



 NYU | LAW

MOOT COURT BOARD

Miller Heritage Lodging, LLC,
Petitioner,

-against-

Donna Leifer,
Respondent.

Memorandum of Law

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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 (“ADA”) 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.

BACKGROUND

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).

Saguaro Flats Inn is a motel that sits alongside historic Route 56. To serve guests’ needs, the motel’s front desk is staffed around the clock. 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 Heritage Lodging, LLC (“Miller”) for violating the Reservation Rule. Though Leifer has no plans to travel to Altavista, she says she would like to visit “sometime in the future.” Leifer 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.

Leifer sought a declaratory judgment, attorney’s fees, and an injunction requiring Miller to bring its website into compliance with the ADA. In its reply, Miller asserts that Saguario Flats Inn has no accessible guest rooms. Its website has since been updated to make that clear. Miller also moved to dismiss the case under Federal Rule of Civil Procedure 12(b)(1), arguing that the court lacks subject-matter jurisdiction over the case because Leifer has no standing to sue.

The District Court for the District of Altavista dismissed Leifer’s complaint for lack of standing, finding that Leifer had not suffered an injury in fact. On appeal, the Court of Appeals for the Fourteenth Circuit reversed and remanded the district court’s order, finding that Leifer was discriminated against when she was denied access to information that the ADA and its regulations require hotels to provide on their websites. Miller then petitioned the Supreme Court for certiorari, which was granted.

After the Court granted review in this case, it came to light that Leifer’s lawyer in another one of her ADA cases had engaged in professional misconduct and was later sanctioned. Soon after, Leifer dismissed her pending suits, including the complaint underlying her case in the Supreme Court. Leifer also “filed a suggestion of mootness,” recommending the case be dismissed on those grounds instead of the Court answering the question of standing.

SUMMARY

The facts of this case mirror *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1 (2023) and are meant to raise the same issues. The Supreme Court’s opinion in *Acheson*, however, left unanswered the question the Court originally granted certiorari to address: whether an ADA tester has standing to sue the owner of a hotel whose website lacks accessibility information that ADA regulations require the hotel to provide.

Petitioner will argue that Leifer lacks standing for several reasons. The ADA does not create a right to information, so when Leifer encountered Saguario Flats Inn’s website, she could not be said to have “suffered injury in precisely the form the statute was intended to guard against.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). Even if the ADA did create a right to information, Leifer would lack standing because she had no intention to travel to Saguario Flats Inn and therefore has “identified no ‘downstream consequences’” of having been denied that information. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021). “An asserted informational injury that causes no adverse effects cannot satisfy Article III.” *Id.* at 442. (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)).

Petitioner will also argue that Leifer’s self-appointed role as a private attorney

general usurps that of the Executive Branch, highlighting why Article III standing’s “concrete-harm requirement is essential to the Constitution’s separation of powers.” *Id.* at 429. Leifer’s hundreds of lawsuits throw the ADA’s enforcement provisions into disarray because the statute tasks the Attorney General, chiefly, with the duty to investigate and prosecute violations—though leniently—whereas Leifer’s lawsuits saddle defendants with costly legal fees without regard for their “good faith effort[s]” to comply with the law. 42 U.S.C. § 12188(b)(5).

Respondent will also have several arguments that Leifer has standing. Leifer was discriminated against when she was denied the “full and equal enjoyment” of Saguaro Flats Inn’s reservation services, as the ADA guarantees, causing an injury that gives rise to standing. 42 U.S.C. § 12182(a). Under the Supreme Court’s decision in *Havens Realty*, a person who experiences discrimination when they are denied information that they are legally entitled to obtain suffers a concrete injury whether or not they had a specific use for that information. *See* 455 U.S. at 374 (holding that a concrete injury occurred when Black testers were denied their “statutorily created right to truthful housing information”). Traditionally, a place of public accommodation inflicts a concrete injury when it discriminatorily withholds access to its services.

Respondent will also argue that the ADA’s enforcement provisions permit testers like Leifer to bring suit, bolstered by the fact that Congress enacted the ADA eight years after the Supreme Court’s decision in *Havens Realty* and was therefore aware of tester standing. Further, Title III of the ADA “plainly omit[s]” any requirement that a plaintiff who experiences discrimination intend to use a place of public accommodation in order to sue. *Id.* at 374.

