

[UN]USUAL SUSPECTS: DESERVINGNESS, SCARCITY,  
AND DISABILITY RIGHTS

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People encounter disability in public spaces where accommodations are granted to those who fit into this protected legal class. Nondisabled people desire many of these accommodations—such as the use of reserved parking spots or the ability to avoid waiting in a queue—and perceive them as “special rights” prone to abuse. This apprehension

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about the exploitation of rights by those pretending to be disabled, which I refer to as “fear of the disability con,” erodes trust in disability law and affects people with disabilities both on an individual level and a group level. Individuals with disabilities are often harassed or questioned about their identity when using their rights. As a group, disabled people are forced to navigate new defensive policies that seek to address widely held perceptions of fakery and abuse. This Article uses a series of survey experiments conducted with multiple nationally representative

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samples totaling more than 3200 Americans along with forty-seven qualitative in-depth interviews. It brings to light the psychological mechanism of suspicion and identifies factors that motivate fear of the disability con in public spaces. Findings counterintuitively suggest that the scarcity of the desired public resources has no effect on the level of suspicion against potential abusers. Rather, it is the sense of deservingness (or lack thereof) in the eyes of others that drives suspicion. Using these empirical findings, as well as analysis of relevant case law, this Article outlines the normative implications for the design and implementation of laws affecting millions of individuals. Furthermore, this research contributes to our understanding of how rights behave on the ground, both with regard to disability and to myriad distributive policies.

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## INTRODUCTION

In July 2018, two men in Florida were assaulted in separate incidents occurring three days apart. One man was critically stabbed and the other shot dead. Those assaults were initiated by a “self-appointed guardian of disabled parking spaces [who] decide[ed] someone doesn’t belong in such a place and confront[ed] the person.”<sup>1</sup> A month later, in the same state, an appeal that challenged a new policy for visitors with disabilities in Disney parks due to perceived abuse of rules by people faking disabilities was decided in the Eleventh Circuit.<sup>2</sup> At first glance, these two cases seem unrelated. However, I argue that they point to much broader issues regarding the ethics of using disability accommodations and to a moral panic about abuse of rights by “nondisabled fakers.” In this Article, I use two case studies of disabled parking and queuing in theme parks as the basis for an original study that investigates perceptions of fairness, noncompliance, and deservingness. The empirical findings from this

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<sup>1</sup> Howard Cohen, They Fought over a Handicapped Parking Spot, Cops Say. Now a Man Is Fighting for His Life, MIAMI HERALD (July 18, 2018), <https://miamiherald.com//local//.html> [<https://web.archive.org/web/20180719110844/https://www.miamiherald.com/news/local/crime/article215084395.html>]; Julia Jacobs, ‘Stand Your Ground’ Cited by Florida Sheriff Who Declined to Arrest Suspect in Killing, N.Y. TIMES (July 21, 2018), <https://www.nytimes.com/2018/07/21/us/florida-stand-your-ground.html> [<https://perma.cc/DYL9-MP3V>].

<sup>2</sup> A.L. ex rel. D.L. v. Walt Disney Parks and Resorts US, Inc., 900 F.3d 1270 (11th Cir. 2018).

research reach beyond disability law and contribute to the understanding of decision-making processes on the allocation of goods and determination of eligibility for compensation, public goods, services, or benefits.

People's beliefs about fairness, justice, and trust in others are the core antecedent of the willingness to cooperate voluntarily and stand behind laws and policies.<sup>3</sup> This is especially true in regard to distributive laws that ask people to allocate valuable resources to other members of society.<sup>4</sup> Western societies increasingly rely on formal rules and legal rights to regulate interactions and exchanges between their members.<sup>5</sup>

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<sup>3</sup> Cass R. Sunstein, Behavioral Law and Economics: A Progress Report, 1 AM. L. & ECON. REV. 115, 121–22 (1999); Tom R. Tyler, Trust and Law Abidingness: A Proactive Model of Social Regulation, 81 B.U. L. REV. 361, 403 (2001); Tom R. Tyler, Why Do People Rely on Others? Social Identity and Social Aspects of Trust, in TRUST IN SOCIETY 285, 285–87 (Karen S. Cook ed., 2001); Katharine G. Young, Rights and Queues: On Distributive Contests in the Modern State, 55 COLUM. J. TRANSNAT'L L. 65, 88 (2016).

<sup>4</sup> NORMAN T. FEATHER, VALUES, ACHIEVEMENT, AND JUSTICE: STUDIES IN THE PSYCHOLOGY OF DESERVINGNESS 169–70 (1999); Rourke L. O'Brien, Monetizing Illness: The Influence of Disability Assistance Priming on How We Evaluate the Health Symptoms of Others, 128 SOC. SCI. & MED. 31, 32, 34 (2015) (showing how the prospect of taxpayer funded public benefits alters the way one evaluates others' deservingness); Young, supra note 3, at 88.

<sup>5</sup> BARBARA A. MISZTAL, INFORMALITY: SOCIAL THEORY AND

When a “cheater” violates the rules by taking advantage of the benefits offered while failing to meet the expected requirements,<sup>6</sup> the balance and evolution of exchange are threatened.<sup>7</sup> Scholars argue that as a consequence, individuals are continually vigilant, trying to detect cheaters.<sup>8</sup>

How do people assess the legitimacy of rights? What drives the support of certain policies and pushback against others? Is it the rational

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CONTEMPORARY PRACTICE 77 (2000).

<sup>6</sup> In a situation that may create a “sucker effect,” when other members of a group appear to be free-riding, one would be less motivated to make an effort and follow the rules themselves in order not to play the “sucker role.” See Norbert L. Kerr, Motivation Losses in Small Groups: A Social Dilemma Analysis, 45 J. PERSONALITY & SOC. PSYCHOL. 819, 820–21 (1983); Ashley Simms & Tommy Nicholas, Social Loafing: A Review of the Literature, 15 J. MGMT. POL'Y & PRAC. 58, 63 (2014).

<sup>7</sup> Leda Cosmides, The Logic of Social Exchange: Has Natural Selection Shaped How Human Reason? Studies with the Wason Selection Task, 31 COGNITION 187, 197–98 (1989); Elain Walster, Ellen Berscheid & G. William Walster, The Exploited: Justice or Justification?, in ALTRUISM AND HELPING BEHAVIOR: SOCIAL PSYCHOLOGICAL STUDIES OF SOME ANTECEDENTS AND CONSEQUENCES 179, 181 (J. Macaulay & L. Berkowitz eds., 1970).

<sup>8</sup> Leda Cosmides & John Tooby, Cognitive Adaptation for Social Exchange, in THE ADAPTED MIND: EVOLUTIONARY PSYCHOLOGY AND THE GENERATION OF CULTURE 163, 180–81 (Jerome H. Barkow, Leda Cosmides & John Tooby eds., 1992).

pursuit of self-interest, driven by the idea of sharing scarce resources, or is it views about the beneficiaries' deservingness,<sup>9</sup> motivated by the desire to enforce rules of fairness and to prevent cheaters? This Article answers these questions by looking at the case of disability rights and accommodations—an area of law considered rife with abuse—resulting in mistrust in its policies and its beneficiaries. The Article also empirically proves that perceptions of ethics and fairness trump the pursuit of self-interest in circumstances of scarcity.

The last three decades have brought about a significant shift in the legal treatment of Americans with disabilities. With the enactment of the omnibus Americans with Disabilities Act (ADA) of 1990,<sup>10</sup> disability has graduated from being the subject of charity or goodwill to being

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<sup>9</sup>. Norman Feather, as well as some other scholars, prefer the term “entitlement” to describe situations where claims for some outcome are codified in laws or can be traced back to social norms. Accordingly, deservingness should refer to “judgments about outcomes that are associated with a person’s actions.” Norman T. Feather, Deservingness, Entitlement, and Reactions to Outcomes, in THE JUSTICE MOTIVE IN EVERYDAY LIFE 334, 336–38 (Michael Ross & Dale T. Miller eds., 2002). Nevertheless, in this Article, I will use the term deservingness when referring to people’s evaluations of individuals’ use of codified disability rights and accommodations, as this is the more common expression used in the literature.

<sup>10</sup>. Pub. L. No. 101–336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–12113 (2012)).

recognized as a matter of civil rights.<sup>11</sup> The ADA broke new ground in American legal tradition, not only by prohibiting disability discrimination in all areas of public life but also by further combining a distributive element of “positive rights” that compels the state and private actors to affirmatively provide accommodations for disabled people.<sup>12</sup> This is while most American civil rights law is grounded in the tradition of negative rights, prohibiting government interference with private behavior.<sup>13</sup> After almost three decades since the ADA’s enactment, however, and despite the fact

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<sup>11</sup>. RICHARD K. SCOTCH, FROM GOOD WILL TO CIVIL RIGHTS: TRANSFORMING CIVIL DISABILITY POLICY 10–11 (2d ed. 2001); Arlene S. Kanter, The Law: What’s Disability Studies Got to Do with It or an Introduction to Disability Legal Studies, 42 COLUM. HUM. RTS. L. REV. 403, 445 (2011); Michael Ashley Stein, From Crippled to Disabled: The Legal Empowerment of Americans with Disabilities, 43 EMORY L.J. 245, 255 (1994).

<sup>12</sup>. See 42 U.S.C. § 12183 (2012); Cass R. Sunstein, Why Does the American Constitution Lack Social and Economic Guarantees?, 56 SYRACUSE L. REV. 1, 6 (2005).

<sup>13</sup>. See KATHARINA HEYER, RIGHTS ENABLED: THE DISABILITY REVOLUTION, FROM THE US, TO GERMANY AND JAPAN, TO THE UNITED NATIONS 44–45 (2015); STEPHEN HOLMES & CASS R. SUNSTEIN, THE COST OF RIGHTS: WHY LIBERTY DEPENDS ON TAXES 40–41 (1999); Michael Ashley Stein & Penelope J.S. Stein, Beyond Disability Civil Rights, 58 HASTINGS L. J. 1203, 1209 (2006); Mark Tushnet, Essay on Rights, 62 TEX. L. REV. 1363, 1392–93 (1984).

that disability rights have become ubiquitous in everyday life, laypeople do not seem to fully grasp disability as a civil rights issue and have difficulty accepting accommodations as positive rights.

Fitting into the “special administrative category” of disability gives some people “privileges” (in fact accommodations) that nondisabled individuals often desire.<sup>14</sup> These so-called privileges include, for example, the right to park in reserved spots even when parking is limited or to go to the front of long lines.<sup>15</sup> As a consequence, disability rights are often perceived as prone to abuse. Those using such accommodations, who already belong to a stigmatized group, are encountering another type of stereotype: they are regarded as faking their disabilities and abusing the law to gain an unfair advantage. I refer to this perception of a “national epidemic of horrible people pretending to be disabled”<sup>16</sup> as “fear of the

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<sup>14.</sup> In her 1984 book, written before the enactment of the ADA, Deborah Stone writes, “The argument that disability functions as a privileged category is meant in the very precise sense: the state accords special treatment to some people who are disabled.” DEBORAH A. STONE, *THE DISABLED STATE* 4 (1984). Although Stone referred mostly to public benefits in her analysis, this idea can be extended to other disability rights and accommodations granted by the ADA.

<sup>15.</sup> DANA S. DUNN, *THE SOCIAL PSYCHOLOGY OF DISABILITY* 21 (2015); MICHELLE NARIO-REDMOND, *ABLEISM: THE CAUSES AND CONSEQUENCES OF DISABILITY PREJUDICE* 203 (2019).

<sup>16.</sup> Brad Tuttle, National Epidemic of Horrible People Pretending to Be Disabled, *TIME* (Oct. 12, 2013), <http://business.time>.

disability con.”<sup>17</sup> In previous work, I demonstrated how the suspicion of the disability con is prevalent among the American public and how it cuts across different types of disability rights: academic accommodations in educational settings, disabled parking privileges, Social Security benefits, and the use of service animals.<sup>18</sup> I also pointed out that people with disabilities are reluctant to ask for accommodations and disability-related rights due to the fear of being thought of as fakers or abusers.<sup>19</sup>

This Article examines the psychological mechanism behind the everyday apprehension about the exploitation of rights by those “pretending” to be disabled. It uses a mixed-methods approach to uncover what factors affect laypeople’s suspicion of the disability con. By doing so, this Article makes two original contributions. First, it allows for the assessment

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com/2013/10/12/national-epidemic-of-horrible-people-pretending-to-be-disabled/ [<https://perma.cc/J727-MNBZ>].

<sup>17</sup>. The term “disability con” was originally coined by English professor and disability studies scholar Ellen Samuels, who described how the idea of malingering and “faking” a disability was portrayed in literary pieces and cultural products. See, e.g., ELLEN SAMUELS, FANTASIES OF IDENTIFICATION: DISABILITY, GENDER, RACE 28 (2014); Ellen Samuels, *From Melville to Eddie Murphy: The Disability Con in American Literature and Film*, 8 LEVIATHAN 61 (2006).

<sup>18</sup>. See, e.g., Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53.4 LAW & SOC’Y REV. 1051 (2019).

<sup>19</sup>. Id.

of what drives people's perceptions about fairness of rights and distributive legal mechanisms. Second, it explores an important yet unexplored barrier Americans with disabilities confront when trying to use their rights and accommodations in the public sphere: that of public suspicion about faking disabilities and abusing the law. This suspicion leads to harassment and to the creation of defensive policies that curtail the participation of disabled individuals in civic life.

Using a series of survey experiments along with forty-seven qualitative interviews, this Article empirically assesses how fear of the disability con plays out in two case studies: the use of disabled parking placards and the policy allowing disabled visitors to skip lines at Disneyland.<sup>20</sup>

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<sup>20</sup> I am aware that the expensive experience of visiting a Disney park is one reserved to those with great class privilege, which stands in contrast to the fact that people with disabilities usually belong to a lower social economic background. However, and as I discuss later, people with disabilities do visit Disney parks regularly, primarily because of their high level of accessibility. It is the prevalence of Disney parks in the lives of many individuals with disabilities that drew me to this case study. As articulated by blogger Katy St. Clair: "Many people with developmental disabilities make a trip to a Disney theme park their one vacation in life—yes, life. They live on Social Security, a very modest amount, and Disney parks aren't cheap. A one-day Disneyland pass costs \$99—and that doesn't count parking, food, or gift shop purchases. If a person with disabilities gets a windfall—an inheritance, bonus at work, high-stakes Special Olympics betting payout—they need to dump it quickly, lest the

Both case studies involve accommodations put in place to allow persons with disabilities to better navigate the public space.

The survey experiments, which I conducted with nationally representative samples totaling more than 3200 Americans,<sup>21</sup> test the effect of two independent variables on the level of suspicion of the disability con: deservingness (measured through the proxy of the visibility of disability) and scarcity of resources.

The term “deservingness” plays a central role in social policy studies on the welfare state.<sup>22</sup> It refers to general public support for services

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government step in and snatch it. Naturally, their first choice is often to spend it like an NFL star who just won the big game.” Katy St. Clair, How Fakers with Wheelchairs Ruined Disneyland’s Disabled Line, BROADLY (Nov. 4, 2015), [https://broadly.vice.com/en\\_us/article/jpy3vy/how-fakers-with-wheelchairs-ruined-disneylands-disabled-line](https://broadly.vice.com/en_us/article/jpy3vy/how-fakers-with-wheelchairs-ruined-disneylands-disabled-line) [<https://perma.cc/EU4P-CAMK>].

<sup>21</sup>. For a detailed explanation of the research design and samples used for the experiments, see infra Part III.

<sup>22</sup>. SUSANNE N. BEECHEY, SOCIAL SECURITY AND THE POLITICS OF DESERVINGNESS 35 (2016); MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY 61–63, 92 (1999); MICHAEL B. KATZ, THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE (1989); STEIN RINGEN, THE POSSIBILITY OF POLITICS: A STUDY IN THE POLITICAL ECONOMY OF THE WELFARE STATE 47–63 (1987); THEDA SKOCPOL, PROTECTING

and is usually measured using public opinion data.<sup>23</sup> I expand the use of this term to also include accommodations outside of social benefits. To assess deservingness, I use the common misconception about how disability should manifest itself—being clearly visible and easily detectable—thus, presumably, signaling a higher degree of deservingness.

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SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES 138 (1992); Wim Van Oorschot & Femke Roosma, The Social Legitimacy of Targeted Welfare and Welfare Deservingness, in THE SOCIAL LEGITIMACY OF TARGETED WELFARE: ATTITUDES TO WELFARE DESERVINGNESS 3, 4 (Wim Van Oorschot, Femke Roosma, Bart Meuleman & Tim Reeskens eds., 2017). For a fascinating experimental study about deservingness and Social Security disability benefits, see O'Brien, supra note 4 (showing that participants who were primed with information about an individual receiving government assistance were harsher in their evaluation of his or her disability i.e., less likely to say he or she lives with a disabling impairment and more likely to blame them for their condition). For the ways in which deservingness plays out in other areas of law, such as international investment law, see Sergio Puig & Anton Strezhnev, The David Effect and ISDS, 28 EUR. J. INT'L L. 731 (2017) (finding that international arbitrators were more likely to grant poorer states reimbursement of their legal costs compared to wealthy states, as the first were perceived to be more deserving).

<sup>23</sup> Van Oorschot & Roosma, supra note 22, at 5.

Nonvisible or less apparent disability signals a lower degree of deservingness.

By scarcity of resources, I refer to the availability of public resources in a specific scenario. In this research, scarcity refers to the abundance or lack of parking spots and to a short or long wait time in line for an attraction at Disneyland.<sup>24</sup> My hypothesis is that the level of fear of the disability con will be higher when resources are scarce (parking lot full/an hour-long wait) in comparison with a situation in which there is no such problem (parking lot empty/a few minutes or no wait time).

Disability law serves as a useful tool for studying public perceptions of trust and fairness because it is an area of law that is largely left for private enforcement by members of society, specifically in everyday situations in which formal law enforcement is absent (at least in the immediate sense). As legal scholar Sarah Marusek observes:

Constitutive legal theory reminds us that law is made by everyday actors interpreting what the law really means. In this way, the non-disabled members of society have as much

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<sup>24</sup>. Scarcity of resources has also been referred to as congestion: “The basic congestion problem involves a situation in which demand exceeds available supply. In other words, capacity is scarce . . . . This may lead to congestion, in the form of crowding, increased waiting time in queues, slower service, pollution, noise, reduced quality of service due to increased interruptions of service, and so on.” BRETT M. FRISCHMANN, *INFRASTRUCTURE: THE SOCIAL VALUE OF SHARED RESOURCES* 138–39 (2012).

to say, if not more, about how the ADA works for the simple reason that, in my view, the non-disabled are those who implement disability policy in everyday situations.<sup>25</sup>

Using the two case studies and narratives by interviewees, I demonstrate how the fear of the disability con affects people with disabilities both on an individual and group level. Individuals with disabilities are often harassed or questioned about their status when making use of a disabled parking placard or theme park policy. Disabled people as a group are also forced to navigate new defensive policies that seek to address widely held perceptions of fraud and abuse by limiting the scope of the accommodations. The two case studies were chosen due to their wide public familiarity that stems from personal experience and from the attention they receive in media coverage and popular culture. The focus on case studies also allows for some assessment of the elusive nature and scope of the “objective” abuse.

My findings show, perhaps counterintuitively, that the level of scarcity of public resources has no effect on levels of suspicion. It is the sense of deservingness (or lack thereof) that drives mistrust, as participants were always much more suspicious of a person with a nonvisible disability. These findings suggest that fear of the disability con is a matter of principle—that of perceived fairness, justice, and ethics, which goes beyond a simple cost-benefit analysis. Furthermore, the findings show that those

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<sup>25</sup>. SARAH MARUSEK, POLITICS OF PARKING: RIGHTS, IDENTITY, AND PROPERTY 139 (2012).

with an “inside view” of disability,<sup>26</sup> disabled individuals and nondisabled people who have a personal relationship with a disabled person, were found generally less suspicious of disability con. These findings serve as the basis for proposed policy aimed at improving access, reducing the stigma of fraud, and increasing trust in disability law and its beneficiaries. The findings also hold valuable lessons for those studying public support and legitimacy of myriad distributive policies outside of the disability realm, such as health care,<sup>27</sup> immigration,<sup>28</sup> and mass torts.<sup>29</sup>

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<sup>26</sup>. DUNN, supra note 15, at 20–22; PAUL K. LONGMORE, TELETHONS: SPECTACLE, DISABILITY, AND THE BUSINESS OF CHARITY 98–99 (Catherine Kudlick ed., 2016); Elizabeth F. Emens, Framing Disability, 2012 U. ILL. L. REV. 1383, 1386 (2012).

<sup>27</sup>. JESSICA L. ROBERTS & ELIZABETH WEEKS, HEALTHISM: HEALTH-STATUS DISCRIMINATION AND THE LAW 92, 100 (2018).

<sup>28</sup>. For an empirical analysis of deservingness in the context of immigration policy in Europe, see Kirk Bansak, Jens Hainmueller & Dominik Hangartner, How Economic, Humanitarian, and Religious Concerns Shape European Attitudes Toward Asylum Seekers, 354 SCIENCE 217 (2016).

<sup>29</sup>. For changing public notions about the deservingness in the context of mass torts, see Michele Landis Dauber, The War of 1812, September 11th, and the Politics of Compensation, 53 DEPAUL L. REV. 289, 345, 348 (2003) (documenting the shift in public views of victims of the 9/11 attacks and their family members, who received compensation, from viewing them as “deserving of charity” to “worthy of suspicion” for being

This Article proceeds as follows: Part I presents the socio-legal phenomenon of the public fear of the disability con. Part II introduces the mixed-methods methodology used in this research. Part III discusses the legal framework of the two case studies, the use of parking placards and the disability policy in Disneyland, the experiments conducted on each one, and the findings from these experiments. Part IV discusses the findings. Using interview data along with a variety of secondary sources, it discusses the effect of the suspicion on people with disabilities, which control variables had an effect on the level of suspicion, and data about the scope of abuse of disability rights. Part V delineates the normative implications of the findings for policy that would affect both disabled and nondisabled members of society. The conclusion explores ways of utilizing the findings and methodology in other legal areas other than within disability law.

