No. 22-10646

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DYLAN CAMPBELL,

Plaintiff-Appellant

v.

UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD.,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANT AND URGING REVERSAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, the United States as amicus curiae certifies that, in addition to those identified in the brief filed by plaintiff-appellant, the following persons may have an interest in the outcome of this case:

1. Clarke, Kristen, U.S. Department of Justice, Civil Rights Division, counsel for the United States;
2. Levine, Brant S., U.S. Department of Justice, Civil Rights Division, counsel for the United States;
3. Riley, Nicolas Y., U.S. Department of Justice, Civil Rights Division, counsel for the United States.

The United States certifies that no publicly traded company or corporation has an interest in the outcome of this appeal.

s/ Brant S. Levine
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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which involves Title III of the Americans with Disabilities Act (ADA) and one of its implementing regulations. Congress charged the Department of Justice with implementing Title III of the ADA by promulgating regulations, issuing technical assistance, and bringing suits in federal court to enforce the statute. See 42 U.S.C. 12186(b)-(c), 12188(b), 12206; 28 C.F.R. Pt. 36.

This case also concerns a potential conflict between the ADA's anti-discrimination mandate and state law. In other cases involving potential conflicts between the ADA and state law, the United States has filed amicus briefs explaining how the ADA preempts state law. See, *e.g.*, *Disability Rts. S.C.* v. *McMaster*, 24 F.4th 893 (4th Cir. 2022) (No. 21-2070); *Chadam* v. *Palo Alto Unified Sch. Dist.*, 666 F. App'x 615 (9th Cir. 2016) (No. 14-17384); *American Nurses Ass'n* v. *Torlakson*, 304 P.3d 1038 (Cal. 2013) (No. S184583); *Mary Jo C.* v. *New York State & Loc. Ret. Sys.*, 707 F.3d 144 (2d Cir. 2013) (No. 11-2215).

STATEMENT OF THE ISSUE

Title III of the ADA prohibits places of public accommodation from imposing any "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities * * * unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered." 42 U.S.C. 12182(b)(2)(A)(i). The United States addresses the following question:

Whether a place of public accommodation that excludes persons with certain disabilities can justify that exclusion as "necessary"—and thus avoid Title III liability—simply by establishing that the exclusion is required by state law.

STATEMENT OF THE CASE

Plaintiff Dylan Campbell brought this suit under Title III of the ADA to challenge his exclusion from certain rides at an amusement park in Orlando, Florida. He alleges that the park's rider-eligibility rules, which prohibit anyone without two functioning arms from accessing most rides, are overbroad and not necessary to ensure rider safety. The district court granted summary judgment to the amusement park, holding that the park could not be liable under Title III because it complied with Florida law, which requires amusement-park operators to adopt all rider-eligibility restrictions established by a ride's manufacturer. Doc. 66, at 5-10.[1] Campbell appeals that order.

1. Statutory And Regulatory Background

a. Congress enacted the ADA after finding that "there was a 'compelling need' for a 'clear and comprehensive national mandate' to eliminate discrimination against disabled individuals, and to integrate them 'into the economic and social mainstream of American life.'" *PGA Tour, Inc.* v. *Martin*, 532 U.S. 661, 675 (2001) (quoting the legislative history of the ADA). A comprehensive prohibition on disability discrimination was necessary, *ibid.*, because "individuals with disabilities continually encounter various forms of discrimination, including

[1] "Doc. __, at __" refers to the docket entry and page number of documents filed on the district court's docket.

* * * overprotective rules and policies, * * * [and] exclusionary qualification standards," 42 U.S.C. 12101(a)(5).

To root out this discrimination in places of public accommodation, Congress enacted Title III of the ADA, which provides: "No individual shall be discriminated against 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 by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. 12182(a). An "amusement park" is a place of accommodation under the statute. 42 U.S.C. 12181(7)(I).

Title III defines discrimination to include, among other things,

> "the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered."

42 U.S.C. 12182(b)(2)(A)(i). The regulations implementing Title III clarify that this last clause—"necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered"—includes safety considerations: "A public accommodation may impose legitimate safety requirements that are necessary for safe operation." 28 C.F.R. 36.301(a) and (b).

