No. 22-429

IN THE
Supreme Court of the United States

ACHESON HOTELS, LLC,
Petitioner,

v.

DEBORAH LAUFER,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

BRIEF OF PETITIONER

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QUESTION PRESENTED

Does a self-appointed Americans with Disabilities Act "tester" have Article III standing to challenge a place of public accommodation's failure to provide disability accessibility information on its website, even if she lacks any intention of visiting that place of public accommodation?

CORPORATE DISCLOSURE STATEMENT

Petitioner, Acheson Hotels, LLC, has no outstanding shares or debt securities in the hands of the public, and it does not have a parent company. No publicly held company has a 10% or greater ownership interest in Petitioner.

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JURISDICTION

The judgment of the First Circuit was entered on October 5, 2022. A timely petition for certiorari was filed on November 4, 2022. This Court granted certiorari on March 27, 2023. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

Pertinent statutes and regulations appear in an addendum to this brief.

INTRODUCTION

The Americans with Disabilities Act (ADA) bars discrimination "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). A hotel is a place of public accommodation. *Id.* § 12181(7).

The Justice Department has promulgated regulations to implement the ADA's nondiscrimination mandate. One such regulation states that hotels, "with respect to reservations made by any means," 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 his or her

accessibility needs." 28 C.F.R. § 36.302(e)(1)(ii). This regulation ensures that persons with disabilities can make reservations at hotels secure in the knowledge that they can access those hotels once they arrive.

Respondent Deborah Laufer has sued over 600 hotels, including Petitioner Acheson Hotels, LLC, claiming that they failed to post accessibility information on their websites in violation of § 36.302(e)(1)(ii). Laufer, however, has no intention of accessing the hotels she sues. Instead, she is a self-appointed "tester." She searches the Internet for hotel websites. If she finds a website that lacks accessibility information, she sues the hotel. In each lawsuit, she alleges that she intends to return to the hotel's website and seeks an injunction that would require the hotel to add accessibility information. In each lawsuit, she also demands attorney's fees.

The question in this case is whether Laufer has standing to sue a hotel over failing to provide accessibility information when she does not intend to access the hotel. The answer is no.

To establish standing, Laufer must demonstrate a concrete and particularized injury. In the decision below, the First Circuit held that Laufer sustains an informational injury when she fails to receive accessibility information to which she is entitled. That holding was wrong. "An asserted informational injury that causes no adverse effects cannot satisfy Article III." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021) (internal quotation marks omitted). Here, Laufer does not intend to use Acheson's disability accommodations, so failure to receive information about

those accommodations does not cause her a cognizable injury under Article III.

Laufer also claims she suffers a stigmatic injury when she visits Acheson's website. That argument similarly fails. This Court's cases hold that a "stigmatic injury" gives rise to standing if it is "suffered as a direct result of having personally been denied equal treatment." *Allen v. Wright*, 468 U.S. 737, 755 (1984). But an "abstract stigmatic injury" arising from alleged discrimination against third parties is not actionable. *Id.* Here, Laufer does not claim to have been personally denied access to Acheson's hotel; she claims that *other* travelers are hindered from accessing Acheson's hotel. Under *Allen*, such an allegation does not give rise to standing.

Rather than seeking to remedy her own injuries, at bottom, Laufer's litigation campaign seeks to enforce the law on behalf of other disabled persons. However, it is the job of the Executive Branch, not Laufer, to enforce the law. Laufer can sue only if she, personally, is injured, and she has not been. Laufer's lawsuit therefore should be dismissed for lack of standing.

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

Title III of the Americans with Disabilities Act (ADA) 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 by any person who owns, leases (or leases to), or operates a place of public

accommodation." 42 U.S.C. § 12182(a). The ADA further provides that "discrimination includes … 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." *Id.* § 12182(b)(2)(A)(ii).

The Attorney General has statutory authority to issue regulations "to carry out the provisions" of Title III of the ADA. *Id.* § 12186(b). In 2010, the Department of Justice promulgated a regulation requiring hotel owners and operators to, "with respect to reservations made by any means, including by telephone, in-person, or through a third party — … [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) (the "Reservation Rule"); *see* Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56,237, 56,273 (Dep't of Just. 2010).

Title III of the ADA includes a private cause of action authorizing plaintiffs to obtain injunctive relief against "any person" who "is about to engage in any act or practice prohibited by" Title III. *See* 42 U.S.C.

§§ 12188(a)(1), 2000a-3(a). The Attorney General's regulations similarly permit an action for injunctive relief by "[a]ny person who is being subjected to discrimination on the basis of disability" in violation of the ADA or its implementing regulations. 28 C.F.R. § 36.501(a). Prevailing parties may also obtain attorney's fees. 42 U.S.C. § 12205; 28 C.F.R. § 36.505.

II. Proceedings Below

Respondent Deborah Laufer is a Florida resident who uses a wheelchair and qualifies as disabled under the ADA. Pet. App. 2a-3a, 38a. She is also "a self-proclaimed ADA 'tester.'" Pet. App. 6a. She searches the Internet for websites of hotels that do not, in her view, provide sufficient information as to whether rooms are ADA-accessible. When she finds such a website, she sues the hotel, seeking an injunction and attorney's fees. Since 2018, Laufer has filed over 600 such lawsuits.

On September 24, 2020, Laufer's litigation campaign reached Maine. Laufer filed seven ADA suits in the District of Maine, one of which was against Petitioner Acheson Hotels, LLC, the owner and operator of the Coast Village Inn and Cottages in Wells, Maine.[1] Pet. App. 39a, 41a. Laufer alleged that she visited the online reservation website for Coast Village, but it failed to provide sufficient information as to whether

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[1] As Petitioner explained in the petition for certiorari, Acheson Hotels, LLC has transferred its interest in Coast Village to a different legal entity, 876 Post LLC, but remains the proper party in this Court. *See* Pet. 10 n.1; Fed. R. Civ. P. 25(c).