Regarding the mootness question, Petitioner will argue that the case should be dismissed as moot for several reasons. The Court has discretion to resolve jurisdictional questions in any order that it chooses. *Acheson*, 601 U.S. at 4. It should waste no more resources answering a question in a case that “lost its character as a present, live controversy of the kind that must exist if [the Court is] to avoid advisory opinions on abstract propositions of law.” *Hall v. Beals*, 396 U.S. 45, 48 (1969).

Respondent will argue that the Court should answer the question it granted certiorari to answer because the standing question is a recurring one that arises in ADA cases brought by other plaintiffs. In addition, the question already has been fully briefed. Were the Court to answer the question, its opinion would aid lower courts in resolving it when it inevitably arises. As a result, judicial resources will be saved, not wasted. Answering the question will discourage other plaintiffs from strategically dismissing their complaints and manipulating the Court’s docket, as it appears Leifer has done.

DISCUSSION

I. Both Petitioner and Respondent Have Several Arguments Available to Answer the Standing Question.

The Supreme Court’s opinion in *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1 (2023), did not address whether an ADA tester has standing to sue the owner of a hotel whose website lacks accessibility information that ADA regulations require the hotel to provide. The facts of this case provide Petitioner and Respondent the opportunity to address this question with legal and policy arguments.

A. Petitioner Will Argue that Leifer Lacks Standing.

Petitioner’s strongest arguments against Leifer’s standing are based on the statutory text of the ADA or are policy arguments based on the separation of powers.

1. Leifer cannot assert a claim under the ADA because the ADA does not create a right to information.

Leifer alleges that Miller violated the ADA by failing to include accessibility information on its website as is required by the Reservation Rule. However, the ADA does not create a right to information. It provides only 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).

That fact already distinguishes Leifer’s claim from that of the tester in *Havens Realty Corp. v. Coleman*, who sued under the Fair Housing Act (“FHA”). 455 U.S. 363, 366 (1982). The FHA, in contrast to the ADA, prohibits “represent[ing] to any person because of race . . . that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.” 42 U.S.C. § 3604(d). In other words, the FHA, unlike the ADA, creates “a legal right to truthful information about available housing.” *Havens Realty*, 455 U.S. at 373.

The Black tester in *Havens Realty* “had been personally denied that truthful information.” *Acheson*, 601 U.S. at 12 (Thomas, J., concurring). Therefore, she “suffered injury in precisely the form the statute was intended to guard against,” giving rise to standing. *Havens Realty*, 455 U.S. at 373. That is not the case here.

2. Even if the ADA created a right to information, Leifer lacks standing as she did not intend to travel to Saguaro Flats Inn.

Assuming, for the sake of argument, that the ADA, through the Reservation Rule, did create a right to information, Leifer would still lack standing because she

has not suffered a concrete injury as a result of its deprivation. To establish standing, a plaintiff must demonstrate that they have suffered an “injury in fact,” which 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) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

A “concrete” injury is “real, and not abstract.” *Id.* at 340 (internal quotations omitted). “Article III standing requires a concrete injury even in the context of a statutory violation.” *Id.* at 341.

The injury Leifer alleges is not concrete. Leifer has said that she would like to visit Altavista and the Saguaro Flats Inn “sometime in the future,” but “some day intentions” are insufficient to establish standing. *Lujan*, 504 U.S. at 564 (1992) (internal quotations omitted). A plaintiff cannot establish standing for a failure to receive information if they “have identified no ‘downstream consequences.’” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021).

3. Leifer’s self-appointed role as a private attorney general usurps that of the Executive Branch.

Leifer’s litigation campaign has usurped the role of the Executive Branch in enforcing the law, highlighting the importance of Article III’s standing requirements in upholding the Constitution’s separation of powers. The “Constitution’s central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts.” *Lujan*, 504 U.S. at 559–560. To that end, “the concrete-harm requirement is essential to the Constitution’s separation of powers.” *TransUnion*, 594 U.S. at 429.

That is because “[a] regime where Congress could freely authorize *unharm*ed plaintiffs to sue defendants who violate federal law not only would violate Article III but also would infringe on the Executive Branch’s Article II authority.” *Id.* “[T]he choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch, not within the purview of private plaintiffs (and their attorneys).” *Id.* And for good reason—private plaintiffs and their lawyers, unlike elected officials, “are not accountable to the people and are not charged with pursuing the public interest in enforcing a defendant’s general compliance with regulatory law.” *Id.*

This case is a prime illustration of those principles. Leifer and her attorney, Frank Cheatham, have sued hundreds of hotels across the country, saddling them with costly legal fees. They are “not accountable to the people.” *Id.* The record suggests they are seeking to enrich themselves, not “pursuing the public interest.” *Id.* Where the Executive Branch has conspicuously declined to do so, they have decided to “pursue legal actions” “aggressively.” *Id.* That undermines the system the

Constitution establishes.