Any safety requirements that exclude persons with disabilities "must be based on actual risks and not on mere speculation, stereotypes, or generalizations

about individuals with disabilities." 28 C.F.R. 36.301(b). As the Department of Justice explained when issuing this rule, legitimate safety qualifications that "would be justifiable in appropriate circumstances would include height requirements for certain amusement park rides or a requirement that all participants in a recreational rafting expedition be able to meet a necessary level of swimming proficiency." 56 Fed. Reg. 35,544, 35,564 (July 26, 1991).

b. Florida law imposes certain "[s]afety standards for amusement rides." Fla. Stat. Ann. § 616.242 (West 2020). The relevant statute instructs a state agency to issue safety rules that are "the same as or similar to" national standards. Fla. Stat. Ann. § 616.242(4)(a) (West 2020). The ensuing rules directly incorporated 20 guidelines from the leading international standards organization for amusement parks, ASTM (formerly known as the American Society for Testing and Materials). See Fla. Admin. Code Ann. 5J-18.0011 (West 2019).

The ASTM standards specify how amusement-park rides should be designed, manufactured, and operated. As relevant here, one standard requires amusement park operators to follow the operating instructions established by ride manufacturers. Doc. 66, at 7-8; see also Fla. Admin. Code Ann. 5J-18.016(6)(a) and (e) (West 2019) (instructing waterparks to operate a ride "in accordance with its operations manual and manufacturer requirements"). At least 31 other states have also adopted ASTM standards for amusement park rides or contain a similar

requirement that operators must follow a manufacturer's instructions. See Erik H. Beard, *You Must Be This Tall ... and Have This Many Hands ... and This Many Legs ... to Ride: Recreational Access Under the Americans with Disabilities Act*, 35 Franchise L.J. 19, 34 & n.84 (2015) (listing state laws). But "the vast majority of amusement rides and attractions have no manufacturer recommendations with regard to access." *Id.* at 35.

2. Factual Background

In 2019, Dylan Campbell traveled with his family to Volcano Bay, a water amusement park operated by Universal City Development Partners. Doc. 66, at 2. Campbell was born without a right forearm. Doc. 66, at 2. Campbell wanted to ride the Krakatau Aqua Coaster, a raft-style ride that propels riders up and down in water-filled tunnels. Doc. 66, at 2. But the ride's operator refused to let Campbell on, citing the rider eligibility rules. Doc. 66, at 2. Those rules state that "[t]wo natural functioning hands are required." Doc. 28-1, at 16. Managers at Volcano Bay then told Campbell that most other rides at the park have similar restrictions. Doc. 66, at 2.

The contested rides are all manufactured by a Canadian company called ProSlide. ProSlide's operations manual for these rides specifies that riders must be able to "firmly grasp the handles." Doc. 28, at 3-4, ¶ 14. Although that requirement effectively excludes all persons with only one functioning hand like

Campbell, ProSlide has no documentation of testing or any other tangible evidence of safety risk to any person with limb differences. Doc. 28, at 7-9, ¶¶ 26, 30. Nor did any of ProSlide's hazard analyses specifically assess whether a person with one natural arm could maintain a proper position throughout the ride. Doc. 28, at 9, ¶ 31. Rather, ProSlide developed that requirement based on (1) ProSlide's own testing of the ride (not involving people with limb differences), (2) the observations made by its customers and ride operators in the amusement park industry, and (3) ProSlide's general experience with different amusement parks throughout its 35-year history designing and manufacturing amusement rides. Doc. 28, at 7-8, ¶ 26. ProSlide also maintains that its safety requirements align with "industry-accepted riding standards" (Doc. 28, at 8-9, ¶ 29), though nothing in the record shows that "industry-accepted riding standards" includes safety considerations for people with limb differences.

ProSlide provided its operations manual to Universal before the amusement park opened, and Universal drafted rider eligibility guidelines for each ride. Doc. 28, at 4, ¶ 15. Universal's draft guidelines would have permitted individuals with one arm to ride all attractions, provided that the person could continuously maintain an appropriate ride position. Doc. 28, at 4, ¶ 16. But ProSlide objected to Universal's draft guidelines, insisting that persons with one limb be excluded from its rides even though it did not identify any particular risks to those persons. Doc.

28, at 4-5, ¶¶ 17-18; see also Doc. 28-13, at 7 (e-mail from ProSlide to Universal stating, "We feel that at this time we are not prepared to take on these risks"). Based on ProSlide's position, Universal revised its guidelines to preclude individuals with one arm from riding the contested rides. Doc. 28, at 6, ¶ 21.