Coast Village was ADA-accessible. Pet. App. 39a-40a. She made similar allegations regarding Coast Village's listing on third-party booking sites like www.expedia.com. Pet. App. 41a n.3. Based on these allegations, she alleged that Acheson Hotels violated the Reservation Rule. Pet. App. 41a-42a. She did not allege that Coast Village had any physical barriers that violated the ADA. Pet. App. 42a.

If Laufer had actually wanted to know whether Coast Village was ADA-accessible, she could have placed a two-minute phone call or sent an email. She would have learned that Coast Village does not provide ADA-accessible lodging,[2] but that all guests have direct entrance into their cottages and some rooms have easy-entry showers. Pet. App. 40a n.2. But Laufer had no intention of visiting Coast Village and therefore had no reason to learn whether Coast Village was ADA-accessible. Her sole purpose for visiting the website was to sue.

Acheson Hotels moved to dismiss for lack of standing. In response, Laufer submitted a declaration averring that she is an ADA "tester." J.A. 16a-17a, ¶ 3. She explained: "As a tester, I visit hotel online reservation services to ascertain whether they are in compliance with the Americans With Disabilities Act.

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[2] This does not mean that Coast Village violates the ADA. The ADA requires removal of architectural barriers only "where such removal is readily achievable." 42 U.S.C. § 12182(b)(2)(A)(iv). Laufer has never claimed that Coast Village could readily remove architectural barriers to become ADA-accessible.

In the event that they are not, I request that a law suit be filed to bring the website into compliance with the ADA so that I and other disabled persons can use it." *Id.* She stated that she hoped to travel to Maine in the future, although she did not express any intention to visit Coast Village. J.A. 17a, ¶ 5. She represented that because Coast Village's online reservation system allegedly "failed to comply with the requirements set forth in 28 C.F.R. Section 36.302(e)," she "suffered humiliation and frustration at being treated like a second class citizen, being denied equal access and benefits to the goods, facilities, accommodations and services." J.A. 18a-19a, ¶¶ 6-7.

The district court dismissed Laufer's suit due to Laufer's lack of injury. Pet. App. 42a. The court held that Laufer could not establish standing based on her "status as an e-tester" because she "lacked any intention to actually access [Acheson]'s place of public accommodation when she visited the [online reservation system]." Pet. App. 43a-44a, 46a. The court also observed that Coast Village's website had been edited after Laufer filed her lawsuit to clarify that it did not offer ADA-accessible accommodations, and that Laufer "cannot claim a concrete informational injury based on the failure of an [online reservation system] to allow her to book an accessible room that apparently does not exist." Pet. App. 48a.

The court further concluded that Laufer faced no imminent injury that would justify injunctive relief. It declined to find that Laufer "is imminently about to embark on a trip from Florida to Maine." Pet. App. 49a. Taking "judicial notice of Laufer's many similar

cases filed in courts around the country," the court found it "implausible that Laufer's wanderlust will translate into an imminent need to book accommodations in Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Maine, Massachusetts, Maryland, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Wisconsin." Pet. App. 49a.

On appeal, Laufer disclaimed any intent to travel to Maine. Pet. App. 11a n.3. Nonetheless, the First Circuit agreed she had standing and reversed the district court's dismissal.

The First Circuit framed the question as follows: "In the age of websites, that means a disabled person can comb the web looking for non-compliant websites, even if she has no plans whatsoever to actually book a room at the hotel. Thus, the information could be viewed as irrelevant to her—except to whether the website is complying with the law. Has she suffered a concrete and particularized injury in fact to have standing to sue in federal court?" Pet. App. 2a.

The First Circuit held it was bound by *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), to find standing. In *Havens Realty*, a tester sued a landlord for providing false information about the availability of housing because of the tester's race, even though the tester did not intend to rent an apartment. This Court held that the tester had standing to enforce the Fair Housing Act's prohibition on "discriminatory representations" regarding the availability of housing. *Id.* at 373-74. In the First Circuit's view, *Havens Realty* was "right on the nose for Laufer's case": Just

as the *Havens Realty* plaintiff could sue despite her lack of interest in renting the apartment, Laufer could sue despite her lack of interest in booking a room at Acheson's hotel. Pet. App. 14a-15a.

The Court rejected Acheson Hotels' argument that *TransUnion* undermined *Havens Realty*. *TransUnion* stated that when there are "no downstream consequences from failing to receive the required information," an "asserted informational injury that causes no adverse effects cannot satisfy Article III." 141 S. Ct. at 2214 (internal quotation marks omitted). No matter, said the First Circuit—*Havens Realty* had not been formally overruled, so the court felt bound to follow it even if it was "in tension with newer" case law. Pet. App. 18a-19a.

The First Circuit rejected all of Acheson Hotels' efforts to distinguish *Havens Realty*. Pet. App. 20a-22a & n.5. Disagreeing with its sister circuits, the First Circuit equated Laufer's interest in "using the information" to the *Havens Realty* plaintiff's interest in "testing compliance and bringing her lawsuit." Pet. App. 22a.

The First Circuit further reasoned that, even if *TransUnion* requires that informational injury result in adverse effects, Laufer alleged a concrete injury in the form of alleged "'frustration and humiliation' when Acheson's reservation portals didn't give her adequate information about whether she could take advantage of the accommodations." Pet. App. 26a. The court declined to find that stigmatic injury alone gives rise to Article III standing but concluded that "Laufer's feelings of frustration, humiliation, and second-class

citizenry are indeed 'downstream consequences' and 'adverse effects' of the informational injury she experienced" and thus satisfy *TransUnion*'s "additional harm" requirement. *Id.*

The court then held that Laufer's informational harm was sufficiently particularized. In the court's view, Laufer "is a person with disabilities—not just any one of the hundreds of millions of Americans with a laptop—and personally suffered the denial of information the law entitles her, as a person with disabilities, to have." Pet. App. 28a-29a.