## I. THE PERSISTENCE OF THE FEAR OF THE DISABILITY CON: FROM CHARITY TO RIGHTS

People with disabilities have been historically excluded from the public sphere. In the late nineteenth century, people with physical disabilities (“any person who is diseased, maimed, mutilated, or in any way deformed”) or mental disabilities (“mad vagrants”) were considered

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greedy). For an enlightening description of the process of determining deservingness for compensation by decision-makers in various types of mass torts, see KENNETH R. FEINBERG, WHO GETS WHAT: FAIR COMPENSATION AFTER TRAGEDY AND FINANCIAL UPHEAVAL (2012).

“unsightly” and were banned from appearing in public by laws spreading across U.S. cities, known as the Ugly Laws.<sup>30</sup> The Ugly Laws were enacted at a time in which urban begging had become widespread,<sup>31</sup> and the regulation of the two closely related categories of disability and vagrancy became a priority both from the practical need to regulate the cityscape and from a moral standpoint.<sup>32</sup> From an ethical standpoint, there was a need to protect the public from fraud by helping the

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<sup>30</sup>. The first Ugly Law was passed in 1867 in San Francisco, but most of the others were passed in the 1880s and the 1890s. See SUSAN M. SCHWEIK, THE UGLY LAWS: DISABILITY IN PUBLIC 24 (2009). For the development of the legal category of an “unsightly beggar,” see id. at 25–26.

<sup>31</sup>. Id.; Susan M. Ryan, Misgivings: Melville, Race, and the Ambiguities of Benevolence, 12 AM. LITERARY HIST. 685, 686 (2000). The reason for the rise of urban begging is attributed to social transformations allowing greater geographic and social mobility that led to “constant confrontation with strangers [that] must have undermined people’s sense that they could understand one another. And nothing can be more threatening to a sense of social order than the perception that the boundaries between the real and the fake are suddenly blurred.” STONE, supra note 14, at 33.

<sup>32</sup>. SCHWEIK, supra note 30, at 27; STONE, supra note 14, at 29. For the historic connection between poverty and disability, see Jacobus tenBroek & Floyd W. Matson, The Disabled and the Law of Welfare, 54 CALIF. L. REV. 809, 809 (1966).

layperson distinguish the true disabled beggars “worthy” of benevolence and charity from the “unworthy fake disabled beggars”;<sup>33</sup> “[d]isability, after all, could be faked, as could illness, hunger pains, and other sympathy-eliciting elements.”<sup>34</sup> As a result, people with disabilities were forcibly institutionalized away from the public eye.<sup>35</sup> The Ugly Laws remained on the books for a century and were even occasionally enforced during the second half of the twentieth century.<sup>36</sup>

Years later, the disability rights movement’s ongoing struggle for accessibility, which started in the early 1960s, demonstrates that the exclusion of persons with disabilities from the public sphere was not only the product of prejudice and stigma but also the outcome of exclusionary environments that disregard disability from early stages of planning and design.<sup>37</sup> Without access, people with disabilities cannot benefit

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<sup>33</sup>. Yoshiaki Furui, “Secret Emotions”: Disability in Public and Melville’s *The Confidence Man*, 15 *LEVIATHAN* 54, 56 (2013); SAMUELS, supra note 17, at 63; see also GEORGINA KLEEGER, *SIGHT UNSEEN* 20–21 (1999); SCHWEIK, supra note 30, at 111–12.

<sup>34</sup>. Ryan, supra note 31, at 686.

<sup>35</sup>. SCHWEIK, supra note 30, at 68–69.

<sup>36</sup>. For the enforcement of the Ugly Laws in Omaha and Portland in the 1970s, see Susan Schweik, Kicked to the Curb: Ugly Law Then and Now, 46 *HARV. C.R.-C.L. L. REV. AMICUS* 1, 2–4 (2011).

<sup>37</sup>. TOBIN SIEBERS, *DISABILITY AESTHETICS* 75–79 (2010); TANYA TITCHKOSKY, *THE QUESTION OF ACCESS: DISABILITY, SPACE, MEANING* 78 (2011); Ron Imrie & Marion Kumar, Focusing on Disability

from the services and opportunities available to the nondisabled public and are not able to exercise their rights as equal citizens.<sup>38</sup> Despite progressive disability rights legislation such as the ADA, put in place almost three decades ago to help disabled individuals navigate public spaces, this population remains undereducated,<sup>39</sup> underemployed,<sup>40</sup> and mostly absent from the public sphere.<sup>41</sup>

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and Access in the Built Environment, 13 *DISABILITY & SOC'Y* 357, 358 (1998); Sagit Mor, With Access and Justice for All, 39 *CARDOZO L. REV.* 611, 612–13 (2017).

<sup>38</sup>. Mor, supra note 37, at 612–13.

<sup>39</sup>. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., *FAST FACTS: STUDENTS WITH DISABILITIES* (2019), <https://ed.gov//display.asp?id=60> [<https://cc/D2Q-9GJM>].

<sup>40</sup>. “For all age groups, the employment-population ratio was much lower for persons with a disability than for those with no disability.” U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *PERSONS WITH A DISABILITY: LABOR FORCE CHARACTERISTICS SUMMARY—2016* (2017), [https://bls.gov/.release//\\_06212017.pdf](https://bls.gov/.release//_06212017.pdf) [<https://cc/RY-KDDS>].

<sup>41</sup>. JOHN R. PARKINSON, *DEMOCRACY AND PUBLIC SPACE: THE PHYSICAL SITES OF DEMOCRATIC PERFORMANCE* 184 (2012); Peter Freund, Bodies, Disability and Spaces: The Social Model and Disabling Spatial Organisations, 16 *DISABILITY & SOC'Y* 689, 697 (2001).

As the most important factors contributing to the inequality and exclusion of people with disabilities are deeply rooted and structural, traditional antidiscrimination law is ill-equipped to fight such barriers.<sup>42</sup> This is because prototypical antidiscrimination requirements entail that an entity treat similarly situated individuals the same whereas disability status often requires giving this class of persons something that is not needed for others in order to ensure this class's inclusion.<sup>43</sup> Therefore, the ADA includes a mandate determining that failure to provide reasonable accommodations for people with disabilities in the design of the physical environment, social structures, and policies is considered discrimination.<sup>44</sup>

Many scholars view the idea of accommodations as a redistributive scheme in the form of "positive rights."<sup>45</sup> Positive rights pose affirmative

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<sup>42</sup>. SAMUAL R. BAGENSTOS, *LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT* 75 (2009).

<sup>43</sup>. Id. at 56, 66–68; Linda Hamilton Krieger, Foreword—Backlash Against the ADA: Interdisciplinary Perspectives and Implications for Social Justice Strategies, 21 *BERKELEY J. EMP. & LAB. L.* 1, 3–4 (2000).

<sup>44</sup>. 42 U.S.C. § 12182(b)(2)(A) (2012).

<sup>45</sup>. HEYER, supra note 13, at 44–45; Michael Ashley Stein, Disability Human Rights, 95 *CAL. L. REV.* 75, 77–78, 106 (2007) (alerting to the prominence of both negative and positive rights in disability policies both in the domestic and international levels). Nevertheless, a few scholars have argued that the line between providing accommodations and traditional antidiscrimination doctrine are not that different after all. See

duties on the state or other entities (such as private employers or places of public accommodations).<sup>46</sup> They are thus foreign to the American legal tradition of only providing “negative rights,” which prohibit interference with private behavior (such as the right to free speech or to practice one’s religion).<sup>47</sup> Therefore, the positive right to receive disability accommodations has been criticized by economists because of the preferable treatment given to disabled persons.<sup>48</sup> Most scholars paid attention to the way disability accommodations are perceived in the employment context and from the employers’ point of view.<sup>49</sup> This Article fills a gap in the literature by examining laypeople’s perceptions of accommodations in public spaces.

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BAGENSTOS, supra note 42, at 66–68; Christine Jolls, Antidiscrimination and Accommodation, 115 HARV. L. REV. 642, 690–95 (2001); Ruth O’Brien, What a Difference Thirty Years—1978 to 2008—Makes in the Transformation of Disability Law, 50 TULSA L. REV. 367, 371 (2015).

<sup>46</sup>. HEYER, supra note 13, at 44–45.

<sup>47</sup>. HOLMES & SUNSTEIN, supra note 13, at 40–41; Sunstein, supra note 12, at 6; Tushnet, supra note 13, at 1392–93.

<sup>48</sup>. See, e.g., RICHARD A. EPSTEIN, FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS 486–93 (1992); Sherwin Rosen, Disability Accommodation and the Labor Market, in DISABILITY & WORK: INCENTIVES, RIGHTS, AND OPPORTUNITIES 18, 21 (Carolyn L. Weaver ed., 1991).

<sup>49</sup>. See, e.g., Samuel R. Bagenstos, “Rational Discrimination,” Accommodation, and the Politics of (Disability) Civil Rights, 89 VA. L. REV. 825 (2003); Christine Jolls, Accommodation Mandates, 53

I argue that the introduction of the distributive, positive rights element of disability accommodations into the American legal system creates an unintended byproduct. It makes laypeople, who are not accustomed to this type of rights regime, question the deservingness of those who receive “special treatment.” In laypersons’ minds, as many accommodations are desirable by all members of society, it is quite possible that people who are not in fact “deserving” would fake a disability to obtain these accommodations.

The Ugly Laws can thus be thought of as one of the first manifestations of public fear of the disability con,<sup>50</sup> a socio-legal phenomenon that is omnipresent until this day due to the perception of accommodations as special treatment.<sup>51</sup> Despite the formal legal move from charity to rights, people with disabilities still pay a price for their ability to participate in civic life: that of public suspicion regarding the authenticity of their impairments. People who use legally obtained rights to park in disabled parking spots or to move to the front of lines (among many other rights) are often viewed as faking disabilities and abusing the law.<sup>52</sup>

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STAN. L. REV. 223 (2000); Michael Ashley Stein, The Law and Economics of Disability Accommodations, 53 DUKE L.J. 79 (2003); J.H. Verkerke, Is the ADA Efficient?, 50 UCLA L. REV. 903 (2003).

<sup>50.</sup> An even earlier manifestation of the fear of the disability con can be traced back to the newspaper coverage of the eligibility assessment for pensions for disabled veterans after the Civil War. See Peter Blanck, Civil War Pensions and Disability, 62 OHIO ST. L.J. 109, 120 (2001).

<sup>51.</sup> See Dorfman, supra note 18, at 1061–63.

<sup>52.</sup> As shown in previous research, the fear of the disability con extends

The fear of abusing disability rights and privileges is fueled by the misunderstanding of the complex and fluid (as opposed to static) nature of disability that can take visible and invisible forms.<sup>53</sup> When people talk about those with disabilities as a social group, things get complicated. This group is a product of a social movement that for political reasons took upon itself a cross-disability approach,<sup>54</sup> meaning including people with all types of disabilities. This political move toward an inclusive disability community makes it harder to assess deservingness in the eyes of the public.<sup>55</sup> It is this elusive nature that signals to people that disability can be relatively easily faked and that the “special privileges” it awards are being regularly abused. Disability scholars have pointed to a hierarchy of disability within this protected group. Although both people with nonvisible, or less apparent, disabilities are part of the protected class, they are often marginalized within the disability community.<sup>56</sup> In

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to other disability rights and privileges, such as learning accommodations for students, accommodations at the workplace, the use of service animals, and the retaining of Social Security disability benefits. See id.

<sup>53.</sup> Sharon N. Barnartt, Disability as a Fluid State: Introduction, in DISABILITY AS A FLUID STATE 1, 2 (Sharon Barnartt ed., 2010).

<sup>54.</sup> BAGENSTOS, supra note 42, at 41–45; Richard K. Scotch, Politics and Policy in the History of the Disability Rights Movement, 67 MILBANK Q. 380, 385 (1989).

<sup>55.</sup> See, e.g., Susan Wendell, Unhealthy Disabled: Treating Chronic Illnesses as Disabilities, 16 HYPATIA 17, 28 (2001).

<sup>56.</sup> Kirstin Marie Bone, Trapped Behind the Glass: Crip Theory and

a social movement historically led by people with physical or sensory disabilities, people living with chronic illnesses (such as arthritis, fibromyalgia, lupus, MS, heart or respiratory conditions, HIV, or diabetes) and life-threatening-disabling diseases (such as cancer or AIDS), and people who are neurodiverse individuals (who are autistic or on the autistic spectrum) or who have mental-psychiatric disabilities are often set aside.<sup>57</sup>

Disability philosopher Susan Wendell eloquently points out the multiple layers of mistrust confronted by people with nonvisible disabilities:

Suspicion surrounds people with chronic illnesses—suspicion about how ill/disabled we really are, how or why we became ill, whether we are doing everything possible to get well, and how mismanaging our lives, minds, or souls may be contributing to our continuing illness. Suspicion comes from medical professionals, friends, relatives, co-workers, and, understandably, from other people with disabilities.<sup>58</sup>

Data from this study, and from the previous one, show that nearly 60% of both visibly and invisibly disabled Americans in a representative sample indicated that there are situations in which they worry that others might be

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Disability Identity, 32 *DISABILITY & SOC'Y* 1297, 1302, 1306 (2017);

Wendell, supra note 55, at 28.

<sup>57.</sup> Ellen Jean Samuels, My Body, My Closet: Invisible Disability and the Limits of Coming-Out Discourse, *GLQ: J. LESBIAN & GAY STUD.* 233, 244–45 (2003).

<sup>58.</sup> Wendell, supra note 55, at 28 (citation omitted).

skeptical of their disabilities.<sup>59</sup> Public trust in disability law is therefore a crucial, yet understudied, issue affecting the legitimacy and rule of law that undergirds the participation of people with disabilities in society.

## II. MIXED-METHODS APPROACH

This research empirically assesses the perceptions of the disability con in two specific case studies: the use of disabled parking placards and the right to go to the front of lines at Disneyland. I use a mixed-methods approach to investigate the way the stereotype of the disability con plays in both contexts, combining both econometric analysis of survey experiments and qualitative interviews.

The study aims to answer the following research questions and test the following hypotheses:

- Does scarcity of resources (i.e., scarcity/abundance of parking spaces and long/short wait in line) affect the level of suspicion? The hypothesis is that participants who encounter scarcity of resources will be more suspicious of disability con compared with those who encounter a situation in which resources are abundant.<sup>60</sup>

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<sup>59</sup>. In this study, 58% of disabled participants (148 out of 253 disabled participants) out of a representative sample of 1,103 Americans (SSI 2) answered positively to the question: “Are there any situations where you worry that others may be skeptical of your disability?” The same percentage was found in previous research (142 out of 246 disabled participants, in a representative sample of 1,085 Americans). Dorfman, supra note 18, at 1079.

<sup>60</sup>. For the claim that abundance or scarcity of resources influences judgments of deservingness in implementation of distributive policies,

- Does visibility of disability, which signals a sense of deservingness, affect the level of suspicion? The hypothesis is that participants would be more suspicious of a person with nonvisible disabilities (whom they see as undeserving and may abuse the law) than of those with visible disabilities.
- How does someone's "personal relationship with disability" (having a disability, having a friend or close family member with disabilities, or not having any relationships with disability) affect the level of suspicion? The hypothesis is that in both contexts, people who have some relationship with disability (either by being disabled themselves or having a cordial or familial relationship with a disabled person) will be less suspicious than will those who have no relationship with disability.<sup>61</sup>

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see Kristina A. Diekmann, Steven M. Samuels, Lee Ross & Max H. Bazerman, Self-Interest and Fairness in Problems of Resource Allocation: Allocators Versus Recipients, 72 J. PERSONALITY & SOC. PSYCHOL. 1061, 1061 (1997) (proving that: "As self-interested actors in a world of limited goods and opportunities, we are motivated to promote and justify resource distribution that favors us and those whom we are linked by ties of kinship or group membership."); Linda J. Skitka & Philip E. Tetlock, Allocating Scarce Resources: A Contingency Model of Distributive Justice, 28 J. EXPERIMENTAL SOC. PSYCHOL. 491, 493 (1992).

<sup>61</sup>. This hypothesis stands in contrast to the finding from previous research I conducted on the topic, which found higher levels of suspicion by nondisabled individuals with a friendly or familial relationship with

- How do people with disabilities experience the stereotype of disability con? Unlike the other questions that are answered via quantitative tools, this last question will be answered using qualitative analysis of forty-four interviews with people living with a wide array of disabilities.<sup>62</sup>

The interviews were primarily conducted with people with disabilities. A few were also conducted with professionals who work in federal organizations and Departments of Motor Vehicles (DMVs) across the country who are in charge of implementing disabled parking policies. The interview sample consisted of twenty-eight women and fifteen men, all between the ages of twenty-one and seventy-two and living independently (that is, not in an institutional setting) in the San Francisco Bay Area. This area holds significance, as the first Ugly Laws were enacted

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a disabled person (compared to people with no relationship with disabilities). See Dorfman, *supra* note 18, at 1073, 1077–78. For a discussion on the relationships between the findings, see *infra* Part IV.B.

<sup>62</sup>. Sixteen interviewees were living with physical disabilities (such as paraplegia), eight had learning disabilities (such as dyslexia, AAD/ADHD), seven had sensory disabilities (blind or deaf individuals), six were living with mental disabilities (such as schizophrenia, anxiety disorders, or bipolar depression), four were living with chronic illness or chronic pain (such as fibromyalgia, Addison's disease, or adult onset asthma), two were neurodiverse (autistic or on the autistic spectrum), and one interviewee was living with life threatening allergies. Eleven interviewees had more than one type of disability.

in San Francisco, and it is where, years later, the Independent Living and Disability Rights Movements originated.<sup>63</sup> Although no sampling methods were used to ensure that this group is representative of the disability community in the United States or even the Bay Area, the diversity within the sample did help foreground a wide spectrum of voices not often heard on a topic rarely addressed in academia.

I distributed my survey experiments using the services of two online panel companies: Social Sampling International (SSI)<sup>64</sup> and YouGov.<sup>65</sup>

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<sup>63.</sup> I recruited the interviewees using multiple methods. I attended two fairs organized by local disability services organizations and support groups, and I also recruited through personal connections. The interviews averaged around thirty minutes and were semi-structured; they were conducted in person, recorded, and later transcribed. The interviewees received \$10 or \$15 gift cards as a token of appreciation.

<sup>64.</sup> SSI recruits participants through various online communities, social networks, and website ads. SSI makes efforts to recruit hard-to-reach groups, such as ethnic minorities and seniors. These potential participants are then screened and invited into the panel. When deploying a particular survey, SSI randomly selects panel participants for survey invitations. It later uses weighing of certain participants to create a more representative sample. I did not employ quotas but asked SSI to recruit a target population that matched the (18 and older) census American population on education, gender, age, geography, and income.

<sup>65.</sup> YouGov interviewed 1078 participants who were then matched down to a sample of 1000 to produce the final dataset. The participants were

Those platforms produce samples considered more diverse and representative of the general U.S. population than those collected through online convenience samples (such as Amazon's Mechanical Turk, MTurk). I also ran pretests for each experiment on MTurk.

The experiments were included in omnibus surveys comprising questions on various topics investigated by Stanford University researchers from various departments<sup>66</sup> and thus allowed for some flexibility in the ordering of the questions.

I ran the experiments in three rounds. At first, each panel company distributed one of the survey experiments, either the Disneyland or the parking. (I refer to those two rounds as "SSI 1" and "YouGov.") This method guaranteed that participants would not be biased when shown more than one scenario about potential abuse of disability rights. This also contributed to the external validity, as I ran similar experiments across different representative samples. I then ran the two experiments together (I refer to this round as "SSI 2"). Overall, the research

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matched to a sampling frame on gender, age, race, education, party identification, ideology, and political interest. The frame was constructed by stratified sampling from the full 2010 American Community Survey (ACS) sample with selection within strata by weighted sampling with replacements (using the person weights on the public use file).

<sup>66</sup>. None of the other questions on the survey concerned disability, abuse of rights, or any topic that I thought could potentially bias the results.

population included more than 3200 participants from three representative samples of the U.S. population.

The YouGov nationally representative sample included 1000 participants, 447 men and 553 women, between the ages of eighteen and ninety-two. In terms of relationship with disability, 239 people self-identified as people with disabilities, and 761 people identified as nondisabled. This percentage (almost 24% of the survey sample identify as people with disabilities) closely corresponds with U.S. Census Bureau data that show that 20% of the U.S. population is living with some kind of disability.<sup>67</sup> Out of the 761 nondisabled participants, 27% (267 participants) had a personal relationship with a disabled individual (who was either a friend or a family member). Participants in this sample partook in the disabled parking experiment.

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<sup>67</sup> It was found in 2010 that about 56.7 million people—19% of the American population—had a disability. See Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports, U.S. CENSUS BUREAU (July 25, 2012), <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html> [<https://perma.cc/W4L5-VYDN>]. The slightly higher percentage of people with disabilities in the sample could be attributed to the fact that participating in online surveys is a job that suits many people living in disabilities who still find the job market to be inaccessible (both in terms of conditions and attitudes).

The SSI 1 nationally representative sample included 1,172 participants,<sup>68</sup> 559 men and 613 women, between the ages of eighteen and ninety-nine. Exactly 20% of the sample (233 participants) identified as people with disabilities whereas 939 identified as nondisabled. Among the nondisabled participants, 33% (391 participants) said they had a personal relationship with a disabled individual. Participants in this sample partook in the Disneyland line experiment.

The SSI 2 nationally representative sample was composed of 1103 participants,<sup>69</sup> 519 men and 581 women,<sup>70</sup> between the ages of eighteen and eighty-two. Twenty-three percent of the sample (253 participants) identified as people with disabilities whereas 830 identified as nondisabled. Out of the nondisabled participants, 35% (294 participants) said they had a personal relationship with a disabled individual.<sup>71</sup> In this sample, disabled participants were asked whether there are situations in which they worry that others may be skeptical of their disabilities. Exactly as was demonstrated in previous research,<sup>72</sup> 58% of disabled participants

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<sup>68</sup>. Originally 1357 individuals started the survey, but after dropping participants who failed to complete it, the sample dropped to 1172.

<sup>69</sup>. Before dropping participants who did not complete the survey, the sample included 1175 participants.

<sup>70</sup>. Three participants assigned themselves to a third gender option (“other”).

<sup>71</sup>. Five participants chose not to respond to the question of whether they have a family member or friend living with disabilities.

<sup>72</sup>. Dorfman, supra note 18, at 1079.