3. Procedural History

Campbell filed suit under Title III of the ADA and the Florida Civil Rights Act. He alleges that Universal violated Title III "by imposing and applying eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations." Doc. 1, at 8, ¶ 49. Campbell does not allege a failure-to-accommodate claim—he wants Universal to change its policies for everyone. His complaint seeks a declaratory judgment and injunction requiring that "any [eligibility] criteria imposed by the Defendant to use its public accommodation are based on real risks and are tailored to such risks, and not unduly broad and based upon stereotypes of disabilities." Doc. 1, at 9.

After discovery, both parties moved for summary judgment, stipulating to the relevant facts and asking the district court to resolve a disputed legal issue: whether Universal's compliance with the manufacturer's safety instructions was "necessary" under Title III when Florida law requires amusement park operators to

follow manufacturer's safety instructions. The court answered that question affirmatively and granted summary judgment to Universal, holding that the "[t]he ADA does not preempt the Florida law and its accompanying regulations." Doc. 66, at 8.

In reaching that conclusion, the district court first reasoned that Congress "expressly anticipated the need for and exempted necessary eligibility criteria, and the Department of Justice recognized that such justifiable restrictions exist in the amusement ride context, a unique and inherently risk-laden form of entertainment." Doc. 66, at 8. Second, the court determined that Florida properly used its "historic police powers to institute a 'floor' of neutral ridership eligibility criteria that the Florida Legislature deems necessary for the safe operation of amusement rides." Doc. 66, at 9. Finally, the court held that Universal's undisputed compliance with the manufacturer's ridership eligibility criteria proved that those criteria are necessary for the safe operation of the rides. Doc. 66, at 9-10.

SUMMARY OF THE ARGUMENT

Contrary to the district court's ruling, a Title III defendant cannot escape liability for discriminatory conduct simply because that conduct is required under a state law. As other circuits have uniformly recognized, the ADA preempts state laws that conflict with or impede the ADA. Thus, the district court should not

have granted summary judgment to Universal merely because Universal followed state law.

Rather than resolving this case on state-law grounds, the district court should have focused its analysis on whether Universal's ban on one-limbed riders qualifies as "necessary" under the ADA and its implementing regulations. 42 U.S.C. 12182(b)(2)(A)(i); 28 C.F.R. 36.301(b). In answering this question, courts should certainly consider whether a defendant's conduct was mandated by state safety rules. But that is not all that courts should consider. If a plaintiff offers evidence that an exclusionary policy fails to qualify as a legitimate safety requirement—for instance, by demonstrating that the policy is based on speculation rather than actual risks—then a court may not disregard that evidence simply because the defendant complied with state law. That is what happened here, and this Court should thus remand with instructions for the Court to consider Campbell's evidence.

If Campbell's evidence establishes a genuine dispute over whether Universal's policies are "necessary" under the ADA, then Universal cannot prevail even if its policies are "neutral," as Universal argued in district court. Neutral, well-intended policies can still violate the ADA if they improperly exclude persons with disabilities. Indeed, Congress sought to eliminate paternalism when it enacted the ADA. So when persons with disabilities are improperly excluded from places

of public accommodation because of overbroad eligibility restrictions, operators of public accommodations must end those discriminatory practices, as Congress directed them to do.

In sum, because the district court applied the wrong legal standards, this Court should reverse the order granting summary judgment to Universal and remand the case with instructions to reconsider the parties' summary judgment motions.

ARGUMENT

THE DISTRICT COURT DID NOT PROPERLY EVALUATE WHETHER UNIVERSAL'S EXCLUSIONARY POLICIES WERE "NECESSARY" UNDER THE ADA

A. Defendants Cannot Escape Liability For Discriminatory Conduct Merely Because That Conduct Is Required Under A State Law

The district court's conclusion that "[t]he ADA does not preempt the Florida law" rests on the mistaken premise that state law controls here. Doc. 66, at 8. It does not. State law, standing alone, can never excuse discrimination that the ADA prohibits. As the Seventh Circuit has explained, "[a] discriminatory state law is not a *defense* to liability under federal law; it is a *source* of liability under federal law." *Quinones* v. *City of Evanston*, 58 F.3d 275, 277 (7th Cir. 1995). Thus, the district court erred by holding that Universal's compliance with Florida law, by itself, extinguishes Campbell's Title III claim.

