No. 22-429

In the Supreme Court of the United States

ACHESON HOTELS, LLC, PETITIONER

v.

DEBORAH LAUFER

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING NEITHER PARTY

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
KRISTEN CLARKE
Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
ERICA L. ROSS
Assistant to the Solicitor General
BONNIE I. ROBIN-VERGEER
YAEL BORTNICK
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. 12181 *et seq.*, provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. 12182(a). Title III further defines discrimination to include failing to make "reasonable modifications" to "policies, practices, or procedures" when necessary to afford individuals with disabilities equal access to "such goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C. 12182(b)(2)(A)(ii).

A Department of Justice regulation known as the Reservation Rule interprets that requirement as applied to the reservation services offered by hotels and other places of lodging. As relevant here, the Reservation Rule provides that, "with respect to reservations made by any means," a place of lodging must "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets [their] accessibility needs." 28 C.F.R. 36.302(e)(1)(ii). The question presented is:

Whether a plaintiff has Article III standing to challenge a hotel's failure to include information required by the Reservation Rule on its reservation website if the plaintiff does not allege that she used, attempted to use, or plans to use the hotel's online reservation service to make or consider making a reservation.

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INTEREST OF THE UNITED STATES

This case presents the question whether respondent, a self-described "tester," has Article III standing to sue under Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, which prohibits disability discrimination by places of public accommodation. Congress authorized the Attorney General to promulgate regulations to carry out the relevant provisions of Title III, and the Department of Justice issued the regulation on which respondent's suit relies. In addition, private suits—including suits by testers—are an essential complement to the federal government's enforcement of Title III and other antidiscrimination laws. The United States therefore has a substantial interest in the question presented.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-10a.

STATEMENT

A. Legal Background

1. Congress enacted the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, "to remedy widespread discrimination against disabled individuals." *PGA Tour, Inc.* v. *Martin*, 532 U.S. 661, 674 (2001). "Congress concluded that there was a 'compelling need' for a 'clear and comprehensive national mandate' to eliminate discrimination against disabled individuals, and to integrate them 'into the economic and social mainstream of American life.'" *Id.* at 675 (citation omitted). The ADA meets that need by forbidding "discrimination against disabled individuals in major areas of public life," including "employment (Title I of the Act), public services (Title II), and public accommodations (Title III)." *Ibid.* (footnotes omitted).

This case concerns Title III's provisions governing public accommodations. Title III's "[g]eneral rule" provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. 12182(a) (emphasis omitted). As relevant here, the covered places of public accommodation include an "inn, hotel, motel, or other place of lodging." 42 U.S.C. 12181(7)(A).

In adopting the ADA, Congress recognized that disability discrimination includes both "intentional exclusion" and the "failure to make modifications to existing

facilities and practices" to afford equal access to individuals with disabilities. *PGA Tour*, 532 U.S. at 675 (quoting 42 U.S.C. 12101(a)(5)). Title III thus provides that "[i]t shall be discriminatory" and unlawful to "afford" individuals with disabilities an unequal opportunity "to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation." 42 U.S.C. 12182(b)(1)(A)(ii). Title III further defines discrimination to "include[]" failing to make "reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford" a covered entity's "goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities," unless the modifications would "fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C. 12182(b)(2)(A)(ii).

The ADA provides a private cause of action to "any person who is being subjected to discrimination on the basis of disability in violation of [Title III]." 42 U.S.C. 12188(a)(1). A prevailing plaintiff may obtain injunctive relief and attorney's fees, but not damages. *Ibid.* (cross-referencing 42 U.S.C. 2000a-3); see 42 U.S.C. 12205. Title III also authorizes the Attorney General to bring civil enforcement actions. 42 U.S.C. 12188(b)(1)(B).

2. Congress directed the Attorney General to promulgate regulations to carry out Title III's provisions governing public accommodations. 42 U.S.C. 12186(b). In 2010, the Department of Justice amended its existing regulations by adopting the Reservation Rule, which addresses the application of the statutory reasonable-modification requirement to reservation services offered by hotels and other places of lodging. 28 C.F.R. 36.302(e).

The Department explained that Title III requires hotels to make "reasonable modifications to reservations policies, practices, or procedures when necessary to ensure that individuals with disabilities are able to reserve accessible hotel rooms with the same efficiency, immediacy, and convenience as those who do not need accessible guest rooms." 28 C.F.R. Pt. 36, App. A at 804. The Department determined that a regulation specifically addressing reservation services was necessary because it had received "many complaints" and commenters had highlighted "an ongoing problem with hotel reservations." *Ibid.* For example, individuals with disabilities who had reserved accessible hotel rooms often "discover[ed] upon arrival that the room they reserved [was] either not available or not accessible." *Ibid.* Other individuals with disabilities found themselves unable to use hotels' online reservation services at all because of a lack of accessibility information. *Id.* at 805.

The Reservation Rule applies "with respect to reservations made by any means, including by telephone, in-person, or through a third party." 28 C.F.R. 36.302(e)(1). The Rule provides that a covered hotel must "[m]odify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms * * * in the same manner as individuals who do not need accessible rooms." 28 C.F.R. 36.302(e)(1)(i).

As relevant here, the Reservation Rule requires a hotel to "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets [their] accessibility

needs." 28 C.F.R. 36.302(e)(1)(ii). That requirement recognizes that an individual who uses a wheelchair, for example, cannot book a room using an online reservation service—and thus is not afforded equal access to that service—if she cannot determine whether the hotel or specific rooms are wheelchair accessible. See 28 C.F.R. Pt. 36, App. A at 805.

The Reservation Rule does not apply directly to third-party reservation services like Expedia.com. 28 C.F.R. Pt. 36, App. A at 806. Instead, guidance accompanying the Rule states that hotels that use such services must make "reasonable efforts" to "provide these third-party services with information concerning" the hotel's accessible features and rooms. *Id.* at 805. A hotel that satisfies this obligation "will not be responsible" if "the third party fails to provide the information" to users. *Ibid.*

B. The Present Controversy

1. Respondent Deborah Laufer is a Florida resident who is visually impaired, has limited use of her hands, and relies on a wheelchair or cane for mobility. Pet. App. 2a-3a. She requires accessible parking, sufficiently wide and properly graded passageways for her wheelchair, lowered surfaces, and bathrooms with grab bars. *Id.* at 3a. Laufer is a self-described ADA "tester" who identifies hotel websites that fail to comply with the ADA and the Reservation Rule and brings suits to remedy those violations. *Id.* at 6a, 39a.

