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U.S. Supreme Court Vacates, Dismisses as Moot Decision Holding ADA 'Tester' Has Standing to Sue

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The U.S. Supreme Court vacated a decision by the U.S. Court of Appeals for the First Circuit holding a self-appointed "tester" has standing to sue under the Americans With Disabilities Act (ADA). *Acheson Hotels, LLC v. Laufer*, No. 22-429. However, the Court declined to address the merits of whether the tester had a sufficient concrete and particularized injury to establish standing, holding the case had become moot and leaving in place a deep circuit split on the standing issue.

Deborah Laufer had sued Acheson Hotels for alleged violation of the Reservation Rule, a Department of Justice regulation requiring places of lodging to identify and describe accessible features in the hotels and guest rooms offered through their reservations service. The information must have enough details to allow individuals with disabilities to determine

whether a given hotel or guest room meets their accessibility needs.

Title III of the ADA requires hotels to make reasonable modifications to reservations policies, practices, or procedures when necessary to ensure that individuals with disabilities can reserve accessible hotel rooms with the same efficiency, immediacy, and convenience as those who do not need accessible guest rooms.

Cover of Self-Appointed Tester

As a self-appointed tester, Laufer has sued more than 600 hotels by searching the internet for hotel websites and finding those that lack such accessibility information. Although Laufer has no intention of accessing the hotels she sued, she claims to enforce the law on behalf of other disabled persons.

In response to Laufer's suits, the hotels argued Laufer lacks standing to bring these lawsuits. Allowing Laufer and other self-appointed testers to sue thousands of hotels across the United States on behalf of every disabled person in the country simply by visiting their websites would cause a flood of litigation from other testers, the hotels warned.

The First Circuit joined the Fourth and Eleventh Circuits to hold that Laufer has standing. In contrast, the Second, Fifth, and Tenth Circuits have held that she lacks standing.

Dismissal Proponent

After Acheson Hotels had submitted its merits brief to the Court, but before oral argument, another court sanctioned one of Laufer's attorneys for misconduct related to some of Laufer's ADA cases for repeatedly demanding $10,000 in attorneys' fees after filing boilerplate complaints. Laufer dismissed her lawsuit with prejudice, ostensibly because of that sanction.

Laufer then urged the Supreme Court to dismiss the case on the ground of mootness, arguing "mootness is easy and standing is hard," so the Court should "refrain from resolving a difficult question in a case that is otherwise over." Acheson Hotels urged the Court to decide the standing issue, arguing "the standing issue might not come back anytime soon. Acheson Hotels argued, the Court recounted, "While Laufer has disavowed the intention to file any more ADA tester suits, others will file in the circuits that sided with her, and hotels will settle, regarding it as pointless to challenge circuit precedent." It continued, "'Why would any hotel take a case this far,' Acheson asks, 'if the respondent can evade our review by abandoning a claim rather than risking a loss?'"

In an 8-1 opinion by Justice Amy Coney Barrett, the Court dismissed the case as moot.

The Court explained, "We are sensitive to Acheson's concern about litigants manipulating the jurisdiction of this Court. We are not convinced, however, that Laufer abandoned her case in an effort to evade our review." It continued, "She voluntarily dismissed her pending ADA cases after a lower court sanctioned her lawyer. She represented to this Court that she will not file any others." Although, the Court said, "Laufer's case against Acheson is moot, and we dismiss it on that ground, … [w]e emphasize, however, that we might exercise our discretion differently in a future case."

The Court also vacated the First Circuit's decision under its practice of "*Munsingware* vacatur," meaning the issue is once again open in that circuit.

Justice Clarence Thomas filed a lone dissent. He would have reached the standing issue, reasoning "whether Laufer had standing the day she filed

her suit is logically antecedent to whether her later actions mooted the case." Moreover, he continued, "the circumstances strongly suggest strategic behavior on Laufer's part." In addition, he wrote, "Laufer's logic is … that she dismissed her claim—and the Court should no longer address whether she had standing—because an attorney she hired in an entirely different case engaged in misconduct." According to Justice Thomas, he "would not reward Laufer's transparent tactic for evading our review."

Justice Thomas then explained he would have held that Laufer lacked standing. He reasoned, assuming the Reservation Rule creates a right to accessibility information, "Laufer asserts no violation of her own rights with regard to that information." He continued, "Acheson Hotels' failure to provide accessibility information on its website is nothing to Laufer, because she disclaimed any intent to visit the hotel."

In a lone concurrence, Justice Ketanji Brown Jackson explained that, although she agreed that the Court followed its "*Munsingware* vacatur" precedent, she would instead require a party to show equitable entitlement to such relief.

After *Acheson*, testers generally lack standing to sue for alleged violation of the Reservation Rule in the Second, Fifth, and Tenth Circuits and have such standing in the Fourth and Eleventh Circuits. The issue is once again open in the First Circuit and remains open in the other circuits. The Supreme Court likely will be called upon again to resolve the circuit split.

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