Under the Supremacy Clause of the U.S. Constitution, "Congress may implicitly pre-empt a state law, rule, or other state action" through conflict preemption. *Oneok, Inc.* v. *Learjet, Inc.*, 575 U.S. 373, 376-377 (2015) (citing U.S. Const. Art. VI, Cl. 2). State law conflicts with federal law when, for instance, "the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Graham* v. *R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1186 (11th Cir. 2017) (internal quotation marks omitted) (quoting *Hillman* v. *Maretta*, 569 U.S. 483, 490 (2013)), cert. denied, 138 S. Ct. 646 (2018). When such a conflict exists, "federal law must prevail." *Oneok*, 575 U.S. at 377. "Federal law," for preemption purposes, includes both statutes and regulations. See *Fidelity Fed. Sav. & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153 (1982) ("Federal regulations have no less pre-emptive effect than federal statutes.").

In ADA and other disability-rights cases, courts of appeals have consistently recognized that "[r]eliance on state statutes to excuse non-compliance with federal laws is simply unacceptable under the Supremacy Clause." *Barber* v. *Colorado Dep't of Revenue*, 562 F.3d 1222, 1232-1233 (10th Cir. 2009). For example, the First Circuit held that a condominium association was "duty bound not to enforce a statutory provision if doing so would either cause or perpetrate unlawful discrimination." *Astralis Condo. Ass'n* v. *Department of Hous. & Urb. Dev.*, 620 F.3d 62, 69-70 (1st Cir. 2010) (rejecting the argument that local law precluded the

association from giving preferred parking spots to residents with disabilities). Likewise, the Ninth Circuit held that although courts generally "will not second-guess the public health and safety decisions of state legislatures, * * * it is incumbent upon the courts to insure that the mandate of [the ADA] is achieved." *Crowder* v. *Kitagawa*, 81 F.3d 1480, 1485 (9th Cir. 1996) (allowing a challenge to a state's animal quarantine law as applied to guide dogs).

Contrary to these decisions, the district court here held that Universal *could* rely on state law to excuse noncompliance with Title III, reasoning that neither the text nor the structure of Title III shows that Congress meant to preempt state health regulations. Doc. 66, at 8. But as the Supreme Court has held, "[e]ven without an express provision for preemption," a state law will still be preempted when, "under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372-373 (2000) (internal citation, brackets, and quotation marks omitted). That is why other courts of appeals have concluded—correctly—that defendants cannot rely exclusively on state laws to excuse compliance with the ADA or other disability-rights laws.

To be sure, this Court need not hold that the ADA in fact preempts the Florida law and regulations at issue here. Addressing that question is premature.

Universal argued in the district court that its policies are legitimate safety requirements that the ADA exempts from liability. If Universal is correct, then no conflict would exist between state and federal law because Universal's policies would be permissible under the ADA itself. But if Universal is wrong, then the ADA would preempt any state laws permitting the discriminatory policies. Either way, the district court must first consider whether Universal's ban on one-limbed riders actually qualifies as "necessary" under the ADA and its implementing regulations; it cannot simply assume that a state law requiring the exclusions supersedes the ADA.

B. Compliance With State Law Is Merely One Of Several Factors That A Court Should Consider

Rather than focusing on state law, the district court should have determined whether any material factual disputes existed on the merits of the case. The merits turn on a single issue: whether Universal's policies banning one-limbed riders qualify as "legitimate safety requirements that are necessary for safe operation." 28 C.F.R. 36.301(b). On this issue, Universal's reliance on state law is certainly relevant—when a state has chosen to mandate certain safety rules, those rules may well qualify as legitimate safety requirements. But state laws and practices are not always based on actual risk; they sometimes rely on stereotypes about persons with disabilities that perpetuate discrimination, even if inadvertently. So, plaintiffs like

Campbell must be given an opportunity to present evidence that supports their claim of illegal discrimination.