In 2020, Laufer sued petitioner, Acheson Hotels, LLC. At the time, Acheson owned and operated the Coast Village Inn and Cottages in Wells, Maine. Pet. App. 39a. The Inn accepts reservations through its website, as well as through third-party services. *Id.* at 3a. Laufer alleged that when she visited the Inn's web-

site and third-party booking websites, they "failed to identify accessible rooms, failed to provide an option for booking an accessible room, and did not provide sufficient information as to whether the rooms or features at the hotel [were] accessible." *Id.* at 40a (quoting J.A. 7a ¶ 11); see J.A. 6a-9a. Laufer further alleged that "the conditions she encountered when visiting" the websites caused her to suffer "frustration and humiliation" and contributed to her "sense of isolation and segregation." Pet. App. 41a; J.A. 10a ¶ 14. Laufer sought declaratory and injunctive relief, attorney's fees, and costs. Pet. App. 6a.

2. The district court dismissed Laufer's complaint for lack of Article III standing. Pet. App. 36a-51a. The court held that "to plausibly allege concrete harm based on a violation of the Reservation[] Rule, a plaintiff must have a genuine plan to make a reservation" using the defendant hotel's reservation service, and that Laufer had no such plan. *Id.* at 47a.

3. The court of appeals reversed. Pet. App. 1a-35a.

a. The court of appeals did not question the district court's finding that Laufer lacked a plan to make a reservation at the Inn. Indeed, it noted that she had "disclaim[ed]" any "intent to travel to Maine." Pet. App. 11a n.3. But the court held that Laufer's alleged injury nonetheless satisfies Article III. The court relied on *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363 (1982), which held that a Black "tester" who was falsely told that the defendant had no apartments to rent could sue under the Fair Housing Act (FHA), 42 U.S.C. 3604(d), which makes it unlawful to falsely "represent to any person because of race * * * that any dwelling is not available for inspection, sale, or rental." See 455 U.S. at 373-374.

The court of appeals held that Laufer alleged a concrete injury because, like the tester in *Havens Realty*, "she was denied information to which she has a legal entitlement." Pet. App. 15a. The court reasoned that just as the *Havens Realty* plaintiff's lack of intent to rent an apartment did not bar her suit, Laufer's conceded "lack of intent to book a room" did not "negate her standing." *Ibid.*; see *id.* at 11a n.3. And the court also held that Laufer's alleged injury is sufficiently particularized because she "was not given information she personally had a right to under the ADA and its regulations." *Id.* at 27a-28a.

The court of appeals rejected Acheson's "various attempts to distinguish *Havens Realty.*" Pet. App. 20a; see *id.* at 20a-24a. Among other things, the court rejected the argument that Laufer "wasn't injured in the way the statute was designed to protect since she wasn't prevented from reserving a room." *Id.* at 21a. On the court's view, the Reservation Rule "was not designed only to make sure that a disabled person could book a room," but also to create a broader right to "public information on accessibility features," even for those not seeking to make reservations. *Ibid.*

The court of appeals also relied on *FEC* v. *Akins*, 524 U.S. 11, 20-21 (1998), and *Public Citizen* v. *DOJ*, 491 U.S. 440, 449-450 (1989), for the proposition that the "denial of information that a plaintiff is statutorily entitled to have can make for a concrete injury in fact." Pet. App. 16a. And the court rejected Acheson's contention that this Court's decision in *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190 (2021), overturned those decisions or suggested that Laufer's injury is not concrete. Pet. App. 17a-19a, 25a-27a.

b. The court of appeals next held that Laufer has standing to seek injunctive relief. Pet. App. 29a-32a. The court observed that past injury does not suffice for such standing; rather, a plaintiff must show that she is likely to suffer "imminent" future injury. *Id.* at 30a. The court found that requirement met based on Laufer's "concrete plans" to revisit the relevant websites. *Id.* at 31a; but see *id.* at 32a n.8 (stating that Judge Howard was "doubtful" on this point).

c. Finally, the court of appeals held that the case is not moot. Pet. App. 32a-34a. The court recognized that the Inn's website has been updated to "show[] that the Inn has no ADA-compliant lodging." *Id.* at 32a. But the court noted that Laufer also alleged that Acheson "violated the Reservation Rule via the booking portals on third-party booking websites," which have not been updated in a similar fashion. *Id.* at 33a.

SUMMARY OF ARGUMENT

A. This Court has long held that an individual who suffers a violation of a statutory right to be free from discrimination has standing to sue—even if she voluntarily subjected herself to discrimination to test the defendant's compliance with the law. Most notably, in *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363 (1982), the Court held that a tester could sue for a violation of the FHA's prohibition on discriminatory misrepresentations about the availability of housing even though she voluntarily subjected herself to discrimination and lacked any intention to rent an apartment. The Court explained that the tester had standing because she had "suffered injury in precisely the form the statute was intended to guard against." *Id.* at 373.

This Court has continued to recognize that "Congress is well-positioned to identify intangible harms

that meet minimum Article III requirements," including the harms that accompany discrimination. *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 341 (2016). And the lower courts have correctly applied *Havens Realty* to hold that testers who suffer violations of statutory rights to be free from discrimination have standing to sue under a variety of other laws, including Title III. Those tester suits provide an essential complement to the federal government's limited enforcement resources—as Congress has specifically recognized by funding private tester enforcement of the FHA.

B. The court of appeals correctly recognized that a plaintiff who suffers a violation of a statutory right to be free from discrimination has Article III standing. But the court erred in concluding that Laufer is such a plaintiff. Title III and the Reservation Rule give individuals with disabilities a right of equal access to and enjoyment of a particular "service[]" offered by hotels, 42 U.S.C. 12182(b)(2)(A)(ii)—the service of making "reservations," 28 C.F.R. 36.302(e)(1). Unlike the provision at issue in *Havens Realty*, they do not provide a freestanding right to information. And an individual like Laufer who merely *views* a hotel's online reservation service without intending to *use* the service to make or consider making a reservation lacks standing because she has not suffered any "injury within the meaning" of Title III and the Reservation Rule. *Havens Realty*, 455 U.S. at 374.