The panel majority[3] also held that Laufer had standing to seek an injunction because she sufficiently alleged imminent future harm. Pet. App. 29a-30a. In the court's view, because Laufer allegedly "schedule[d] herself to review the website again after the complaint [was] filed," she expected to suffer a sufficiently imminent injury. Pet. App. 31a. The court rejected Acheson Hotels' argument that there was no likelihood of a future injury because, while Acheson's website had been updated to include ADA compliance information, third-party websites like Hotels.com had not made those updates. Pet. App. 32a-34a.

SUMMARY OF ARGUMENT

Because the ADA does not authorize a backwards-looking damages remedy, Laufer seeks forward-looking

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[3] One panel member, Judge Howard, was "doubtful" that the complaint sufficiently alleged standing to pursue injunctive relief. Pet. App. 32a n.8.

injunctive and declaratory relief. Hence, to establish standing, Laufer must establish a concrete, particularized, forward-looking injury.

She cannot do so. She will not be injured by failing to receive accessibility information regarding a hotel she does not intend to visit. Therefore, her complaint should be dismissed for lack of standing.

Laufer contends she will suffer an "informational injury" by failing to receive accessibility information regarding Acheson's hotel. But her asserted injury is neither concrete nor particularized.

Laufer's injury is not concrete because she will suffer no real-world harm. Under *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021), an alleged informational injury satisfies Article III only if the plaintiff experiences adverse effects from failing to obtain the information. Here, because Laufer will not visit Acheson's hotel, accessibility information is useless to her. She therefore lacks standing to seek an injunction requiring the hotel to add that information to its website.

Laufer's injury is also not particularized. Laufer contends that because she has a disability, she may represent the interests of other persons with disabilities who may be hindered from traveling to Acheson's hotel. But particularization requires that the plaintiff *personally* be harmed. Laufer's asserted intent to visit Acheson's website, without more, does not establish personal harm.

The First Circuit held that Laufer had standing because in *Havens Realty Corp. v. Coleman*, 455 U.S.

363 (1982), the Court concluded that a tester who was denied accurate information about a house she had no intention of renting had standing to sue for "invasion" of her "legal rights" under the Fair Housing Act. *Id.* at 373. *TransUnion*, however, holds that the mere invasion of a legal right does not give rise to standing absent a concrete injury. 141 S. Ct. at 2214.

Even setting aside *TransUnion*, *Havens Realty* does not support Laufer's position. In *Havens Realty*, the plaintiff relied on a federal statute that personally entitled her to information and granted her a private cause of action to vindicate that informational right. Here, by contrast, Laufer relies on a federal regulation that does not personally entitle her to information and on a federal statute that does not grant her a private cause of action to vindicate an informational right.

Nor does Laufer have standing based on this Court's cases recognizing standing under sunshine laws. This Court has recognized that a plaintiff has standing to sue under sunshine laws when (1) she seeks and is denied information from the government that would have been useful to her; (2) the denial of information was particularized to her; and (3) she sues under a statute guaranteeing public access to information from the government. Here, however, Laufer (1) seeks unneeded information from a private business, (2) did not suffer a particularized denial of information, and (3) is not suing under a statute guaranteeing access to the information.

Laufer contends, in the alternative, that she will suffer a stigmatic injury when she returns to Acheson's website. That argument similarly fails. Laufer cannot

establish stigmatic injury based on *her* failure to obtain information that is potentially useful to *third party* travelers. Moreover, Laufer's claim of a *future* stigmatic injury, based on her intended return to a website that, she claims, will stigmatize her, is a self-inflicted injury that does not support standing. Nor can Laufer establish standing based on her anticipation of subjectively experiencing an emotional injury. That injury is not a "harm with a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 141 S. Ct. at 2213.

The reality of this case is that Laufer is not seeking to remedy her own injuries. She is seeking to enforce the law. That is why she has sued not only Acheson, but also over 600 other hotels. But as this Court explained in *TransUnion*, "the 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.* at 2207. "Private plaintiffs 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.*

Finally, and at a minimum, there is no longer an Article III case or controversy because Acheson has updated its website to state that its hotel is not accessible. Because Laufer has received the information she seeks, she no longer faces an injury from failing to receive it. The First Circuit held that Laufer still has standing, and the case is not moot,

because Laufer intends to visit third-party websites such as Hotels.com, which still allegedly lack accessibility information. But Laufer does not face an imminent injury from failing to obtain information that she not only does not need, but also already has.

ARGUMENT

Laufer alleges that Acheson violated a federal regulation requiring hotels to include disability accessibility information on their websites. However, Laufer has never visited Acheson's hotel and has no intent to do so. Hence, the absence of accessibility information regarding that hotel did not, and will not, injure her.

Laufer's complaint should be dismissed for lack of standing. The allegations in Laufer's complaint are insufficient to establish a concrete and particularized injury. *See* Parts I-IV, *infra*. At a minimum, any Article III case or controversy vanished when Coast Village's website was updated to include the information required by the regulation. *See* Part V, *infra*.