4. Leifer's litigation campaign throws the ADA's enforcement provisions into disarray.

Leifer's hundreds of lawsuits have also sidestepped the ADA enforcement scheme envisioned by Congress. Title III of the ADA grants the Attorney General broad authority, instructing the Attorney General to "investigate alleged violations of this subchapter, and . . . undertake periodic reviews of compliance of covered entities" like hotels. 42 U.S.C. § 12188(b)(1)(A)(i). It is the Attorney General's "[d]uty to investigate" compliance with the ADA's provisions. *Id.* § 12188(b)(1)(A). If the Attorney General discovers "any person or group of persons is engaged in a pattern or practice of discrimination . . . or any person or group of persons has been discriminated against . . . and such discrimination raises an issue of general public importance," the ADA empowers the Attorney General to file a civil enforcement action. *Id.* § 12188(b)(1)(B).

In lawsuits brought by the Attorney General, Title III instructs courts, "when considering what amount of civil penalty, if any, is appropriate, . . . [to] give consideration to any good faith effort or attempt to comply with this Act." *Id.* § 12188(b)(5). In other words, the ADA instructs courts to assess penalties leniently.

In contrast, the private cause of action afforded under the ADA is limited. The ADA permits only plaintiffs who are currently "being subjected to discrimination on the basis of disability in violation of [Title III] or who [have] reasonable grounds for believing [they are] about to be subjected to discrimination" to file "a civil action for *preventive* relief." *Id.* §§ 12188(a)(1), 2000a-3(a) (emphasis added). That may include "a permanent or temporary injunction, restraining order, or other order," but not money damages. *Id.* § 2000a-3. However, unlike in suits brought by the Attorney General, individual plaintiffs may recover a "reasonable attorney's fee" without regard for a defendant's "good faith" efforts to comply with the law. *Id.* And, as the allegations against Leifer's lawyer suggest, that system can be abused to extract large attorney's fee awards from unwitting businesses.

Leifer's litigation campaign flips Title III's enforcement scheme on its head by appropriating the Attorney General's duty to "investigate alleged violations" of Title III and file suit. *Id.* § 12188(b)(1)(A)(i). Additionally, Leifer's lawsuits, unlike those brought by the Attorney General, leave no room for courts to weigh the "good faith effort[s]" of hotels to comply with the Reservation Rule, instead saddling them with costly legal fees. *Id.* § 12188(b)(5).

B. Respondent Will Argue that Leifer Has Standing.

Respondent's strongest arguments in favor of Leifer's standing are also based

on the statutory text of the ADA, but also may be based on traditional practices in the common law.

1. Leifer was discriminated against when she was denied the full and equal enjoyment of Saguaro Flats Inn’s reservation services, causing an injury that gives rise to standing.

Congress, in enacting the ADA, recognized that “individuals with disabilities continually encounter various forms of discrimination.” 42 U.S.C. § 12101(a)(5). Barriers to access are not only the result of intentional discrimination. They “includ[e] . . . the discriminatory effects of . . . failure[s] to make modifications to existing . . . practices.” *Id.* § 12101(a)(5). The purpose of the ADA is to address discriminatory barriers in all their forms by “provid[ing] a clear and comprehensive national mandate for the[ir] elimination,” so that that people with disabilities can “fully participate in all aspects of society,” *Id.* § 12101(a)(1)–(b)(1).

For individuals with disabilities, the ability to shop for and book a hotel room online requires accurate and detailed information regarding the accessible features of the rooms a hotel offers. However, far too often, individuals with disabilities are prevented from traveling freely because online booking services lack that information. *See, e.g., Walker v. Carnival Cruise Lines*, 63 F. Supp. 2d 1083, 1093 (N.D. Cal. 1999) (“Accurate information regarding disabled accessibility of accommodations is essential to making realistic travel plans and a basic requirement of equal access to travel services.”).

Recognizing that problem, the Reservation Rule requires hotels 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.” 28 C.F.R. § 36.302(e)(1)(i). The rule is designed to enable individuals with disabilities “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.

Whether a plaintiff has suffered an “injury in fact” is “the first and foremost of standing’s three elements.” *Spokeo*, 578 U.S. at 338 (citation omitted). And, as the Court has “repeatedly emphasized,” those “who are personally denied equal treatment” experience “serious noneconomic injuries” that can give rise to standing. *Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984).

