No. 23-2428

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DAVID FELIMON CERDA,

Plaintiff-Appellant

v.

CHICAGO CUBS BASEBALL CLUB, LLC,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Case No. 1:17-cv-9023
The Honorable Judge Jorge L. Alonso

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT AND URGING REVERSAL ON THE ISSUES RAISED HEREIN

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INTEREST OF THE UNITED STATES

This case concerns the accessibility of Wrigley Field to individuals with disabilities, and it presents important questions regarding the interpretation of Title III of the Americans with Disabilities Act (ADA), its implementing regulations, and the ADA Standards for Accessible Design. The Attorney General is responsible for enforcing Title III and issued in 2010 the accessibility standards that the district court applied in this case. *See* 42 U.S.C. 12186(b)-(c), 12188(b). In addition, the United States has filed its own Title III enforcement action challenging the accessibility of Wrigley Field, which the district court declined to consolidate with the instant case. *See United States v. Chicago Baseball Holdings, LLC*, No. 1:22-cv-03639 (N.D. Ill.). Accordingly, the United States has a substantial interest in the proper resolution of the questions raised in this appeal. The United States files this brief under Rule 29(a)(2) of the Federal Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

1. Whether the district court misinterpreted the 2010 ADA Standards for Accessible Design's requirements for the minimum size of wheelchair spaces in venues like Wrigley Field.

2. Whether the district court misapplied the 2010 ADA Standards for Accessible Design's substantial-equivalence and dispersion requirements to the accessible seats at Wrigley Field.

STATEMENT OF THE CASE

A. Legal Background

Congress enacted the ADA because it found, among other things, that "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers," and the "failure to make modifications to existing facilities." 42 U.S.C. 12101(a)(5). Congress thus sought "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "to provide clear, strong, consistent, enforceable standards" addressing such discrimination. 42 U.S.C. 12101(b)(1)-(2).

Title III of the ADA prohibits discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation," which includes "stadium[s]" and "other place[s] of exhibition or entertainment." *See* 42 U.S.C. 12181(7)(C), 12182(a). One

form of "discrimination" under Title III is altering a facility without ensuring "that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs." 42 U.S.C. 12183(a)(2); 28 C.F.R. 36.402(a).

To implement Title III's accessibility requirements, Congress directed the Attorney General to adopt regulations consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board, also known as the Access Board. 42 U.S.C. 12186(b) and (c), 12204; 29 U.S.C. 792. The Department of Justice first adopted ADA Standards for Accessible Design in 1991 based on the Access Board's 1991 ADA Accessibility Guidelines. *See* 28 C.F.R. Pt. 36, App. D. The Access Board amended its Accessibility Guidelines in 2004, which the Department adopted in 2010 as the new ADA Standards for Accessible Design after notice and comment. *See* 75 Fed. Reg. 56,236, 56,238-56,239 (Sept. 15, 2010); 28 C.F.R. Pt. 36, App. A, B.

At the same time the Department adopted the 2010 Standards, it also adopted certain regulations specific to assembly areas, including stadiums, to ensure "greater dispersion of wheelchair spaces and companion seats

throughout" such areas "than would otherwise be required by" the Access Board's guidelines. 75 Fed. Reg. at 56,308; *see* 28 C.F.R. 36.406(f). Alterations to assembly areas undertaken after March 2012 must comply with the Department's 2010 Standards and regulations rather than earlier versions. 28 C.F.R. 36.406(a)(3) and (f).

B. Factual and Procedural Background

1. The Chicago Cubs have played at Wrigley Field since 1916. Doc. 258 (Op.), at 4.[1] In 2014, the Cubs began the 1060 Project, a significant phased renovation of the ballpark. Op. 5. The Cubs undertook renovations each off-season from 2014-2015 to 2018-2019, completing partial upgrades each time to avoid interfering with the baseball season, which runs from spring to fall. Op. 6-8.

Wrigley Field has three general seating areas: (1) the outfield bleachers (the 500 level); (2) the lower grandstand, located behind home plate and down the first- and third-base lines (the 10, 100, and 200 levels); and (3) the upper deck, located above the grandstand (the 300 and 400

[1] Citations to "Doc. __, at __" refer to the documents in the district court record and the page numbers or paragraphs within those documents. Citations to "Tr. __" refer to the trial transcript.

levels). Op. 5-8.[2] The 1060 Project altered them all. The Cubs demolished and rebuilt the bleachers in left and right field, adding new "porches" for group seating areas as well as jumbotrons. Op. 6-7. The Cubs also tore down much of the grandstand to install new premium clubs behind home plate and beyond the team dugouts. Op. 7. Because of the substantial renovations, wheelchair spaces were added and redistributed throughout the ballpark. Op. 7-8, 10-12, 23.

2. In December 2017, David Cerda sued the Cubs under Title III of the ADA. Doc. 1. Cerda is a longtime Chicago resident and Cubs fan who uses a wheelchair because Duchenne Muscular Dystrophy impairs his mobility. Op. 3. Cerda has regularly attended Cubs games at Wrigley Field for years, including before, during, and after the 1060 Project renovations. Op. 5, 23-24.