C. That conclusion fully resolves the question this Court granted certiorari to decide. Acheson, however, also advances a variety of broader arguments that would curtail tester standing in other contexts or otherwise unsettle the principles that have long governed standing in discrimination cases. Those arguments lack

merit. In particular, nothing in this Court's decision in *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190 (2021), calls into question *Havens Realty* or otherwise undermines tester standing to challenge prohibited discrimination.

D. Finally, Acheson contends that even if Laufer had standing when she filed this suit, the case is now moot. Updates to the Inn's website have mooted Laufer's claims to at least some extent. And even if those developments have not fully mooted this case, they have at minimum greatly diminished the practical significance of any remaining dispute between the parties. Under the circumstances, the Court could choose to direct the dismissal of Laufer's complaint on equitable grounds rather than adjudicating the Article III questions raised by the parties.

ARGUMENT

A. A Plaintiff's Desire To Test A Defendant's Compliance With The Law Does Not Deprive Her Of Standing To Sue For A Violation Of A Statutory Right To Be Free From Discrimination

1. To establish Article III standing, "a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2203 (2021). An injury is "concrete" if it is "real, and not abstract." *Id.* at 2204 (citation omitted). But concrete injuries are not limited to "traditional tangible harms, such as physical harms and monetary harms." *Ibid.* "Various intangible harms can also be concrete." *Ibid.*

In determining whether an intangible harm "is sufficiently concrete to qualify as an injury in fact," this

Court has recognized that "Congress's views may be 'instructive.'" *TransUnion*, 141 S. Ct. at 2204 (citation omitted). The Court has rejected the suggestion that "a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 341 (2016). But the Court has also emphasized that courts applying Article III "must afford due respect to Congress's decision to impose a statutory prohibition or obligation on a defendant, and to grant a plaintiff a cause of action to sue." *TransUnion*, 141 S. Ct. at 2204.

Consistent with those principles, the Court has held that "Congress may 'elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.'" *TransUnion*, 141 S. Ct. at 2204-2205 (citation omitted). Accordingly, although Congress cannot "authorize *unharmed* plaintiffs to sue," *id.* at 2207, "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before," *Spokeo*, 578 U.S. at 341 (citation omitted). Thus, in some circumstances, an Article III injury may exist "by virtue of 'statutes creating legal rights, the invasion of which creates standing.'" *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 578 (1992) (citation omitted).

2. In *TransUnion*, this Court identified "discriminatory treatment" as the paradigmatic example of a harm that Congress can elevate into a cognizable injury that satisfies Article III. 141 S. Ct. at 2205 (citing *Allen* v. *Wright*, 468 U.S. 737, 757 n.22 (1984)). The foundational precedent establishing that principle is *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363 (1982), which held that a plaintiff who suffers a violation of a statutory right to

be free from discrimination has Article III standing even if she subjected herself to the violation to test the defendant's compliance with the law.

The plaintiffs in *Havens Realty* included two testers employed to determine whether apartment complexes were complying with the FHA. 455 U.S. at 368. The defendant's employees told Sylvia Coleman, a Black tester, "that no apartments were available" in an apartment complex, but told R. Kent Willis, a white tester, "that there were vacancies." *Id.* at 367-368. The plaintiffs sued, alleging that the defendant had violated a provision of the FHA that made it unlawful "to represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." *Id.* at 373 (quoting 42 U.S.C. 3604(d) (1976)) (brackets and emphasis omitted).

This Court held that Coleman, the Black tester, satisfied the "Art. III minima of injury in fact." *Havens Realty*, 455 U.S. at 372. The Court acknowledged that she lacked "an intent to rent or purchase a home or apartment." *Id.* at 373. But the Court explained that Congress had "conferred on all 'persons' a legal right to truthful information about available housing" without discrimination based on race and made that right enforceable through "an explicit cause of action." *Ibid.* Coleman thus "suffered injury in precisely the form the statute was intended to guard against": She was denied housing information on a "discriminatory" basis. *Id.* at 373-374. That she "may have approached the real estate agent fully expecting that [s]he would receive false information, and without any intention of buying or renting a home, d[id] not negate the simple fact of injury within the meaning" of the statute. *Id.* at 374. By con-

trast, the white tester—who did not "allege that he was a victim of a discriminatory misrepresentation"—had neither standing nor a cause of action. *Id.* at 375.

Havens Realty's holding that the violation of a statutory right to be free from discriminatory denials of housing information inflicts a concrete injury is consistent with this Court's observation that "Congress is well-positioned to identify intangible harms that meet minimum Article III requirements." *Spokeo*, 578 U.S. at 341. As this Court has recognized, "discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group * * * can cause serious non-economic injuries." *Heckler* v. *Mathews*, 465 U.S. 728, 739-740 (1984) (citation omitted); see *id.* at 740 n.7. Accordingly, a suit based on the violation of a statutory right to be free from discrimination constitutes one "circumstance[]" in which a plaintiff "need not allege any *additional* harm beyond the one Congress has identified." *Spokeo*, 578 U.S. at 342; cf. *Barr* v. *American Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2355 (2020) (opinion of Kavanaugh, J.).

That conclusion leads directly to *Havens Realty*'s holding that a plaintiff who suffers discrimination in violation of a statute has Article III standing even if she subjected herself to the violation to test the defendant's compliance. Although such a plaintiff may not suffer any additional tangible harm, such as the loss of a desired apartment, the violation of her statutory right to be free from discriminatory treatment is itself a concrete and particularized injury.