(148 participants) answered positively to the question, indicating that they have experienced suspicion of the disability con themselves. Participants partook in both the parking and the Disneyland line experiments.

The third round, SSI 2, included two general questions about the level of suspicion of the disability con and the prevalence of fakery in the eyes of the participants. Those questions were included in the survey before the participants were exposed to the two experiments (the treatment). The questions were as follows: In your opinion, to what extent do current disability laws allow people, who do not have disabilities, to take advantage of them? and In general, how often do you think people who are not disabled take advantage of laws that are designed for people with disabilities? The answers were given on a 1–5 Likert scale.

TABLE 1. RESEARCH POPULATION ACROSS SAMPLES

	YouGov (Parking)	SSI(1) (Line)	SSI(2) (Parking +Line)
	Mean / %		
<b>Disabled</b>	24%	20%	23%
<b>Nondisabled</b>			
With Cordial/Familial Relationship with a Disabled Individual	27%	33%	35%
<b>Female</b>	55%	52%	53%
<b>Age</b>	49	44	50
<b>Party ID</b>			
Democrat	38%	38%	39%
Republican	28%	28%	28%
Independent	27%	28%	33%
Other/Not Sure	7%	6%	N/A
<b>Political Ideology</b> ◇	3.42	2.99	3.69

Note:

N (YouGov) = 1,000

N (SSI 1) = 1,172

N (SSI 2) = 1,103

◇ Political Ideology measured on a scale of 1–5 (Liberal to Conservative)

The idea behind the inclusion of these questions was to ensure the internal validity of the study, in other words, to prove that the experiments are testing levels of suspicion of the disability con and not some other construct. A positive correlation between the answers to the general

questions about suspicion and the question asked in the experiments proves that this is the case. Such a correlation was indeed found.<sup>73</sup>

The limitations of experimental methods center on their external validity, meaning the degree to which results are generalizable to broader phenomena of interest. Experiments also reduce scenarios to a few core variables, often implemented over a short period, compared with the complex and “messy” nature of everyday life situations. This is specifically true for survey experiments that are limited in simulating scenarios and their consequential emotional responses. In this case, the experiments cannot recreate the exact feelings of frustrations, stress, and nervousness resulting from looking for parking or standing in line for a theme park attraction. To mitigate these concerns, I conducted surveys at different points in time, using nationally representative samples and providing vignettes that closely resemble real-life scenarios with the addition of familiar visual cues of either a disabled parking placard on a car windshield or a sign indicating wait time at Disneyland. I also reran my experiments a few times, as pretests on MTurk and three times on representative samples, to demonstrate the reliability of the results.

I report my findings from the experiments using OLS regression models and two-factor analysis of variance (ANOVA). I also conducted an analysis of the data using ordinal regressions (ordered logit), and those yielded similar results.

In the next parts, I present the two case studies examined in this research and elaborate on the experiments conducted on each one.

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<sup>73</sup>. See infra note 157 and accompanying text.

### III. TWO CASE STUDIES

#### A. Case Study I: Disabled Parking Placards

The right to park in a disabled parking spot (commonly known as handicapped parking<sup>74</sup>) might be the one most associated with disability rights. As parking is such a quotidian activity in the developed world,<sup>75</sup> it is a perfect example wherein to illustrate the relationship between law, culture, and society both with regard to legality<sup>76</sup> and to disability. Legality has been described as the concepts of “the meanings, sources of authority, and cultural practices that are commonly recognized as legal.”<sup>77</sup> The right to park in disabled parking signals to others a person’s social identity and is symbolic of the role that law plays in ensuring the participation of people with disabilities in society.<sup>78</sup>

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<sup>74</sup>. As the term “handicapped” is regarded as outdated and even offensive in the disability community and in disability rights advocacy, I will refrain from using the term “handicapped parking,” although this is the term generally used in academic and legal discourse. I will instead use the term “disabled parking.”

<sup>75</sup>. MARUSEK, supra note 25, at 1.

<sup>76</sup>. Id. at 17, 23, 31.

<sup>77</sup>. Patricia Ewick & Susan S. Silbey, The Common Place of Law, in THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE 15, 22 (Patricia Ewick & Susan S. Silbey eds., 1998); see also KITTY CALAVITA, INVITATION TO LAW & SOCIETY: AN INTRODUCTION TO THE STUDY OF REAL LAW 47 (2d ed. 2016).

<sup>78</sup>. MARUSEK, supra note 17, at 17, 62–63.

With regard to disabled parking fraud, I make a distinction between situations in which people park in disabled parking spots without a disabled parking placard<sup>79</sup> and those who display such a placard but whose appearance and behavior do not fit within the public's view of disability. Although I consider the first category to be inexcusable, as it deprives people with disabilities their legal rights and can even be a safety issue,<sup>80</sup> I will demonstrate

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<sup>79</sup>. For observational research that predicts some guilt on the part of those who illegally park in disabled parking without a placard and calls for more police enforcement, see Donna Fletcher, A Guilt Gradient in the Illegal Use of Parking Spaces Reserved for People with Disabilities: Field Observations over Five Years, 93 PERCEPTUAL & MOTOR SKILLS 157, 161 (2001).

<sup>80</sup>. In an interview I conducted with a representative from the National Highway Traffic Safety Administration (NHTSA), she clearly made a connection between disabled parking, safety, and other stigmas regarding people with disabilities and parenthood:

We tie everything to safety, and when people don't have access to the right of accessible parking, then they are forced to deploy their [wheelchair] lift in the middle of roads, the middle of a parking lot, and that creates a safety problem . . . . It's never safe, because it's not something you [as a driver] would normally expect someone to do in the middle of a parking lot. And then, of course, you also have people with disabilities who have small children, and if you're already limited, and you have a mobility impairment, children can get away from you quickly. So there's lots of different scenarios you could run. I think sometimes we

how the second category is far from being clear-cut and how it raises core issues of legality, private enforcement, trust, and deservingness.<sup>81</sup>

## 1. Disabled Parking Regulations

Disabled parking regulations were first enacted in the United States through modest local programs at the state level, during the 1960s and 1970s, in tandem with the first days of the independent living and disability rights movements.<sup>82</sup> The Architectural Barriers Act of 1968 signaled the first time the federal government required any physical accessibility standards.<sup>83</sup> However, these requirements were restricted to federal

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assume that people with disabilities don't have children or aren't married, that all of them have care attendants, I mean just lots of different stereotypes that exist out there.

For the stereotypes about disabled parenthood, see Doron Dorfman, The Inaccessible Road to Motherhood—The Tragic Consequence of Not Having Reproductive Policies for Israelis with Disabilities, 30(1) COLUM. J. GENDER & L. 49, 65–71 (2015); Robyn Powell & Michael Ashley Stein, Persons with Disabilities and their Sexual, Reproductive, and Parenting Rights: An International and Comparative Analysis, 11 FRONTIERS L. CHINA 53 67 (2016).

<sup>81.</sup> See ELLEN SAMUELS, FANTASIES OF IDENTIFICATION: DISABILITY, GENDER, RACE 134–35 (2014).

<sup>82.</sup> Geoffrey P. Miller & Lori S. Singer, Handicapped Parking, 29 HOFSTRA L. REV. 81, 87 (2000).

<sup>83.</sup> See 42 U.S.C. §§ 4151–4157 (2012).

facilities and only where it was possible.<sup>84</sup> The Rehabilitation Act of 1973 extended the reach of the federal regulations beyond federal facilities to federally funded ones.<sup>85</sup> In 1988, the Fair Housing Act was amended to prohibit discrimination against a buyer or a renter with disabilities by requiring the implementation of disabled parking in housing.<sup>86</sup> Today, at the federal level, the requirement to have disabled parking spaces available is an integral part of public accommodations according to Title II and Title III of the ADA.

However, beyond the federal level, a complex “mosaic of rules” governs disabled parking at the state and local government levels.<sup>87</sup> These rules pertain to the eligibility to receive a disabled parking permit and site regulations (on the design and number of parking spaces).

Disabled parking permits can be temporary or permanent (yet subject to renewal) when the criteria for eligibility are determined by each state. The Department of Transportation’s Uniform System for Parking for Persons with Disabilities (Uniform System Regulations) serves as a baseline standard for the states.<sup>88</sup> The guidelines in the Uniform System Regula-

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<sup>84.</sup> Id.

<sup>85.</sup> 29 U.S.C. § 794(a) (2012).

<sup>86.</sup> 42 U.S.C. §§ 3601–3614(a) (2012).

<sup>87.</sup> Miller & Singer, supra note 82, at 88.

<sup>88.</sup> CAROL TOLAND, CONG. RESEARCH SERV., RS22697, FEDERAL LAW ON PARKING PRIVILEGES FOR PERSONS WITH DISABILITIES 1–2 (2008); ROBERT M. WARD & NIKKIA E. GRANT, DEP’T OF MOTOR VEHICLES, SUGGESTIONS FOR ENFORCING HANDICAP

tions suggest that a person should be eligible for a permit if he or she can comply with one of six qualifying conditions:

(1) Cannot walk two hundred feet without stopping to rest; or

(2) Cannot walk without the use of, or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or

(4) Use portable oxygen; or

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in the ability to walk due to an arthritic, neurological, or orthopedic condition.<sup>89</sup>

As mentioned, these eligibility criteria are just a minimum standard, and states such as Kentucky, for example, clarified and expanded the eligibility to people with sensory disabilities, chronic illnesses, and other "debilitating condition[s] which limits or impairs one's . . . mobility or ability to walk."<sup>90</sup> The case of Debbie Mizrahi from Florida exemplifies

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PARKING LAWS 5 (2010), [https://texas.gov///// \\_J\\_-Accessible\\_Parking\\_Studies\\_by\\_Other\\_States.pdf](https://texas.gov///// _J_-Accessible_Parking_Studies_by_Other_States.pdf) [<https://perma.cc/3SKF-E88T>].

<sup>89</sup>. Uniform System Regulations, 23 C.F.R. § 1235.2(b) (2019).

<sup>90</sup>. KY. REV. STAT. ANN. § 189.456 (West 2018); WARD & GRANT,

another kind of disability not covered by the Uniform System Regulations. Mizrahi, fifty-five, had brain cancer and, as a consequence of her treatment, she experiences short-term memory loss. To remember where she parked her car, she needs to park it in the disabled parking spot.<sup>91</sup>

The expiration and renewal periods of “permanent” disabled placards vary from state to state and even from town to town but usually stand between three and five years. All cases require the receipt of a certificate signed by a doctor or health professional.<sup>92</sup> According to the Uniform

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supra note 88, at 6.

<sup>91</sup>. David Fleshler, Parking Lot Vigilantes Abuse Woman with ‘Invisible’ Disability, SUN SENTINEL (Jan. 2, 2015, 2:38 PM), <http://www.sun-sentinel.com/local/broward/fl-disabled-tag-20150102-story.html> [<https://perma.cc/PEM7-572Z>].

<sup>92</sup>. Miller & Singer, supra note Disabled parking regulations were first enacted in the United States through modest local programs at the state level, during the 1960s and 1970s, in tandem with the first days of the independent living and disability rights movements. The Architectural Barriers Act of 1968 signaled the first time the federal government required any physical accessibility standards. However, these requirements were restricted to federal facilities and only where it was possible. The Rehabilitation Act of 1973 extended the reach of the federal regulations beyond federal facilities to federally funded ones. In 1988, the Fair Housing Act was amended to prohibit discrimination against a buyer or a renter with disabilities by requiring the implementation of disabled parking in housing. Today, at the federal level, the requirement

System Regulations, temporary disabled placards should be valid for a period determined by physicians, not to exceed six months.<sup>93</sup>

## 2. Rationales and Privileges

Owning a disabled parking placard establishes three entitlements: (1) the right to obtain a reserved spot even when parking is scarce, in other words, in crowded and popular venues such as malls or sporting events; (2) the right to park close to the entrance, an accommodation for the person who has difficulty walking long distances. In economic terms, the close-by parking spot is worth more to the disabled individual than to a nondisabled one, and the regulator has acknowledged that and intervened in the market on behalf of the former over the latter; (3) an exemption from paying for public parking meters.<sup>94</sup>

There are multiple rationales for the third financial exemption. The first is the need to promote inclusion of people with disabilities in social life. Preventing exclusion of this population is an issue that dates back to the Ugly Laws, which targeted disabled beggars and prohibited those

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to have disabled parking spaces available is an integral part of public accommodations according to Title II and Title III of the ADA., at 91–92.

<sup>93</sup>. 23 C.F.R. § 1235.5(d).

<sup>94</sup>. CAL. STATE AUDITOR, REPORT 2016–121, DEPARTMENT OF MOTOR VEHICLES: ADMINISTRATIVE AND STATUTORY CHANGES WILL IMPROVE ITS ABILITY TO DETECT AND DETER MISUSE OF DISABLED PERSON PARKING PLACARDS 12 (2017), [https://bsa.ca.gov/pdfs/reports/2016–121.pdf](https://bsa.ca.gov/pdfs/reports/2016-121.pdf) [<https://perma.cc/FDE7-U57U>]; Miller & Singer, supra note 82, at 89 n.41.

considered unsightly from moving around in public.<sup>95</sup> Even today, disabled people are often excluded from most of social, economic, and civic life and from public spaces due to environmental and social barriers.<sup>96</sup> Exempting people with disabilities from paying for parking allows them to easily and inexpensively travel and participate in civic and social events, as they might have difficulty traveling with other means due to inaccessible environments and inaccessible public transportation.<sup>97</sup> Another rationale for the payment exemption that relates to social barriers concerns the historical and strong connection between disability and poverty. As articulated by the World Bank, “Disabled people and their families are disproportionately poor, and poor people are disproportionately disabled,”<sup>98</sup> and thus are in

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<sup>95.</sup> See generally SUSAN M. SCHWEIK, *THE UGLY LAWS: DISABILITY IN PUBLIC* (2009).

<sup>96.</sup> See generally Rob Kitchin, ‘*Out of Place*’, ‘*Knowing One’s Place*’: *Space, Power and the Exclusion of Disabled People*, 13 *DISABILITY & SOC’Y* 343 (1998).

<sup>97.</sup> Jonathan Andrew Williams, *Meter Payment Exemption for Disabled Placard Holders As a Barrier to Managing Curb Parking* 14 (2010) (Master’s thesis, Program in Urban and Regional Planning UCLA), <http://bol.ucla.edu/pdf> [<https://perma.cc/239B-RH5M>].

<sup>98.</sup> Armantine M. Smith, *Persons with Disabilities As a Social and Economic Underclass*, 12 *KAN. J.L. & PUB. POL’Y* 13, 21–23 (2002); ROBERT HOLZMANN, LYNNE SHERBURNE-BENZ & EMIL TESLIUC, *SOCIAL RISK MANAGEMENT: THE WORLD BANK’S APPROACH TO SOCIAL PROTECTION IN A GLOBALIZING WORLD* 14 (2003), <http://>

need of such economic benefits. By the late 1990s, states such as Florida and Virginia had decided to cut back on the payment exemption due to alleged overuse and abuse.<sup>99</sup> However, and as I will discuss later, the scope of abuse of disabled parking fraud is elusive.

### 3. The Disabled Parking Experiment

What I'm saying that drives me crazy. If you go to an impacted lot, and you see someone who gets up, and he's very much able to walk the distance. But simply because there's no parking available, and they might have this placard for whatever reason. I don't know if they have it; maybe it was another family member or whatever it is. I don't know whom, but it's definitely not theirs.

This short statement by twenty-five-year-old Sharon,<sup>100</sup> a student with multiple learning disabilities, sums up the premise for the survey experiment I conducted. The two independent variables were the potential loss of the participant observing the situation and the visibility of disability, which signaled the parking-spot user's deservingness (along with the public view about what constitutes a disability). I varied the scarcity of parking (whether the

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worldbank.org////.pdf [<https://perma.cc/BA4K-EHZ2>].

<sup>99</sup>. Miller & Singer, *supra* note 82, at 120.

<sup>100</sup>. All names of interviewees in this Article are pseudonyms used to protect their anonymity. The names of the witnesses for Disney in the legal proceedings described are authentic and have been taken from public records.

parking lot is empty or full, meaning whether the participant needs to spend time searching for parking) and the visibility of the disability of a person who parked in a disabled parking spot and has a visible permit (whether the person drags his leg or just walks “normally”). The dependent variable was how likely the participant thinks the person described has a disability.

In regard to scarcity of resources in disabled parking circumstances, there is no direct personal loss to the nondisabled individuals, as they would not be able to take advantage of the parking spot, even if empty. However, it has been argued that it is difficult for nondisabled persons to assess how the preference given to disabled individuals actually affects their own chances of landing a parking spot. Comparing the disabled parking situation to the debate over affirmative action in admission to college, economist Thomas Kane states that:

Many of the nondisabled drivers who pass by the space while circling the parking lot in search of a place to park may be tempted to think that they would have an easier time finding a space if the space had not been reserved. Although eliminating the space would have only a minuscule effect on the average parking search for nondisabled drivers, the cumulative cost perceived by each passing driver is likely to exceed the true cost simply because people have a difficult time thinking about small probability events.<sup>101</sup>

Participants were randomly assigned to one of four treatments:

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<sup>101</sup>. Thomas J. Kane, Racial and Ethnic Preferences in College Admissions, 59 OHIO ST. L.J. 971, 992–93 (1998).

- Parking lot full (high scarcity) + Seeing a man limping (visible disability, higher deservingness);
- Parking lot full (high scarcity) + Seeing a man walking (nonvisible disability, lower deservingness);
- Parking lot empty (low scarcity) + Seeing a man limping (visible disability, higher deservingness);
- Parking lot empty (low scarcity) + Seeing a man walking (nonvisible disability, lower deservingness).

The vignette presented to the participants read as the following:

You head to the nearest mall to do some shopping, and the parking lot is packed with vehicles/relatively empty. As you are driving through the parking lot to find parking, you see a young man coming out of his car, which he parked in the disabled parking spot. You see the young man drag one of his legs while walking/walking toward the mall entrance. As you pass by his car in the disabled parking spot, you notice he has a disabled parking permit.

In your opinion, how likely is it for the man to be a person with a disability?

- Extremely likely
- Very likely
- Moderately likely
- Slightly likely
- Not at all likely

The idea of keeping the use of a placard constant could also demonstrate the level of trust that laypeople put in this formal legal signal. As mentioned, the general views about how widespread the abuse of disabled parking permits have led people to see those as not credible anymore and to a loss of trust in what used to be reliable formal signs.<sup>102</sup> This issue came across in the interviews while some confessed that they have relatives who abuse parking permits. “My brother-in-law has a disabled placard, which he uses for parking. You won’t tell on me,

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<sup>102</sup>. Michael Bacharach & Diego Gambetta, Trust in Signs, in 2 TRUST IN SOCIETY 148, 165 (Karen S. Cook ed., 2001).

will you?” said Gina, fifty-two, who had become a wheelchair user six months before our interview due to an illness: “I’m not sure how he got it . . . But I know [that] when his daughter . . . had an operation, they were using it for her. Maybe that’s where he got it . . . . He uses it every now and then, and technically I don’t think he’s supposed to.” Norah said, “My mother-in-law tells me that my nephew, he has the placard from the mom, [but he uses it] even when he’s not driving the mom around.” Camila, twenty-five, who has multiple learning disabilities, was not as sure but was quite suspicious of her relative, demonstrating how the suspicion of the disability con transcends to disabled individuals as well:

My cousin actually . . . I hate it when people do this, when they use the handicap placard. A lot of people use the handicap placard. She has a bad knee but . . . I just don’t think she needs it. She doesn’t need help. She doesn’t need to park that closely to wherever she’s at. She just wants it because her husband pushes her more to get it. She feels bad, but they use it because they just want the parking space.

All the participants were shown the same photo.

FIGURE 1: DISABLED PARKING PLACARD PHOTO PRESENTED TO THE PARTICIPANTS



#### 4. Findings

Counterintuitively, and contrary to the hypothesis, the scarcity of resources (the congested parking lot) did not have a statistically significant effect on the level of suspicion against the man using the disabled parking. It was only the visibility of disability that affected the suspicion level of the participants, and as hypothesized, the participants were always more suspicious of the man with the less apparent disability ( $P < 0.001$ ). The findings from the parking experiment replicated across the two samples. As mentioned, I ran the experiment on two nationally representative samples of 1,000 participants distributed by YouGov and on a sample of 1,103 distributed by SSI. I then combined the two samples,

as the experiment was performed identically in the two runs. The results reported are derived from the combined sample of 2,103 participants. An inspection of the separate results demonstrates that they are nearly identical (see the regression tables for the YouGov and SSI 2 in Appendix 1).

A two-factor analysis of variance (ANOVA) confirmed these findings. The effect of the scarcity of parking on the level of suspicion was not statistically significant whereas the visibility of disability was highly significant ( $F(1, 2,102) = 442.6, p < 0.001$ ). The effect size of the visibility within the variance is  $d = 0.92$ , which according to Cohen's d conventions is an extremely large effect.<sup>103</sup> The interaction effect between scarcity and visibility was not statistically significant.<sup>104</sup>

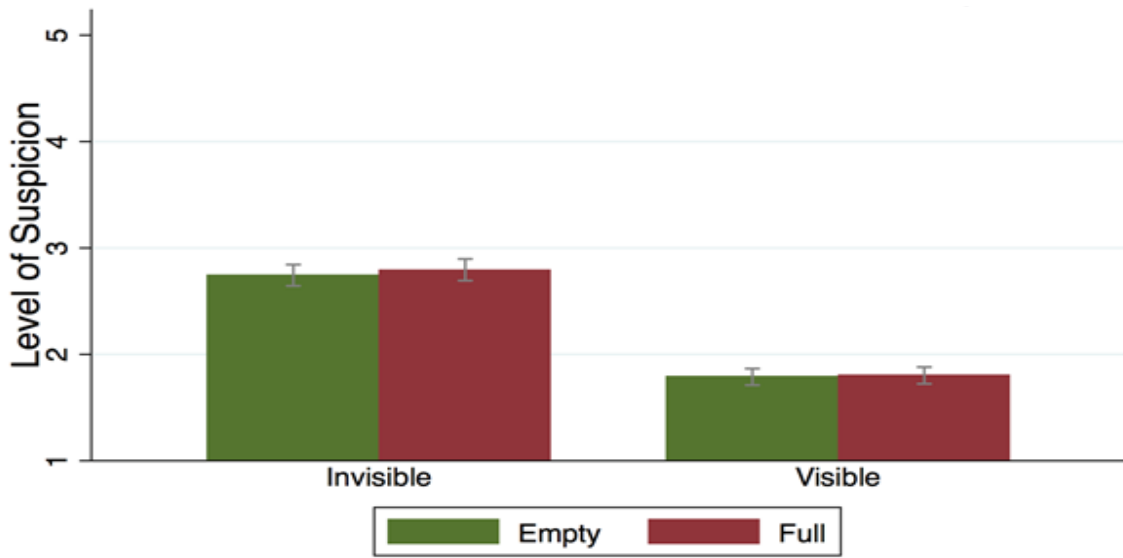
The general level of suspicion by participants was lower than hypothesized, such that the mean levels of suspicion were 2.29 for the combined samples.