Cerda's Third Amended Complaint alleged that Wrigley Field lacked "the minimum required number" of ADA-compliant seats. Doc. 35, at ¶¶ 70, 80; *see* Standard 221.2.1 (specifying minimum number of wheelchair

[2] For a visual depiction, *see Chicago Cubs - Wrigley Field 3D Seatmap*, https://map.3ddigitalvenue.com/chicago-cubs (last visited Feb. 2, 2024).

spaces for "assembly areas"); Standard 221.3 (requiring "[a]t least one companion seat" for every wheelchair space).[3] Cerda alleged that Wrigley Field's seating plan failed to provide "wheelchair spectators with choices of seating locations and view[ing] angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to other spectators." Doc. 35, at ¶¶ 82-85; *see* Standard 221.2.3. Cerda also alleged that the Cubs failed to make wheelchair spaces an "integral part" of Wrigley Field's seating plan and to disperse them both horizontally and vertically around the stadium. Doc. 35, at ¶¶ 81, 83-85; *see* Standards 221.2.2 (integral part), 221.2.3.1 (horizontal dispersion), 221.2.3.2 (vertical dispersion).

3. In 2019, the district court dismissed portions of Cerda's case. Doc. 62. As relevant here, the court ruled that Cerda could not challenge the vertical dispersion of seats in Wrigley Field. Doc. 62, at 17-18. Cerda argued that Wrigley Field violated the vertical-dispersion standard because "there is no 'front-to-back' dispersion at Wrigley Field for wheelchair

[3] The 2010 ADA Standards for Accessible Design are available at https://perma.cc/7ULK-XTPD.

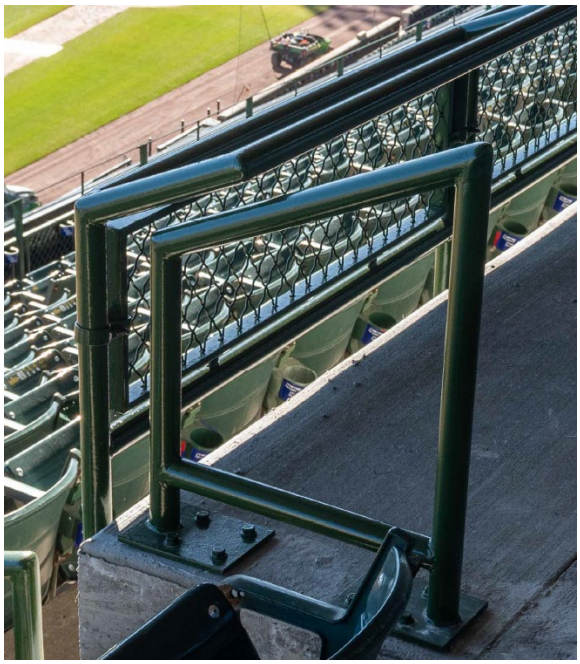
patrons. Rather, every ADA seat is in the last row." Doc. 62, at 16. The court dismissed Cerda's vertical-dispersion challenge for lack of Article III standing. Doc. 62, at 17-18. In that ruling, the court stated that "the 2010 Standards . . . do not require the Cubs to place ADA seats in the front row." Doc. 62, at 17-18.

4. In August 2022, the district court denied the Cubs' motion for summary judgment. Doc. 201, at 3-5. At that time, Wrigley Field concededly lacked the minimum number of ADA-compliant wheelchair spaces, though the Cubs pledged that sufficient spaces were planned and would soon be completed. Doc. 171, at 6; Doc. 201 at 3-4. Between summary judgment and trial, the Cubs added wheelchair spaces in the upper deck to reach the minimum number they believed the 2010 Standards require, and they altered existing wheelchair spaces in upper-deck sections 309L, 313L, and 328R. *See* Tr. 5-14. The court then held a five-day bench trial in April 2023. *See* Docs. 239-244.

The trial focused on whether the Cubs had the minimum number of ADA-compliant spaces and on their horizontal dispersion around the ballpark. Whether the Cubs had the minimum number of ADA-compliant wheelchair spaces turned in part on the depth of the spaces in the three

recently altered upper-deck sections, which did not fit Cerda's wheelchair. Op. 18, 30, 36. In "assembly areas" like Wrigley Field, wheelchair spaces entered from the rear must be at least 48 inches deep, not counting any "circulation path" behind the wheelchair space. Op. 29, 31; Standards 802.1.3, 802.1.5.

An angled railing at the front of the upper-deck sections' recently altered wheelchair spaces complicated their measurement:[4]



Cerda's wheelchair could not fit under the angled railing when he sat in reclined positions, as his medical condition periodically requires. Op. 18.

[4] Doc. 245, at 42.