In other ADA cases where a defendant invokes a safety-related defense, courts have consistently held that the defendant must provide objective evidence to justify that safety measure. For example, when Disneyland objected to allowing Segways at its parks because of safety concerns, the Ninth Circuit held that "any safety requirements Disney imposes 'must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.'" *Baughman* v. *Walt Disney World Co.*, 685 F.3d 1131, 1137 (9th Cir. 2012) (quoting 28 C.F.R. 36.301(b)). Likewise, when a medical facility declined to serve a person with a disability because of purported safety concerns with his use of a service animal, the Third Circuit rejected that defense because "[n]o medical justification or other scientific evidence" supported those concerns. *Matheis* v. *CSL Plasma, Inc.*, 936 F.3d 171, 181 (3d Cir. 2019). And another court declined to allow a ski resort to exclude wheelchair users from a cable car because the resort "produced no studies or other evidence to support their judgment that wheelchair users would pose safety risks not posed by other individuals permitted to use the Cable Car." *Leiken* v. *Squaw Valley Ski Corp.*, No. 2:93cv505, 1994 WL 494298, at *9 (E.D. Cal. June 28, 1994).

As the above cases show, many different types of objective evidence can be considered when evaluating a safety-related defense to an ADA claim: whether the challenged restrictions are based on stereotypes; whether expert or scientific findings support the restrictions; whether the restrictions exclude more people than necessary to address the safety risk; and whether the defendant's own conduct casts doubt on the true need for such restrictions. The bottom line is whether the challenged requirement is "based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities." 28 C.F.R. 36.301(b).

In many cases, state-mandated safety rules will reflect actual risks, and plaintiffs will be hard-pressed to show otherwise.[2] That will often be the case in the amusement-park context, given the inherent dangerousness of certain rides. In fact, the commentary to the Title III safety regulation specifically cites height requirements at amusement park rides as an example of a permitted safety requirement that *may* permissibly screen out certain people with disabilities in appropriate circumstances. See 56 Fed. Reg. 35,544, 35,564 (July 26, 1991).

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[2] Notably, even when a plaintiff does prevail on an ADA claim, Title III generally authorizes private plaintiffs to receive only injunctive relief—not monetary damages. See 28 C.F.R. 36.501.

But this case is different, for several reasons. First, unlike height restrictions, which are grounded in anthropomorphic and scientific data, here the manufacturer "has no documentation of testing, ride verifications or any other tangible evidence of safety risk to any person with limb differences." Doc. 28, at 7-8, ¶ 26. Indeed, the manufacturer's "hazard analyses * * * identified no specific risks for anyone with a limb difference." Doc. 28, at 9, ¶ 30. Second, although ASTM standards for amusement park rides repeatedly reference height requirements, ASTM standards are themselves silent on restrictions for persons with limb differences. Doc. 30-1, at 23-110; Doc. 37-1, at 17. Third, state law itself does not directly address whether patrons need two functioning hands to ride waterslides safely—it simply delegates general responsibility for setting eligibility standards to ASTM, which, in turn, delegates that responsibility to manufacturers. Finally, Universal itself acknowledged that some people with one limb *could* safely enjoy the rides. Doc. 28, at 4, ¶ 16. Under these circumstances, a genuine dispute likely exists over whether the ban on one-limbed riders was based on "actual risk" and "necessary for safe operation," as the regulation requires. 28 C.F.R. 36.301(b).

The district court's decision to grant summary judgment to Universal under these circumstances contrasts with another district court's decision in a similar case, *Bench* v. *Six Flags Over Tex., Inc.*, No. 3:13-CV-705-P, 2014 WL 12586743

at *8 (N.D. Tex. July 7, 2014). *Bench* provides a model example of how courts should address claims and defenses like these. In *Bench*, an amusement park also defended its exclusionary policies by pointing to state law, which also required amusement parks to follow manufacturers' recommendations. The court, in denying summary judgment to the amusement park, correctly concluded that the amusement park "may not simply point to state law to escape liability." *Id.* at *7-8 (recognizing that those laws may be preempted by the ADA). Rather, the court held, "defendants to these suits still bear the burden of proving their defense on the merits" and must show that the restrictions are "grounded in objective evidence rather than assumptions about the disabled." *Ibid.*[3]

As the *Bench* court also highlighted when denying summary judgment to the amusement park, mere reliance on state law does not necessarily promote safety in this particular context: "States are passing the buck to ASTM and ASTM is passing the buck to manufacturers." 2014 WL 12586743 at *8. Indeed, Universal's own expert testified that manufacturers could impose arbitrary

