



 NYU | LAW

MOOT COURT BOARD

Miller Heritage Lodging, LLC,
Petitioner,

-against-

Donna Leifer,
Respondent.

Record

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QUESTIONS PRESENTED

- (1) Whether a person with a disability has standing to sue a motel whose website lacks information regarding accessible rooms for disabled people, as required by Americans with Disabilities Act regulations, even if that person has no intention of staying at the motel.
- (2) Whether the Supreme Court should dismiss a case as moot, on a claimant's suggestion, after the claimant voluntarily dismisses the underlying complaint upon it coming to light that their lawyer engaged in misconduct.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALTAVISTA

Donna Leifer,

Plaintiff,

-against-

Miller Heritage Lodging, LLC,

Defendant.

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Docket No. 24-CV-8675309

OPINION AND ORDER
ON DEFENDANT’S MOTION
TO DISMISS

McGrath, J:

INTRODUCTION

Donna Leifer is an Americans with Disabilities Act (“ADA”) “tester.” Miller Heritage Lodging, LLC (“Miller”), owns the Saguaro Flats Inn, located along historic Route 56 in Willow Spring, Altavista. After visiting Saguaro Flats Inn’s website, Leifer sued Miller for the website’s failure to “identify and describe” the “accessible features” of the motel’s guest rooms, violating an ADA regulation known as the “Reservation Rule.” 28 C.F.R. § 36.302(e)(1)(ii).

Miller has moved to dismiss Leifer’s complaint. It argues that because Leifer never had plans to travel to Saguaro Flats, she lacks standing to sue as required by Article III of the Constitution. This Court agrees. Miller’s motion is **GRANTED**.

FACTUAL BACKGROUND

Saguaro Flats Inn is a motel that sits alongside historic Route 56. The motel is historic in its own right—it was designed by an apprentice of Frank Lloyd Wright and built in 1928, soon after the highway itself. For almost half a century, travelers flocked to the motel. With the advent of the interstate highway system, however, the traffic along Route 56—and number of guests to Saguaro Flats Inn—has thinned.

Today, for most of its visitors, Saguaro Flats Inn is the destination, not a stop along the way. Visitors seek out the motel to enjoy the dry desert air, listen to the wind drift over the sands, and, at night, gaze at the Milky Way. To serve guests’ needs, the motel’s front desk is staffed around the clock.

Donna Leifer is a resident of New Jersey. She is disabled, and uses a wheelchair, cane, or other support to get around. Leifer also describes herself as an “advocate” for “similarly situated people with disabilities.” Her advocacy consists, in

large part, of her work as a self-appointed ADA “tester.”

As a tester, Leifer visits hotels’ online reservation systems to determine their compliance with an ADA regulation known as the “Reservation Rule.” The Reservation Rule requires “public accommodation[s],” such as motels, to “[i]dentify and describe [the] accessible features in the . . . guest rooms offered through [their] reservations service[s] in enough detail to reasonably permit individuals with disabilities to assess independently whether a . . . guest room meets his or her accessibility needs.” 28 C.F.R. § 36.302(e)(1)(ii).

Earlier this year, Leifer visited Saguaro Flats Inn’s website to check its compliance with the Reservation Rule and discovered that it “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 are accessible.” Leifer says the Inn’s noncompliance deprived her of “the capability to make an informed decision,” leading to feelings of “humiliation and frustration at being treated like a second-class citizen and being denied equal access and benefits to accommodations and services.”

Soon after her visit to Saguaro Flats Inn’s website, she sued Miller for violating the Reservation Rule. Though Leifer has no plans to travel to Altavista and Saguaro Flats Inn, she says in her complaint that she would like to visit “sometime in the future.”

Leifer’s efforts to enforce compliance with the Reservation Rule have not been limited to motels along historic Route 56. She has filed more than 500 similar lawsuits against hotels located across the country. Through her litigation campaign, Leifer has single-handedly contributed to a circuit split regarding the question of standing addressed here.