I. TO ESTABLISH STANDING, LAUFER MUST DEMONSTRATE A CONCRETE, PARTICULARIZED, AND FORWARD-LOOKING INJURY.

"Article III confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). "For there to be a case or controversy under Article III, the plaintiff must have a personal stake in the case—in other words, standing." *Id.* (internal

quotation marks omitted). To establish standing, the plaintiff must allege "an injury in fact that is concrete, particularized, and actual or imminent." *Id.*

In this suit, Laufer seeks injunctive and declaratory relief. She does not seek damages because Title III of the Americans with Disabilities Act, under which this case arises, does not authorize damages suits.

Because an injunction is a forward-looking remedy, Laufer must allege future injury. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (internal quotation marks omitted).

So too for a declaratory judgment. "[J]ust like suits for every other type of remedy, declaratory-judgment actions must satisfy Article III's case-or-controversy requirement." *California v. Texas*, 141 S. Ct. 2104, 2115 (2021). Laufer's standing to obtain a declaratory judgment thus turns on whether she has standing to obtain an injunction. *Id.* at 2116 (explaining that this Court inquires "whether a suit for declaratory relief would be justiciable in this Court if presented in a suit for injunction" (quotation marks and citation omitted)). If Laufer cannot establish forward-looking injury entitling her to an injunction, she cannot get a declaratory judgment either: A request for a declaratory judgment "cannot alone supply jurisdiction otherwise absent." *Id.*; *accord Already, LLC v. Nike, Inc.*, 568 U.S. 85, 98 (2013) ("[W]e have never held that a plaintiff has standing to pursue declaratory relief

merely on the basis of being 'once bitten.'"); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 106 (1998) (declaratory judgment on whether defendant previously broke the law, without forward-looking controversy, is "not only worthless to respondent, it is seemingly worthless to all the world").

II. LAUFER CANNOT ESTABLISH STANDING BASED ON HER ALLEGED INFORMATIONAL INJURY.

Laufer's complaint alleges that she sustained an informational injury when she visited Coast Village's website and did not receive accessibility information to which she was entitled. J.A. 6a-9a, ¶ 11. She further alleges that she intends to return to Coast Village's website in the future and expects to experience the same informational injury. J.A. 9a, ¶ 12.

Laufer's contention is wrong. Laufer was not injured when she failed to obtain information she did not need. As such, she does not face an imminent risk of future injury based on her anticipation of again failing to receive information she does not need. Her asserted injury is neither concrete (Part II.A) nor particularized (Part II.B). *Havens Realty* (Part II.C), and this Court's cases involving sunshine laws (Part II.D), on which the First Circuit relied, do not support Laufer's position.

A. Laufer's alleged injury is not concrete.

Laufer claims she will be imminently injured by failing to obtain accessibility information from Coast Village's website. But the district court found that she lacked imminent plans to travel to Maine, Pet. App.

49a-50a, and on appeal she disclaimed any intent to travel to Maine, Pet. App. 11a n.3. As a result, her failure to receive information about Coast Village's accessibility is not a concrete injury.

TransUnion establishes that a plaintiff does not sustain a concrete injury from her failure to obtain information when that failure causes no harm. In that case, TransUnion's credit files incorrectly stated that the plaintiffs were on the Treasury Department's Office of Foreign Assets Control (OFAC) list. As relevant here, the plaintiffs alleged that TransUnion violated the Fair Credit Reporting Act (FCRA) because it "sent the plaintiffs copies of their credit files that omitted the OFAC information, and then in a second mailing sent the OFAC information." 141 S. Ct. at 2213. They alleged that, to comply with FCRA, "TransUnion should have included another summary of rights in that second mailing—the mailing that included the OFAC information." *Id.* In the plaintiffs' view, these mailings "deprived them of their right to receive information in the format required by statute." *Id.*

This Court held that the plaintiffs lacked standing because they "identified no downstream consequences from failing to receive the required information." *Id.* at 2214 (internal quotation marks omitted). "They did not demonstrate, for example, that the alleged information deficit hindered their ability to correct erroneous information before it was later sent to third parties." *Id.* Absent "adverse effects," the Court concluded, "an asserted informational injury … cannot satisfy Article III." *Id.* (internal quotation marks omitted).

TransUnion resolves this case. Laufer alleges an "informational injury"—that she did not receive information regarding Coast Village's accessibility. However, she "identifie[s] no downstream consequences from failing to receive the required information." *Id.* (internal quotation marks omitted). She does not allege, for example, that failing to obtain this information hindered her or will hinder her from making a reservation.[4] Laufer does not intend to use Coast Village's disability accommodations, so information about those accommodations is irrelevant to her. Because Laufer's asserted "informational injury … causes no adverse effects," she "cannot satisfy Article III." *Id.* (quotation marks omitted).

TransUnion's requirement of downstream consequences is consistent with the principle that "deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing." *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009). In *Summers*, the plaintiffs were environmental organizations whose members enjoyed recreation in national forests. *Id.* at 494. They challenged the Forest Service's policy not to provide a period of public comment or appeal process for certain timber salvage sales. *Id.* at 491. But they could not identify any particular timber sale that would harm

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[4] To the extent Laufer contends that her alleged emotional injury satisfies *TransUnion*'s "downstream consequences" requirement, that argument fails because she has suffered no actionable emotional injury. *See infra* Part III.

them. *Id.* at 495. They nonetheless alleged that "they ha[d] standing to bring their challenge because they ha[d] suffered procedural injury, namely, that they ha[d] been denied the ability to file comments on some Forest Service actions and w[ould] continue to be so denied." *Id.* at 496. This Court disagreed. The Court explained that the mere "deprivation of … a procedural right *in vacuo*" was insufficient to create Article III standing. *Id.* Only a "person who has been accorded a procedural right to protect *his concrete interests* can assert that right without meeting all the normal standards for redressability and immediacy." *Id.* (quotation marks omitted).