The railing thus posed a legal question: "can the ground space underneath the angled railings be included when measuring the depth of a wheelchair space for the purposes of ADA compliance?" Op. 30. The district court recognized that, if the space under the railing could not be counted, "then the Cubs fall short" of providing adequate depth for these spaces and, consequently, of providing the minimum number of ADA-compliant wheelchair spaces required across the entire stadium. Op. 32.

5. The court ruled in the Cubs' favor, concluding that Cerda failed to prove that Wrigley Field lacked the required minimum number of ADA-compliant seats for wheelchair users and that the seats were not horizontally dispersed around the stadium. Op. 50. First, the court held that the ground space under the angled railings could be included when measuring the depth of upper-deck wheelchair spaces. Op. 32-36. It viewed the space under the railings as permissible "knee and toe clearance." Op. 32-36; Standard 305.4 ("Unless otherwise specified, clear floor or ground space shall be permitted to include knee and toe clearance complying with 306."); Standard 306.1 ("Where space beneath an element is included as part of clear floor or ground space or turning space, the space shall comply with 306."). It considered the angled railings an

"element" under Standard 306.1, so the space beneath the railings could count toward Standard 802's minimum-depth requirement. Op. 32-36.

Second, the court rejected Cerda's arguments that the accessible seats in Wrigley Field's terrace level were not "substantially equivalent" to non-accessible seats and that accessible seating was not horizontally dispersed throughout the stadium. Op. 36-44, 48-50. The terrace level is in the lower grandstand, ranging from left field around home plate to right field, and sits mostly underneath the upper deck. The terrace level's accessible seats are in the last row of their respective sections, so the upper deck's overhang obstructs their views significantly. Op. 37. Cerda challenged the seats as not "substantially equivalent" to the terrace's non-accessible seats, so they should not be counted towards the minimum number of ADA-compliant accessible seats. Op. 36-37; Standard 221.2.3. But the court rejected that challenge and counted the seats toward the minimum number. Op. 36-44. Relying in part on a "quartile" approach offered by the Cubs' expert witness, the court also determined that Wrigley Field's

accessible seats had adequate horizontal dispersion around the ballpark. Op. 48-50.[5]

6. Cerda timely appealed. Doc. 260.

SUMMARY OF ARGUMENT

The district court committed several errors in analyzing Wrigley Field's compliance with the 2010 Standards. This Court should reverse the district court's judgment in favor of the Cubs and remand for further proceedings.

1. In assessing whether Wrigley Field had the required number of ADA-compliant seats, the district court misinterpreted the 2010 Standards' requirements for the minimum size of wheelchair spaces. Wheelchair spaces in assembly areas like Wrigley Field must meet the minimum depth and width requirements of Standard 802.1. The court erred in assessing the depth of the wheelchair spaces in Wrigley Field's upper-deck sections

[5] The United States takes no position on other rulings by the district court not addressed in this brief. It is separately developing a factual record on the accessibility of Wrigley Field in its ongoing enforcement action.

because it incorrectly counted the ground space beneath the angled railings at the front of those spaces.

The district court viewed the ground space beneath the angled railings as permissible knee or toe clearance under Standards 305.4 and 306.1. But those standards do not apply to Standard 802.1's minimum dimensions. The Standards employ explicit cross-references to make clear when one standard applies to another, and no cross-reference makes Standards 305.4 or 306.1 applicable to Standard 802.1. Without the ground space beneath the railing, those wheelchair spaces fall short of the minimum depth and thus do not comply with the ADA.

2. The 2010 Standards require that wheelchair spaces in assembly areas provide choices of seating locations and viewing angles that are "substantially equivalent" to the choices all other spectators enjoy. Standard 221.2.3. The Standards likewise require horizontal and vertical dispersion of wheelchair spaces around the venue. Standards 221.2.3.1, 221.2.3.2. The district court misapplied these requirements.

a. The district court dismissed Cerda's challenge to the vertical dispersion of accessible seats at Wrigley Field based on a mistaken view that the Standards do not require venues to provide them in the front row.

Though no standard expressly requires that venues provide wheelchair spaces in the front row of sections, applying the Standards to venues like sports stadiums will often lead to that result, as other courts have recognized. Most stadium seating is reached by inaccessible stairs, so often only the front and rear rows of sections adjoin accessible routes. It would consign wheelchair users to worse seating than other spectators enjoy if stadiums provide wheelchair spaces only at the rear and never in the front of their respective sections.

b. The district court unduly narrowed the substantial-equivalence requirement in analyzing the accessible seats in Wrigley Field's terrace level, which are relegated to the last row of their sections. The court turned the substantial-equivalence requirement into a bare minimum, satisfied as long as a stadium does not make *all* wheelchair spaces the worst in the venue. And it misconstrued 28 C.F.R. 36.406(f)(1), a regulation intended to increase dispersion, as authorizing Wrigley Field to place wheelchair spaces only in the last row.

c. Finally, the district court rejected Cerda's challenge to the horizontal dispersion of accessible seats by relying in part on an inappropriate method of gauging horizontal dispersion advanced by the

Cubs' expert witness. That method—dividing the venue into "quartiles" and determining whether the venue provides accessible seats in each quartile—is both unfounded and unsuitable for ensuring that accessible seats are adequately dispersed around the venue.