In its reply to Leifer’s complaint, Miller asserts that Saguaro Flats Inn has no accessible guest rooms.¹ Its website has since been updated to make that clear.

Leifer is seeking a declaratory judgment, attorneys’ fees, and an injunction requiring Miller to bring its website into compliance with the ADA. Miller moved to dismiss the case under Federal Rule of Civil Procedure 12(b)(1). It argues that this Court lacks subject matter jurisdiction over the case because Leifer failed to allege an injury in fact and thus has no standing to sue. As is explained below, this Court agrees with Miller.

¹ The ADA requires the removal of “architectural barriers” in existing structures only “where such removal is readily achievable.” 42 U.S.C. § 12182(2)(A)(iv). It is unclear whether that is the case here, and, in any event, Leifer is not arguing that any “architectural barriers” must be removed from Saguaro Flats Inn.

DISCUSSION

Article III of the Constitution grants federal courts the power to decide “Cases” and “Controversies.” U.S. Const. art I, § 2. “[T]hat constitutional phrase . . . require[s] that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions.” *Carney v. Adams*, 592 U.S. 53, 58 (2020).

To establish standing, a plaintiff must show that they “have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). That first factor—that a plaintiff suffered an “injury in fact”—is the “[f]irst and foremost” element of standing. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998) (internal quotations omitted).

An “injury in fact” is “an invasion of a legally protected interest [that] is (a) concrete and particularized and (b) actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). While Leifer alleges a bare violation of her statutory rights, “Article III standing requires a concrete injury even in the context of a statutory violation.” *Spokeo*, 578 U.S. at 341.

Leifer lacks standing because the injury she alleges is not an injury in fact. She has no plans to travel to Altavista to visit Saguaro Flats Inn. Even though Leifer has said that she hopes to visit Altavista “sometime in the future,” “[s]uch ‘some day’ intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the ‘actual or imminent’ injury” required by Article III. *Lujan*, 504 U.S. at 564. Although the Court recognizes the difficulties faced by people with disabilities, including in booking hotel accommodations online, it is unwilling to ignore the “irreducible constitutional minimum of standing,” a requirement that undergirds “the Constitution’s . . . separation of powers.” *Id.* at 559–60.

CONCLUSION

Because Leifer never had plans to visit Saguaro Flats Inn, she has not suffered an injury in fact, and therefore lacks standing to sue. Miller's motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

Greta McGrath

Hon. Greta McGrath
United States District Judge

Dated: September 21, 2024
Tumbleweed Junction, Altavista

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALTAVISTA

Donna Leifer,

Plaintiff,

-against-

Miller Heritage Lodging, LLC,

Defendant.

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NOTICE OF APPEAL

No. 24-CV-8675309

NOTICE IS GIVEN that Donna Leifer appeals to the Court of Appeals for the Fourteenth Circuit the District Court's granting of Defendant's motion to dismiss entered on September 21, 2024.

Evangeline Sosa

Evangeline Sosa
Attorney for Donna Leifer
Sosa & Beck, LLC
312 Rancho Drive,
Willow Spring, Altavista 01214

CERTIFICATE OF SERVICE

I hereby certify that I served a copy hereof upon Defendant's counsel by email and by postage prepaid-first class U.S. mail on September 22, 2024.

Evangeline Sosa

Evangeline Sosa
Attorney for Donna Leifer

In the
United States Court of Appeals
FOR THE FOURTEENTH CIRCUIT

MARCH TERM 2025
No. 25-1411

DONNA LEIFER,

Plaintiff-Appellant,

v.