Similarly, in *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), this Court reiterated *Summers*' holding that a plaintiff cannot allege "a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III." *Id.* at 341. "A violation of one of the FCRA's procedural requirements may result in no harm" and thus would not give rise to a concrete injury. *Id.* at 342. Likewise, *Spokeo* held, inaccurate information that does not "cause harm or present any material risk of harm" does not inflict a concrete injury. *Id.*

In this case, Laufer's asserted right to accessibility information is analogous to the "procedural right *in vacuo*" that was held insufficient to establish standing in *Summers* and *Spokeo*. The ADA ensures that places of public accommodation, including hotels, are accessible to persons with disabilities. *See* 42 U.S.C. § 12182(a) (providing 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"); *id.* § 12181(7)(A) (defining "place of public accommodation" to include hotels). Thus the "concrete interest[]," *Summers*, 555 U.S. at 496, that the ADA protects is access to public accommodations such as hotels.

Providing people with information about accessibility is a means to achieve the ADA's substantive goal of facilitating access to hotels. It is not an end in itself. This is clear from both the Rule's text and its history. By its terms, the Reservation Rule applies "*with respect to reservations* made by any means." 28 C.F.R. § 36.302(e)(1)(ii) (emphasis added). In other words, it protects people making reservations—*i.e.*, people planning to travel. The Justice Department's commentary accompanying the Reservation Rule likewise explains: "Each year the Department receives many complaints concerning failed reservations. Most of these complaints involve individuals who have reserved an accessible hotel room only to discover upon arrival that the room they reserved is either not available or not accessible." 75 Fed. Reg. at 56,273. The Reservation Rule prevents that outcome by ensuring that people who travel have accurate information about their destinations.

Here, however, Laufer is not planning to travel to Coast Village.[5] Thus, the asserted procedural

[5] In her declaration submitted to the district court, Laufer alluded to her plans to drive from Florida to Maine. J.A. 17a-18a, ¶ 5. But the district court deemed it "implausible" that Laufer was

violation—Acheson's alleged failure to provide information about Coast Village's accessibility—lacks any effect on Laufer's concrete interest at issue—her ability to access that hotel. Under *Summers* and *Spokeo*, a mere deprivation of information *about* accessibility *in vacuo*, divorced from any concrete impact *on* accessibility, does not give rise to Article III standing.

The logical implication of Laufer's position is that *anyone*—not just someone who uses a wheelchair—would have Article III standing to sue for failure to provide accessibility information. Under Laufer's view, if Congress believed there was insufficient enforcement of the ADA, it could amend the ADA to allow non-disabled people to sue if they go to websites and fail to obtain accessibility information. Congress could simply declare a statutory right to accessibility information and authorize lawsuits for being deprived of that information, regardless of whether that information is useful to the plaintiff.

Intuitively, a non-disabled person cannot claim an Article III injury from a lack of information about

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"imminently about to embark on a trip from Florida to Maine," Pet. App. 49a, and Laufer did not challenge that finding on appeal. To the extent that Laufer has vague plans to visit Maine at some future point, those plans do not suffice to support standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992) ("'[S]ome 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 that our cases require.").

wheelchair ramps. A non-disabled person will not use the wheelchair ramps and hence has no need for information about them. However, because Laufer does not plan to visit Coast Village, she also has no need for information about wheelchair ramps there. The information has exactly the same utility to Laufer as to a non-disabled person: zero. If Laufer can nonetheless claim injury by being deprived of this information, anyone can. *TransUnion* repudiates that unbounded view of Article III.

B. Laufer's alleged injury is not particularized.

"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). An "undifferentiated, generalized grievance" does not give rise to standing. *Gill v. Whitford*, 138 S. Ct. 1916, 1931 (2018).

Laufer characterizes herself as an "advocate" on behalf of both herself and "similarly situated disabled persons." J.A. 17a, ¶ 3. But Laufer's allegation that she is "similarly situated" to other persons with disabilities does not satisfy Article III's particularization requirement. Under this Court's precedents, a plaintiff cannot satisfy Article III's particularization requirement merely by showing that she falls within a *group* protected by a particular law. Instead, Article III requires that the plaintiff be *personally* affected by the law.

For example, in *Lewis v. Continental Bank Corp.*, 494 U.S. 472 (1990), a bank holding company sought to

open an insured industrial savings bank (ISB). The application was denied because Florida law prohibited out-of-state bank holding companies from operating ISBs, but the controversy was later mooted with respect to *insured* ISBs of the type the holding company proposed to open. *Id.* at 475-77. The holding company nonetheless pursued the litigation and sought an injunction and declaration that the statute was unconstitutional as applied to *uninsured* banks. *Id.* at 479. The company argued that, even though it did not have imminent plans to benefit from such an injunction and declaration, it could benefit from in the future by "seek[ing to open] an uninsured rather than an insured ISB." *Id.* This Court held that the company lacked standing, despite its potential future grievance: "[I]t could also be said that every bank in the country is free to file an application seeking an uninsured Florida ISB." *Id.* "[T]he mere power to seek is not an indication of the intent to do so, and thus does not establish a particularized, concrete stake that would be affected by our judgment." *Id.*

Here, likewise, Laufer cannot establish a particularized informational injury. Because Laufer does not intend to visit Coast Village, Laufer's sole grievance is that Coast Village's website lacks accessibility information. However, *all* of the "tens of millions" of Americans, BIO 8, who require disability accommodations could say the same thing. Just as the *Lewis* plaintiff could not pursue a claim shared by "every bank in the country," 494 U.S. at 479, Laufer cannot pursue a claim shared by every disabled person in the country. Laufer has not "sufficiently

differentiated [her]self from a general population of individuals affected in the abstract by the legal provision [she] attacks." *Carney v. Adams*, 141 S. Ct. 493, 502 (2020).