When Leifer encountered Saguaro Flats Inn’s website and discovered it lacked information necessary to permit individuals with disabilities to “fully participate,” in the “enjoyment of” its “services,” she suffered discrimination. 42 U.S.C. § 12101(a). Congress “elevat[ed]” that intangible harm “to the status of [a] legally cognizable

injur[y]” by enacting Title III of the ADA. *Lujan*, 504 U.S. at 578. That “congressional intention cannot be overlooked in determining whether testers,” like Leifer, “have standing to sue.” *Havens*, 455 U.S. at 373.

2. A person who faces discrimination by being denied information that they are legally entitled to suffers a concrete injury regardless of whether they intended to use that information.

The question of whether Leifer has standing to sue for Saguaro Flats Inn’s failure to provide information even though she did not intend to book a room is settled by the Court’s precedent in *Havens Realty*. That case involved the Fair Housing Act of 1968 (“FHA”), which made it illegal to “[t]o represent to any person because of race . . . that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.” 42 U.S.C. § 3604(d).

Just as is true here, *Havens Realty* involved plaintiffs who sought to test compliance with an antidiscrimination law. *See* 455 U.S. at 368 (noting that the “two individual plaintiffs” in the case “were described in the complaint as ‘tester plaintiffs’”). Crucially, the testers there, “without an intent to rent or purchase a home or apartment, pose[d] as renters or purchasers [to] collect[] evidence of unlawful steering practices” that violated the FHA. *Id.* at 373. When the plaintiffs approached Havens Realty and inquired whether any of its apartments were available for rent, Havens Realty falsely claimed that none were. *Id.* at 368.

Tasked with deciding whether the plaintiffs had standing even though they did not intend “to rent or purchase a home or apartment,” the Court held that they did. *Id.* at 373. That is because “[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 can be said of Leifer’s case as Title III’s regulations make it unlawful for hotels not to provide information about the accessible features of their rooms.

3. In our country’s tradition, a place of public accommodation inflicts a concrete injury when it discriminatorily withholds access to its services.

The Court has instructed that “with respect to” Article III standing’s “concrete-harm requirement . . . courts should assess whether the alleged injury to the plaintiff has a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts.” *TransUnion*, 594 U.S. at 424 (quotations omitted). Throughout the country’s history, courts have recognized that a public accommodation inflicts a concrete injury when it discriminates in providing services.

Nondiscrimination laws, such as the ADA, “grow from nondiscrimination rules the common law sometimes imposed on common carriers and places of traditional public accommodation like hotels and restaurants.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 590 (2023). The common law, for example, permits a plaintiff to sue for being “mortified, humiliated, discomfited, and distressed, and otherwise injured” after being turned away from an inn on the basis of their disability. *Jackson v. Va. Hot Springs Co.*, 213 F. 969, 971 (4th Cir. 1914). The common law right to access inns also extends to those who, lacking firm plans to book a room, merely “inquire what room [they] can get and what price will be charged, and to make such other investigations as is possible.” Joseph Henry Beale, Jr., *The Law of Innkeepers and Hotels Including Other Public Houses, Theaters, Sleeping Cars* § 89 (1906). An innkeeper, under the common law, owes a duty to provide equal treatment even to those who have no intention of booking a room. *See Markham v. Brown*, 8 N.H. 523, 530 (1837) (holding that an innkeeper could not prohibit a driver from entering the inn to solicit passengers).

Viewed in their historical context, there is nothing extraordinary about the Reservation Rule and Leifer’s lawsuits to enforce it. They are both outgrowths of principles that go far back in the country’s history applied to the digital age.

4. The ADA’s enforcement provisions permit testers like Leifer to bring suit.

The ADA permits private individuals like Leifer to test compliance with the law and sue to enforce it. Congress was well aware of tester standing when it enacted the ADA. Title III of the ADA was enacted eight years after the Court’s decision in *Havens Realty*, and Congress worded the cause of action conferred under Title III in the same terms as that of the FHA. Just as the FHA confers a private cause of action to “any person” who is denied truthful information about housing on a discriminatory basis, 42 U.S.C. § 3604(d), Title III confers a private cause of action to “any person who is being subjected to discrimination on the basis of disability,” *id.* § 12188(a)(1).

The FHA “plainly omit[s]” any requirement that a plaintiff who experiences discrimination intend to “rent or purchase” housing. *Havens Realty*, 455 U.S. at 374. The same is true for Title III, which does not impose an intent requirement on a plaintiff who experiences discriminatory treatment on the basis of their disability. That “congressional intention cannot be overlooked in determining whether testers have standing to sue.” *Id.* at 373.