MILLER HERITAGE LODGING, LLC,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALTAVISTA

ARGUED: MARCH 5, 2025
DECIDED: APRIL 1, 2025

Before: JEFFERSON, MORRIS, AND VALENCIA, *Circuit Judges.*

INTRODUCTION

Donna Leifer, who is disabled, sued Miller Heritage Lodging, LLC (“Miller”), the owner of the Saguaro Flats Inn, for violating Title III of the Americans with Disabilities Act (“ADA”). Leifer had observed that Saguaro Flats Inn’s website lacked information about accessible features in its guest rooms, as is required by Title III regulations.² The district court dismissed Leifer’s complaint for lack of standing, finding that she had not suffered an injury in fact. We disagree. A disabled person who is denied access to online information as required by law suffers a concrete injury

² While the case was pending on appeal, Miller transferred its interest in Saguaro Flats Inn to a different legal entity, Frontier Trail Properties, LLC. Under Rule 25(c) of the Federal Rules of Civil Procedure, Leifer’s lawsuit may still continue against Miller, LLC. Should her lawsuit result in the issuing of an injunction against Miller, it will also “bind all successors in interest.” *Nat. Res. Def. Council, Inc. v. Texaco Ref. & Mktg., Inc.*, 2 F.3d 493, 506 (3d Cir. 1993).

that gives rise to standing under Article III of the Constitution.

For the reasons below, we now **REVERSE** the judgment of the district court and **REMAND** for further proceedings.

Jefferson, *Circuit Judge*:

Before this Court is a motion to dismiss. We review the motion de novo.

BACKGROUND

Congress enacted the Americans with Disabilities Act (“ADA”) in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). It recognized that society has a long history of excluding individuals on the basis of their disabilities. *Id.* § 12101(a)(2). Congress acknowledged that “individuals with disabilities,” even today, “continually encounter various forms of discrimination,” including “failure[s] to make modifications to existing . . . practices.” *Id.* § 12101(a)(5). Such discrimination “denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is . . . famous.” *Id.* § 12101(a)(8).

Title III of the ADA provides, specifically, that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the . . . services . . . of any place of public accommodation.” 42 U.S.C. § 12182(a). “[A]ny person who is being subjected to discrimination on the basis of disability . . . or who has reasonable grounds for believing that [they are] about to be subjected to discrimination,” 42 U.S.C. § 12188(a)(1), is authorized to enforce that provision by filing a “civil action for preventive relief,” 42 U.S.C. § 2000a-3.

The ADA delegates authority to the Attorney General to promulgate regulations to carry out Title III. *Id.* § 12186(b). One of those regulations, the “Reservation Rule,” requires hotels 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 his or her accessibility needs.” 28 C.F.R. § 36.302(e)(1)(ii).

We are tasked with deciding whether Leifer, an ADA “tester” who visited Saguaro Flats Inn’s website and discovered it violated the Reservation Rule, has standing to sue. We hold that she does.

DISCUSSION

Article III of the Constitution permits federal courts to hear only “Cases” and “Controversies.” U.S. Const. art I, § 2. That limitation gives rise to the “doctrine of standing, a doctrine simple to describe but often tricky to apply.” *Laufer v. Acheson Hotels, LLC*, 50 F.4th 259, 266 (1st Cir. 2022) (citation omitted). The “[f]irst and foremost” element of standing is that a plaintiff suffer an injury in fact. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998).

An “injury in fact” is “an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (internal quotations omitted). The term “‘concrete’ is not, however, necessarily synonymous with ‘tangible.’” *Id.* at 340. “In determining whether an intangible harm constitutes [an] injury in fact, both history and the judgment of Congress play important roles.” *Id.*

In other words, because the doctrine of standing is “grounded in historical practice, it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.” *Id.* at 341. Congress can also elevate “concrete, *de facto* injuries” that at one time “were . . . inadequate” to establish standing “to the status of legally cognizable injuries.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 578 (1992).