ARGUMENT

I. The district court misinterpreted the ADA Standards' requirements for the minimum size of wheelchair spaces.

A. Standard 802.1 governs the dimensions of wheelchair spaces in assembly areas.

Under the 2010 Standards, Wrigley Field is an "assembly area." Standard 106.5. "Assembly areas shall provide wheelchair spaces, companion seats, and designated aisle seats complying with 221 and 802." Standard 221.1. Standard 802 therefore governs Wrigley Field's wheelchair spaces. Under Standard 802.1, a wheelchair space must be at least 36 inches wide and 48 inches deep when a wheelchair user enters the space from the rear, as is the case in Wrigley Field's upper-deck sections. *See* Standards 802.1.2, 802.1.3.

This combination of provisions—drawing on Chapters 1, 2, and 8 of the Standards—reflects the Standards' organization. Chapters 1 and 2 contain "scoping requirements" for facilities subject to the ADA. 75 Fed.

Reg. 56,236, 56,238 (Sept. 15, 2010). Scoping requirements "prescribe which elements and spaces . . . must comply with the technical specifications" set forth in subsequent chapters. *Ibid.* Chapters 3 through 10, in turn, "provide uniform technical specifications," such as required sizes, shapes, or textures, for the design of facilities subject to the ADA. *Ibid.*

The Standards use cross-references to connect the dots between provisions and make clear when one incorporates another. Chapters 3 through 10 each begin by stating that the chapter's provisions "shall apply where required by Chapter 2 or where referenced by a requirement in this document." Standards 301.1, 401.1, 501.1, 601.1, 701.1, 801.1, 901.1, 1001.1. Under this reference rule, Standards 305.4 and 306.1—the provisions for knee and toe clearance applied by the district court—apply only when Chapter 2's scoping requirements provide it or when another technical provision refers to them. *See* Standard 301.1. Here, Chapter 2 contains no requirement making Standards 305.4 and 306.1 applicable to the minimum dimensions in Standard 802.1, and Standard 802.1 does not refer to them. Thus, by the Standards' own terms, Standards 305.4 and 306.1 do not apply to Standard 802.1.

By contrast, Chapter 8 makes many specific references to Chapter 3 provisions in other instances. For instance, Standard 802.1.1 provides that "[t]he floor or ground surface of wheelchair spaces shall comply with 302." It thereby incorporates requirements such as that the surface must be "stable, firm, and slip resistant" (Standard 302.1) and that any carpet must be "securely attached" (Standard 302.2). Other standards in Chapter 8 expressly refer to Standards 305 and 306, the provisions on which the district court relied. *See, e.g.*, Standards 803.3 (dressing, fitting, and locker rooms), 804.3.1 (kitchen work surfaces), 804.6.4 (kitchen cooktops). No such reference to Chapter 3 appears in Standard 802.1's requirements for wheelchair spaces' minimum depth and width.

The interpretive canon *expressio unius est exclusio alterius* reinforces the conclusion that Standards 305.4 and 306.1 do not apply to Standard 802.1. The canon bars reading implied exceptions into a statute that enumerates only certain exceptions. *See, e.g.*, *Hillman v. Maretta*, 569 U.S. 483, 496 (2013); *TRW Inc. v. Andrews*, 534 U.S. 19, 28-29 (2001); *cf. Law v. Siegel*, 571 U.S. 415, 424 (2014) ("The [Bankruptcy] Code's meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to

create additional exceptions."). By the same logic, additional implied references should not be read into the Standards beyond those express references that they already contain.

Because the allowances for knee and toe clearance in Standards 305.4 and 306.1 are not permitted to be part of Standard 802.1's minimum dimensions, the district court's assessment of the wheelchair spaces in the three upper-deck sections at issue should not have counted the ground space beneath the angled railings in those sections. The court recognized that, if the space beneath the railing is not counted, the wheelchair spaces fall short of the minimum-depth requirement. Op. 32. Thus, correcting the court's error yields the conclusion that the wheelchair spaces in these upper-deck sections fail to comply with the ADA.

B. The district court's reasons for applying Standards 305 and 306 to the dimensions of wheelchair spaces at Wrigley Field were erroneous.

The district court justified applying Standards 305 and 306 by reasoning that "[n]othing in Chapter 8, or Chapter 2, expressly *prohibits* the application of Chapter 3 to wheelchair spaces." Op. 34 (emphasis added). This inverts the Standards' reference rule. A technical standard needs a reference to apply, so silence about a standard means that it does not. An

express prohibition against applying a given standard is not necessary. Demanding one would invite confusion in future cases because the Standards were drafted to rely on express incorporation, not to permit incorporation unless expressly disclaimed.