3. In the four decades since *Havens Realty*, federal courts have consistently held that testers have Article III standing to sue under various provisions of the FHA, including not just Section 3604(d)'s prohibition on

discriminatory denials of housing information, but also Section 3604(a)'s prohibition on discriminatory refusals to make housing available, see, *e.g.*, *Village of Bellwood* v. *Dwivedi*, 895 F.2d 1521, 1527 (7th Cir. 1990); Section 3604(b)'s prohibition on discrimination in services connected with the sale or rental of a dwelling, see, *e.g.*, *ibid.*; and Section 3604(f)'s prohibition on housing-related disability discrimination, see, *e.g.*, *Smith* v. *Pacific Props. & Dev. Corp.*, 358 F.3d 1097, 1102 (9th Cir.), cert. denied, 543 U.S. 869 (2004). Courts have also recognized that *Havens Realty*'s approval of tester standing applies equally to other antidiscrimination laws, including Title II of the ADA, 42 U.S.C. 12132, see, *e.g.*, *Tandy* v. *City of Wichita*, 380 F.3d 1277, 1286 (10th Cir. 2004); the Rehabilitation Act of 1973, 29 U.S.C. 794, see, *e.g.*, *Tandy*, 380 F.3d at 1286; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2, see, *e.g.*, *Kyles* v. *J.K. Guardian Sec. Servs., Inc.*, 222 F.3d 289, 298 (7th Cir. 2000).

Courts have reached the same conclusion with respect to Title III. For example, courts have uniformly recognized that a plaintiff who encounters an architectural barrier at a place of public accommodation has suffered a concrete injury even if she visited only to test for compliance with Title III. See, *e.g.*, *Mosley* v. *Kohl's Dep't Stores, Inc.*, 942 F.3d 752, 758 (6th Cir. 2019); *Nanni* v. *Aberdeen Marketplace, Inc.*, 878 F.3d 447, 457 (4th Cir. 2017), cert. denied, 138 S. Ct. 2657 (2018); *Colorado Cross-Disability Coal.* v. *Abercrombie & Fitch Co.*, 765 F.3d 1205, 1211 (10th Cir. 2014); *Houston* v. *Marod Supermarkets, Inc.*, 733 F.3d 1323, 1332-1334 (11th Cir. 2013).

That result follows directly from *Havens Realty*. Title III creates a right to equal access to the facilities and

services of a place of public accommodation and confers a cause of action on "any person" who is denied that right. 42 U.S.C. 12188(a)(1). That right, like the right conferred by the FHA provision at issue in *Havens Realty*, "does not depend on the motive behind" a plaintiff's "attempt to enjoy the facilities" of a particular place of public accommodation. *Houston*, 733 F.3d at 1332 (emphasis omitted). Thus, as in *Havens Realty*, "anyone who has suffered an invasion of the legal interest protected by Title III may have standing, regardless of his or her motivation in encountering that invasion." *Colorado Cross-Disability Coal.*, 765 F.3d at 1211.

In the context of Title III suits involving physical barriers to access, courts of appeals have generally agreed on what a plaintiff—whether a tester or not—must allege and prove to establish standing to seek prospective relief. A plaintiff's mere awareness of an ADA violation at a public accommodation that she has neither visited nor intends to visit does not suffice. See, *e.g.*, *Scherr* v. *Marriott Int'l, Inc.*, 703 F.3d 1069, 1075 (7th Cir. 2013). Nor does a plaintiff have standing to seek an injunction merely because he previously encountered a barrier to accessibility; instead, he must establish "a sufficient likelihood that he will be affected by the allegedly unlawful conduct in the future." *Houston*, 733 F.3d at 1334 (citation omitted).

As in other contexts, vague "'some day' intentions" to visit the defendant accommodation are insufficient to establish "'actual or imminent' injury." *Lujan*, 504 U.S. at 564. But a plaintiff may establish standing by showing that she is "currently deterred from patronizing a public accommodation" because of the defendant's ADA violation or that she is likely to visit the accommodation and encounter the violation in the future. *Pickern* v.

Holiday Quality Foods Inc., 293 F.3d 1133, 1138 (9th Cir.), cert. denied, 537 U.S. 1030 (2002); see, *e.g.*, *Colorado Cross-Disability Coal.*, 765 F.3d at 1211-1212; see also *Mosley*, 942 F.3d at 757 (collecting other cases).

4. This Court has long recognized that "private litigation" is essential to effective enforcement of the Nation's antidiscrimination laws. *Newman* v. *Piggie Park Enters., Inc.*, 390 U.S. 400, 401 (1968) (per curiam). Because federal agencies have limited enforcement resources, it would be impossible to "secur[e] broad compliance" with those laws absent suits by individuals who experience discrimination. *Ibid.* Suits by testers are a key component of that system of private enforcement, and they have proven especially important in certain contexts.

For example, testers are critical to the effective enforcement of the FHA. Most housing discrimination is covert, and testers play an essential role in uncovering and remedying racial steering and other unlawful practices. Congress has thus specifically embraced tester suits by providing funding to nonprofit organizations to "carry out testing and other investigative activities" and to bring "litigation" to remedy the violations those activities uncover. 42 U.S.C. 3616a(b)(2)(A) and (E).

Testers are likewise critical for enforcement of Title III. "[T]he unavailability of damages reduces or removes the incentive for most disabled persons who are injured by inaccessible places of public accommodation to bring suit under the ADA." *Molski* v. *Evergreen Dynasty Corp.*, 500 F.3d 1047, 1062 (9th Cir. 2007) (per curiam), cert. denied, 555 U.S. 1031 (2008). And because patrons frequently have only an ephemeral relationship with places of public accommodation, individuals with disabilities who encounter ADA violations often

have little practical reason to incur the burdens of a lawsuit seeking prospective relief. Testers therefore play an important role in ensuring that the statute "yield[s] its promise of equal access." *Ibid.*

B. Laufer Lacks Standing Because Title III And The Reservation Rule Do Not Confer A Freestanding Informational Right On Individuals Who Do Not Seek To Use A Hotel's Reservation Service

The court of appeals correctly recognized that *Havens Realty* establishes that a plaintiff who suffers a violation of a statutory right to be free from discrimination has Article III standing even if she subjected herself to the violation to test the defendant's compliance. But the court erred in applying that principle to hold that Laufer has standing because it misunderstood the nature of the right conferred by Title III and the Reservation Rule. The court believed that the Rule gives Laufer a right to accessibility information about the Inn even though she does not seek to use that information to reserve, or to consider whether to reserve, a room. But Title III and the Rule do not create any such freestanding informational right; instead, they give individuals with disabilities a right of equal access to a hotel's reservation services. Laufer viewed the booking websites maintained by the Inn and third parties, but she has disclaimed any allegation that she used, attempted to use, or plans to use those services. Laufer thus lacks standing because, unlike the Black tester plaintiff in *Havens Realty*, she has not "suffered injury" in "the form the statute was intended to guard against." 455 U.S. at 373.