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<sup>103.</sup> According to the Cohen's convention,  $d = 0.2$  is considered a "small" effect size, 0.5 represents a "medium" effect size, and 0.8 a "large" effect size. See JACOB COHEN, STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES 24–27 (2d ed. 1988).

<sup>104.</sup> The results were similar across each one of the other waves. The ANOVA and Cohen's  $d$  results for the YouGov sample, were ( $F(1, 999) = 231.4, p < 0.001$ ),  $d = 0.96$ ; The ANOVA and Cohen's  $d$  results for the SSI 2 sample were ( $F(1, 1102) = 229.3, p < 0.001$ ),  $d = 0.89$ .

FIGURE 2. LEVEL OF SUSPICION IN THE PARKING EXPERIMENT BY VISIBILITY OF DISABILITY AND SCARCITY OF PARKING SPACES (COMBINED DATA FROM YOUGOV AND SSI 2)



Note: N=2,103

TABLE 2. OLS REGRESSION OF LEVEL OF SUSPICION IN PARKING EXPERIMENT  
(COMBINED DATA FROM YOUgov AND SSI 2)

	Model 1	Model 2	Model 3	Model 4	Model 5
Visibility of Disability	-0.978*** (0.0454)	-0.985*** (0.0460)	-0.987*** (0.0460)	-0.981*** (0.0457)	-0.987*** (0.0454)
Scarcity of Resources (parking spots)	0.0328 (0.0454)	0.0421 (0.0460)	0.0412 (0.0460)	0.0458 (0.0457)	0.0459 (0.0454)
No Relationship w. Disability (ref.)	—	—	—	—	—
Having a Cordial or Familial Relationship w. Disabled Individual	—	-0.142* (0.0552)	-0.139* (0.0552)	-0.150* (0.0549)	-0.135* (0.0545)
Having a Disability	—	-0.249*** (0.0663)	-0.252*** (0.0662)	-0.297*** (0.0665)	-0.278*** (0.0661)
Experienced Suspicion	—	-0.384*** (0.0950)	-0.373*** (0.0951)	-0.385*** (0.0946)	-0.379*** (0.0944)
Female	—	—	-0.130** (0.0462)	-0.125** (0.0460)	-0.114* (0.0456)
Having Some College Educ.	—	—	—	-0.275*** (0.0963)	-0.228*** (0.0565)
Political Ideology (Liberal to Conservative)	—	—	—	—	0.0110*** (0.0188)
Constant	2.811***	2.899***	2.975***	3.083***	2.551***
R-square	0.1767	0.1877	0.1910	0.2000	0.2172
Adjusted R-square	0.1755	0.1854	0.1882	0.1970	0.2093
Sample Size (N)	2,175	2,102	2,098	2,098	2,095

Notes: Other control variables that were not found significant are race, family income, and age.

General suspicion level of others; Level of suspicion measured on a scale of 1–5.

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$  (two-tailed test)

## B. Case Study II: Skipping Lines

With my illustration of how disability laws and policies play out in action, my choice of Disney theme parks might seem surprising at first glance. However, Disney parks can serve as an excellent way to showcase the public suspicion of the disability con and its relationship to American culture because Disney parks have been thought of as a microcosmic laboratory of American life and values.<sup>105</sup> Furthermore, Disney theme parks have been known to influence other spheres in “real” American everyday life (such as cities, shopping malls, museums). Queuing, an integral part of visiting a Disney park, is a private ordering mechanism for ensuring (perceived and actual) fairness and also extends important lessons to other myriad areas of life. Therefore, studying how fear of the disability con manifests itself in Disneyland would be helpful in understanding the phenomenon in other “Disney-influenced spaces.”<sup>106</sup> Using Disneyland as an example works from the outside-in (Disney parks’ representing American society) and from the inside-out (other spaces are

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<sup>105.</sup> JEAN BAUDRILLARD, *SIMULACRA AND SIMULATION* 12 (Sheila Faria Glaser trans., Univ. of Mich. 1994) (1981); Margaret J. King & J.G. O’Boyle, The Theme Park: The Art of Time and Space, in *DISNEYLAND AND CULTURE: ESSAYS ON THE PARKS AND THEIR INFLUENCE* 5, 8 (Kathy Merlock Jackson & Mark I. West eds., 2011).

<sup>106.</sup> Bryman has referred to the representative aspect of the Disney parks as structural Disneyization and to the influential aspect as transferred Disneyization. See ALAN BRYMAN, *THE DISNEYIZATION OF SOCIETY* 12 (2004).

mimicking Disneyland). Disney parks “become[] a useful lens through which to view a number of issues that are of concern in contemporary social sciences.”<sup>107</sup>

### 1. Lines and the “Disney Laws”

Visiting a Disney park is an immersive experience primarily because it is an extremely controlled environment.<sup>108</sup> Many scholars have discussed oversight of guests in the park<sup>109</sup> through architectural design,<sup>110</sup> structural methods (such as the high cost of admission and displayed

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<sup>107.</sup> Id. at 175.

<sup>108.</sup> CHER KRAUSE KNIGHT, POWER AND PARADISE IN WALT DISNEY’S WORLD 26–32 (2014).

<sup>109.</sup> One of the early and most extreme views was articulated by Italian philosopher Umberto Eco who wrote, “Disneyland is also a place of total passivity. Its visitors must agree to behave like robots.” UMBERTO ECO, TRAVELS IN HYPER REALITY: ESSAYS 48 (William Weaver trans., Harcourt Brace Jovanovich, Inc. 1986) (1967).

<sup>110.</sup> STEPHEN M. FJELLMAN, VINYL LEAVES: WALT DISNEY WORLD AND AMERICA 203 (1992); Susan Willis, Public Use/Private State, in INSIDE THE MOUSE: WORK AND PLAY AT DISNEY WORLD 180, 184–85 (The Project on Disney ed., 1995).

signage),<sup>111</sup> and strictly enforced rules about appropriate behavior and attire.<sup>112</sup>

Despite that law and order are omnipresent at Disney parks, people come there to relieve anxieties, forget their worries, and enjoy an uplifting, enjoyable experience.<sup>113</sup> Statistics show that 70% of Disney World guests are repeat visitors.<sup>114</sup> Ironically, however, a visit to a Disney park can also be seen as an uneasy experience due to its competitive nature—competition with other guests for the most precious resource there is: time. As cultural studies scholars Margaret King and Jamie O’Boyle write: “Like our cities, theme parks are crowded, competitive, decision-laden environments requiring considerable pre-planning and re-planning as contingencies, chance, and fresh opportunities arise . . . . A theme park visit, unlike a beach or spa vacation, demands almost continuous decision-making and problem-solving.”<sup>115</sup>

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<sup>111</sup>. Guests are expected to “show common courtesy to fellow park guests” and avoid engaging in unsafe, illegal, or offensive behaviors. See KNIGHT, supra note 108, at 63.

<sup>112</sup>. BRYMAN, supra note 106, at 132–33. Guests are expected to “show common courtesy to fellow park guests” and avoid engaging in unsafe, illegal, or offensive behaviors. See KNIGHT, supra note 108, at 63.

<sup>113</sup>. KNIGHT, supra note 108, at 26.

<sup>114</sup>. ID.

<sup>115</sup>. King & O’Boyle, supra note 105, at 15; see also Susan Willis, The Family Vacation, in INSIDE THE MOUSE: WORK AND PLAY AT DISNEY WORLD, supra note 110, at 34, 35–37.

Lines to attractions are the quintessential manifestation of the competitive nature that a Disney park visit could take. Lines are a system of ordering in conditions of scarcity.<sup>116</sup> However, apart from enforcing social order and increasing efficiency, lines also promote equality because they rely on the principle that individuals should access services based on their time of arrival at the service location.<sup>117</sup> “First come, first served” is an important concept in American society, as it reinforces the democratic notions of fairness, efficiency, and equality.<sup>118</sup> One should always wait his or her turn, as everyone is supposed to be equal in access to systems of distribution.<sup>119</sup>

The tension between the social reasoning to have lines (as a matter of enforcing order) and the individualistic desire to be entitled and to “jump the queue” is the force behind the fear of the disability con in Disney parks.<sup>120</sup> Simply put, “[lines] tell us what excuses are acceptable

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<sup>116.</sup> Young, supra note 3, at 76.

<sup>117.</sup> Id. at 78–79.

<sup>118.</sup> MICHAEL J. SANDEL, WHAT MONEY CAN'T BUY: THE MORAL LIMITS OF MARKETS 18–19 (2012); Richard C. Larson, Perspectives on Queues: Social Justice and the Psychology of Queueing, 35 OPERATIONS RES. 895, 896 (1987); Ronen Perry & Tal Z. Zarsky, Queues in Law, 99 IOWA L. REV. 1595, 1602 (2014).

<sup>119.</sup> FJELLMAN, supra note 110, at 39.

<sup>120.</sup> The metaphor of “queue jumpers” has been discussed in legal scholarship to describe various instances from academic accommodations for learning disabilities, to healthcare coverage, claiming

and how to make or avoid eye contact with others. Lines are arenas for both civility and potential chaos. They are also the one central experience all visitors [to Disney parks] share,” and disability is the celebrity status that could potentially cut all the others but not without evoking strong emotions of anger and envy.<sup>121</sup>

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refugee status, and housing rights. See generally MARK KELMAN & GILLIAN LESTER, JUMPING THE QUEUE: AN INQUIRY INTO THE LEGAL TREATMENT OF STUDENTS WITH LEARNING DISABILITIES (1997); Young, supra note 3, at 93–112. In her account of the events that led to the Presidential election results of 2016, renowned sociologist Arlie Russell Hochschild describes how Trump voters perceive themselves as standing in a line working towards accomplishing the American Dream when minorities, women, immigrants, refugees, public sector workers are “cutting in line ahead of them,” because of liberal policies such as affirmative action. “You feel uneasy. It has been said: the line cutters irritate you. They are violating rules of fairness.” ARLIE RUSSELL HOCHSCHILD, STRANGERS IN THEIR OWN LAND: ANGER AND MOURNING ON THE AMERICAN RIGHT 102–04 (2016).

<sup>121</sup>. FJELLMAN, supra note 110, at 206; Ben Mattlin, When Wheelchairs Are Cool, N.Y. TIMES (July 31, 2014), [http://www.nytimes.com/2014/08/01/opinion/when-wheelchairs-are-cool.html?\\_r=0](http://www.nytimes.com/2014/08/01/opinion/when-wheelchairs-are-cool.html?_r=0) [<https://perma.cc/HK76-C35S>].

## 2. Disability Policy in Disney Parks

“In general, and contrary to much of the real world, the disabled are made welcome [in Disney parks]”<sup>122</sup> through careful design of the built environment and policies that include reserved seating and access procedures to shows, parades, and rides, all which ensure accessibility. Those efforts were put in place even before it was mandatory under Title III to the ADA.<sup>123</sup> In the words of the mother of a 4.5-year-old girl with cerebral palsy and epilepsy writing about the experience of holding annual passes to Disneyland:

It has been one of the most magical and incredible family fun times of our lives . . . There’s just no way to describe seeing your child have genuine fun . . . their face light up . . . and feel like just one of the kids . . . when you so often watch them on the sidelines . . . watching everyone else ride bikes and play baseball in the cul de sac. Disneyland is one of the absolute few places where we can all . . . every one of us . . . participate in the same way.

She concludes:

Disneyland is not a basic human right, but it’s FUN. And in so many ways, it actually manages to level the playing field, if even only for a day.<sup>124</sup>

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<sup>122.</sup> FJELLMAN, supra note 110, at 201.

<sup>123.</sup> Id.

<sup>124.</sup> Jeannett Gibson, Disneyland’s Guest Access Card Changes & Physical Disabilities, LIFE REARRANGED (Sept. 26, 2013),

Disability is ubiquitous in Disney parks because these places are so welcoming and accessible.<sup>125</sup> People can rent wheelchairs and other assistive devices at City Hall at the entrance to the park.

In the past, Disney parks had a policy of issuing a Guest Assistant Card (GAC), which allowed guests with disabilities and all people in their respective parties to skip lines and enter attractions through alternative entrances.<sup>126</sup> The rationale for allowing people with disabilities to skip lines has to do with the fact that, generally speaking, this population tends to move more slowly than nondisabled persons do. To “compensate” for the lost time of moving around the spread-out theme park and to allow disabled guests to enjoy the many attractions, Disney accommodates them by providing them with shorter lines. Other rationales for the policy differ according to the type of disability. People with mobility or orthopedic impairments who use wheelchairs, scooters, or strollers also cannot physically wait in the lines that were designed as complex open

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<http://liferearranged.com/2013/09/disneylands-guest-access-pass-changes-physical-disabilities/> [<https://perma.cc/4QMF-YDJC>].

<sup>125</sup>. St. Clair, supra note 20.

<sup>126</sup>. A.L. v. Walt Disney Parks and Resorts U.S., Inc., No. 6:14-cv-1544-Orl-22GJK, at \*1–2 (M.D. Fla. Apr. 28, 2016) (Courthouse News Service).

mazes<sup>127</sup> and are not wide enough to accommodate mobility devices.<sup>128</sup> For people with neurological impairments (or simply differences, as the neurodiversity movement puts it<sup>129</sup>), such as autism, waiting in line is an excruciating task, as will be discussed later.

The perception of the GAC policy as providing “special rights” was further emphasized by media outlets that refer to it as the “line jumping program.”<sup>130</sup> Because of the privileges it allows, there was alleged abuse of the GAC system, when “the most common way guests abused the former GAC system was by requesting the accommodation with no need

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<sup>127.</sup> FJELLMAN, supra note 110, at 207. Umberto Eco wrote: “Access to each attraction is regulated by a maze of metal railings which discourages any individual initiative [to choose and think independently].” ECO, supra note 109, at 48.

<sup>128.</sup> Gibson, supra note 124.

<sup>129.</sup> See, e.g., ANNE MCGUIRE, WAR ON AUTISM: ON THE CULTURAL LOGIC OF NORMATIVE VIOLENCE 59 (2016); Francisco Ortega, The Cerebral Subject and the Challenge of Neurodiversity, 4 BIOSOCIETIES 425, 426 (2009); Judy Singer, ‘Why Can’t You Be Normal for Once in Your Life?’ From a ‘Problem with No Name’ to the Emergence of a New Category of Difference, in DISABILITY DISCOURSE 62, 64 (Mairian Corker & Sally French, eds., 1999).

<sup>130.</sup> Disney Changing Line-Jumping Program for Disabled, FOX NEWS (Sept. 24, 2013), <http://.foxnews.com/travel////changing-line-jumping-program-for-disabled.html> [<https://perma.cc/7HT8-ZLR7>].

for it altogether.”<sup>131</sup> Another type of abuse received major national attention in May 2013, when multiple media outlets published stories about wealthy families hiring individuals with disabilities as “tour guides” to take advantage of their “celebrity” status and cut the lines with them.<sup>132</sup>

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<sup>131.</sup> A.L. v. Disney, No. 6:14-cv-1544-Orl-22GJK, at \*2–3; see also Ciara Lavelle, How I Scammed the Disney World Wheelchair Line System, MIAMI NEW TIMES (May 15, 2013), <https://miaminewtimes.com/i-scammed-the-disney-world-wheelchair-line-system-6492140> [<https://perma.cc/D2CT-LP96>].

<sup>132.</sup> KNIGHT, supra note 108, at 160; Lavelle, supra note 131; Lisa Belkin, Disney World Scam: Wealthy Moms ‘Rent’ Disabled Guides to Skip the Lines (And Shame Humankind), HUFFINGTON POST (May 14, 2013), [http://www.huffingtonpost.com/2013/05/14/skipping-lines-at-disney\\_n\\_3275836.html](http://www.huffingtonpost.com/2013/05/14/skipping-lines-at-disney_n_3275836.html) [<https://perma.cc/AU62-PUKW>]; Moms Pay \$1,000-a-Day to Hire Disabled Members to Skip Lines at Disney, FOX NEWS (Nov. 5, 2015), <http://www.foxnews.com/wealthy-nyc-moms-pay-1000-day-for-disabled-tour-members-to-skip-lines-at-disney.html> [<https://perma.cc/63LF-6WVU>]; Tara Palmeri, Rich Manhattan Moms Hire Handicapped Tour Guides So Kids Can Cut Lines at Disney World, N.Y. POST (May 14, 2013), <https://nypost.com/2013/05/14/rich-manhattan-moms-hire-handicapped-tour-guides-so-kids-can-cut-lines-at-disney-world/> [<https://perma.cc/XB28-96YD>]; Jeff Rossen & Josh Davis, Undercover at Disney: ‘Deplorable’ Scheme to Skip Lines, TODAY (May 31, 2013), <https://today.com/disney-deplorable-scheme-skip-lines-6C10131266> [<https://perma.cc/EJ4K-T3G4>].

Due to this type of abuse, Disney changed its GAC policy beginning October 2013.<sup>133</sup> The new policy, replacing GAC, is called Disability Access Services (DAS) and requires guests with disabilities and their parties to obtain a special card at the park's entrance. This card allows disabled guests to "virtually wait" for attractions without waiting in line by receiving a ticket with a "return time" for every attraction after visiting a special kiosk located next to it.<sup>134</sup> These guests can thus plan their visit accordingly (by visiting attractions in the order of the wait times obtained for each one).<sup>135</sup>

The change of policy due to fear of the disability con had caused quite a stir within the disability community, many of whom visit the parks regularly throughout their lives and view the former GAC policy as the

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<sup>133</sup>. Rossen & Davis, supra note 132.

<sup>134</sup>. A.L. ex rel. D.L. v. Walt Disney Parks and Resorts US, Inc., 900 F.3d 1270, 1277 (11th Cir. 2018).

<sup>135</sup>. Id. For the official policy, see Disney Parks, Disney Parks Disability Access Service Card Fact Sheet, DISNEY PARKS BLOG, <https://disneyparks.disney.go.com/blog/disney-parks-disability-access-service-card-fact-sheet/> [<https://perma.cc/X83C-GJZG>] (last visited Oct. 19, 2019). The difference between a DAS card and a regular "Fast Pass," which is available to every guest in the park, is that the former applies only to popular attractions, whereas the latter applies to every attraction. Despite the fact that the DAS can only hold one "return time" at a time, one can use it in addition to the Fast Pass that allows for reserved times to three attractions a day. See A.L. ex rel. D.L., 900 F.3d at 1277.

one that best accommodates their needs.<sup>136</sup> Some guests with disabilities even turned to the courts for help.

In April 2016, the U.S. District Court for the Middle District of Florida in Orlando rendered its decision in a case filed by A.L., a frequent visitor to Disney World, who has moderate-to-severe autism. A.L.'s impairment could make his visit to the park challenging because, as mentioned, it could be a competitive experience that requires continual decision-making and is prone to changes according to chance.<sup>137</sup> A.L. is "incapable of deviating from consistency and routine"; his impairment requires him to follow his set plan when visiting the park. Following a routine includes avoiding waiting in line for attractions. Deviating from the routine results in a meltdown.<sup>138</sup>

Although A.L. was extremely pleased with the GAC, when he tried to visit the park with his family and used the new DAS system, he found it to be insufficient in maintaining the much-needed strict routine. He had to cut his visit short and leave, to avoid the risk of a meltdown, after

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<sup>136.</sup> A.L. v. Disney, No. 6:14-cv-1544-Orl-22GJK, at \*2; Katia Hetter, Disney Tightens up Resort Disability Program, CNN (Sept. 25, 2013), <http://www.cnn.com/travel/article/disney-disability-policy-changes/index.html> [<https://perma.cc/34F8-7SRN>].

<sup>137.</sup> See supra note 107 and accompanying text.

<sup>138.</sup> "A meltdown consists of exhibiting a specific tic or tendency which could be humming sounds, making random noises, striking out, swinging arms, hitting oneself, or flailing wildly." A.L. v. Disney, No. 6:14-cv-1544-Orl-22GJK, at \*2.

standing in line for forty minutes for one attraction.<sup>139</sup> A.L. claimed that the failure of the DAS to accommodate his needs is illegal based on Title III of the ADA, which prohibits disability discrimination “in the full and equal enjoyment of . . . services” at “any place of public accommodation” such as theme parks.<sup>140</sup> The “full and equal enjoyment” standard can be fulfilled via the use of “reasonable modifications in policies, practices, or procedures.”<sup>141</sup>

A.L. thus filed for injunctive relief, requiring Disney to return to the GAC system because he alleges it is the only one that accommodates persons with cognitive-neurological impairments.<sup>142</sup> In response, Disney again relied on the fear of the disability con rationale by claiming that returning to the GAC system would “fundamentally alter its operations based on the risk of abuse and an overall adverse impact on the wait times experienced by all other guests.”<sup>143</sup> In other words, Disney’s perceptions of the adverse effect of the abuse of its disability policy are

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<sup>139.</sup> Id. at \*3–4.

<sup>140.</sup> 42 U.S.C. § 12182(a) (1990); A.L. ex rel. D.L. v. Walt Disney Parks and Resorts US, Inc., 900 F.3d 1270, 1290 (11th Cir. 2018) (“As a threshold issue, plaintiffs claim Disney’s DAS program is an impermissible ‘blanket’ or ‘one size fits all’ policy for all disabled persons with autism and/or cognitive impairments.”).

<sup>141.</sup> 42 U.S.C. § 12182(b)(2)(A)(ii) (1990).

