

MARCH 29, 2023 | DISCRIMINATION, HARASSMENT & RETALIATION

U.S. Supreme Court Will Decide Whether an ADA Plaintiff Must Allege an Intent to Visit a Property to Establish Standing

This past Monday, the U.S. Supreme Court agreed to hear a case challenging a disabled woman's claim that she has legal standing to bring a lawsuit against a Maine hotel company for violating Title III of the Americans with Disabilities Act ("ADA") even though she does not plan to visit its hotel in the future. The outcome of this case will be crucial for all places of public accommodations, even those outside the hotel context, such as restaurants, stores, and other retail establishments. Indeed, this case has the potential to determine whether it becomes significantly easier or more difficult for plaintiffs to bring viable ADA lawsuits against any type of company whose business is open to the public, regardless as to whether the allegations relate to websites or more traditional "brick and mortar" barriers to access. 

This case began in 2020 when Deborah Laufer, an individual who uses a wheelchair, brought a lawsuit against Acheson Hotels, a hotel company that operates the Coast Village Inn and Cottages in Maine, alleging that Acheson's website failed to identify accessible rooms, failed to provide an option for booking an accessible room, and failed to provide sufficient information to determine whether any of the guest rooms were accessible, in violation of Title III of the ADA. As you may recall from our [prior blog post](#), Ms. Laufer is a prolific ADA tester/serial plaintiff who has filed more than 600 lawsuits against hotels and other places of lodging. Aside from the name of the property she is suing, Ms. Laufer's lawsuits are virtually identical; they allege that a hotel or other place of lodging has violated the ADA because its website and/or third-party online reservation website (such as Expedia) purportedly fails to sufficiently identify the accessible features of the hotel, as required by the ADA regulations.

In response to Ms. Laufer's lawsuit, Acheson moved to dismiss her complaint, arguing that she did not have legal standing to bring the case under the ADA, as required under Article III of the U.S. Constitution, because she was a serial tester who had no intention of actually staying at the hotel. The district court agreed with Acheson and granted its motion to dismiss.

Ms. Laufer appealed the district court's dismissal to the U.S. Court of Appeals for the First Circuit (which has jurisdiction over appeals from federal courts in Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico). In October 2022, the First Circuit reversed the district court's dismissal, finding that Ms. Laufer had legal standing to bring her complaint based simply on her allegation that she was denied hotel-related information

required by the ADA and its regulations, regardless of the fact that she had failed to allege an intent to reserve a guest room at the property.

Notably, the First Circuit's decision was in direct contrast to other Circuit Court of Appeals rulings, namely, the Second, Fifth, and Tenth Circuits, which have found that ADA testers such as Ms. Laufer could only seek to enforce the ADA at places they sincerely intended to visit, or at the very least, claimed that they intended to visit. Thus, there is now a circuit split on this question of law. As a result, following the First Circuit's ruling, Acheson immediately filed a [writ of certiorari \(request for an appeal\) with the U.S. Supreme Court](#), arguing that the First Circuit got it wrong — that Ms. Laufer's failure to sufficiently allege that she intends to stay at the hotel in the future precludes her from establishing legal standing to bring this case, and therefore, her lawsuit should have been dismissed.

On March 27, 2023, the U.S. Supreme Court granted Acheson's writ of certiorari, meaning that it has agreed to hear this case. As mentioned above, and as Acheson noted in its writ for certiorari, this case is one of "immense practical importance" due to the extremely large volume (and growing) number of similar cases. As Acheson further noted, these types of "ADA tester" cases have become a "cottage industry" in which "uninjured plaintiffs lob ADA lawsuits of questionable merit, while using the threat of attorney's fees to extract settlement payments." These cases burden both large and small businesses, clog the judicial system, and undermine the executive branch's exclusive authority to enforce federal law. As set forth in Acheson's writ, the choice of how to prioritize and how aggressively to pursue legal actions against companies who violate the ADA should fall within the discretion of the Department of Justice, not within the purview of private plaintiffs and their attorneys who are not accountable to the people and who are not charged with pursuing the public interest in enforcing a defendant's general compliance with regulatory law.

By removing the necessity of a plaintiff to demonstrate a definitive and sincere intent to visit and/or return to the property at issue, the First Circuit's decision has exacerbated these issues by making it much easier for plaintiffs in jurisdictions covered by the First Circuit to bring claims against hotels and other places of lodging, and arguably other places of public accommodation as well. While we cannot predict with any certainty how the Supreme Court will rule on this issue, its willingness to hear this case shows that at the very least it is willing to listen to Acheson's arguments which, for hotels and other places of public accommodation who consistently find themselves subject to these lawsuits, is much better than the alternative. The justices will likely hear oral argument in this case in the Fall of 2023, with a decision to follow sometime in 2024.

On that note, we are planning to file an Amicus Brief in support of Acheson and would be pleased to have you join us in this endeavor. Accordingly, if you are interested in voicing your opinion on this important issue, [please let us know](#) .