 2008 ("ADAAA") thus reinstated the ADA's "broad scope of protection" in order to promote the Act's underlying goal: a "clear and comprehensive national mandate for the

elimination of discrimination." Pub. L. No. 110-325, § 2, 122 Stat 3553 (2008). To drive the point home, Congress even *deleted* from the U.S. Code the two findings that the Supreme Court had used to narrowly construe the Act. 54 Cong. Rec. S8840 (daily ed. Sept. 16, 2008).

In sum, Congress has spent decades urging courts to liberally construe disability rights statutes in general, and the ADA in particular. The District Court failed to honor these clear expressions of legislative intent.

B. The District Court Erred by Narrowly Construing Section 4.33.3

The ADA's purpose—evident in its text, legislative history, regulatory background, and subsequent amendments—is clear. It promises people with disabilities "full participation" and "equality of opportunity" in public life. 42 U.S.C. § 12101(a)(7). The District Court should have honored those twin goals by liberally construing Section 4.33.3.

Instead, the District Court engaged in a narrow, unduly formalist analysis wholly at odds with an avowedly broad, remedial statute. *Hason*, 279 F.3d at 1172–73; *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 952 (9th Cir. 2011). The District Court held that T-Mobile

Park's seating distribution satisfied Section 4.33.3 because the percentage of accessible seats in the front row (8.6 percent) equaled or exceeded the percentage of overall seats in the front row (2.4 percent). *Landis*, 2019 WL 7157165, at *19–20.

This simplistic analysis fails to acknowledge that the vast majority of wheelchair accessible seats are at the very back; *precisely* the seating arrangement the ADA seeks to eliminate. Section 4.33.3 does not—and while promoting the ADA's goals cannot—rely on a mathematical formula that solves segregation with tokenism. Nowhere does Section 4.33.3 state that dispersion is adequate whenever the percent of accessible front row seats exceeds the percent of overall front row seats. What it instead requires is a common-sense comparison between seating choices to ensure that fans who use wheelchairs have the same chance to enjoy the game as everyone else. *See* H. R. Rep. No. 101-485, pt. 2 at 102, *reprinted in* 1990 U.S.C.C.A.N. 303, 385 (noting importance of providing seating "in the most integrated setting" and avoiding "inferior" seating for persons with disabilities); 28 C.F.R. Pt. 36, App. B (even though the required distribution may vary, "venue operators understand which seats are better").

In other words, Section 4.33.3 is about equal opportunity. T-Mobile Park does not provide that. Fans with disabilities seeking to sit in the 100 Level have systematically fewer options, almost all of which are in the back—172 of 180 wheelchair accessible seats, or 95.6 percent, are in the last row. This is indistinguishable from the isolation the ADA has sought to eradicate since its inception. *See, e.g.*, H. R. Rep. No. 101-485, pt. 3 at 56–57, *reprinted in* 1990 U.S.C.C.A.N. 445, 479–80 ("[I]t would also be a violation of this Act to segregate seating for persons using wheelchairs to the back of auditoriums or theaters.").

There is another fundamental flaw in the District Court's finding that making a few front row seats available to fans with disabilities automatically confers ADA compliance. The District Court ignored that these seats—which are close to home plate and cost $75 or more—are prohibitively expensive for most fans with disabilities. In practice, then, the great majority of fans who use wheelchairs have but one choice: to take the worst seats at the back of the section. Nondisabled fans, by contrast, have a host of options, including front row seats in the outfield or along the base lines, seats in the second and third rows, seats in partial shade and open air, and everything in between. As

courts have recognized, this egregious disparity violates the letter and spirit of the ADA. *See Colo. Cross-Disability Coal. v. Colo. Rockies Baseball Club, Ltd.*, 336 F. Supp. 2d 1141, 1146 (D. Colo. 2004) ("At Coors Field, choices of wheelchair patrons do not generally match those of ambulatory spectators. To sit near [the] infield, they must pay at least $100, while nondisabled fans can do so for $20–38."); *Indep. Living Res. v. Or. Arena Corp.*, 982 F. Supp. 698, 709 (D. Or. 1997), *disapproved on other grounds by Miller v. Cal. Speedway Corp.*, 536 F.3d 1020, 1024 (9th Cir. 2008) ("Without a requirement for horizontal and vertical dispersal, an arena operator could simply designate a few token wheelchair seats in the better seating areas, and cluster the majority of wheelchair seats in the last row or in other undesirable locations. That is contrary to the Congressional intent in enacting Title III of the ADA.").

The same is true of the T-Mobile Park's sight lines. In light of the Act's remedial purpose, Section 4.33.3 is clearly meant to give similarly situated fans as close to equal lines of sight as possible. Indeed, the updated guidelines confirm this has always been the intent. *See* 28 C.F.R. Pt. 36, App. B ("This performance standard is based upon the

underlying principle of equal opportunity for a good viewing experience for everyone."); ADAAG § 802.2.2 (2010) (noting that the required sight line for fans in wheelchair accessible seats depends on the sight line offered to nearby standing spectators); 69 Fed. Reg. 58768, 58776 (Sept. 30, 2004) ("[T]he Department does not believe that its proposed line-of-sight regulation represents a substantive change from the existing line-of-sight requirements of Standard 4.33.3 of the current ADA standards.").

The District Court failed to understand this. It found the sight lines acceptable because "several of the locations have 100% visibility of the field" and others have close to 100 percent. *Landis*, 2019 WL 7157165, at *15. But the standard is comparative visibility, not overall visibility. And as Appellants have shown, fans who use wheelchairs at T-Mobile Park consistently see less of the field than nearby standing fans. *Id.* at *13.

CONCLUSION

The District Court's erroneous approach violates both the letter and the spirit of the ADA, and accordingly should be reversed.

Respectfully submitted.

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