<sup>142.</sup> A.L. v. Disney, No. 6:14-cv-1544-Orl-22GJK, at \*4.

<sup>143.</sup> Id. at \*8; A.L. ex rel. D.L., 900 F.3d at 1298–99.

sufficient justification for enacting a new policy that is far less favorable to its beneficiaries.

The district court eventually dismissed all of A.L.'s claims and granted summary judgement for Disney. In its decision, the court explained that even with the DAC system in place, Disney "affords Plaintiff a similar, or better, experience as those not needing [it]."<sup>144</sup> After winning summary judgement in the A.L. case, Disney filed for summary judgments in thirty-seven other similar cases brought by disabled individuals<sup>145</sup> against the DAS, which were granted in September 2016.<sup>146</sup> A.L. and the thirty-six other plaintiffs filed appeals to the Eleventh Circuit that were consolidated.<sup>147</sup>

On August 17, 2018, the Eleventh Circuit reversed the summary judgements after finding that genuine issues of material facts exist with regard to the question about the necessity of the modification in the form of an altered DAS.<sup>148</sup> The court concluded, "The DAS card, as good as it may be, still fails to address plaintiffs' alleged impairments of the inability to wait virtually for rides and the need to adhere to a routine order of

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<sup>144.</sup> A.L. v. Disney, No. 6:14-cv-1544-Orl-22GJK, at \*11.

<sup>145.</sup> All but four of the thirty-six plaintiffs-appellants in those cases had autism and some of them had other disabilities as well. See A.L. ex rel. D.L., 900 F.3d at 1279. They were all frequent visitors to the parks. See id. at 1282.

<sup>146.</sup> Id. at 1288.

<sup>147.</sup> Id. at 1289.

<sup>148.</sup> Id. at 1297–98.

rides or repeat rides.”<sup>149</sup> The Eleventh Circuit remanded the case back to the district court to examine whether amending the DAS system to properly meet the needs of the plaintiffs-appellants would be reasonable (i.e., making sure that the amendment will not “fundamentally alter the nature of” services and facilities offered in the parks,<sup>150</sup> as Disney claimed it would by allowing for as much fraud as allegedly existed in the days of the GAC system.<sup>151</sup>)

### 3. The Disneyland Line Experiment

I designed an experiment around the experience of disability in a Disneyland line. Disney parks are an example of a place where line length matters, but a similar experience is typical in other cultural institutions (such as theaters and museums), airports, or government offices.<sup>152</sup> I varied the wait time and the visibility of disability of a guest who proceeds to the front of the line.

With regard to the visibility of disability, I decided to describe a wheelchair user because of the attention drawn to people who allegedly rent out wheelchairs at the park without actually being disabled.

Taking advantage of the fact that Disney parks display the wait time on signs that are located at the entrance to the line,<sup>153</sup> I manipulated a

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<sup>149.</sup> Id. at 1298.

<sup>150.</sup> *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 682 (2001).

<sup>151.</sup> A.L. ex rel. D.L., 900 F.3d at 1300.

<sup>152.</sup> See SANDEL, supra note 118, at 4–17.

<sup>153.</sup> The use of signs, which provide information to guests and help them plan their visit to theme parks, has been acknowledged as good

photo of a real Disneyland sign to showcase varying wait times. Having a visual cue helps better communicate the experience to participants by making it seem more real, even though the experiment was conducted online.

I ran the experiments three times: once on a sample of 666 participants using MTurk, displaying wait times of either 120 minutes or 10 minutes;<sup>154</sup> second on a representative sample of 1172 participants distributed by SSI, for which the wait time was either 5 minutes or no wait at all (0 minutes); and for the third time on a representative sample of 1103 participants distributed by SSI, for which the wait time was either 60 minutes or 3 minutes.

Participants were randomly assigned to one of four treatments:

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practice in terms of customer experience. See Larson, supra note Lines to attractions are the quintessential manifestation of the competitive nature that a Disney park visit could take. Lines are a system of ordering in conditions of scarcity. However, apart from enforcing social order and increasing efficiency, lines also promote equality because they rely on the principle that individuals should access services based on their time of arrival at the service location. “First come, first served” is an important concept in American society, as it reinforces the democratic notions of fairness, efficiency, and equality. One should always wait his or her turn, as everyone is supposed to be equal in access to systems of distribution., at 900.

<sup>154</sup>. This run did not include any other demographic and control variable, so, therefore, no regression table is provided.

- Long wait time (high scarcity) + Encountering a wheelchair user (visible disability, higher deservingness);
- Long wait time (high scarcity) + Encountering a man walking (nonvisible disability, lower deservingness);
- Short or no wait time (low scarcity) + Encountering a wheelchair user (visible disability, higher deservingness);
- Short or no wait time (low scarcity) + Encountering a man walking (nonvisible disability, lower deservingness).

The vignette presented to the participants read as the following:

You go on vacation at Disneyland. While exploring the rides and attractions, you notice that some of them have a separate and much shorter line designed for people with disabilities. You decide to go on one of these rides and notice the sign in front of the line saying the wait will take **120 minutes** / 60 minutes / 5 minutes / **10 minutes** / 3 minutes / there is no wait time. You then look to your side and see a young man in a wheelchair go to the disabled line/walk up to the disabled line showing a card to the staff person. He is let in right away.

In your opinion, how likely is it for the man to be a person with a disability?

- Extremely likely
- Very likely
- Moderately likely
- Slightly likely
- Not at all likely

FIGURE 3. . DISNEYLAND SIGNAGE INDICATING THE AMOUNT OF WAIT TIME IN LINE FOR AN ATTRACTION, AS PRESENTED TO PARTICIPANTS IN THREE WAVES: 120 MINUTES VS. 10 MINUTES OF WAIT TIME; 60 MINUTES VS. 3 MINUTES WAIT TIME; 5 MINUTES VS. NO WAIT TIME AT ALL



#### 4. Findings

The findings from the Disneyland experiments demonstrated the same pattern as the parking experiment did. Again, contrary to the hypothesis, the scarcity of resources did not have a statistically significant effect on the level of suspicion against the man cutting the line at Disneyland. It was solely the visibility of disability (that signals perceived deservingness) that affected the suspicion level of the participants, and as hypothesized, the participants were always more suspicious of the man with the less apparent disability ( $P < 0.001$ ).

The effect of the wait time on level of suspicion was not significant whereas the visibility of disability was again highly significant ( $F(1, 427) = 114.09$ ,  $p < 0.001$  for the 120-min vs. 10-min wait;  $F(1, 1,102) = 180.61$ ,  $p < 0.001$  for the 3-min vs. 60-min wait;  $F(1, 1,170) = 90.14$ ,  $p < 0.001$  for the 5-min wait vs. no wait time).

In the 120-min vs. 10-min wait condition, the effect size of the visibility is  $d = 0.8$ , which according to the Cohen's d convention is a large effect. In the 60-min vs. 3-min wait condition, the effect size was also large,  $d = 0.81$ . In the 5-min vs. no wait condition, the effect size of the visibility was  $d = 0.55$ , which is between medium and large effect size. The interaction effect between wait time and visibility was not statistically significant.

As with the parking experiment, the level of suspicion was lower than expected, with a mean of 2.36, 2.25, and 2.15 for the 120/10-min wait, 3/60-minute wait, 0/5-min wait, respectively.

FIGURE 4: LEVEL OF SUSPICION IN A DISNEYLAND LINE BY VISIBILITY OF DISABILITY AND WAIT TIME (120 MINUTES VS. 10 MINUTES) (MTURK)

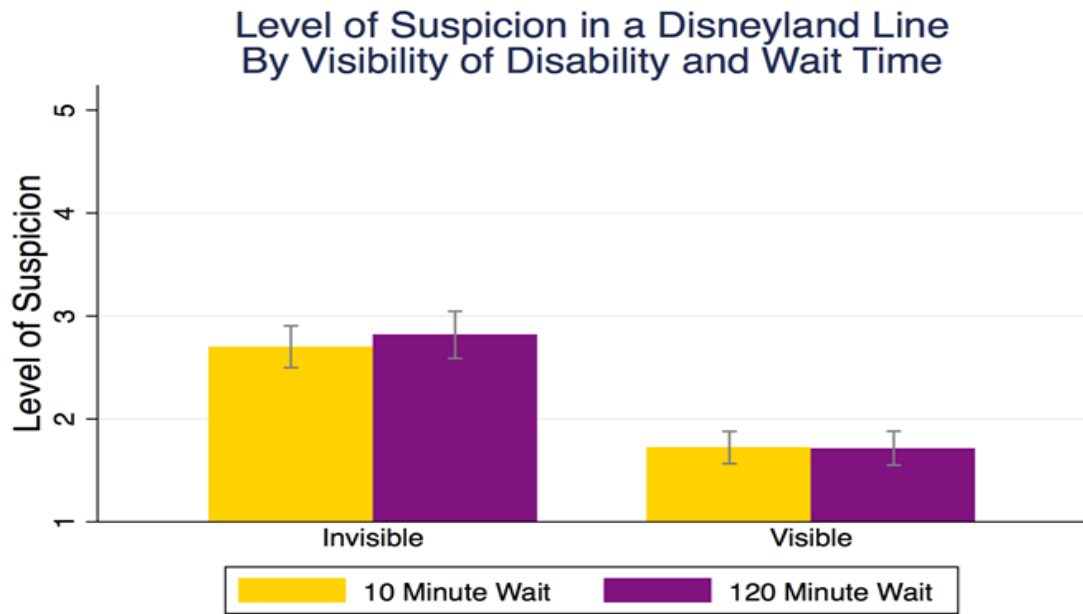


FIGURE 5: LEVEL OF SUSPICION IN A DISNEYLAND LINE BY VISIBILITY OF DISABILITY AND WAIT TIME (3 MINUTES VS. 60 MINUTES)

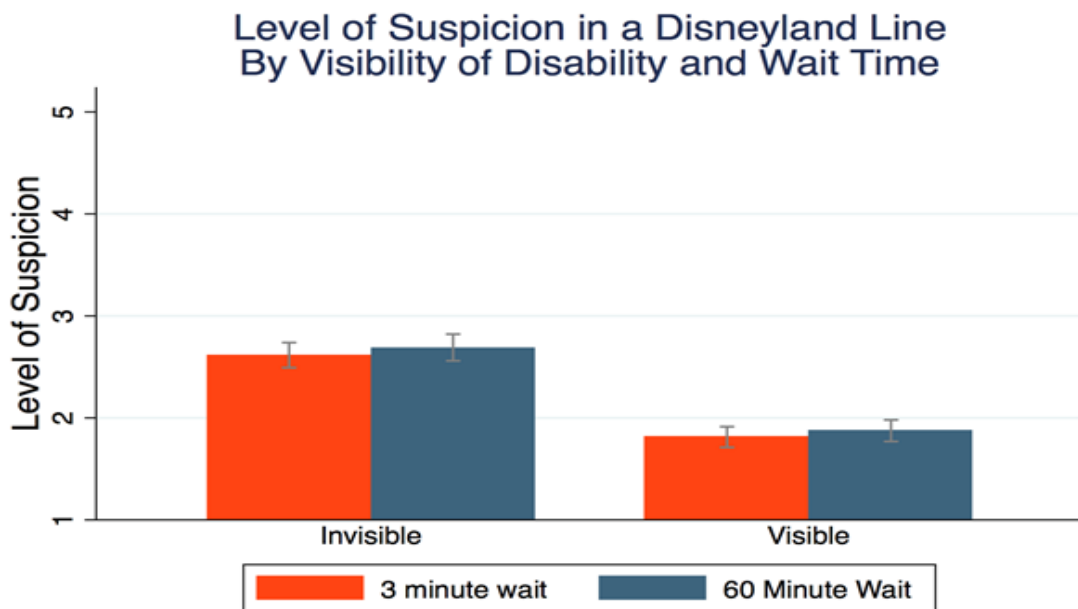
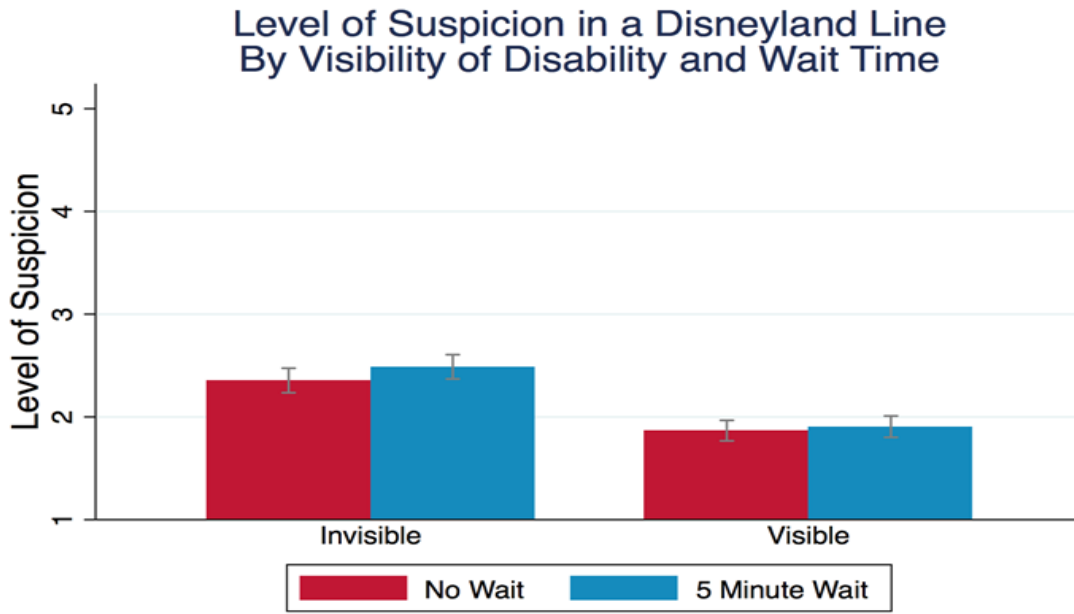


FIGURE 6. LEVEL OF SUSPICION IN A DISNEYLAND LINE BY VISIBILITY OF DISABILITY AND WAIT TIME (5 MINUTES VS. NO WAIT TIME)



Note: N=1,172

TABLE 3. OLS REGRESSION OF LEVEL OF SUSPICION IN A DISNEYLAND LINE, 60-MINUTE WAIT VS. 3-MINUTE WAIT (SSI 2)

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Visibility of Disability	-0.798*** (0.0572)	-0.809*** (0.0567)	-0.832*** (0.0584)	-0.835*** (0.0585)	-0.831*** (0.0585)	-0.833*** (0.0584)
Scarcity of Resources (Wait Time)	0.0709 (0.0572)	0.0698 (0.0567)	0.0806 (0.0583)	0.0777 (0.0585)	0.0824 (0.0585)	0.0871 (0.0584)
Likelihood of people abusing the law		0.0728* (0.0348)	0.0786* (0.0367)	0.0852* (0.0371)	0.0832* (0.0370)	0.0785* (0.0316)
Extent law allows abuse		0.0945** (0.0304)	0.0984** (0.0315)	0.0945** (0.0317)	0.0979** (0.0317)	0.0965** (0.0316)
No Relationship w. Disability (ref.)	--	--	--	--	--	--
Having a Cordial or Familial Relationship w. Disabled Individual	--	--	-0.143* (0.0700)	-0.140* (0.0702)	-0.151* (0.0704)	-0.144* (0.0704)
Having a Disability		--	-0.0547 (0.103)	-0.0574 (0.103)	-0.0879 (0.105)	-0.0759 (0.105)
Experienced Suspicion			-0.235** (0.0894)	-0.229* (0.0898)	-0.236** (0.0898)	-0.237** (0.0901)
Female	--	--	--	-0.0727 (0.0591)	-0.0727 (0.0590)	-0.0607 (0.0591)
Having Some College Educ.	--	--	--	--	-0.167 (0.0916)	-0.143 (0.0918)
Political Ideology (Liberal to Conservative)	--	--	--	--	--	0.075** (0.029)
Constant	2.612***	2.116***	2.167***	2.197***	2.343***	2.185***
R-square	0.1434	0.1645	0.1755	0.1791	0.1816	0.1870
Adjusted R-square	0.1419	0.1616	0.1722	0.1731	0.1749	0.1795
Sample Size (N)	1,174	1,172	1,102	1,098	1,098	1,098

Notes: Other control variables that were not found significant are race, family income, and age.

General suspicion level of others. Level of suspicion measured on a scale of 1–5.

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$  (two-tailed test)

TABLE 4. OLS REGRESSION OF LEVEL OF SUSPICION IN A DISNEYLAND LINE, 5-MINUTE WAIT VS. NO WAIT (SSI 1)

	Model 1	Model 2	Model 3	Model 4	Model 5
Visibility of Disability	-0.534*** (0.0563)	-0.524*** (0.0572)	-0.525*** (0.0571)	-0.525*** (0.0571)	-0.523*** (0.0571)
Scarcity of Resources (parking spots)	0.0856 (0.0564)	0.102 (0.0572)	0.103 (0.0572)	0.104 (0.0571)	0.103 (0.0571)
No Relationship w. Disability (ref.)	--	--	--	--	--
Having a Cordial or Familial Relationship w. Disabled Individual	--	-0.151* (0.0631)	-0.146* (0.0632)	-0.148* (0.0631)	-0.146* (0.0631)
Having a Disability		-0.376*** (0.0830)	-0.377*** (0.0830)	-0.383*** (0.0830)	-0.379*** (0.0831)
Female		--	-0.0797 (0.0573)	-0.0604 (0.0584)	-0.0595 (0.0584)
Having Some College Educ.	--	--	--	-0.0974 (0.0594)	-0.0990 (0.0594)
Political Ideology (Liberal to Conservative)	--	--	--	--	0.0320 (0.0262)
Constant	2.379***	2.477***	2.515***	2.564***	2.467***
R-square	0.0734	0.0905	0.0921	0.0943	0.0955
Adjusted R-square	0.0719	0.0872	0.0880	0.0894	0.0898
Sample Size (N)	1,171	1,113	1,113	1,113	1,113

Notes: Other control variables that were not found significant are race, family income, gender, and age. Level of suspicion measured on a scale of 1–5.

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$  (two-tailed test)

#### IV. DISCUSSION

In this Part, I discuss the findings from the experiments and from the interview data to illuminate how fear of the disability con affects disability law in action.<sup>155</sup> This Part has two goals. The first is to explore

<sup>155</sup>. Research on the gap between the “law on the books” and the “law in action” has been one of the main endeavors of the law and society movement. See STEWART MACAULAY, LAWRENCE M. FRIEDMAN

the implications of the main finding of the experiments that the suspicion is prompted by perceptions of deservingness and not by the pursuit of self-interest in circumstances of scarcity. This finding constitutes the psychological mechanism of the fear of the disability con. The second goal is to demonstrate how the suspicion has a negative effect on the way people with disabilities negotiate their rights.

I start by relating the psychological mechanism of the disability con to theories on the design of distributive laws. Next, to provide a fuller picture of the factors that contribute to the fear of the disability con, I highlight salient demographic characteristics that influenced the level of suspicion in experimental participants. I then use qualitative data obtained through interviews to show how the suspicion of the disability con creates significant burdens for disabled people when using and claiming rights. This Part concludes with a short description of data I obtained on the objective level of abuse of parking placards and the disability policy at Disney parks.

#### A. The Psychological Mechanism of the Fear of the Disability Con

The findings from the two experiments demonstrated that participants' assessments of the situations presented to these participants in both the parking and the Disneyland line vignettes were not motivated by the personal cost the participants might incur due to the scarcity of the resources. In other words, participants were willing to make the sacrifice

to allow for disability accommodations. These findings align well with observations from earlier research.

Early research on cognitive biases and “causes of behavior” found that people tend to underestimate the impact of situational factors (in this case, the availability of parking and the wait time) and overestimate the impact of traits they see as stable or dispositional (in this case, the disability) when analyzing and predicting a stranger’s behavior.<sup>156</sup>

Previous experimental research on public perceptions of systems designed for allocation of scarce resources has demonstrated that individuals see procedures that use a “weaker first” mechanism—one that categorizes need based on status or identity—as the fairest system.<sup>157</sup> Those systems are viewed as fairer than “first come, first served” systems such as queuing or the allocation of public parking.<sup>158</sup> This is despite the fact that the “first come, first served” systems are effective in preventing favoritism and promoting transparency by setting clear

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<sup>156.</sup> Linda Hamilton Krieger, The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity, 47 STAN. L. REV. 1161, 1204–05 (1995).

<sup>157.</sup> David A. Savage & Benno Torgler, Perceptions of Fairness and Allocations Systems, 40 ECON. ANALYSIS & POL’Y 229, 242 (2010). It is important to note that research was conducted with economics students at the University of Basel in Switzerland. I was not able to locate similar research on a “weaker-first” mechanism conducted in an American context.

<sup>158.</sup> Id.

expectations for participants about equally respecting everyone's time.<sup>159</sup> Other research has also demonstrated that people are willing to make small sacrifices to increase the social welfare and the payoff of others who are less well off,<sup>160</sup> as long as those beneficiaries played fairly.<sup>161</sup> Specifically, it was shown that laypeople would be willing to give up their places in line, even without any compensation, to strangers for whom it would be more efficient.<sup>162</sup> However, giving up a place in line is not viewed as an ordinary incident. It should be an exception and be done selectively.<sup>163</sup>

Disability, as an identity category, has been shown to be perceived as deserving to enjoy a "weaker-first" status.<sup>164</sup> This general public view fits with the ADA's accommodation mandate.

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<sup>159.</sup> JON ELSTER, SOLOMONIC JUDGEMENTS: STUDIES IN THE LIMITATION OF RATIONALITY 70–71 (1989); Perry & Zarsky, supra note 118, at 1608, 1611; Young, supra note 3, at 75.

<sup>160.</sup> Gary Charness & Matthew Rabin, Understanding Social Preferences with Simple Tests, 117 Q.J. ECON. 817, 819, 849 (2002); see also Perry & Zarsky, supra note 118, at 1646–49 (discussing the implications of what the authors call the "special need" rule on legitimacy, efficiency, and sense of fairness).

<sup>161.</sup> Charness & Rabin, supra note 160, at 824–25.

<sup>162.</sup> Felix Oberholzer-Gee, A Market for Time: Fairness and Efficiency in Waiting Lines, 59 KYKLOS 427, 436–37 (2006).