1. The critical premise of the decision below—and of Laufer's theory of standing—is that the Reservation Rule confers on *any* person with a disability who visits

a hotel's online reservation system the right to accurate information about the hotel's accessibility. The court reasoned, for example, that Laufer "was denied information to which she has a legal entitlement" under the Rule, and that she had such an entitlement despite her "lack of intent to book a room." Pet. App. 15a. That premise was the basis for the court's conclusion that Laufer had suffered "the discrimination the regulations are trying to stamp out," which was essential to the court's conclusion that Laufer has standing under *Havens Realty*. *Id.* at 22a.

The court of appeals' premise was mistaken. The Reservation Rule does not confer a freestanding right to accessibility information; instead, the Rule's text makes clear that it guarantees individuals with disabilities equal access to a hotel's "reservations service." 28 C.F.R. 36.302(e)(1)(ii). The Rule's obligations apply "with respect to *reservations* made by any means." 28 C.F.R. 36.302(e)(1) (emphasis added). The Rule applies "to *reservations* made" on or after a specified date. 28 C.F.R. 36.302(e)(3) (emphasis added). And the Rule's requirements focus on the reservation process, requiring a hotel to hold accessible rooms for individuals with disabilities, to allow those rooms to be reserved in advance, and to ensure that, once reserved, those rooms will actually be available upon check-in. See 28 C.F.R. 36.302(e)(1)(iii)-(v).

The provision of the Rule at issue here provides that a hotel's "reservations service" must "[i]dentify and describe" the hotel's features in enough detail to "reasonably permit" individuals with disabilities to determine whether the hotel and its rooms meet their "accessibility needs." 28 C.F.R. 36.302(e)(1)(ii). Like the Rule's other requirements, that provision applies "with re-

spect to reservations." 28 C.F.R. 36.302(e)(1). It thus protects individuals with disabilities who are using or seeking to use a hotel's reservation service—that is, individuals who are making, or considering whether to make, a reservation. But the Rule does not confer an informational right on every individual with a disability who merely visits the hotel's website *without* using or attempting to use the reservation service. In that sense, the Rule is narrower than the provision at issue in *Havens Realty*, which made it unlawful to misrepresent the availability of housing "to *any person* because of race." 42 U.S.C. 3604(d) (emphasis added).

That understanding of the Reservation Rule follows directly from Title III. The Rule interprets the statutory requirement that public accommodations "make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford" their "services" to "individuals with disabilities." 42 U.S.C. 12182(b)(2)(A)(ii). The Rule addresses a particular "service[]," *ibid.*, offered by hotels—the ability to review and reserve available rooms through websites or others means. See 36 C.F.R. Pt. 36, App. A at 804. A plaintiff with a disability who is prevented from using that service because of a lack of accessibility information suffers a violation of the right secured by the statute and thus has standing to sue under *Havens Realty*.

Laufer, however, is not such a plaintiff. The district court found that she has no "genuine plan to make a reservation" at the Inn, Pet. App. 47a, and the court of appeals emphasized that she had "disclaim[ed]" any "intent to travel to Maine," *id.* at 11a n.3. As this case comes to the Court, Laufer has not alleged that she used, attempted to use, or planned to use the Inn's res-

ervation service. Instead, she alleges only that she viewed the Inn's website and third-party booking sites, discovered that they violate the Reservation Rule, and felt "frustration and humiliation" as a result. J.A. 10a ¶ 14; see J.A. 19a ¶ 7. That sort of awareness of a statutory violation that infringes the rights of others—even if it is accompanied by frustration and humiliation—is not sufficient to satisfy Article III.

2. Some judges have suggested that a plaintiff like Laufer who does not intend to use a reservation service nonetheless has Article III standing because she has "the exact same experience" as a traveler seeking to make a reservation: In either case, "[t]he hotel displays the very same content to them on the very same webpage." *Laufer* v. *Arpan, LLC*, 65 F.4th 615, 617 (11th Cir. 2023) (Newsom, J., concurring in the denial of rehearing en banc) (emphasis omitted). In fact, however, their experiences differ in a critical respect. A potential traveler attempting to avail herself of a hotel's online reservation service is denied equal access to that service by the lack of accessibility information. Laufer, in contrast, is not denied equal access to that service because she is not attempting to use it at all.

Nor is that sort of distinction unique to the Reservation Rule. One could equally say that two individuals with disabilities who drive by a restaurant and see that it is not wheelchair-accessible have "the exact same experience," *Arpan*, 65 F.4th at 617 (Newsom, J., concurring in the denial of rehearing en banc) (emphasis omitted), even though one of them did not actually intend to visit the restaurant. But only the individual who was prevented from visiting the restaurant would have Article III standing to sue because only she has suffered the denial of the rights secured by Title III.

3. Laufer thus lacks Article III standing because she has not suffered any "injury within the meaning" of Title III and the Reservation Rule. *Havens Realty*, 455 U.S. at 374. To be sure, the Court has often said that, "[f]or standing purposes," a court should "accept as valid the merits of [the plaintiff's] legal claims." *FEC* v. *Cruz*, 142 S. Ct. 1638, 1647 (2022). That means, for example, that "standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal." *Warth* v. *Seldin*, 422 U.S. 490, 500 (1975). Thus, a plaintiff's standing to challenge an alleged violation of the Reservation Rule does not depend on whether the defendant's website actually violated the Rule. That question goes to the merits, not to standing. Cf. Pet. App. 9a-10a.

As *Havens Realty* illustrates, however, standing and the merits overlap where, as here, a plaintiff's claim to standing is predicated on the assertion that she has suffered a violation of an enforceable legal right conferred by Congress. Just as Congress's decision to confer "on all 'persons' a legal right to truthful" and nondiscriminatory "information about available housing" could not be "overlooked" in concluding that the Black tester plaintiff in *Havens Realty* had "standing to sue," 455 U.S. at 373, the fact that Congress has not conferred any similar right on plaintiffs like Laufer forecloses her claim to standing. Laufer lacks standing to assert any injury to the rights created by Title III and the Reservation Rule because "none of the rights identified [in her suit] belong to [her]." *Thole* v. *U.S. Bank N.A.*, 140 S. Ct. 1615, 1623 (2020) (Thomas, J., concurring); see *TransUnion*, 141 S. Ct. at 2204-2205 (explaining that congressional action is "instructive" in the Article III

analysis and can "elevate" a real-world harm into a cognizable injury) (quoting *Spokeo*, 578 U.S. at 341).