Treating Standards 305.4 and 306.1 as applicable to Standard 802.1's dimensions for wheelchair spaces, as the district court did, also creates a conundrum. Standard 305 contains its own, different dimensions for clear floor space that must be provided for wheelchairs: 30 inches by 48 inches, compared to Standard 802.1's 36 inches by 48 inches. *See* Standard 305.3. A reader of the Standards would not know which set of dimensions to apply in a given situation.

Conversely, no incongruity results from treating Standards 305 and 306 as inapplicable to wheelchair spaces in assembly areas under Standard 802.1. Standard 802.1's wider dimensions apply to facilities like stadiums, halls, and classrooms, which tend to be larger facilities where wheelchair users are viewing or spectating, often for lengthy periods of time. Standards relying on the dimensions in Standards 305 and 306 typically address spaces or things that wheelchair users need to get close to and may use only for short periods of time. For instance, Standard 804, addressing

kitchens and kitchenettes, requires that they include kitchen work surfaces. *See* Standard 804.3. The work surfaces must have "clear floor space complying with 305 positioned for a forward approach," as well as "knee and toe clearance complying with 306." Standard 804.3.1. Other examples include elevators' call buttons, 407.2.1.3; drinking fountains, 602.2; and public telephones, 704.2.1. Thus, Standards 305 and 306 retain sensible meaning and utility even if they are inapplicable here.

The district court's error about the Standards' use of cross-references means there is no need to consider its reasoning that the angled railing in Wrigley Field's upper-deck sections is an "element" for purposes of Standard 306.1. *See* Op. 32-33. Because Standard 802.1 does not contain a reference incorporating Standard 306.1, the latter provision simply does not apply here.

The district court's error requires reversal because, without the spaces designated as accessible in the three upper-deck sections at issue, Wrigley Field may no longer have the minimum number of ADA-compliant spaces. The parties to this case agreed that Wrigley Field needs at least 209 accessible seats, while the Cubs asserted that Wrigley Field has 225. Op. 9. Cerda disputed the ADA compliance of 15 seats in the upper-

deck sections. Op. 30. The non-compliance of those seats leaves Wrigley Field with 210, still above the minimum on which the parties agreed. But the district court declined to rule on 15 disputed seats in the center-field "Batter's Eye" area because it concluded that Wrigley Field has sufficient accessible seats elsewhere. Op. 47-48. The district court's erroneous ruling on the upper-deck sections and the unresolved dispute over the 15 center-field seats mean that further proceedings are required to determine conclusively whether Wrigley Field meets the minimum-number requirement.

II. The district court misapplied the Standards' substantial-equivalence and dispersion requirements for accessible seating.

The 2010 Standards require that wheelchair spaces in assembly areas "provide spectators with choices of seating locations and viewing angles that are *substantially equivalent to, or better than*, the choices of seating locations and viewing angles available to all other spectators." Standard 221.2.3 (emphasis added). This standard flows from the statutory requirement that persons with disabilities have "full and equal enjoyment" of the services and advantages offered by places of public accommodation. 42 U.S.C. 12182(a). Corollaries to Standard 221.2.3 further provide that

wheelchair spaces must be "dispersed horizontally" around the venue and "vertically at varying distances from the screen, performance area, or playing field." Standards 221.2.3.1, 221.2.3.2.

The district court misapplied these principles in assessing Wrigley Field's compliance with the Standards' substantial-equivalence and dispersion requirements. It dismissed Cerda's challenge to the vertical dispersion of seats at Wrigley Field based on the misapprehension that the Standards could never require front-row accessible seats. And it unduly narrowed the substantial-equivalence requirement in analyzing accessible seats that Wrigley Field relegates to the last row of their sections. Finally, it relied on an inappropriate "quartile" method of gauging horizontal dispersion.

A. The district court misinterpreted the 2010 Standards in dismissing Cerda's vertical-dispersion challenge.

At the outset of the case, Cerda alleged that Wrigley Field violated the vertical-dispersion standard because "there is no 'front-to-back' dispersion at Wrigley Field for wheelchair patrons. Rather, every ADA seat is in the last row" of its seating section. Doc. 62, at 16; *see* Standard 221.2.3.2. The district court dismissed Cerda's vertical-dispersion challenge

based partly on its understanding that "the 2010 Standards . . . do not require the Cubs to place ADA seats in the front row." Doc. 62, at 17-18.[6]

While no standard states expressly that assembly areas must provide front-row accessible seats, that can be the Standards' practical effect in cases involving venues like sports stadiums, as other courts have recognized. Wheelchair spaces in assembly areas, including stadiums, must be on accessible routes. Standards 221.1, 802.1.4. But in sports stadiums like Wrigley Field, most seating is reached by stairs and narrow aisles inaccessible to wheelchair users. *See Independent Living Res. v. Oregon Arena Corp.*, 982 F. Supp. 698, 709 (D. Or. 1997) ("[W]heelchair users cannot navigate stairways or the narrow passage leading to a seat in the middle of a row."), *supplemented*, 1 F. Supp. 2d 1159 (D. Or. 1998). Accessible routes thus will usually be at either the front or rear of a section, making those locations the only options for wheelchair spaces.