<sup>163.</sup> Id. at 438.

<sup>164.</sup> It was found that, in industrialized Western countries, the general

Furthermore, it has been argued that the reason for the ubiquitous private enforcement of disabled parking regulations, even in contexts in which the enforcers have little to personally gain, is the internalization of the rules by laypeople; they highly value the principle of “weaker first” and thus feel the need to enforce it.<sup>165</sup> The same applies to the convention of queuing; in a classic experiment, renowned social psychologist Stanley Milgram and others explained that people do not violate the norms of the queue, because they have internalized them or because other people in the line enforce those norms through verbal and nonverbal acts.<sup>166</sup> As I will demonstrate later, although this private enforcement of norms might be well-intentioned, it ends up hurting many of the persons who are supposed to be protected by the law. This is due to false identification and the misunderstanding of the nature of disability.<sup>167</sup>

It seems that participants needed to make sure that the legal beneficiary of the right was worthy of the right, in other words, receiving the

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public was most in favor of social protection of old people, closely followed by people with disabilities. See Oorschot & Roosma, supra note 22, at 14–15.

<sup>165.</sup> Geoffrey P. Miller, Norm Enforcement in the Public Sphere: The Case of Handicapped Parking, 71 GEO. WASH. L. REV. 895, 908 (2003).

<sup>166.</sup> Stanley Milgram, Hilary James Liberty, Raymond Toledo & Joyce Wackenhut, Response to Intrusion Into Waiting Lines, 51 J. PERSONALITY & SOC. PSYCHOL. 683, 683–85 (1986); see also Young, supra note 3, at 76, 82.

<sup>167.</sup> See infra Section 1.

preferable parking spot or moving to the front of the line. When there was a doubt as to the person's deservingness, signaled by a nonvisible disability, participants were significantly more suspicious of the person's being a "cheater"<sup>168</sup> who is "gaming the system."

It is the sense of fairness, of making sure that no one is acting wrongly or taking advantage of the situation, rather than a simple cost-benefit analysis, that drives participants' reactions to disability rights in public.<sup>169</sup>

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<sup>168</sup>. Cosmides, supra note 7, at 197; Cosmides & Tooby, supra note 8, at 199–200.

<sup>169</sup>. A 2019 survey conducted by a British NGO dedicated to Crohn's disease, ulcerative colitis, and other forms of inflammatory bowel disease, strengthened this finding. It found that ninety-three percent of respondents think that by challenging a person who does not look disabled for using the accessible toilet, they are "standing up for the rights of disabled people" or because they believe it is "not fair" on the rest of society. See Katie O'Malley, 90% of People Think They're Helping Society by Challenging People Who Don't 'Look Disabled', Says Study, INDEPENDENT (Apr. 16, 2019), <https://independent.co.uk/style/health-and-families/disabilities-crohns-colitis-abuse-disabled-toilets-a8871111.html?fbclid=IwAR0BlgT4MtM6q78YniJf9vKSyDKo3fMFLLTcOsZ5V-zl0c9gANd-5eM70e0> [<https://perma.cc/HN2K-2JKF>]; see also Diekmann et al., supra note 60, at 1071 (finding that participants in two experiments valued equal allocation of scarce resources to different members of society. However, participants viewed allocation favoring them or their

This conclusion is supported by the fact that there was a statistically significant positive correlation between the level of suspicion, perceptions of the prevalence of disability con in society, and perceptions about the ability to commit disability con using current legislation. Participants who thought that current disability laws are likely to allow people who do not have disabilities to take advantage of the law, or that people who are not disabled often take advantage of laws that are designed for people with disabilities, also demonstrated a higher level of suspicion in both experiments [see Tables 3 and 7 (SSI 2)].<sup>170</sup>

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own group members, who they see as deserving, as more fair compared with similar allocation disfavoring members of the out-group, whom they viewed as less or not deserving.).

<sup>170</sup>. Participants were asked the questions about the prevalence of disability con before they were exposed to both the parking and Disneyland line experiments in the third run. The first question was phrased: “In your opinion, to what extent do current disability laws allow people, who do not have disabilities, to take advantage of them?” The answers were given on a 1–5 Likert scale: 1) To a very great extent; 2) To a great extent; 3) To a moderate extent; 4) To a small extent; 5) Does not allow for taking advantage at all. The second question was: “In general, how often do you think people who are not disabled take advantage of laws that are designed for people with disabilities?” The possible answers were: 1) Very often; 2) Often; 3) Sometimes; 4) Rarely; 5) Never.

The assessment of deservingness has not been measured in behavioral economics research on social preferences.<sup>171</sup> This research thus fills a gap in the literature. In this study, the level of the visibility of disability is used as a proxy to measure deservingness. The topic of the socio-legal treatment of nonvisible disability also stands in and of itself as a worthy topic of future investigation.

Another point that deserves further attention is the role of the market in establishing a sense of deservingness vis-à-vis deserving identity groups such as people with disabilities. In today's economy, people can purchase their place at the front of the line in a variety of contexts from tourist attractions, to airports and highways, or even in health care with "concierge doctors" available 24/7 for an appointment.<sup>172</sup> Yet it seems that much less public outcry exists about line-cutting by those who are willing to pay. Future research should examine the differences in perceived fairness in situations in which preferred treatment is assigned by the market or by the law. Such research would demonstrate how anti-discrimination law and affirmative action mandates are at play against the backdrop of a market economy emphasizing a "you get what you pay for" attitude.<sup>173</sup>

## B. Social Demographics Influencing Suspicion

Other factors, apart from the sense of deservingness, were found to influence fear of the disability con. To provide a fuller picture of the

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<sup>171</sup>. Charness & Rabin, supra note 160, at 849.

<sup>172</sup>. See SANDEL, supra note 118, at 19–21, 25–27.

<sup>173</sup>. Id. at 28.

regression models I used for the experiments, I describe the social demographics that were found to affect the level of suspicion.

The OLS regression analysis of both experiments demonstrates a statistically significant relationship between having some kind of familiarity with disability (living with a disability or having a relationship with a disabled friend or family member) and lower levels of suspicion.<sup>174</sup> Thus, compared with those with no relationship to disability, nondisabled participants who have a disabled friend or family member and participants with disabilities reported lower levels of suspicion ( $p < 0.05$ ;  $p < 0.01$ , respectively).<sup>175</sup>

With regard to other demographics, the parking experiment and one of the Disneyland Line experiments (SSI 2) showed a statistically significant positive relationship between conservative political ideology and level of suspicion ( $p < 0.001$  for parking;  $p < 0.01$  for Disneyland). The parking experiment also showed that having some college education is

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<sup>174</sup>. This finding fits with the observation that the social identity of the person making the judgment, and the other who is being judged, influences the determination of deservingness. People are more likely to determine that their in-group members are deserving in comparison to out-group members. See FEATHER, supra note 4, at 6.

<sup>175</sup>. In the 60 Minutes Wait vs. 3 Minutes Wait Disneyland experiment (SSI 2), the regression shows that only participants with disabilities who felt suspected themselves were statistically significantly less suspicious compared with those with no relationship with disability ( $p < 0.01$ ). See supra Table 3.

associated with a lower level of suspicion ( $p < 0.001$ ) and that women are statistically significantly less suspicious than men are ( $p < 0.05$ ). However, these last two demographic correlations of suspicion were not found in any of the Disneyland experiments. The reason for the inconsistencies in the results of the two experiments might be attributed to an inherent difference between the two case studies. One could argue, for example, that the parking case is much more common and ubiquitous than the Disneyland case is, and therefore those differences might translate into the outcome.

Whereas the results about the relationship between gender and lower levels of suspicion of the disability can align with those from a previous study,<sup>176</sup> the results about relationship with disability seem to contradict earlier findings. Previous research about fear of the disability can that used an observational (rather than experimental) survey design found that participants with a personal relationship with disability were more suspicious of the disability can.<sup>177</sup> This contradiction can be explained by the common notion in social science that more abstract questions about a phenomenon receive different answers than questions asked in context do. This phenomenon has been widely known in political science research as “Fenno’s paradox.”<sup>178</sup> Public opinion surveys demonstrate the phenomenon that individual members of Congress have relatively high

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<sup>176.</sup> See Dorfman, *supra* note 18, at 1072, 1074, 1076–77.

<sup>177.</sup> *Id.* at 1073–74, 1077–78.

<sup>178.</sup> RICHARD F. FENNO, JR., *HOME STYLE: HOUSE MEMBERS IN THEIR DISTRICTS* 164–68 (1978).

approval ratings, while simultaneously, Congress as a whole has a very low approval rating.<sup>179</sup> Similarly, although the majority of public school parents said that they would give their child's school a grade of "A" or "B," just 17% of these same participants would give "public schools nationally" the same high score.<sup>180</sup> Thus, when asked general questions about abuse of disability law in the first study, participants with a relationship to disability answered differently than they did in this study, which presented concrete cases (parking and lines).

Although descriptive data, like that obtained through an observational survey in the previous study, give a glance into the respondents' broader world view (how much disability con there is generally), the experimental results test for the effect of encountering disability in a familiar context. The experimental results are powerful because they speak to a person's contextual behavioral decision-making process. Because they point to

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<sup>179</sup>. Laurel Harbridge & Neil Malhotra, Electoral Incentives and Partisan Conflict in Congress: Evidence from Survey Experiments, 55 AM. J. POL. SCI. 494, 507 (2011); see also Elizabeth Mendes, Americans Down on Congress, OK with Own Representative, GALLUP (May 9, 2013), <http://gallup.com///down-congress-own-representative.aspx> [<https://perma.cc/874W-3NJT>].

<sup>180</sup>. See Catherine Rampell, Actually, Public Education Is Getting Better, Not Worse, WASH. POST (Sept. 18, 2014), [https://washingtonpost.com//rampell-actually-public-education-is-getting-better-not-worse////c23b020-3f6a-11e4-9587-5dafd96295f0\\_story.html?utm\\_term=.b807e4b8a2b2](https://washingtonpost.com//rampell-actually-public-education-is-getting-better-not-worse////c23b020-3f6a-11e4-9587-5dafd96295f0_story.html?utm_term=.b807e4b8a2b2) [<https://perma.cc/KCK7-M4Q7>].

the factors that influence decision-making, the experimental results have strong real-world implications for the design of laws regulating the relationship between disabled and nondisabled individuals.

### C. The Consequences of Mistrust

The public fear of the disability con has a negative effect on people with disabilities. On the individual level, they worry about being judged negatively for using the disabled parking placard and are frequently harassed or questioned about their status. Furthermore, because fear of the disability con translates into law, the disability community often needs to navigate defensive practices that limit the scope of accommodations they previously enjoyed.<sup>181</sup> This point is clearly demonstrated in the context of the disability policy at Disney parks.

#### 1. Private Enforcement

In July 2016, one man in the San Francisco Bay Area consulted his neighbors in an email titled “Handicap parking abuse” sent to a local neighborhood electronic mailing list. This email demonstrates the lack of trust in authorities to enforce disabled parking rules and the need for private enforcement:

What is the best way to deal with people abusing the system?

Every day I watch as people with permits park in the 4-hr zone (for the entire day) jaywalk across Key Blvd and navigate the parking lot between cars to the BART [Bay Area

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<sup>181</sup>. For examples of the translation of the fear of the disability con into disability laws, see Dorfman, supra note 18, at 1057–58, 1086–87.

Rapid Transit] . . . Clearly these folks are gaming the system for free long term parking, and all it does is make the street unparkable for residents. Passive aggressive notes on windows? Confrontational YouTube videos? Just highly doubt ECPD [El Cerrito Police Department] can or will do anything . . .<sup>182</sup>

Administration of disability law and policies in general, and of disabled parking in particular, is often left to private enforcement by citizens. This is especially true in everyday situations when formal law enforcement is absent.<sup>183</sup> Disabled parking is a prime example of situations in which laypeople enforce legal standards according to the way those rules are communicated to them by the state and their understanding of those rules.<sup>184</sup>

Scholars have shown the private enforcement of disabled parking to be a social phenomenon that takes on many forms. Disability studies scholar Ellen Samuels documented the online traffic in HandicappedFraud.org, a website founded in 2007 as a community service surveillance project with the goal of ending the misuse of disabled parking placards.<sup>185</sup> The website allows individuals to report violations of

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<sup>182.</sup> Email sent to a listserv called “Nextdoor El Cerrito del Norte (Inner)” on the morning of July 27, 2016. On record with the author.

<sup>183.</sup> BAGENSTOS, supra note 42, at 32; MARUSEK, supra note 25, at 138–39.

<sup>184.</sup> Miller, supra note 17, at 903.

<sup>185.</sup> SAMUELS, supra note 17, at 133; HANDICAPPEDFRAUD.COM,

disabled parking rules along with a description of the incident; photos can be posted as well. Samuels documents responses on the website by people who were wrongly suspected of fraud, asking reporters “not to jump to conclusions.”<sup>186</sup> Legal scholar Geoffrey Miller analyzed stories in local newspapers and letters to the editors to create a typology of responses from enforcers.<sup>187</sup> Those reactions range from giving friendly and cordial advice to the “violator” to confrontation (whether face-to-face or by leaving a note) and even retribution (by causing harm to the “violator’s” vehicle, blocking the “violator” into the space, and even physical violence).<sup>188</sup>

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<https://www.myparkingsign.com/handicapped-fraud/> [<https://perma.cc/42AH-UVZ7>] (last visited Nov. 16, 2019).

<sup>186.</sup> SAMUELS, supra note 17, at 139. There are also smart phone apps that enable the reporting of abuse to local authorities, but those usually regard instances in which no placards were displayed at all in the car and thus are beyond the scope of disabled parking placard abuse. One of those apps, called Parking Mobility, requires a photo of the car’s windshield to prove there is no placard in place. See Richard Read, Finally: An App to Report Drivers Illegally Parked in Handicapped Spots, CAR CONNECTION (Sept. 5, 2013), [https://www.thecarconnection.com/news/1086743\\_finally-an-app-to-report-drivers-illegally-parked-in-handicapped-spots](https://www.thecarconnection.com/news/1086743_finally-an-app-to-report-drivers-illegally-parked-in-handicapped-spots) [<https://perma.cc/MT3C-5KKW>].

<sup>187.</sup> Miller, supra note 165, at 898.

<sup>188.</sup> Id. at 916–32. For a few recent examples of such reactions published in the media, see Jennifer Earl, Student Undergoing Radiation Publicly

David Brown,<sup>189</sup> a deputy director at a California DMV, said in an interview that because of the fear of confrontation, the DMV does not encourage people to record suspicious disabled parking placard use. However, officially, the California DMV does encourage individuals to report potential abusers to its hotline.<sup>190</sup> Illinois has a similar policy, as

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Shamed for Using Handicapped Spot, CBS NEWS (Nov. 8, 2017), <https://www.cbsnews.com/news/student-undergoing-radiation-treatments-publicly-shamed/> [<https://perma.cc/CA6P-MGH2>]; Mom of Terminally Ill Son Shamed for Parking in Handicapped Spot, FOX NEWS (Dec. 7, 2017), <http://www.foxnews.com/us/2017/12/07/mom-terminally-ill-son-shamed-for-parking-in-handicapped-spot.html> [<https://perma.cc/A2TW-WTDB>]; Sarah Moessinger, I'm Tired of People Telling Me I Don't 'Look Sick' Because I Am, KVELLER (Feb. 8, 2016), <https://kveller.com/tired-of-people-telling-me-i-dont-look-sick-because-i-am/> [<https://perma.cc/82C4-TGNW>]; Gina Szajnik, To the Person Who Left Me a Rude Note After I Parked in a Disability Spot, MIGHTY (Jan. 4, 2017), <https://themighty.com/2017/01/response-to-rude-note-after-parking-in-disability-spot/> [<https://perma.cc/9WGX-YLDB>].

<sup>189</sup>. See supra note 100.

<sup>190</sup>. See David Fleshler, Parking Lot Vigilantes Abuse Woman with 'Invisible' Disability, SOUTH FLA. SUN SENTINEL (Jan. 2, 2015), <http://www.sun-sentinel.com/local/broward/fl-disabled-tag-20150102-story.html> [<https://perma.cc/V5VL-H8UG>]; David Lazarus, How to Report Bogus Use of a Disabled Parking Placard, L.A. TIMES (May 6, 2015), <http://beta.latimes>.

Tamara Woodward, who works on disabled parking policy at the Illinois Secretary of State, explained:

We have an “email hotline.” So, when someone sees abuse, they can shoot us an email . . . and we take a look to see whether we need to pursue this further. What we see with the email is that we have some very zealous people, for a lack of a better term, who would just literally sit in the Walmart parking lot all day long and do nothing but take down license plates of individuals who park in the disabled parking spots and don’t have a placard . . . and I would say 70% of the time, these are people who do have placards who just forgot to hang them up . . . . We also get somebody who will write in and say, “This person parked in the disabled spot, and they don’t look disabled,” and things like that. And we’ll always have to come back and say that to this person—we respect this person’s opinion, and we also train our law enforcement this way, but disabilities are not always visible.

Things can escalate, as Woodward mentioned: “We do have situations where people would actually confront other people in the parking lot . . . and that can end up being a very dangerous situation.”

Two incidents in Florida in July 2018 are an example of those types of “dangerous situations.” On July 16, a 40-year-old man was critically injured after being stabbed repeatedly with a folding knife by

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com/business/la-fi-laz-reporting-disabled-placard-fraud-20150506-column.html [https://perma.cc/LXS2-RGPA].

43-year-old “self-appointed guardian of disabled parking spaces” after being suspected of disability con.<sup>191</sup> Three days later, on July 19, 2018, a 28-year-old man who arrived with his girlfriend and son to a convenience store in Clearwater was shot to death by a 47-year-old “self-appointed wannabe cop”<sup>192</sup> after an altercation about the first one’s parking in a disabled spot.<sup>193</sup> The shooter was described by the local sheriff as a person who “lives in the area, was a frequent customer of the store and somebody who others have said complained about people parking in the handicapped spots, and he had an issue with people who illegally parked in handicapped spots.”<sup>194</sup>

Interviewees for this research had their own stories of being wrongfully accused of gaming the system. Jennifer, a 21-year-old college student who is a double amputee, said:

I guess I can’t even count the number of times that I’ve been questioned, especially in parking lots . . . People will give

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<sup>191</sup>. Cohen, supra note 1.

<sup>192</sup>. David Boroff, Gunman in ‘Stand Your Ground’ Parking Lot Shooting Charged with Manslaughter, DAILY NEWS (Aug. 13, 2018), <https://www.nydailynews.com/news/crime/ny-news-stand-your-ground-florida-20180813-story.html> [<https://perma.cc/KSB9-NUFK>].

<sup>193</sup>. Jacobs, supra note 1.

<sup>194</sup>. Pinellas Sheriff, Sheriff’s Press Conference- July 20, 2018- Shooting Investigation- Unincorporated Clearwater, YOUTUBE (July 20, 2018), <https://www.youtube.com/watch?v=MyiMpmZGZEk&feature=youtu.be> [<https://perma.cc/L8DU-FXTT>].

dirty looks, or they will pull up to the parking spot right next to me and they like look at me and I'm like [laughs] why do you [look at me]? Sometime I get aggressive [laughs].

There was one time when my little brother and my dad and I were going to the mall to shop for Christmas presents, and we have parked in the front row spot cause it was icy and I don't do well on ice, and some man starts following behind us and he's grumbling and very clearly upset about us parking in the front spot. So my dad turns around and he's like: "Excuse me? Can we help you?"

And he [the man] is like: "You don't need that parking spot . . . I'm the 'parking lot police,'" and he wasn't official but [said], "I'd like to think of that as my title, and I go around making sure that people who don't need it don't use it." And my dad [said]: "Well, for your information, one of us is disabled and has prosthetic limbs, so we do in fact need the spot," and the guy was like: "Well, you're walking fine, so I don't believe you," I mean he was really nasty . . . And I have never seen my dad get so mad.

The extreme private enforcement can even deter people with disabilities from using a disabled placard, preventing them from going out in public.<sup>195</sup> Thirty-eight-year-old Brenda, who lives with myasthenia gravis (a form of muscle fluctuation) and learning disabilities, said:

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<sup>195</sup>. See Dorfman, supra note 18, at 1082–83.

I don't use a disabled parking permit. I have actually been harassed when trying to [do so] . . . at one time I had it in Southern California when . . . I actually had a woman yell at me and pursue me in the parking lot . . . and I didn't feel safe having a simple tag up [that identifies me as disabled].

In a survey I conducted for another study,<sup>196</sup> a 47-year-old wrote, "I have not requested a disabled parking tag, because I'm terrified of being harassed." A 60-year-old wrote, "It happens all the time, to the point where I now avoid people." Another 33-year-old was more explicit:

I never reapplied for a parking plaque even though not having one has often caused me to avoid going to stores. If I can't get a close spot, sometimes I have to leave. I used to have one, but nearly every time I went out, I got verbally attacked, so it just became easier to adjust without one . . . I've been attacked and berated all because I'm young and don't look disabled. I have congenital heart disease and Ehlers-Danlos syndrome along with incomplete paraplegia. Getting around is hard, getting a parking permit is harder, and actually using one is impossible.

The stereotype of disability con has been shown to have a chilling effect on the use of rights by people with disabilities, a consequence that hinders the law's aspiration of inclusion. There is a need to restore the public trust in disability law and to mitigate the stereotype. Those goals

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<sup>196</sup>. Id. at 1064–65.

can be accomplished through a series of strategies related to the amendment of policies, enforcement, and improving intergroup relations.

## 2. The Price of Defensive Policies

Other than causing harassment and questioning at the individual level, as seen in the case of disabled parking placards, the fear of disability con has an effect on law and policy creation and implementation. People with disabilities need to navigate stricter policies based on the fear of abuse. Changes in Disney's disability policies are a prime example of the institutional burdens for people with disabilities.

A reading of the Disney briefs in the A.L. case gives the impression that despite the fact that Disney did not have sufficient data on the scope of abuse of the GAC system, Disney was more worried about the way the public reacted to the news media, specifically around the "tour guides" scandal, and thus reacted by enacting new rules. In his deposition, Bruce Laval, former vice president of Operations Planning and Development for Walt Disney Parks and Resorts, said that the abuse of GAC was egregious because:

It was all over social media . . . . And when that gets out in social media, it was more and more people doing it [selling GAC cards or "tour guide services"] as a business so you can't control that number . . . . I also read it in the newspaper . . . . I saw it on a news report somewhere when I was watching TV.<sup>197</sup>

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<sup>197</sup>. Deposition of Bruce Laval at 92–93, A.L. ex rel. D.L. v. Walt Disney Parks and Resorts US, 900 F.3d 1270 (July 18, 2018) (Doc 159–1, Ex-5).