C. Acheson's Broader Arguments Lack Merit

A determination that Laufer lacks standing because she has not suffered a violation of any right secured by Title III and the Reservation Rule would resolve the question presented and eliminate the conflict in the courts of appeals. Cf. Pet. 16-25. Acheson, however, also advances several broader arguments that would disrupt the law governing tester standing in other contexts or unsettle Article III principles more generally. Those arguments are unnecessary to decide this case and unsound in any event.

1. Acheson's other attempts to distinguish Havens Realty *lack merit*

a. Acheson first contends that *Havens Realty*'s relevance is limited to "*statutes* creating legal rights," while this case involves a regulation. Br. 28 (quoting *Havens Realty*, 455 U.S. at 373). That argument incorrectly assumes that the premise of Reservation Rule suits is that the Rule *itself* "create[s] an injury at law." Br. 29. In fact, the Rule is an interpretation of Title III's requirement that hotels make "reasonable modifications" to afford individuals with disabilities equal access to their "services." 42 U.S.C. 12182(b)(2)(A)(ii); see 28 C.F.R. Pt. 36, App. A at 803-804. Congress authorized the Attorney General to issue regulations "to carry out the provisions of [Title III]." 42 U.S.C. 12186(b). And Acheson did not argue below that the Rule is inconsistent with the statute or otherwise "exceeds" the Attorney General's "authority." Pet. App. 5a n.2.

To the extent Acheson now suggests that the Reservation Rule goes beyond what Title III authorizes, it is

mistaken. Acheson contends (Br. 20) that "[p]roviding people with information about accessibility is a means to achieve the ADA's substantive goal of facilitating access to hotels." Thus, Acheson suggests (*e.g.*, Br. 31-32) that a person with disabilities might have standing under the Reservation Rule if she accessed a deficient website in the course of making a reservation only because that would effectively prevent her from enjoying the *physical* place of accommodation. But while the physical accessibility of a public accommodation's "facilities" is an important aspect of ADA compliance, Title III also applies to "services," 42 U.S.C. 12182(a), including "those offered on the web," Civil Rights Div., DOJ, *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022) (emphasis omitted), https://perma.cc/CLG6-EK9A. The Reservation Rule ensures that a hotel's reservation services comply with the requirements of Title III. See pp. 17-20, *supra*.

b. Acheson further asserts that the injury suffered by the Black tester in *Havens Realty* is distinguishable from any injury suffered by a plaintiff who experiences a violation of the Reservation Rule because such a plaintiff is "not 'personally subject to discriminatory treatment.'" Br. 39-40 (quoting *Allen*, 468 U.S. at 757 n.22). Acheson errs to the extent it suggests that no discrimination occurs when a defendant provides the same information to all comers. See Br. 40. Title III defines "discrimination" to include a failure to make reasonable modifications as necessary to afford equal access to individuals with disabilities. 42 U.S.C. 12182(b)(2)(A)(ii).

As this Court recognized in addressing the parallel reasonable-accommodation requirement in Title I of the ADA, such modifications are sometimes "necessary to achieve the Act's basic equal opportunity goal" because

they are "needed for those with disabilities to obtain the *same* * * * opportunities that those without disabilities automatically enjoy." *US Airways, Inc.* v. *Barnett*, 535 U.S. 391, 397 (2002). In the religion context, too, Congress has sometimes concluded that equality of opportunity demands more than "mere neutrality" and instead requires imposing an affirmative obligation to offer reasonable accommodations. *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015). The Court should reject any suggestion that such reasonable-accommodation requirements stand on lesser footing than prohibitions on other forms of discrimination.

c. Finally, Acheson's assertion (Br. 22-26, 39-40) that any Reservation Rule tester necessarily lacks a particularized injury is incorrect. "For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.'" *Spokeo*, 578 U.S. at 339 (citation omitted). That requirement is satisfied when a plaintiff suffers a violation of a statutory right to be free from discrimination, even if she experiences that violation over the Internet. Accordingly, just as the Black tester plaintiff in *Havens Realty* suffered a particularized injury when her statutory right was violated, a plaintiff who is denied equal access to a hotel's reservation service suffers a particularized injury, too.

2. TransUnion *does not suggest that a tester's motivation deprives her of a concrete injury*

Acheson asserts (Br. 18) that "*TransUnion* resolves this case." But as Acheson elsewhere acknowledges (Br. 28, 33), *TransUnion* did not overrule *Havens Realty* or any other precedent. And it did not address tester standing at all.

a. In *TransUnion*, this Court considered whether a class of plaintiffs had Article III standing to sue a credit

reporting agency for alleged violations of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* See 141 S. Ct. at 2200. The Court held that (1) plaintiffs who alleged that TransUnion supplied misleading credit reports about them to third parties had standing with respect to certain claims, and (2) the named plaintiff had standing with respect to claims relating to defects in certain mailings he received. *Ibid.* By contrast, plaintiffs whose credit reports had not been sent to third parties, and those who had not alleged specific harms from the defective mailings, lacked standing to assert the relevant claims. *Ibid.*

In reaching those conclusions, *TransUnion* reaffirmed this Court's rejection of "the proposition that 'a plaintiff *automatically* satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue.'" 141 S. Ct. at 2205 (quoting *Spokeo*, 578 U.S. at 341) (emphasis added). Acheson asserts (Br. 27-28) that *TransUnion* is thus inconsistent with *Havens Realty*'s statement that "the actual or threatened injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'" *Havens Realty*, 455 U.S. at 373 (quoting *Warth*, 422 U.S. at 500) (brackets omitted). But *TransUnion* also reiterated that courts applying Article III must afford "due respect" to congressional action, which may "'elevate'" to cognizable status otherwise-insufficient harms. 141 S. Ct. at 2204-2205 (citation omitted). That is entirely consistent with *Havens Realty*. Indeed, in observing that Congress may validly recognize

such injuries, *TransUnion* specifically invoked "discriminatory treatment." *Id.* at 2205; see Pet. Br. 39.*

b. Acheson argues (Br. 45-46) that a Reservation Rule tester's stigmatic or emotional injuries are insufficiently concrete because they do not bear "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion*, 141 S. Ct. at 2204. But *TransUnion* states that such a relationship *or* congressional recognition may indicate that an injury is sufficiently concrete. *Id.* at 2204-2205; see *Spokeo*, 578 U.S. at 340-341; *Lujan*, 504 U.S. at 562-563. Where Congress recognizes the *de facto* injuries that accompany discrimination, no further showing is required.