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[6] The court rested its dismissal on a lack of standing under Federal Rule of Civil Procedure 12(b)(1), rather than a failure to state a claim under Rule 12(b)(6). *See* Doc. 62, at 17 (finding that Cerda had not suffered an "injury in fact" with regard vertical dispersion of seats within Wrigley Field). The United States takes no position on whether Cerda had standing to assert the claim.

Applications of the predecessor rule, Section 4.33.3 of the 1991 Standards, are illustrative. Section 4.33.3 did not contain an express vertical-dispersion requirement. But, like Standard 221.2.3's substantial-equivalence requirement, Section 4.33.3 mandated that wheelchair spaces "be an integral part of any fixed seating plan," "*provide people with physical disabilities a choice of . . . lines of sight comparable to those for members of the general public*," and "*be provided in more than one location*." *See* 28 C.F.R. Pt. 36, App. D, at 56. Enforcing these requirements, the United States negotiated consent decrees with sports venues requiring front-row locations for wheelchair users. *See, e.g.*, Consent Decree at ¶¶ 7.b., 7.c., 8.a., *United States v. Madison Square Garden, L.P.*, No. 2:07-cv-09704-RJH (S.D.N.Y. Nov. 5, 2007) (requiring "front-row or rink-side" locations).

Courts applying Section 4.33.3 also held that stadiums could not cluster wheelchair spaces only in the last row of seats. For instance, in a challenge to Seattle's T-Mobile Park, a district court ruled that a stadium "could not fulfill Section 4.33.3's mandate by merely apportioning an equal amount of accessible seating within each of the stadium's vertical tiers but then relegating those seats entirely to the rear of each of the tiers." *Landis v. Washington State M.L.B. Stadium Pub. Facilities Dist.*, No. 2:18-cv-01512, 2019

WL 7157165, at *19 (W.D. Wash. Dec. 3, 2019), *aff'd in relevant part*, 857 F. App'x 930 (9th Cir. 2021). When "ambulatory patrons have the option to access front row seating, stadiums, at the very least, must also provide accessible front row seating for wheelchair patrons." *Ibid.*

Likewise, in a challenge to Denver's Coors Field, another district court found that most accessible seats were in the rear under an overhang, whereas non-wheelchair users had thousands of unobstructed seat options. *Colorado Cross-Disability Coal. v. Colorado Rockies Baseball Club, Ltd.*, 336 F. Supp. 2d 1141, 1146 (D. Colo. 2004). "Locating the wheelchair accessible seats at the back of the Lower Level does not provide[] comparable lines of sight[] for wheelchair patrons." *Ibid.*[7]

Stadiums that placed wheelchair spaces in rear areas satisfied Section 4.33.3 only by offsetting them with front-row spaces. *See Landis*, 2019 WL 7157165, at *19 (baseball stadium added front-row options after lawsuit began); *Bailey v. Board of Comm'rs of La. Stadium & Exposition Dist.*, 484 F.

[7] Similarly, stadium-style movie theaters violated Section 4.33.3 by clustering wheelchair spaces at the front, which subjected wheelchair users to inferior viewing angles. *See, e.g.*, *United States v. Cinemark USA, Inc.*, 348 F.3d 569, 576-580 (6th Cir. 2003); *Oregon Paralyzed Veterans of Am. v. Regal Cinemas, Inc.*, 339 F.3d 1126, 1131-1133 (9th Cir. 2003).

Supp. 3d 346, 361, 403 (E.D. La. 2020), *aff'd sub nom. Bailey v. France*, 852 F. App'x 852 (5th Cir. 2021) (New Orleans Superdome satisfied Section 4.33.3 because "wheelchair users are not entirely relegated to one specific spot, but rather have the choice between sitting in the front row, or the back row.").

The lessons of these cases apply even more forcefully under the 2010 Standards. The 2010 Standards added the express requirement of vertical dispersion, Standard 221.2.3.2, and turned Section 4.33.3's requirement of "comparable" sight lines into Standard 221.2.1's requirement of "substantially equivalent" (if not "better") "choices of seating locations and viewing angles." *See also* Advisory to Standard 221.2.3 ("[I]ndividuals who use wheelchairs must be provided *equal access* so that their *experience* is substantially equivalent to that of other members of the audience." (emphasis added)).

Accordingly, the district court should not have ruled, before fact development about Wrigley Field, that the 2010 Standards categorically do not require the Cubs to place accessible seats in its front rows. In Wrigley Field's particular circumstances, a developed factual record may demonstrate that the front and back rows are the only feasible places to put

wheelchair spaces, and thus that compliance with the vertical-dispersion and substantial-equivalence standards can require spaces in the front rows.

B. The district court misapplied the substantial-equivalence requirement for accessible seating in Wrigley Field's terrace level.