What really motivated Disney to change its policy was the concern about its wholesome reputation and sense of control over the parks rather than the actual effects of the abuse. As highlighted earlier, the idea of control in the Disney parks is a top priority.

As a consequence, disabled guests claim that new DAS system burdens parties that include guests with disabilities who now must plan their visits based on further restrictions other than those caused by their impairments<sup>198</sup> and make their way across the park many times to pick up a return time ticket for each attraction.<sup>199</sup> Disabled guests, who frequent the park, suffered the consequences of a defensive policy. Recognizing this, the Eleventh Circuit sided with the plaintiffs, eventually convinced by the evidence presented by the plaintiffs in the appeal that they do have problems transitioning from one activity to the other, when not done in a strict routine, without having meltdowns.<sup>200</sup>

Whether Disney could have tolerated a certain level of abuse to better accommodate its disabled guests' needs is a question that stands at the heart of the complex issue of fear of the disability con. It seems that had Disney not given into the media frenzy, which would have likely abated, Disney would not have "punished" some of its loyal guests because of isolated acts of abuse. There could have been a better, more moral solution implemented under the circumstances.

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<sup>198</sup>. Hetter, supra note 136.

<sup>199</sup>. Gibson, supra note 124; A.L. ex rel. D.L. v. Walt Disney Parks and Resorts US, Inc., 900 F.3d 1270, 1284 (11th Cir. 2018).

<sup>200</sup>. Id. at 1297.

#### D. Perception vs. Reality: Assessing the Scope of Abuse

This Article seeks to empirically examine public perceptions and stereotypes about “faking disability” to abuse the law. Its main goal is not to objectively assess how much abuse there really is.<sup>201</sup> Nevertheless, as this Article focuses on two specific case studies, I was able to obtain some data on the scope of actual abuse of disabled parking placards and of the disability policy in Disney parks. As with any study of fraud, adequate data are hard to obtain;<sup>202</sup> however, the data indicate a lower level of abuse than perhaps expected.

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<sup>201.</sup> The theory behind studying the “social construction of social problems” was developed in the 1970s by sociologists Herbert Blumer, Malcolm Spector, and John Kitsuse. It suggests that what is often referred to as social problems or “epidemics” are not purely objective and identifiable societal conditions but are framed and constructed by members of society, interest groups, and the media. This construction stands alone from the “objective” nature of the problem and is worthy of sociological inquiry in and of itself. See MALCOLM SPECTOR & JOHN I. KITSUSE, CONSTRUCTING SOCIAL PROBLEMS 53, 77 (1977); Herbert Blumer, Social Problems As Collective Behavior, 18 SOC. PROBS. 298, 300 (1971). For a discussion of the importance of studying the fear of the disability con as a constructed social problem, see Dorfman, supra note 18, at 1056.

<sup>202.</sup> DEBORAH L. RHODE, CHEATING: ETHICS IN EVERYDAY LIFE 4 (2018).

## 1. Disabled Parking Placards

Citation data from the California DMV during the period 2013–2016 suggest that 15% of the placards checked were used fraudulently.<sup>203</sup> Using press releases from sting operations conducted in California from 2017 to 2018,<sup>204</sup> I found that the average use of fraudulent parking placards stood at 11% (ranging between 7% and 15%) [see Table 5].<sup>205</sup>

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<sup>203.</sup> CAL. STATE AUDITOR, supra note 94, at 34.

<sup>204.</sup> After the release of a report on the issue in April 2017, the California DMV started publishing monthly press releases on the sting operations conducted. For the database containing the press releases, see CA Department of Motor Vehicles News Releases, ST. CAL. DEP'T MOTOR VEHICLES, [https://dmv.ca.gov///?1dmy&urile=wcm:path:/\\_content\\_en/landing%2Bpages/toc1](https://dmv.ca.gov///?1dmy&urile=wcm:path:/_content_en/landing%2Bpages/toc1) [<https://perma.cc/XB5Z-NCAP>] (last visited Nov. 16, 2019). Other than sting operations, in 2019, the city of Los Angeles also significantly increased the fines for the abuse of disabled placards as another way to create deterrence and try to combat fraud and abuse. See Sonja Sharp, L.A. Quadruples the Fines for Disabled-Placard Fraud, But Will It Help?, L.A. TIMES (Apr. 21, 2019), <https://www.latimes.com/local/lanow/la-me-ln-disabled-placard-fraud-los-angeles-20190421-story.html> [<https://perma.cc/XD9C-AX6C>].

<sup>205.</sup> It is important to note that the sting operations are conducted in “hot spots,” popular locations where there is a lot of traffic and parking is scarce and which are reported to the DMV by the public. It might be that in less crowded locations there is even less improper use than was found during the sting operations.

These numbers might be lower than expected considering that the abuse of disabled parking placards is perceived to be a major problem.<sup>206</sup> It is much harder to assess how many placards were obtained illegally by falsifying documents, malingering,<sup>207</sup> or paying a “crooked doctor.” This is because the question of whether a person actually “needs” the disabled

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<sup>206.</sup> For example: Parking enforcement officials at five out of six cities in California stated that placard misuse was a big problem. See CAL. STATE AUDITOR, supra note 94, at 13. In a previous survey I conducted, 46% (494 out of 1,085) answered that it is common for people who do not have disabilities to use a disabled parking permit to park in disabled parking spots. The question asked: “How common is it for people who do not have disabilities to use a disabled parking permit in order to park in disabled parking spots?” The answers were given on a 1–5 Likert scale. Five percent (51 out of 1,085 respondents) answered it is extremely common; 16% (176 respondents) answered it is very common; and 25% (270 respondents) said it was moderately common. These numbers are high, specifically if one accounts for a social desirability bias that is expected to play a role in these types of surveys. See John M. Darley & Paget H. Gross, A Hypothesis-Confirming Bias in Labeling Effects, 44 J. PERSONALITY & SOC. PSYCHOL. 20, 28 (1983); Dorfman, supra note 18, at 1066.

<sup>207.</sup> Maligner, according to Merriam-Webster Dictionary, means “to pretend or exaggerate incapacity or illness (as to avoid duty or work).” Maligner, MERRIAM-WEBSTER DICTIONARY ONLINE, [https://www.merriam-webster.com/\[https://perma.cc/YZL6-GVHA\]](https://www.merriam-webster.com/[https://perma.cc/YZL6-GVHA]) (last visited Nov. 16, 2019).

parking permit was recognized by policy makers in many of the states as a subjective judgment.<sup>208</sup> I was not able to locate data or estimates on the prevalence of this type of abuse.<sup>209</sup>

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<sup>208</sup>. Miller & Singer, supra note 82, at 91.

<sup>209</sup>. While it offered no data with respect to malingering or purposefully submitting falsified documents, the California report did find that 73% (70 out of 96) of the applications for placards that were awarded were inadequate when compared with legal standards: there was not a full description of the disability needed to determine eligibility. See CAL. STATE AUDITOR, supra note Owning a disabled parking placard establishes three entitlements: (1) the right to obtain a reserved spot even when parking is scarce, in other words, in crowded and popular venues such as malls or sporting events; (2) the right to park close to the entrance, an accommodation for the person who has difficulty walking long distances. In economic terms, the close-by parking spot is worth more to the disabled individual than to a nondisabled one, and the regulator has acknowledged that and intervened in the market on behalf of the former over the latter; (3) an exemption from paying for public parking meters., at 16. However, David Brown (pseudonym), a deputy director at a California DMV, who went over the same sample, assured me that while the applications did not contain a “complete description of the disability,” 90% of the sample did contain sufficient information to tell that the applicant is permanently disabled.

TABLE 5. SCOPE OF PARKING PLACARD FRAUD IN CALIFORNIA BETWEEN APRIL 2017 AND APRIL 2018

2017/2018	Number of Sting Operations	Number of Vehicles Audited	Number of Citations issued	Percentage of Fraudulent Use
April	12	3,142	417	13%
May	16	1,175	135	11%
June	22	1,633	195	12%
July	24	1,596	170	11%
August	21	1,676	145	9%
September	25	3,700	555	15%
October	21	1,622	135	8%
November	27	2,016	171	8%
December	21	2,106	150	7%
January	22	1,822	185	10%
February	20	1,582	153	10%
March	20	2,050	167	8%
April	22	4,951	381	8%
				Mean: 11%

Note: Data presented in this table is based on author's calculation of the CA DMV Office of Public Relations' Press Releases.

## 2. Disney Disability Policy Abuse

How much fraud was there at Disneyland? It is difficult to know. A few interviewees testified to seeing such abuse. For example, 32-year-old Ashley, who has cerebral palsy, said:

I go to Disneyland every year . . . and people would, you know, you get a wheelchair from Disneyland and sit in it and they would go on a ride and they would get out of the chair [and] walk until [they got to] the ride, like normal, and then somebody else would get in the chair when they got off the ride. So, they would switch who will get in the chair at the ride. For me, I was like "what the heck?"

Reading Disney's trial brief, expert witness reports, and depositions from the A.L. case only reveals anecdotal information.<sup>210</sup> Disney mentions the issue of the disabled "tour guides" along with a study it conducted at Disney World in April 2013 called, "The GAC Easter Study," which measured the volume of guests using GAC.<sup>211</sup> Unfortunately, the actual number of guests using the GAC, like other valuable information, was blacked out and cannot be accessed on the electronic case file.<sup>212</sup> In the A.L. appeal, Disney argued that even if altering the

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<sup>210</sup>. "At least on one occasion, Guest Relations employees at the Magic Kingdom [park at Disney World, which most resembles the Disneyland park] witnessed a teenage boy celebrating with his friends after leaving City Hall with GAC. More egregiously, some guests created counterfeit GACs, posted Craigslist ads offering the use of GACs—at the cost of thousands of dollars—for unauthorized "tours" of Walt Disney World, and used the Internet to sell unexpired GACs." Document 217 Filed 1/29/2016. The incident involving the teenage boy is reminiscent of a story featuring teen sensation Justin Bieber uploading a picture of himself to social media using a wheelchair in Disneyland, which allowed him to "cut all lines." Price Peterson, Wheelchair-Bound Justin Bieber Cut All the Lines at Disneyland, WIRE (July 24, 2014), <https://www.theatlantic.com/entertainment/archive/2014/07/wheelchair-bound-justin-bieber-cut-all-the-lines-at-disneyland//> [<https://cc/GA-AGAW>].

<sup>211</sup>. Laval, supra note 197, at 15.

<sup>212</sup>. In any case, this report only showed an increase of GAC users in the park and does not indicate how many of them obtained the card illegally.

DAS could be considered a “necessary modification,” it still is unreasonable, as it would open the door to the same kind of abuse of the GAC system.<sup>213</sup> Recognizing that the question of whether altering the DAS system would fundamentally alter the park experience for visitors because of abuse has to do with substantial factual inquiry, the Eleventh Circuit remanded the issue to the district court.<sup>214</sup>

When Alison Armor, director of Distribution Services at Disney World, who was part of the team that devised the DAS reform, was asked in her deposition about the prevalence of the “tour guide” abuse, she answered: “People had anecdotal knowledge of it, but it’s not something people were advertising and letting us know ‘hi, I’m here as a tour guide to pick up my GAC card and sell my services’ . . . It was impossible to formally study.”<sup>215</sup>

In addition, the “tour guides” abuse, which generated a massive amount of bad press, was not the major cause of abuse. Armor said:

What we felt like, though, was the major sources of abuse were coming more from guests just fabricating their needs

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Id.

<sup>213.</sup> A.L. ex rel. D.L. v. Disney, 900 F.3d 1270, 1298 (11th Cir. 2018). In the appeal process the plaintiffs argued that they are not asking for a return to the GAC system but request for a modification of DAS system.

See id.

<sup>214.</sup> Id.

<sup>215.</sup> Deposition of Alison Armor at 53–54, A.L. ex rel. D.L. v. Disney, 900 F.3d 1270 (July 18, 2018) (Doc 159–2, Ex-6).

to get the pass for themselves because there was really no reason to pay for a guide if you were willing to just go and ask for a pass for yourself. We felt that was a major form [of abuse].<sup>216</sup>

In any case, the new DAS policy does not eliminate the potential for abuse or at least the perception of abuse by other guests, because Disney legally cannot require any documentation when someone requests the DAS card at the park entrance.<sup>217</sup> However, Armor said that the new DAS gives Disney a better sense of control:

We believe it [the DAS] is highly sought after . . . . Well, speaking on fraud in general, we do feel that although people are still wanting and desiring the pass and potentially

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<sup>216.</sup> Id.

<sup>217.</sup> The rule prohibiting the inquiry of someone about his or her disability when receiving public accommodation is found in the ADA regulations. 28 C.F.R. § 36.302(c)(6) (2016) (“A public accommodation shall not ask about the nature or extent of a person’s disability [and] shall not require documentation . . . .”). The rationale behind the rule relates to other cherished values in American society, that of privacy, personal space, and control over disclosure of information (all derived from individualism). See L. Robert Kohls, The Values Americans Live By (1984), <http://annmarielei.com/content////Values-Americans-Live-By.pdf> [<https://cc/PGR-M6MB>]; P. Wesley Schultz & Lynnette Zelezny, Reframing Environmental Messages to Be Congruent with American Values, 10 HUM. ECOLOGY REV. 126, 127 (2003).

fabricating the need for DAS, we have put some limits in place as it pertains to transferability . . . . You can't sell it on the street corner [or online].<sup>218</sup>

Essentially, the DAS does not curb the potential abuse; it just makes the appearance of the Disney experience seem fairer: People with the card do not get the “celebrity treatment,” and the public concern about “disabled tour guides” has been removed. Nevertheless, shortly after the tour guide controversy broke, Disney parks started to offer “VIP tours” with official tour guides, which include “expedited access to over 30 favorite Disneyland Resort attractions, Character Greetings and shows,” to those who are willing to pay hundreds of dollars for this service.<sup>219</sup> These VIP tours are exemplary of situations in which the ethics of queues—“first come, first served”—is being replaced by the ethics of markets—“you get what you pay for.”<sup>220</sup> This phenomenon, which was

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<sup>218</sup>. Armor, supra note 215, at 57–58.

<sup>219</sup>. Disneyland Resort VIP Tours, DISNEYLAND.COM, <https://disneyland.disney.go.com/events-tours/vip-tour-services/> [<https://perma.cc/3BVM-JP45>] (last visited Nov. 20, 2019); VIP Services, WALT DISNEY WORLD.COM, <https://.disney.go.com/tours/tour-services/> [<https://perma.cc/8XBT-2NRA>] (last visited Nov. 20, 2019).

<sup>220</sup>. See SANDEL, supra note 118, at 28. Other situations include “Lexus Lanes,” where the right to jump the queue is available for purchase, whether in other tourist attractions, airports, or highways, or “concierge doctors” available 24/7 with no line to make an appointment, for those who are willing to pay. Id. at 19–21, 25–27.

pointed out by philosopher Michael Sandal, is controversial because the democratic ideas of fairness and equality represented by the queuing system still dominate public opinion. It appears that for Disney, the ethics of queues is only given priority when it comes to disability policy, but comes in second to the ethics of markets that seem to trump any other consideration.

## V. RESTORING TRUST IN DISABILITY LAW

In this Part, I outline policy recommendations to help alleviate fear of the disability con and to enable people with disabilities to more easily and safely exercise their legal rights and accommodations in public spaces, specifically parking lots and lines. As the findings from this research could be expanded to other rights-based policies outside of the disability realm, so too could the recommendations in this part be applied to other social groups such as the recipients of health care and public benefits, immigrants, and asylum seekers.

Before I elaborate on strategies to increase trust and support of policies, it might be helpful to reiterate what is not required based on this study's findings. The experiments demonstrate that there is no need to invest in greater resources for public use, to fight scarcity, in order to increase public trust. In other words, there is no need to build more parking spots or more rides to enable theme park guests to spread across multiple queues. People are willing to wait in line longer or spend more time looking for parking if they know that the person receiving the accommodation, oftentimes at their expense, is in fact deserving. The current mandate of eligibility for protection under disability law needs to be better

communicated to the public, and the public view of deservingness should be better aligned with formal law.

This conclusion will seem like good news to some yet bad news to others. Changing public perceptions and reducing stereotypes is no easy task.<sup>221</sup> It might be much more complicated than fighting scarcity or encouraging people to give up their place in line or to find another parking spot, as they will do these things if they know that their effort helped a deserving person. The change needs to be in the way people understand both disability and the law. The goal of this part is to provide strategies and some concrete ideas on how to accomplish this challenging task.

#### A. Reducing the Deservingness Bias: Reframing Disability

Both types of the formal signs of disabled parking, the street parking sign and the placard itself, use the International Symbol of Access depicting a white stylized image of a person in a wheelchair on a blue background that has been commonly known as “handicapped blue.”<sup>222</sup> This worldwide symbol has become “the prototypic representation of

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<sup>221</sup>. THOMAS F. PETTIGREW & LINDA R. TROPP, WHEN GROUPS MEET: THE DYNAMIC OF INTERGROUP CONTACT 101 (2011); David J. Schneider, Modern Stereotype Research: Unfinished Business, in STEREOTYPES AND STEREOTYPING 419, 438–39 (C. Neil Macrae, Charles Stangor & Miles Hewstone, eds., 1996).

<sup>222</sup>. KATIE ELLIS & GERARD GOGGIN, DISABILITY AND THE MEDIA 1 (2015).

disability in Western societies.”<sup>223</sup> The International Symbol of Access has been successful in raising public awareness of the issue of disability accommodations. At the same time and perhaps because it was the way to educate the public about the existence of disability rights, it also defined a narrow view of disability as solely a physical, clearly visible condition, specifically that of the wheelchair user.<sup>224</sup> The symbol

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<sup>223</sup>. Liat Ben-Moshe & Justin J.W. Powell, Sign of Our Time? Revis(it)ing the International Symbol of Access, 22 DISABILITY & SOC’Y 489, 497 (2007).

<sup>224</sup>. See generally id. In 2012, the international symbol of access was revisited and a “Dynamic Symbol of Access” was introduced and since became popular. Nevertheless, even this new incarnation showcasing the disabled person “moving around the world” instead of “blocky and rigid,” it still arguably depicts disability in a narrow way as only a physical condition. See Natasha Frost, The Controversial Process of Redesigning the Wheelchair Symbol, ATLAS OBSCURA (Mar. 29, 2018), [https://atlasobscura.com//symbol-redesign?utm\\_source=Commission%20for%20Persons%20with%20Disabilities%20-%20Newsletters&utm\\_campaign=4%2F2%2F2018%20-%20Community%20Update&utm\\_medium=email](https://atlasobscura.com//symbol-redesign?utm_source=Commission%20for%20Persons%20with%20Disabilities%20-%20Newsletters&utm_campaign=4%2F2%2F2018%20-%20Community%20Update&utm_medium=email) [<https://perma.cc/46RB-NTLY>]. A recent study has shown that people with mobility-physical disabilities rated the symbol more favorably compared to individuals with other types of disabilities. See Jason Vice, Beth A. Barstow, Sean Bowman, Tapan Metha & Sangeetha Padalabalanarayanan, Effectiveness of the International Symbol of Access and Inclusivity of Other Disability Groups, 13 DISABILITY &

thus created a deservingness cognitive bias against other types of disabilities.<sup>225</sup> It has also been criticized for encouraging a “social gaze” of those using disabled parking spaces.<sup>226</sup> The gaze is aimed at scrutinizing the person getting out of the car, seeking to locate differences in his or her appearance, behavior, and surroundings that would make this person worthy of the special right.

Because the legal protection of disability status extends to a wide array of impairments, the way to communicate the law to the public is by using a symbol, or a series of symbols, that encompasses the heterogeneity of this protected category. However, developing a new symbol of access could be a difficult task considering the politics within the diverse disability community.<sup>227</sup>

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HEALTH J. 1, 3–4 (2020).

<sup>225.</sup> For one of the classic articles discussing the ways cognitive biases play a significant role in antidiscrimination law, see generally Krieger, supra note 156.

<sup>226.</sup> MARUSEK, supra note 25, at 62–63; ROSEMARIE GARLAND-THOMSON, *STARING: HOW WE LOOK* 20 (2009). For a general analysis of how the aesthetic markers of disability affect the way disability antidiscrimination law manifests itself, see Jasmine Harris, The Aesthetic of Disability, 119 COLUM. L. REV. 895, 951–61 (2019).

<sup>227.</sup> A recent attempt to create a series of symbols was made by the London office of the global advertising agency McCann Erickson in 2018. Under a campaign called Visibility93, the agency created a collection of twenty-seven new icons aimed at representing different disabilities—from

A more concrete and easier strategy to implement is to apply a broader pallet of colors, each signifying a different type of impairment, to the disabled parking permit system. The concept is that rather than having only one type of placard painted “handicapped blue,” we could print placards in a variety of colors, each one’s signaling a different type of disability (for example: respiratory, neurological, or physical). Such a system should not include too many categories as to respect the privacy of the placard owner. The idea is not to create a tier system, as all of the placards regardless of color would have the same exact parking privileges. This new system would reduce the element of surprise felt due to uncertainty regarding another’s belonging to the protected group.<sup>228</sup>

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epilepsy to diabetes and Alzheimer’s. Sarah Dawood, Why the Wheelchair Symbol Should Be Rethought to Include “Invisible Disabilities, DESIGN WK. (Aug. 1, 2018), <https://www.designweek.co.uk/issues/30-july-5-august-2018/the-wheelchair-symbol-should-be-rethought-to-include-invisible-disabilities/> [<https://perma.cc/6UNZ-R6K3>]. The campaign was criticized by some members of the disability community for focusing on the impairment (which was actually drawn as part of each symbol) and for sending a stigmatizing message that resonates with a deficit view of disability. It was also considered too ambitious, “gimmicky,” and unpractical due to the large number of icons.