The sole thing that purportedly differentiates Laufer from other persons with disabilities is that she visited Coast Village's website and intends to return to that website in the future. But merely visiting a website, without more, should not be sufficient to establish a "particularized" injury. As *Lewis* reasoned, "the mere power to seek" information from the website does not translate into a "particularized, concrete stake" in that information. 494 U.S. at 479. Any other holding would deputize Laufer to sue thousands of hotels across the United States merely by visiting their websites: "Never mind how geographically remote. Never mind how attenuated their relationship." *Brintley v. Aeroquip Credit Union*, 936 F.3d 489, 494 (6th Cir. 2019) (Sutton, J.). As the Sixth Circuit explained, "[t]hat's not the law. Standing aims to prevent the federal judiciary from becoming a vehicle for the vindication of the value interests of concerned bystanders. Those who merely peruse websites that they can't benefit from have less in common with bystanders than they do with passersby." *Id.* (citation and quotation marks omitted).

If merely visiting a website were sufficient to establish a "particularized" injury sufficient to support injunctive relief, the law of standing would be dramatically expanded. Any generalized injury could be transformed into a particularized injury merely by exposure to that injury on the Internet. To take one

example, in *United States v. Richardson*, 418 U.S. 166 (1974), the plaintiff sued, under a theory of taxpayer standing, alleging that he was legally entitled to information regarding the CIA's expenditures. This Court found that he was impermissibly pursuing a "generalized grievance … since the impact on him is plainly undifferentiated and common to all members of the public." *Id.* at 176-77 (internal quotation marks omitted). Under Laufer's theory, however, the taxpayer's generalized and undifferentiated grievance would transform into a particularized injury if he merely went to the CIA's website and observed that information regarding the expenditures was not present.

Similarly, lower courts have recognized "offended observer" standing in Establishment Clause cases, under which a person who observes a religious symbol has standing to sue—but only if she *personally* observed and was offended by the religious symbol such that she can plausibly assert a particularized injury distinct from the injuries experienced by all ideological opponents of the symbol. *See, e.g.*, *Am. Humanist Ass'n v. Md.-Nat'l Capital Park & Planning Comm'n*, 874 F.3d 195, 203 (4th Cir. 2017) (finding standing when plaintiffs "regularly encountered the Cross as residents while driving in the area"), *rev'd on other grounds*, 139 S. Ct. 2067 (2019); *ACLU of Ga. v. Rabun Cnty. Chamber of Com., Inc.*, 698 F.2d 1098, 1108 (11th Cir. 1983) (offended observer had standing because cross was visible from "the porch of his summer cabin"). If Laufer's theory prevails, someone who visits a website displaying that religious symbol

could allege a "particularized" injury sufficient to establish standing.

Laufer stands in the same position with respect to Coast Village as millions of others. Her visit to Coast Village's website does not establish a particularized injury.

C. *Havens Realty* does not assist Laufer.

In holding that Laufer has standing, the First Circuit relied primarily on *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). *Havens Realty* does not support Laufer's position.

Havens Realty addressed standing under the Fair Housing Act. As relevant here, the Fair Housing Act makes it illegal for landlords to "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). In addition, at the time *Havens Realty* was decided, the Fair Housing Act stated that "[t]he rights granted … may be enforced by civil actions …" 42 U.S.C. § 3612(a) (1982).[6] In other words, anyone injured by a violation of § 3604(d) had a private cause of action.

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[6] The Fair Housing Act was thereafter amended to afford a cause of action to an "[a]ggrieved person," *id.* § 3613(a), defined as a person who was "injured" by a "[d]iscriminatory housing practice," that is, an "act that is unlawful under," among other provisions, "section 3604[] … of this title." *Id.* § 3602(f), (i) (2023); *see also id.* § 3602(f) (1982) (same definition of discriminatory housing practice); Fair Housing Amendments Act of 1988, 100 Pub. L. No. 100-430, 102 Stat. 1619 (adding definition of "aggrieved person").

In *Havens Realty*, two plaintiffs, Sylvia Coleman and Kent Willis, inquired whether there were vacancies at an apartment building. Coleman was Black and Willis was white. Neither Coleman nor Willis was interested in renting apartments; instead, their goal was to test compliance with the Fair Housing Act. The apartment owner, Havens Realty, told Willis there were vacancies and told Coleman there were no vacancies. Coleman sued, alleging a violation of § 3604(d). Havens Realty argued that Coleman lacked Article III standing because she did not intend to rent the apartment.

This Court held that Coleman had standing. The Court cited case law holding 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." 455 U.S. at 373 (quotation marks and citations omitted). It then held that § 3604(d), "which, in terms, establishes an enforceable right to truthful information concerning the availability of housing, is such an enactment." *Id.* According to the Court, "[a] tester who has been the object of a misrepresentation made unlawful under § 804(d) 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.

Havens Realty does not support Laufer's claim. To begin, this Court's recent cases have disagreed with *Havens Realty*'s statement that Article III injury "may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." *Id.* at 373.

TransUnion, most notably, "rejected 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 to vindicate that right." *TransUnion*, 141 S. Ct. at 2205 (internal quotation marks omitted). Instead, "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* (quotation marks omitted). Thus, in *TransUnion*, the Court held that plaintiffs could not recover statutory damages for violations of FCRA because they could not establish concrete harm, even though FCRA granted them a private cause of action. *Id.* at 2214; *accord Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1620-21 (2020) (holding that statutory violation without concrete injury does not establish standing).

This does not mean that *Havens Realty* must be overruled. As explained below, because Coleman was the victim of an individualized act of racial discrimination, Coleman may well have sustained a stigmatic injury that satisfies Article III's concreteness requirement, separate and apart from any deprivation of information. *Infra* at 39. However, post-*TransUnion*, a plaintiff cannot establish standing merely by showing that a statutory right to information has been violated.