The district court rejected Cerda's argument that the accessible seats at Wrigley Field are not substantially equivalent to its non-accessible seats. At trial, Cerda focused on the relegation of the wheelchair spaces and their companion seats on Wrigley Field's terrace level to the last row of their respective sections. The upper deck at Wrigley Field hangs over the terrace level, obscuring views more the further back one sits. In upholding the ADA compliance of these seats, the district court misinterpreted the accessibility standards in two respects.

1. The district court stated that the Cubs could satisfy Standard 221.2.3's substantial-equivalence requirement "[e]ven if more than half of the accessible seats on the Terrace Level were among the 'worst' seats at Wrigley Field." Op. 40. The court based this counterintuitive conclusion on an unduly narrow reading of the advisories to Standard 221.2.3.

Two advisories are at issue: the Advisory to Standard 221.2.3, incorporated into the 2010 Standards' text; and the Analysis and

Commentary that the Department issued in 2010 when it adopted the Standards, 28 C.F.R. Pt. 36, App. B. Both principally reiterate the equality principle of Standard 221.2.3. The Advisory states that wheelchair users "must be provided *equal access* so that their *experience* is substantially equivalent to that of other members of the audience." Advisory to Standard 221.2.3 (emphasis added). The Analysis and Commentary states that Standard 221 "is based upon the underlying principle of *equal opportunity for a good viewing experience for everyone*, including persons with disabilities." 28 C.F.R. Pt. 36, App. B (emphasis added).

The district court derived a weaker principle through selective quotation of the advisories that missed their main thrust. The court drew from the Advisory to Standard 221.2.3's statement that, "while individuals who use wheelchairs need not be provided with the best seats in the house, neither may they be relegated to the worst." And it drew from the Analysis and Commentary's statement that "wheelchair locations do not have to be exclusively among the seats with the very best lines of sight nor may they be exclusively among the seats with the worst lines of sight." 28 C.F.R. Pt. 36, App. B. In the district court's formulation, this yielded the rule that Wrigley Field could satisfy Standard 221.2.3 as long as accessible

seats are not "'*relegated to* the worst [seats in the house,]' nor '*exclusively* among the seats with the worst lines of sight.'" Op. 40 (alteration in original; citations omitted) (quoting Advisory to Standard 221.2.3 and 28 C.F.R. Pt. 36, App. B).

This interpretation turns Standard 221.2.3's substantial-equivalence requirement into a bare-minimum threshold. Standard 221.2.3's plain terms require rough equality between accessible and non-accessible seats in choices of seating location and viewing angle. But the district court set the bar so low that a stadium could clear it even if its accessible seats are mostly the worst, provided they are not exclusively the worst. That reading strays far from the requirement of substantial equivalence and from the statutory touchstone that places of public accommodation must provide "full and *equal* enjoyment" to persons with disabilities. 42 U.S.C. 12182(a) (emphasis added). Coupled with the court's earlier ruling that the Standards do not require seats to be placed in the front row of their sections, the effect of the court's narrow conception of substantial equivalence was to permit Wrigley Field's placement of accessible seats only in the last row.

A proper analysis would consider the set of wheelchair spaces and companion seats against the set of non-accessible seats in the aggregate to compare their respective quality. *See* Standard 221.2.3 (requiring substantial equivalence in "choices" of seating locations and viewing angles). The difficulty in doing this comparison is that non-accessible seats are distributed through all sections and rows, accessed by stairways and narrow aisles, while the need for accessible routes means wheelchair spaces can be placed only in certain locations. *See Independent Living Res.*, 982 F. Supp. at 717. "[T]hese physical constraints preclude mathematical homogeneity in the distribution of wheelchair seating." *Ibid.*

Thus, a proper analysis would involve an aggregate comparison akin to weighted averages: comparing the weighted average of all accessible seats' quality to the weighted average of all non-accessible seats' quality. If "more than half of the accessible seats on the Terrace Level [are] among the 'worst' seats" (Op. 40), as the district court allowed, that would drag the overall average quality of accessible seats far below the average quality of non-accessible seats, in the same way that failing grades in most classes would ruin a student's grade-point average. At the very least, the stadium would fail to achieve substantial equivalence unless it also provided

considerable seating of much higher quality to balance things out. *Cf. Landis*, 2019 WL 7157165, at *19; *Bailey*, 484 F. Supp. 3d at 403. But Wrigley Field has not done so, and the district court's dismissal ruling deemed that unnecessary.

2. The district court incorrectly invoked 28 C.F.R. 36.406(f)(1) to justify the Cubs' placement of all accessible terrace-level seats in the last row of their respective sections. Op. 42 & n.10 ("Based on 28 C.F.R. § 36.406(f)(1), the Cubs are in fact required to locate accessible seats at the rear of the Terrace Level, which is served by an accessible route, and the failure to do so would have been noncompliant with the ADA."). That misinterprets the regulation.