In any event, the harms that accompany discrimination in public accommodations are sufficiently analogous to injuries that have traditionally formed the basis for suits in American courts. Public accommodations laws have a "venerable history." *Hurley* v. *Irish-American Gay, Lesbian & Bisexual Grp. of Bos., Inc.*, 515 U.S. 557, 571 (1995). "At common law, innkeepers, smiths, and others who 'made profession of a public employment,' were prohibited from refusing, without good reason, to serve a customer." *Ibid.* (citation omitted). Shortly after the Civil War, many States enacted statutes "codify[ing] this principle to ensure access to public accommodations regardless of race." *Ibid.* Over time, States

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* Acheson errs in suggesting (Br. 47-51) that testers undermine the Executive Branch's Article II authority to enforce the law. Title III provides a cause of action only to individuals who are subject to the real-world harm of discrimination—not to the public in general. Cf. *TransUnion*, 141 S. Ct. at 2207 ("A regime where Congress could freely authorize *unharmed* plaintiffs to sue * * * would infringe on the Executive Branch's Article II authority.").

and the federal government have "continued to broaden the scope" of those laws to bar discrimination based on other protected characteristics, including sex, religion, and disability. *Id.* at 571-572.

Nor did suits based on discrimination necessarily require a showing of economic harm or other tangible injuries. For example, in *Chicago & Northwestern Railway Co.* v. *Williams*, 55 Ill. 185 (1870), the Illinois Supreme Court allowed a woman who was "rudely" refused permission to ride in the ladies' car "for no other reason except her color" to recover damages for "the indignity, vexation and disgrace" she suffered. *Id.* at 186, 190. And in *Aaron* v. *Ward*, 96 N.E. 736, 738 (1911), New York's highest court recognized that a ticketed bathhouse guest could obtain compensation for emotional distress in a breach of contract action after she was denied access and referred to by a derogatory term for a person of Jewish ancestry. See *Aaron* v. *Ward*, 136 A.D. 818, 819 (N.Y. App. Div. 1910) (describing the facts of the case), aff'd, 96 N.E. 736 (N.Y. 1911); see also, *e.g.*, *Knoxville Traction Co.* v. *Lane*, 53 S.W. 557, 558-560 (Tenn. 1899).

c. Acheson further suggests (Br. 17-18) that a Reservation Rule tester's "informational" injury cannot qualify as concrete under *TransUnion* because it "causes no adverse effects." 141 S. Ct. at 2214 (citation omitted). But a tester who suffers discrimination in violation of a statute does not allege a solely informational injury, even if the discrimination occurs with respect to the provision of information. See pp. 10-17, *supra*.

In any event, as Acheson acknowledges (Br. 33), "*TransUnion* distinguished"—but did not overrule—this Court's decisions in *FEC* v. *Akins*, 524 U.S. 11 (1998), and *Public Citizen* v. *DOJ*, 491 U.S. 440 (1989).

In those cases, the Court held that in certain circumstances, the denial of statutorily required information may itself "constitute[] a sufficiently distinct" and "genuine" injury-in-fact. *Public Citizen*, 491 U.S. at 449-450 (addressing the Federal Advisory Committee Act, 5 U.S.C. App. 1 *et seq.*); *Akins*, 524 U.S. at 21 (addressing the Federal Election Campaign Act of 1971, 2 U.S.C. 431). In so doing, the Court emphasized that its "decisions interpreting the Freedom of Information Act have never suggested that those requesting information under it need show more than that they sought and were denied specific agency records." *Public Citizen*, 491 U.S. at 449.

TransUnion distinguished *Akins* and *Public Citizen* on the ground that the class-member plaintiffs in *TransUnion* "did not allege that they failed to receive any required information," but instead "argued only that they received it *in the wrong format*." 141 S. Ct. at 2214. In addition, the Court noted that *Akins* and *Public Citizen* "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information," whereas *TransUnion* did not. *Ibid.*

Acheson relies (Br. 17-18) on *TransUnion*'s further statement that the class-member plaintiffs did not identify any "'downstream consequences' from failing to receive the required information," 141 S. Ct. at 2214 (citation omitted). But even if that statement were to be applied to outright denials of information (rather than to information received in the wrong format, as in *TransUnion*) it would not apply to the *discriminatory* denial of information to which a plaintiff is entitled under an antidiscrimination law like the FHA or Title III. Such a discriminatory action results in "downstream

consequences" long recognized by Congress and the courts: the harms that accompany discriminatory treatment. See pp. 10-17, *supra*. This case thus presents no occasion to consider how *TransUnion* applies to "pure" informational injuries.

3. That a tester's injury is in some sense "self-inflicted" does not defeat Article III standing

Finally, Acheson contends (Br. 46) that any future harm a tester alleges is insufficient to provide standing for injunctive and declaratory relief because it is "self-inflicted." See Br. 42-43. This Court rejected a similar argument in *Cruz*. See 142 S. Ct. at 1647. There, the Court cited *Havens Realty* with approval and reaffirmed that the fact that a plaintiff "subjected himself to discrimination 'for the purpose of instituting the litigation' d[oes] not defeat his standing." *Ibid.* (quoting *Evers* v. *Dwyer*, 358 U.S. 202, 204 (1958) (per curiam)) (brackets omitted). *Cruz* also distinguished *Clapper* v. *Amnesty International USA*, 568 U.S. 398 (2013), on which Acheson relies. The Court explained that the "problem" in *Clapper* was not that the plaintiffs chose to take "costly and burdensome" measures to protect against a government surveillance policy, but rather that they "could not show that they had been or were likely to be subjected to that [surveillance] policy" in the first place. *Cruz*, 142 S. Ct. at 1647. That is not true of testers, who expose themselves to the practices or policies they wish to challenge.