But even assuming *TransUnion* did not limit *Havens Realty*, *Havens Realty* does not assist Laufer for three reasons.

First, *Havens Realty* held that an injury "may exist solely by virtue of *statutes* creating legal rights, the invasion of which creates standing." 455 U.S. at 373

(emphasis added; quotation marks omitted). Here, Laufer does not invoke a statute. Instead, she relies on a *regulation* promulgated by the Justice Department.

This distinction matters. The *TransUnion* dissenters rooted their position in the fact that FCRA—the injury-creating statute—was an Act of Congress. In the dissenters' view, it was the role of the *legislature*—the law-making body—to create injuries at law. 141 S. Ct. at 2218 (Thomas, J., dissenting) (advocating approach that "accords proper respect for the power of Congress and other legislatures to define legal rights"). Moreover, the people's elected representatives were in the best position to assess whether an action created a sufficient risk of injury to warrant standing. *Id.* at 2226 (Kagan, J., dissenting) ("Congress is better suited than courts to determine when something causes a harm or risk of harm in the real world"). Neither rationale suggests that the Justice Department, which enforces rather than enacts the laws, may create an injury at law.

Second, unlike the Fair Housing Act, the Reservation Rule does not purport to create an individual right to accessibility information. As *Havens Realty* emphasized, the Fair Housing Act confers an individual right to accurate information about housing. The Court pointed out that Section 3604(d) prohibited making a false representation about housing to "to *any person*"—emphasis in original—and "thus conferred on all 'persons' a legal right to truthful information about available housing." 455 U.S. at 373 (internal quotation marks omitted).

By contrast, the Reservation Rule does not purport to confer an individual right to accessibility information to "any person." Indeed, it does not purport to grant individual rights to anyone. It simply instructs hotels on what information to put on their websites. Moreover, as explained above, *supra* at 20, the rule is not intended to benefit *all* people who happen to come across the hotel's website. To the contrary, the rule applies solely "*with respect to reservations* made by any means." 28 C.F.R. § 36.302(e)(1)(ii) (emphasis added). Thus, the rule is for the benefit of *people making reservations—i.e.*, travelers. Nothing in the Reservation Rule purports to confer an individual right to accessibility information to someone who does not need it.

Third, the Fair Housing Act creates a private cause of action for any individual whose rights under § 3604(d) were violated. *Supra* at 26. By contrast, Laufer lacks a private cause of action to vindicate her alleged denial of access to information. To be sure, this case is about standing rather than the availability of a private cause of action. But, under *Havens Realty*'s framework, the two issues are intertwined. The *Havens Realty* Court held that Coleman had standing *because* Congress granted her a cause of action to vindicate an injury created by statute. If the ADA does not grant Laufer a cause of action, then *Havens Realty*'s reasoning—even if it remains good law—cannot assist Laufer.

The ADA confers a cause of action to anyone who has been "subjected to discrimination on the basis of disability," 42 U.S.C. § 12188(a)(1), while setting forth

the rule 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).[7] Thus, the statute permits plaintiffs to sue if they have been subjected to discrimination that renders them unable to fully and equally enjoy *the place of public accommodation*—here, the hotel. So, if a person who uses a wheelchair attempts to enter a hotel and cannot do so because it is inaccessible, that person may sue the hotel because she has been denied the "full and equal enjoyment" of the hotel. By contrast, suppose a person who uses a wheelchair finds a photograph on the Internet of a hotel lacking a wheelchair ramp, but does not intend to visit the hotel. The ADA would not grant her a cause of action to sue the hotel because she was not denied the "full and equal enjoyment" of the hotel.

Although the question is not presented here, a violation of the Reservation Rule may give rise to a cause of action under the ADA if the person accesses the deficient website *in the course of making travel plans*. People who use wheelchairs need to know for

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[7] The Justice Department has also promulgated a regulation providing that "[a]ny person who is being subjected to discrimination on the basis of disability in violation of the Act or this part … may institute a civil action for preventive relief." 28 C.F.R. § 36.501. It is not clear that the Justice Department is authorized to create a private cause of action via an implementing regulation, but even if it had that authority, the regulation echoes the statutory requirement that the plaintiff be "subjected to discrimination."

certain whether a hotel is accessible before they travel. They cannot risk traveling to a distant destination, showing up at a hotel, and finding out that they cannot enter the building. For persons with disabilities planning trips, the absence of accessibility information prevents them, as a practical matter, from booking a reservation at the hotel. So, if a person has imminent travel plans, tries to make a reservation at a hotel, and cannot obtain accessibility information, she arguably has a cause of action under the ADA because she has been denied the "full and equal enjoyment" of the hotel. Indeed, it was this concern that prompted the Justice Department to enact the Reservation Rule: "In many cases individuals with disabilities expressed frustration because, while they are aware of improvements in architectural access brought about as a result of the ADA, they are unable to take advantage of these improvements because of shortcomings in current hotel reservations systems. …. The ability to obtain information about accessible guest rooms, to make reservations for accessible guest rooms in the same manner as other guests, and to be assured of an accessible room upon arrival was of critical importance to these commenters." 75 Fed. Reg. at 56,273.

But if a person lacks imminent travel plans, she lacks a cause of action to sue over her failure to receive information about a hotel. Because she has not been deprived of "full and equal enjoyment" of the hotel, she has not been subject to "discrimination" under the ADA. She stands in the exact same position as a person who sees a photograph on the Internet of an inaccessible hotel. Laufer's brief in opposition

emphasized that the website is a "service" provided by the hotel and she has a right to "full and equal enjoyment" of that service. BIO 9. But she was able to access the website without any problem. Her claim is that the website provided insufficient information about the *hotel*'s accessibility, which is relevant only for those who seek to visit the hotel.