Section 36.406(f)(1) is a dispersion mandate, requiring that "[i]n stadiums, arenas, and grandstands, wheelchair spaces and companion seats [must be] dispersed to all levels that include seating served by an accessible route." The mandate's purpose is to ensure "greater dispersion of wheelchair spaces and companion seats throughout stadiums, arenas, and grandstands than would otherwise be required by" Standard 221. 75 Fed. Reg. 56,236, 56,308 (Sept. 15, 2010); *see also* 73 Fed. Reg. 34,508, 34,545 (June 17, 2008) (proposing rule because it "should have the effect of

ensuring a choice of ticket prices, services, and amenities offered in the facility"). The Department of Justice's 2010 rulemaking offered the example of a sports venue that provides seating on the field, which non-wheelchair users reach by stairs, a non-accessible route. 75 Fed. Reg. at 56,308. If an accessible route could reach the seats on the field, then "wheelchair spaces and companion seats must be placed on the field even if that route is not generally available to the public." *Ibid.*

Nothing in Section 36.406(f)(1) commands that the Cubs place wheelchair spaces only at the rear of a level. It is true that wheelchair spaces must adjoin accessible routes, so that wheelchair users have a way to reach the spaces. *See* Standard 802.1.4. But neither that standard nor Section 36.406(f)(1) dictates that the route must be at the *rear* of a section. The accessible route can also be at the front of a wheelchair space, as indicated by Standard 802.1.3's depth requirement for wheelchair spaces, which applies to spaces that "can be entered from *the front* or rear" (emphasis added). Indeed, the Cubs could place all wheelchair spaces at the front of their sections and none at the rear. *See* Standard 221.2.3 (requiring "substantially equivalent . . . *or better* . . . choices of seating locations and viewing angles" (emphasis added)).

C. The district court incorrectly relied on an unsupported quartile approach to assess horizontal dispersion.

The district court rejected Cerda's argument that the Cubs failed to disperse accessible seats horizontally around the stadium in violation of Standard 221.2.3.1, relying in part on the "quartile" approach of Cubs expert Douglas Anderson. Op. 49. Anderson testified that horizontal dispersion can be assessed by "impos[ing] a plus sign on top of a map or drawing of the arena or stadium and determin[ing] whether accessible seating is provided in each of the four quartiles" created by the plus sign. Op. 49. Anderson attributed this approach to a 2021 Access Board webinar, during which a staff member suggested it in brief remarks.[8]

This quartile approach has no basis in the Standards, the Department of Justice's advisories and commentaries, or precedent. The Standards' lone reference to quartiles is an exception to the horizontal-dispersion requirement that applies only to "assembly areas with 300 or fewer seats." *See* Standard 221.2.3.1. The exception allows such smaller venues to put wheelchair spaces in the "the 2nd or 3rd quartile" of rows—that is, the

[8] *See* U.S. Access Board, *Assembly Areas*, Accessibility Online, at 32:08 (June 3, 2021), https://perma.cc/C47E-NR8C.

middle—rather than requiring them to disperse the seats horizontally to the "1st and 4th quartile[s]" of rows—that is, the ends. *Ibid.* That exception does not apply to assembly areas larger than 300 seats, much less provide that they satisfy horizontal dispersion as long as they have accessible seats in four quartiles, however defined. No provision governing horizontal dispersion in assembly areas otherwise refers to or relies on quartiles.

The quartile approach is a poor means of ensuring dispersion, particularly in large, complex assembly areas like Wrigley Field. To the extent certain amenities or prized views exist only in some parts of the stadium, the quartile approach would not ensure that wheelchair users can experience them. For instance, a baseball stadium could have accessible seats in each quartile without placing any behind home plate.

The quartile approach also would tolerate clustering, like a stadium placing all accessible seats behind the end zones. *Cf. Independent Living Res.*, 982 F. Supp. at 715-717 (rejecting arena seating plan that "clustered" accessible seats "in the corners of the end zone or high up on" level not otherwise used for permanent seating); *Paralyzed Veterans of Am. v. Ellerbe Becket Architects & Eng'rs, P.C.*, 950 F. Supp. 393, 398, 404 (D.D.C. 1996) (finding arena violated Section 4.33.3 because wheelchair spaces in the

lower bowl were "ghettoized in the two end zones, with only a few in the front rows and almost none in the center court sections"), *aff'd sub nom. Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579 (D.C. Cir. 1997).

Here, Wrigley Field could satisfy the quartile approach by grouping accessible seats in just four spots around the stadium, which would not ensure that wheelchair users experience "choices of seating locations and viewing angles that are substantially equivalent to" other spectators' choices. Standard 221.2.3. The quartile approach therefore is an inappropriate method for assessing horizontal dispersion in large venues like Wrigley Field, and the district court erred to the extent it relied on it.

CONCLUSION

This Court should reverse the district court's decision and remand for further proceedings consistent with the principles set forth above.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Seventh Circuit Rule 29 because it contains 6,484 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) and Seventh Circuit Rule 32(b) because it was prepared in Book Antiqua 14-point font using Microsoft Word for Microsoft 365.

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