<sup>228</sup>. KAREN S. COOK, RUSSELL HARDIN & MARGARET LEVI, COOPERATION WITHOUT TRUST? 65 (2007); Karen S. Cook & Alexandra Gerbasi, Trust, in THE OXFORD HANDBOOK OF ANALYTICAL SOCIOLOGY 331, 332 (Peter Hedström & Peter Bearman,

It would thus lessen the frequency of the social gaze because laypeople would learn to associate a color with the type of disability that is not necessarily clear at first glance and would increase interpersonal trust. The development of such a color system could be implemented in other contexts where queuing is used such as at airports, theme parks, museums, government offices, and so on.

Another way of priming public awareness is by reminding laypeople of the fluid nature of disability by placing affirmative statements on public information markers at theme parks, parking lots, and other public spaces. These types of interventions, known as “framing rules,”<sup>229</sup> aimed at reframing attitudes around disability could become effective over time, specifically if they are implemented with high intensity.<sup>230</sup>

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eds., 2011).

<sup>229</sup>. Emens, supra note 26, at 1409–10 (discussing “framing rules” to shape attitudes toward disability that are similar to a broad-based public education campaign, except that it targets particular moments when people are primed to think about the problem at hand).

<sup>230</sup>. Sarah Clement, Francesca Lassman, Elizabeth Barley, Sara Evans-Lacko, Paul Williams, Sosei Yamaguchi, Mike Slade, Nicolas Rüsçh & Graham Thornicroft, Mass Media Interventions for Reducing Mental Health-Related Stigma (Review), THE COCHRANE DATABASE OF SYSTEMATIC REVIEWS. 1, 7 (2013); Graham Thornicroft, Nisha Mehta, Sarah Clement, Sara Evans-Lacko, Mary Doherty, Diana Rose, Mirja Koschorke, Rahul Shidhaye, Claire O’Reilly & Claire Henderson, Evidence for Effective Interventions to Reduce Mental-health-related

## B. Taking Action Against Private Enforcement

As findings from the interviews demonstrate, people with disabilities are often harassed by other laypeople when using a disabled parking permit, and some have even become reluctant to use their permits. This harassment can even escalate to extreme physical violence and even death. Although this study did not find evidence for harassment in the Disneyland line context, literature on queuing indicates that private enforcement practices are common in those circumstances, too.<sup>231</sup> This type of harassing behavior, which might only be attributed to a relatively small percentage of the population, has a significant effect on the lives of disabled individuals and needs to be curbed by official law enforcement. The police should make an effort to prevent laypeople from harassing disabled individuals. An idea for such a policy could be a formal mechanism like a “hotline” for individuals who have been harassed to be able to file a complaint with law enforcement. The same way that such hotlines exist to report potential abuse, they could also create a solution for people with disabilities who have suffered the consequences of fear of the disability con. The repercussions of such harassment by private enforcers could range from warnings, fines, or even harsher punishments depending on state laws that usually include prohibitions regarding harassment of people with disabilities using public accommodations. Establishing a public shaming mechanism against self-appointed guardians of dis-

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Stigma and Discrimination, 387 LANCET 1123, 1125 (2016).

<sup>231</sup>. Milgram et al., supra note 166, 683–86; Perry & Zarsky, supra note 118, at 1599; Young, supra note 3, at 76, 82.

abled parking spaces, similar to the one that exists against people who allegedly abuse the system through websites like Handicappedfraud.org,<sup>232</sup> will also help deter zealous and harmful private enforcement.

Although federal courts found that the ADA cannot apply to claims against homeowner associations that did not prevent harassment of tenants' use of disabled parking placards,<sup>233</sup> courts have been responsive to claims of harassment against perpetrators. In Skeens v. Shetter,<sup>234</sup> a police sergeant who was not in uniform and did not identify himself as an officer harassed a woman who was using a disabled parking placard in

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<sup>232</sup>. SAMUELS, supra note 17, at 133.

<sup>233</sup>. Phillips v. Perkiomen Crossing Homeowners Ass'n, No. 95-CV-1535 (E.D. Pa. Sept. 29, 1995). In that case, Sandra Phillips sued the homeowners association for violating the ADA by allowing the neighbors to harass her and her family for having a disabled parking placard. The US District Court for the Eastern District of Pennsylvania dismissed the case for lack of jurisdiction, determining that Title I of the ADA, did not apply because there was no employment relationship between Phillips and the association. Title II did not apply because the homeowners' association is not a "public entity" affiliated with a state or local government. And Title III did not apply because the parking lot was not a "commercial facility," affecting commerce and intended for nonresidential use. See also Shuper v. Fed. Mgmt. Co., No. 2:10-cv-205-GZS, 2010 BL 409486 (D. Me. Aug. 4, 2010) (affirming the holding in Phillips).

<sup>234</sup>. Skeens v. Shetter, No. Civ.A. 04-4474 (JBS), 2006 WL 827782 (D.N.J. Mar. 30, 2006).

a store's parking lot. He blocked her from exiting the lot using his truck and later followed her to her house requesting to speak with her about the incident, all while doubting her right to use the parking.<sup>235</sup> After the woman brought a harassment and official misconduct charge against the policeman, he filed a suit alleging malicious prosecution. The U.S. District Court for the District of New Jersey dismissed the officer's claim and held that the woman's complaint was reliable. The court found that:

Plaintiff, a public servant, berated Shetter [the defendant], intimidated her and at one point threatened her with a ticket while she stood in a bathrobe in front of her home, for the purposes of scaring, harassing and intimidating her, all arising out of her use of a handicap parking space despite her having a handicapped registration.<sup>236</sup>

Courts have found the actions taken by zealous enforcers of disabled parking rules to be harassment, delivering messages such as: "However strongly the defendant may feel about the use of handicapped parking spaces by persons who are not handicapped, her passion does not justify her harassment."<sup>237</sup> In another case, the U.S. District Court for the District of New Jersey affirmed a ban placed on two individuals from visiting a university campus due to continual inci-

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<sup>235.</sup> Id. at 1, 6.

<sup>236.</sup> Id. at 5.

<sup>237.</sup> Com. v. Frith, 79 Mass. App. Ct. 1106, 943 N.E.2d 980 (2011); see also People v. Lakota, No.C048609, 2007 WL 242394, at \*1, \*14 (Cal. Ct. App. Jan. 30, 2007).

dents in which they “acted hostile, harassing, disruptive, and aggressive to . . . staff, students, and visitors, including a nine-year-old child, a diabetic pregnant woman, and a student with spinal meningitis.”<sup>238</sup> The court concluded that “even if plaintiffs had come onto campus to protect disabled persons’ parking rights, [that] does not mean they can conduct themselves in any manner without consequence. The cloak of the ADA does not extend its protections that far.”<sup>239</sup> These court decisions deliver a message to disabled persons that reassures them of their rights to use public accommodations without being harassed. Reporting harassment derived from fear of the disability can via a hotline should be encouraged by the government, just as the DMV officially encourages reports of abuse.<sup>240</sup>

Another tool for deterring zealous private enforcers of disability rights is tort actions by disabled victims against those harassers. Such actions should be taken more frequently by disability rights organizations and private lawyers to help usher in social change concerning the usage of public disability accommodations.<sup>241</sup>

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<sup>238</sup>. Cottrell v. Rowan Univ., 786 F. Supp. 2d 851, 854 (D.N.J. 2011).

<sup>239</sup>. Id. at 860–61.

<sup>240</sup>. See supra note 166.

<sup>241</sup>. For a review of the barriers standing in the way of plaintiffs with disabilities, see Mor, supra note 37, at 637–38.

### C. Increasing Intergroup Knowledge

As the findings indicate, an “inside view of disability,”<sup>242</sup> through personal experience or a close connection with a disabled individual, lowers the level of suspicion. To strengthen the sense of deservingness of people with diverse disabilities, specifically those who do not fit the narrow perception of what constitutes a disability, there needs to be an increase in public empathy and understanding (as opposed to mercy or paternalistic attitudes, which are harmful yet common ways of relating to disabled individuals). The way to achieve such a goal is to effectively communicate to the public the needs of different groups of disabled individuals. An effective way of doing so is by facilitating intimate, cooperative, and positive interpersonal contacts between nondisabled and disabled individuals.<sup>243</sup> Contact interventions conducted with various populations such as soldiers, medical students, and neighbors

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<sup>242</sup>. LONGMORE, supra note 15, at 20–22; Emens, supra note 26, at 1386..

<sup>243</sup>. Patrick Corrigan & Betsy Gelb, Three Program That Use Mass Approaches to Challenge the Stigma of Mental Illness, 57 PSYCHIATRIC SERVS. 393, 394 (2006); Shannon M. Couture & David L. Penn, Interpersonal Contact and the Stigma of Mental Illness: A Review of the Literature, 12 J. MENTAL HEALTH 291, 293 (2003); Emens, supra note 26, at 1407–08. For the benefits of contact in challenging racial stereotypes, see e.g., Kyneshawau Hurd & Victoria C. Plaut, Diversity Entitlement: Does Diversity-Benefits Ideology Undermine Inclusion, 112 NW. U. L. REV. 1605, 1621 (2018)..

have yielded positive effects on attitudes toward people with disabilities.<sup>244</sup> This type of communication, one that conveys the complex ways in which environmental and societal factors contribute to the process of disablement, would enable nondisabled individuals to expand their view of deservingness, and they would grow less suspicious.

The idea of facilitating contact between disabled and nondisabled members of society is not an easy one considering the stigma associated

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<sup>244</sup>. For a recent review of existing research on interpersonal contact interventions, see Shirli Werner & Katrina Scior, Interventions Aimed at Tackling Intellectual Disability Stigma: What Works and What Still Needs to Be Done, in INTELLECTUAL DISABILITY AND STIGMA: STEPPING OUT FROM THE MARGINS 129, 134–35, 138 (Katrina Scior & Shirli Werner eds., 2016). For experimental research that demonstrates the benefits of contact to reducing stigma toward people with mental illness, see e.g., Patrick W. Corrigan, Scott B. Morris, Patrick J. Michaels, Jennifer D. Rafacz & Nicolas Rüsçh, Challenging the Public Stigma of Mental Illness: A Meta-Analysis of Outcome Studies, 63 PSYCHIATRIC SERVS. 963, 969 (2012) (concluding, “Although contact and education both seem to significantly improve attitudes and behavioral intentions toward people with mental illness, contact seems to yield significantly better change, at least among adults.”). See also Patrick W. Corrigan, David Rowan, Amy Green, Robert Lundin, Philip River, Kyle Uphoff-Wasowski, Kurt White & Mary Anne Kubiak, Challenging Two Mental Illness Stigmas: Personal Responsibility and Dangerousness, 28 SCHIZOPHRENIA BULL. 293, 303 (2002).

with disability and thus the reluctance of many to “come out of the disability closet.”<sup>245</sup> Another issue is the continued marginalization of people with disabilities who might not be as present in higher education or in some sectors of the labor market. An effort to increase the presence of people with disabilities in all areas of life is thus crucial for increasing intergroup consciousness and trust.

Increasing intergroup knowledge also holds the potential to increase public legitimacy for disability policies. To demonstrate this point, I examined how encountering the situations described in the experiments might change public support of disability accommodations. I divided the participants into a control group that composed about 20% of the research population and a treatment group that included the remaining participants. Both groups were asked whether “we, as a society, make it easier or more difficult for people to receive disability accommodations?”<sup>246</sup> However, the control group was asked this question

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<sup>245.</sup> See generally ROBERT MCRUER, CRIP THEORY: CULTURAL SIGNS OF QUEERNESS AND DISABILITY 34 (2006); Samuels, supra note 57.

<sup>246.</sup> The question read as follows: “The next question is about disability accommodations. These include, for example, being able to take a service dog into public places that usually do not allow animals; academic accommodations such as getting more time on exams; accommodations at the workplace such as special equipment or flexible work schedule, etc. Should we, as a society, make it easier or more difficult for people to receive disability accommodations?” The answers were given on a

before undergoing the experiments (viewing the parking or Disneyland vignettes), and the treatment group was asked the question after the experiments had been conducted. In the combined data for both experiments, the treatment group was statistically significant ( $p < 0.05$ ) more supportive of the idea of making it easier to obtain disability rights compared with the control group.

This result suggests that when participants were nudged<sup>247</sup> to think about situations that centered on dilemmas related to deservingness, they gave this issue some thought and became aware of the bias against those who appear less deserving (i.e., have nonvisible disabilities). This might explain these participants' higher support of making it easier for people to receive disability accommodations. If this is indeed the case, in addition to the contact approach presented earlier, this finding proves the potential that an educational approach to tackling disability stigma, which exposes the public to dilemmas via campaigns, interventions, and so on, could work to increase intergroup knowledge.<sup>248</sup> Similarly, inclusion of the Uniform System Regulations or state

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1–7 Likert scale: 1) Much easier; 2) Somewhat easier; 3) A little easier; 4) Neither easier nor more difficult; 5) A little more difficult; 6) Somewhat more difficult; 7) Much more difficult.

<sup>247.</sup> See generally RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008).

<sup>248.</sup> Corrigan & Gelb, supra note 243, at 394; Couture & Penn, supra note 243, at 293.

regulations that determine eligibility for disabled parking placards in the DMV's written driving test could potentially increase awareness and reduce suspicion among new drivers.

In 1995, the city of Houston, Texas, passed a bill establishing the Disabled Parking Volunteer Program,<sup>249</sup> which trains citizens to become enforcers of the disabled parking rules and to issue citations to violators.<sup>250</sup> All the volunteers are required to undergo a background check and a four-hour training before joining the force.<sup>251</sup> Between 2015 and 2017, the Houston program had 400 volunteers who issued almost 17,000

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<sup>249</sup>. H.B. NO. 2083, 74 (R) § 1(e) (Tex. 1995), <https://.texas.gov//Text.aspx?LegSess=74R&Bill=HB2083> [<https://perma.cc/NP3U-UAE2>].

<sup>250</sup>. ParkHouston, Volunteer Parking Enforcement Program, CITY OF HOUS., <http://www.houstontx.gov/parking/volunteer.html> [<https://perma.cc/DW8B-NM5G>] (last visited Nov. 20, 2019).

<sup>251</sup>. Id.

citations.<sup>252</sup> Similar volunteer programs exist across the country in places like Omaha, NE;<sup>253</sup> Colorado Springs, CO;<sup>254</sup> and Washington County, OR.<sup>255</sup>

Training for these volunteer programs could implement the ideas about reframing disability deservingness. Incorporating contact with disabled individuals and knowledge about the fluid and diverse nature of disability into trainings would prevent overzealous volunteers from targeting those who might not be perceived as deserving but are in fact protected by law.

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<sup>252.</sup> Catching People Abusing Handicap Parking Spots, KHOU11 (Feb. 17, 2017), <https://www.khou.com/article/news/investigations/stands-for-houston/catching-people-abusing-handicap-parking-spots/409482710> [<https://perma.cc/46LR-2WXF>].

<sup>253.</sup> Handicap Parking Enforcement, OMAHA POLICE DEP'T, <https://police.cityofomaha.org/community-involvement/volunteer-with-the-police-department/handicap-parking-enforcement> [<https://perma.cc/MQV2-ULS6>] (Nov. 20, 2019).

<sup>254.</sup> Timothy M. O'Brien, Audit Report: Disability Parking Enforcement Program, DENVER AUDITOR (Aug. 2016), <https://denverauditor.org/project/disability-parking-enforcement-program/> [<https://perma.cc/VQG8-3LSP>].

<sup>255.</sup> Disabled Parking Enforcement, WASH. COUNTY SHERIFF'S OFF., <https://www.co.washington.or.us///-parking-enforcement.cfm> [<https://perma.cc/92FE-AVF9>] (last visited Nov. 20, 2019).

## CONCLUSION

Everyone makes these assessments: They see a person park, they see that person walk away from the vehicle, they notice the disability space or the placard, and they make an instantaneous assessment in their own minds as to whether or not they just witnessed a legitimate or an abusive use of that parking space. And that perception then fuels their perception on the disability community, on government, on people in general . . .

Because I am the deputy director here at the DMV, I've been trying to challenge my own perception, and so, what I've been doing lately is that when I am out and I see someone who is using a disability [parking] space who then walks away, I'll note my assessment, I'll note what my bias tends toward with that person . . . and then I make a note of the disability placard and I return to my office later and ask my staff to check the records and see what we find . . . It's been interesting because I've been trying to check my own bias with our records and see what I find because there's a lot [of tension] around this topic.

This quote by David Brown of the California DMV summarizes the importance of raising awareness about fear of the disability community while showcasing the difficulties of challenging one's biases against potential abuse, as those biases sneak up even in the minds of those who deal with issues of disability rights on an everyday basis.

The issue of deservingness was found to be the primary force behind public perceptions about fairness and abuse of law. Laypeople would not mind making small sacrifices for others in situations of scarce resources, as long as that other fits within their idea of deserving individuals, in this case, a “real disabled person.” This finding, which was replicated across two settings, has the potential to inform policies that are outside of disability. Future research could, for example, focus on topics such as health-care policies,<sup>256</sup> mass torts,<sup>257</sup> or immigration.<sup>258</sup> All of those areas of laws use a queue-like mechanism when allocating goods or determining eligibility for benefits or compensation (who should receive it and how much).<sup>259</sup> In these situations, issues of scarcity and of deservingness play a crucial part of the decision-making process. Using similar experimental methods, one could assess what influences public support for such policies and then use the findings to garner support for new policies.

With regard to fear of the disability con, it is essential for policy makers, law enforcement personnel, disability rights advocates, and academics to continue to raise awareness of the topic, expand the views of deservingness with regard to disability rights, and take action to prevent the harassment of disabled individuals. These efforts are essential to guaranteeing that the rights that were granted only after a long social struggle

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<sup>256.</sup> See ROBERTS & WEEKS, supra note 27, at 91–92, 100.

<sup>257.</sup> See FEINBERG, supra note 29, at 345, 348.

<sup>258.</sup> See Bansak, Hainmueller & Hangartner, supra note 28.

<sup>259.</sup> Perry & Zarsky, supra note 118, at 1657; Young, supra note 3, at 116.

will be implemented on the ground and for creating a more inclusive, tolerant society.

## APPENDIX

### Regression Tables and Figures for Parking Experiment YouGov and SSI 2

TABLE 6. OLS REGRESSION OF LEVEL OF SUSPICION IN PARKING EXPERIMENT (YOUGOV)

	Model 1	Model 2	Model 3	Model 4	Model 5
Visibility of Disability	-1.042*** (0.0686)	-1.043*** (0.0683)	-1.046*** (0.0682)	-1.040*** (0.0674)	-1.046*** (0.0665)
Scarcity of Resources (Parking Spots)	0.0793 (0.0686)	0.0842 (0.0683)	0.0899 (0.0683)	0.0913 (0.0675)	0.0869 (0.0666)
No Relationship w. Disability (ref.)	—	—	—	—	
Having a Cordial or Familial Relationship w. Disabled Individual	—	-0.186* (0.0820)	-0.183* (0.0819)	-0.190* (0.0809)	-0.1662* (0.0800)
Having a Disability		-0.272** (0.0851)	-0.275** (0.0850)	-0.325*** (0.0846)	-0.294*** (0.0837)
Female		—	-0.132 (0.0686)	-0.119 (0.0679)	-0.110 (0.0670)
Having Some College Educ.	—	—	—	-0.344*** (0.0699)	-0.282*** (0.0700)
Political Ideology (Liberal to Conservative)	—	—	—	—	0.127*** (0.0246)
Constant	2.785***	2.897***	2.969***	3.184***	2.720***
R-square	0.1886	0.1981	0.2011	0.2201	0.2405
Adjusted R-square	0.1870	0.1949	0.1971	0.2154	0.2351

	Model 1	Model 2	Model 3	Model 4	Model 5
Sample Size (N)	1,000	1,000	1,000	1,000	1,000

NOTES: OTHER CONTROL VARIABLES THAT WERE NOT FOUND SIGNIFICANT ARE RACE, FAMILY INCOME, GENDER, AND AGE. LEVEL OF SUSPICION MEASURED ON A SCALE OF 1–5.

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$  (TWO-TAILED TEST)

TABLE 7. OLS REGRESSION OF LEVEL OF SUSPICION IN PARKING EXPERIMENT (SSI 2)

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Visibility of Disability	-0.924*** (0.0604)	-0.930*** (0.0598)	-0.937*** (0.0614)	-0.939*** (0.0615)	-0.936*** (0.0615)	-0.938*** (0.0615)
Scarcity of Resources (Parking Spots)	-0.00649 (0.0604)	-0.00658 (0.0598)	0.00387 (0.0613)	-0.00284 (0.0614)	0.00122 (0.0614)	0.005 (0.0614)
Likelihood of people abusing the law		0.101** (0.0367)	0.102** (0.0386)	0.112** (0.0389)	0.111** (0.0389)	0.106** (0.0389)
Extent law allows abuse		0.0689* (0.0321)	0.0924** (0.0332)	0.0849* (0.0333)	0.0879** (0.0333)	0.0865* (0.0333)
No Relationship w. Disability (ref.)	—	—	—	—	—	—
Having a Cordial or Familial Relationship w. Disabled Individual	—	—	-0.107 (0.0737)	-0.104 (0.0738)	-0.113 (0.0740)	-0.106 (0.0739)
Having a Disability		—	-0.269* (0.109)	-0.275* (0.108)	-0.301** (0.110)	-0.293** (0.110)
Experienced Suspicion			-0.384*** (0.0941)	-0.373*** (0.0943)	-0.380*** (0.0944)	-0.381*** (0.0947)
Female	—	—	—	-0.143* (0.0621)	-0.143* (0.0620)	-0.132* (0.0621)
Having Some College Educ.	—	—	—	—	-0.145 (0.0963)	-0.123 (0.0965)
Political Ideology (Liberal to Conservative)	—	—	—	—	—	0.069* (0.029)

	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>	<b>Model 5</b>	<b>Model 6</b>
Constant	2.734***	2.214***	2.245***	2.311***	2.438***	2.292***
R-square	0.1665	0.1847	0.2010	0.2051	0.2068	0.2106
Adjusted R-square	0.1651	0.1819	0.1959	0.1993	0.2002	0.2033
Sample Size (N)	1,175	1,173	1,102	1,098	1,098	1,095

Notes: Other control variables that were not found significant are race, family income, age, general suspicion level of others. Level of suspicion measured on a scale of 1–5.

\*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$  (two-tailed test)