II. Both Petitioner and Respondent Have Several Arguments Available to Answer the Mootness Question

In its opinion in *Acheson Hotels, LLC v. Laufer*, the Supreme Court acknowledged that it had discretion to “address jurisdictional issues in any order.”

601 U.S. 1, 4 (2023). That notwithstanding, eight justices took Laufer up on her suggestion of mootness and dismissed the case. *Id.* at 5. The majority warned, though, that they “might exercise [their] discretion differently in a future case.” *Id.* Justice Thomas, concurring, would have instead dismissed the case for lack of standing. *Id.* at 6 (Thomas, J., concurring). As a result of the unusual circumstances, the question of dismissal for mootness raised by the case still exists and should be addressed by Petitioner and Respondent.

A. Petitioner Will Argue that the Case Should Be Dismissed as Moot.

A plaintiff has an “absolute right,” *Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003), under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure to voluntarily dismiss their case, so long as it is done “before the opposing party serves either an answer or a motion for summary judgment.”

“A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III—‘when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.’” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (some internal quotations omitted)). A plaintiff’s voluntary dismissal of their case renders it moot because it makes “clear that [they] have unequivocally abandoned their . . . claims.” *Pac. Bell Tel. Co. v. linkLine Commc’ns, Inc.*, 555 U.S. 438, 446 (2009).

Following allegations of misconduct against her lawyer, Leifer abandoned her claims against Miller and other hotel operators across the country. As a result, “there no longer is a live controversy between the parties.” *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). Further, unlike in other cases, because Leifer dismissed her case with prejudice, there is no risk of “the regeneration of the controversy by a reassertion of a right to litigate.” *Id.* at 200.

“[A] federal court” may “choose among threshold grounds for denying audience to a case on the merits.” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999). That means that the Court has discretion to resolve first either the standing issue raised by Miller’s petition for a writ of certiorari, or the mootness question raised by Leifer. Given that Leifer has abandoned her claims, the Court should waste no more judicial resources on resolving the standing question. In light of that fact, this case has “lost its character as a present, live controversy of the kind that must exist if [the Court is] to avoid advisory opinions on abstract propositions of law.” *Hall v. Beals*, 396 U.S. 45, 48 (1969).

B. Respondent Will Argue that the Court Should Answer the Standing Question.

The Court should not dismiss the case as moot. The questions of standing and

mootness are both jurisdictional issues that arise under Article III, and the Constitution “does not dictate a sequencing of jurisdictional issues.” *Ruhrgas*, 526 U.S. at 584. “[W]hether Laufer had standing the day she filed her suit is logically antecedent to whether her later actions mooted the case.” *Acheson*, 601 U.S. at 8–9 (Thomas, J., concurring). Additionally, the question raised by Leifer’s lawsuits—whether a tester has standing to enforce the Reservation Rule—is a recurring question, raised by many other ADA claimants, that only this Court can decisively resolve. *See, e.g., Harty v. W. Point Realty, Inc.*, 28 F.4th 435, 439 (2d Cir. 2022) (holding that a Reservation Rule tester lacked standing).

The suspicious circumstances surrounding Leifer’s voluntary dismissal of her lawsuit, which strongly suggest strategic behavior, are another reason to answer the question for which certiorari was originally granted. After the Court granted certiorari, Leifer voluntarily dismissed her case ostensibly because an attorney she had hired in a separate case was sanctioned for misconduct. The conduct of an unrelated attorney does not change the analysis the Court was originally charged with conducting. And were the Court to dismiss Leifer’s case as moot, it would open the door for other plaintiffs to similarly manipulate its docket.

Respondent might argue that the Court should waste no more judicial resources on resolving a question in a case that has been rendered moot. But the question raised by this case is already fully briefed and answering it now will aid lower courts in resolving the same question when it is inevitably raised in the future.

CONCLUSION

Both Petitioner and Respondent should have strong arguments for both questions presented in this problem. Petitioner’s clearest arguments against Leifer’s standing are based on the ADA’s text or raise policy reasons based on the separation of powers. Respondent’s clearest arguments in favor of Leifer’s standing are also based on the ADA’s statutory text, but also may draw on traditional practices in the common law.

Petitioner’s strongest arguments to dismiss this case as moot are based on Supreme Court precedent regarding the character of the case. Respondent’s strongest arguments against dismissing this case as moot are also based on Supreme Court precedent, but regarding the Court’s discretion and the prevalence of the underlying issue.