D. Even If Laufer Had Standing, Her Claims May Be Moot

Acheson contends (Br. 51-53) that even if the court of appeals were correct that Laufer had standing when she filed this suit, the case is now moot because the Inn's website has been updated to supply the infor-

mation Laufer alleges the Reservation Rule requires. That intervening development moots Laufer's claim for prospective relief with respect to the Inn's website. And although the mootness question is more difficult with respect to third-party services that have not been similarly updated, this Court might conclude that any remaining controversy is too insignificant to justify resolving the standing question on which it granted certiorari. Cf. *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (explaining that a court may dispose of a case on threshold non-merits grounds without deciding whether it has jurisdiction).

1. Even if the court of appeals' understanding of the Reservation Rule were correct, Laufer's claim with respect to the Inn's own reservation service would be moot. The Inn's website has been updated to explain that the Inn is "not equipped at this time to provide ADA compliant lodging." Coast Vill. Inn, *Enjoy Life in the Friendliest Town in Maine* (2023) (Coast Vill. Inn Website), https://coastvillageinn.me. Laufer has not disputed that this information is sufficient to allow her to "assess independently whether" the Inn meets "her accessibility needs." 28 C.F.R. 36.302(e)(1)(ii). That development moots any claim based on the Inn's website, because "changed circumstances already provide the requested relief and eliminate the need for court action." *Hillesheim* v. *Holiday Stationstores, Inc.*, 953 F.3d 1059, 1061 (8th Cir. 2020) (citation omitted); see, *e.g.*, *Collins* v. *Yellen*, 141 S. Ct. 1761, 1780 (2021); *Alvarez* v. *Smith*, 558 U.S. 87, 92-93 (2009).

To be sure, a defendant's voluntary cessation of challenged conduct does not always moot a case. Here, however, nothing suggests that the alleged Reservation Rule violation on the Inn's website could "reasonably be

expected to recur," *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation omitted). The website has been updated by new owners, who state that they are "taking ADA compliance seriously"—with no indication that accessibility information will be removed in the future. Coast Vill. Inn Website. Courts have held that a defendant's changes to its website may moot a Reservation Rule claim in analogous circumstances. See, *e.g.*, *Langer* v. *Music City Hotel LP*, No. 21-cv-4159, 2021 WL 5919825, at *7-*8 (N.D. Cal. Dec. 15, 2021); *Whitaker* v. *Montes*, No. 21-cv-679, 2021 WL 5113218, at *5-*6 (N.D. Cal. Nov. 3, 2021); *Strojnik* v. *International Hospitality Enters., Inc.*, No. 19-1714, 2021 WL 5630352, at *1-*2 (D.P.R. Jan. 4, 2021).

2. The court of appeals declined to decide whether any live controversy remains as to the Inn's website. Pet. App. 34a n.9. Instead, the court held that this case is not moot because third-party sites have not been updated to include the same accessibility information. *Id.* at 33a-34a.

Whether Laufer's claim regarding third-party services preserves a live controversy under the theory of injury adopted by the court of appeals raises difficult questions. The Reservation Rule's requirement to identify accessibility features does not "extend * * * directly to third-party reservation services." 28 C.F.R. Pt. 36, App. A at 806. Rather, the Rule requires hotels to "make reasonable efforts" to provide accessibility information to third-party services. *Id.* at 805. And the Rule recognizes that third parties may not update their websites in response to such information. If the hotel supplies the information "but the third party fails to provide" it to individuals with disabilities, the hotel "will not be responsible." *Ibid.* It is therefore not clear that

an order requiring Acheson (and thus the Inn's new owners, see Pet. 10 n.1) to provide accessibility information to third-party services would "likely" redress any future injury. See *Lujan*, 504 U.S. at 562 (explaining that redressability is harder to show when it depends on the actions of third parties).

3. Whether or not Laufer's claim is technically moot, the changed circumstances greatly diminish the practical significance of the dispute between the parties. In such situations, a court asked to grant injunctive or declaratory relief may invoke the equitable principle sometimes referred to as "prudential mootness." That doctrine recognizes that even though a lawsuit may "still qualify as an Article III 'case or controversy,'" "events [may] so overtake [it] that the anticipated benefits of a remedial decree no longer justify the trouble of deciding the case on the merits." *Winzler* v. *Toyota Motor Sales U.S.A., Inc.*, 681 F.3d 1208, 1210 (10th Cir. 2012) (Gorsuch, J.). In such circumstances, "prolonging the litigation any longer [may be] inequitable," and a court may exercise its discretion to deny equitable relief without determining whether the case is technically moot. *Ibid.*; see, *e.g.*, *Fleming* v. *Gutierrez*, 785 F.3d 442, 448 n.7 (10th Cir. 2015). The Court could invoke similar principles here if it wished to dispose of the case based on changed circumstances without deciding the Article III standing question on which it granted certiorari or reaching a conclusion about Article III mootness.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
KRISTEN CLARKE
Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
ERICA L. ROSS
Assistant to the Solicitor General
BONNIE I. ROBIN-VERGEER
YAEL BORTNICK
Attorneys

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APPENDIX

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1. 42 U.S.C. 12182(a)-(b) provides:

Prohibition of discrimination by public accommodations

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good,

service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals

For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a), discrimination includes—

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

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system

For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including

the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct

threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

2. 42 U.S.C. 12188(a)(1) provides:

Enforcement

(a) In general

(1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

3. 28 C.F.R. 36.302(e) provides:

Modifications in policies, practices, or procedures.

(e)(1) *Reservations made by places of lodging*. A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party—

(i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;

(ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;

(iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;

(iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and

(v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

(2) *Exception*. The requirements in paragraphs (iii), (iv), and (v) of this section do not apply to reservations for individual guest rooms or other units not owned or substantially controlled by the entity that owns, leases, or operates the overall facility.

(3) *Compliance date*. The requirements in this section will apply to reservations made on or after March 15, 2012.