[3] As the district court below noted in declining to follow *Bench*, two other district courts have reached a different result than *Bench*, holding that plaintiffs may not pursue Title III claims against amusement parks that followed state law requiring them to implement restrictions imposed by the manufacturers. Doc. 66, at 8-9 (citing *Masci* v. *Six Flags Theme Park, Inc.*, No. 3:12-cv-6585, 2014 WL 7409952, at *10 (D.N.J. Dec. 31, 2014) and *Castelan* v. *Universal Studios Inc.*, No. 2:12-cv-5481, 2014 WL 210754, at *7 (C.D. Cal. Jan. 10, 2014)). These holdings, however, run afoul of the Supremacy Clause for the reasons stated above.

guidelines that have nothing to do with safety, and amusement parks would be bound to implement them. Doc. 37-1, at 18-20 (acknowledging that manufacturers could restrict women from riding or, "[a]s ridiculous as it sounds," ban persons with blond hair). Although amusement parks may understandably want to blame the manufacturers when these guidelines lead to liability, *Bench* correctly recognized that this game of hot potato has no place under Title III. 2014 WL 12586743 at *8. The ADA does not excuse discrimination just because someone else started it.

In sum, even if amusement parks can show that they did not create discriminatory policies, the ADA compels them, as public accommodations, to either justify those policies or change them. See 42 U.S.C. 12182(a) (applying Title III's prohibitions to "any person who owns, leases (or leases to), or operates a place of public accommodation"). Given this statutory mandate, Universal should not have prevailed on its summary judgment motion simply because it followed the manufacturer's guidelines.

C. Neutral Policies Can Still Violate The ADA If They Improperly Exclude Persons With Disabilities

Nor can Universal prevail, as it argued in the district court, because its restrictions "are neutral on their face" and thus do not discriminate based on disability. Doc. 30, at 14-15. Putting aside whether Universal's exclusionary policies truly are "neutral," this characterization cannot defeat a Title III claim, as

the district court implied. See Doc. 66, at 8 (stating that state law institutes "a 'floor' of neutral ridership eligibility criteria that the Florida Legislature deems necessary for the safe operation of amusement rides").

Title III claims do not depend on whether an exclusionary rule is neutral. What matters is whether individuals with disabilities are being denied "the full and equal enjoyment" of goods and services offered by places of public accommodation. 42 U.S.C. 12182(a). Of course, this rule is not absolute—the ADA provides several exceptions, such as when the policies are either necessary for operation or to protect against direct threats to the health or safety of third parties. See, *e.g.*, 42 U.S.C. 12182(b)(2)(A)(i) and (b)(3). But no allowance exists solely because a policy is "neutral."

In fact, the commentary to the Title III safety regulation recognizes that even neutral policies can violate the ADA. 56 Fed. Reg. at 35,564. As that commentary explains, public accommodations may not "impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate." *Ibid.* For example, a well-intended neutral rule (like requiring a driver's license to cash a check) can violate Title III by indirectly excluding persons with disabilities (like people with vision impairments who cannot obtain a driver's license). *Ibid.*; cf. *Crowder*, 81 F.3d at 1485 (holding that

a state's animal quarantine law, as applied to guide dogs, may violate Title II of the ADA).

And, of course, neutral rules may not always be so well-intended. Neutral rules excluding persons with disabilities can sometimes be a pretext for addressing other concerns, such as promoting the perception that an amusement park is safe or avoiding increased insurance rates. Neutral rules can also promote paternalism—"the most pervasive form of discrimination for people with disabilities." H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. pt. 2, at 74 (1990). But in cases like this, courts need not try to discern the defendant's true motives. They need only determine whether (1) the entity's policies "screen out or tend to screen out an individual with a disability * * * from fully and equally enjoying" the services offered, and (2) whether an exception exists. 42 U.S.C. 12182(b)(2)(A)(i). When making this determination, courts should heed the well-established cannon of statutory interpretation that a remedial statute "should be broadly construed to effectuate its purpose." *Steger* v. *Franco, Inc.*, 228 F.3d 889, 894 (8th Cir. 2000) (applying this principle to Title III). The district court here failed to do so, and its order granting summary judgment to Universal should thus be reversed.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g):

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 4634 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman, 14-point font.

s/ Brant S. Levine
BRANT S. LEVINE
Attorney

Date: June 9, 2022