Here, Leifer has standing to sue because she suffered discrimination when she was denied information that she was entitled to be provided, which Congress “elevat[ed] to the status of [a] legally cognizable injur[y]” by enacting the ADA. *Id.* Title III of the ADA prohibits discrimination “on the basis of disability in the full and equal enjoyment of the . . . services . . . of any place of public accommodation.” 42 U.S.C. § 12182(a). And the ADA’s regulations provide that “basic nondiscrimination principles mandate that individuals with disabilities should be able to reserve 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 (2011). This rationale is why the Department of Justice promulgated the Reservation Rule, which requires hotels like Miller’s to, on their websites, “[i]dentify and describe accessible features in” their guest rooms. 28 C.F.R. § 36.302(e)(1)(ii).

Therefore, when Leifer visited Saguaro Flats Inn’s website and was denied information to which she had a legal right, she was discriminated against. That injury gives rise to standing.

Our holding follows from the Supreme Court’s decision in *Havens Realty Corp.*

v. Coleman, 455 U.S. 363 (1982). There, the plaintiff was also denied information that she was legally entitled to be provided by a realtor. She brought suit under the Fair Housing Act of 1968 (“FHA”), 42 U.S.C. § 3604, which makes it illegal to “represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for . . . rental when such dwelling is in fact so available,” *id.* § 3604(d). The plaintiff, who was an FHA “tester,” asked Havens Realty whether any apartments in its housing complex were available for rent, and it “falsely told [her] that no apartments were” available. *Havens Realty*, 455 U.S. at 368.

On the question of standing, the Supreme Court explained that “congressional intention cannot be overlooked in determining whether testers have standing to sue.” *Id.* at 373. It held that “[a] tester who has been the object of a misrepresentation made unlawful under [the FHA] has suffered injury in precisely the form the statute was intended to guard against, and therefore has standing to maintain a claim for damages under the Act’s provisions.” *Id.* at 373–74.

The same is true in the instant case as Leifer suffered an injury of a kind that Congress designed the ADA to prevent because of Miller’s failure to provide information about the accessibility of its hotel rooms. As a result, she has standing.

CONCLUSION

We **REVERSE** the district court’s order dismissing Leifer’s complaint and **REMAND** to the district court for subsequent proceedings consistent with this opinion. Leifer was discriminated against when she was denied access to information that the ADA and its regulations require hotels to provide on their websites. Because Leifer suffered an injury in fact, she has standing to sue.

IT IS SO ORDERED.

(ORDER LIST: 604 U.S.)

CERTIORARI GRANTED

25-430 MILLER HERITAGE LODGING, LLC v. DONNA LEIFER

The petition for a writ of certiorari is granted. The parties are directed to address the following question:

Whether a person with a disability has standing to sue a motel whose website lacks information regarding accessible rooms for disabled people, as required by Americans with Disabilities Act regulations, even if that person has no intention of staying at the motel.

(ORDER LIST: 604 U.S.)

ORDER IN PENDING CASE

25-430 MILLER HERITAGE LODGING, LLC v. DONNA LEIFER

After the Court granted the petition for a writ of certiorari in this case, the following facts came to light: The United States District Court for the District of Altavista suspended from the practice of law Leifer's lawyer from another one of her ADA cases, Frank Cheatham, for defrauding hotels by lying in fee petitions and during settlement negotiations.

Cheatham had been demanding \$10,000 in legal fees per case even though he used a boilerplate complaint in each. Also, Cheatham referred investigatory work to Leifer's grandchild, for which the grandchild received six-figure sums. However, the investigatory work was never performed, raising the suspicion that Cheatham or Leifer (or both) received a cut for the referrals.

Leifer has said that Cheatham "had no involvement in the case before this Court." Nonetheless, she "does not want any allegations of misconduct committed by [her] attorney to distract from the important issue of enforcing the ADA so that [she] and others can enjoy the rights the ADA provides." As a result, Leifer has voluntarily dismissed with prejudice her pending lawsuits, including the complaint underlying this case, under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. She has also filed a suggestion of mootness with this Court.

The parties are therefore ordered also to provide briefing on the following question:

Whether the Supreme Court should dismiss a case as moot, on a claimant's suggestion, after the claimant voluntarily dismisses the underlying complaint upon it coming to light that her lawyer engaged in misconduct.