Because Laufer lacks a cause of action, she lacks standing even under the reasoning of *Havens Realty*.

D. This Court's "informational standing" cases do not support Laufer.

In upholding Laufer's standing, the First Circuit relied on *FEC v. Akins*, 524 U.S. 11 (1998), and *Public Citizen v. Dep't of Justice*, 491 U.S. 440 (1989), which held that the denial of information, in some contexts, can be an Article III injury. Pet. App. 15a-16a. These cases do not assist Laufer.

TransUnion distinguished *Akins* and *Public Citizen* on the ground that they "involved denial of information subject to public-disclosure or sunshine laws that entitle all members of the public to certain information." *TransUnion*, 141 S. Ct. at 2214. *TransUnion* pointed out that FCRA is not "such a public-disclosure law." *Id.* Neither is the ADA.

Indeed, a closer look at the reasoning of *Akins* and *Public Citizen* demonstrates how different those cases are from this case. Both *Akins* and *Public Citizen* involved "[p]ublic-disclosure laws" which "protect the public's interest in evaluating matters of concern to the political community." *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 338 (7th Cir. 2019) (Barrett,

J.). Both cases involved plaintiffs who (1) sought information that was useful to them; (2) suffered a particularized denial of access to that information; and (3) sued under statutes guaranteeing public access to the information. None of those features of *Akins* and *Public Citizen* is present here.

In *Akins*, a group of voters filed a complaint with the Federal Election Commission (FEC), arguing that the FEC was obliged to require the American Israel Public Affairs Committee (AIPAC) to make disclosures regarding its membership, contributions, and expenditures. 524 U.S. at 15-16. After the FEC denied the complaint, the voters sued, alleging that disclosure was required under the Federal Election Campaign Act. *Id.* at 16, 18.

This Court held that the voters had standing. It explained that (1) the voters had shown why the sought-after information was useful to them. *Id.* at 21 ("There is no reason to doubt their claim that the information would help them (and others to whom they would communicate it) to evaluate candidates for public office, especially candidates who received assistance from AIPAC, and to evaluate the role that AIPAC's financial assistance might play in a specific election."). (2) The injury was particularized: The voters personally filed a complaint with the FEC, the FEC dismissed their complaint, and the voters challenged that dismissal—which pertained only to them—in court. *See id.* at 18 ("Respondents filed a petition in Federal District Court seeking review of the FEC's determination dismissing their complaint."). (3) The voters were invoking a statute that conferred a right to

obtain disclosure of information. *Id.* at 21, 24-25 ("[T]his Court has previously held that a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." "[T]he informational injury at issue here … is sufficiently concrete and specific such that the fact that it is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts.").

Similarly, in *Public Citizen*, the Washington Legal Foundation (WLF) sought, and was refused, information about the ABA Standing Committee's consideration of judicial nominees. WLF sued the Justice Department seeking disclosure of this information under the Federal Advisory Committee Act, which, among other things, imposes certain public notice requirements on private committees that offer advice to the government. 491 U.S. at 446-47. The Court held that WLF had standing. As in *Akins*, it emphasized that: (1) WLF showed why the sought-after information was useful to it. *Id.* at 449 (WLF "seek[s] access to the ABA Committee's meetings and records in order to monitor its workings and participate more effectively in the judicial selection process"). (2) WLF suffered a particularized denial of that useful information. *Id.* (noting that "[a]ppellant WLF has specifically requested, and been refused," sought-after information). (3) WLF was invoking a statutory notice requirement. *Id.* ("[A]ppellants are attempting to compel the Justice Department … to comply with FACA's charter and notice requirements.").

Laufer cannot make any of those showings here. (1) She has not suffered a concrete injury because she cannot show why the information is useful to her, other than as the basis for a lawsuit. (2) She has not suffered a particularized injury because she never asked Coast Village for accessibility information, and was never personally denied it. (3) No statute confers a personal right to accessibility information. For these reasons, *Akins* and *Public Citizen* do not establish that Laufer has standing here.

Akins and *Public Citizen* differ from this case in an additional respect. Both cases involved lawsuits against the government, whereas this case involves a lawsuit against a private business. There is a pragmatic reason to distinguish between private defendants and government defendants for Article III purposes. When a private defendant is alleged to have violated a requirement to provide information—as in *TransUnion* and this case—the Executive Branch is available to enforce the law. When the Executive Branch decides not to initiate an enforcement action, an unharmed plaintiff's enforcement action interferes with that exercise of government discretion. *See infra* at 48-49. By contrast, when the government is alleged to have violated a requirement to provide information—as in *Public Citizen* and *Akins*—the Executive Branch cannot enforce the law. The government cannot sue itself. It therefore makes sense to give Congress some leeway to give private citizens an enforceable right to obtain information from the government.

Public Citizen observed in dictum that the Court's "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." 491 U.S. at 449. If it is true, as this dictum suggests, that FOIA plaintiffs invariably have standing to challenge the denial of FOIA requests, this reflects the fact that FOIA requests seek information *about the government*. Arguably, citizens have an inherent interest in knowing what the government is up to, such that the deprivation of that information inflicts concrete injury. Moreover, FOIA lawsuits involve challenges to particularized denials of FOIA requests, pursuant to a statute specifically authorizing such lawsuits. Finally, as noted above, there is a powerful pragmatic reason to permit such lawsuits: Private enforcement of FOIA allows citizens to expose information that the government may seek to hide.

Here, Laufer is neither suing the government, nor seeking information about the government, nor challenging the particularized denial of a request for information, nor suing under a statute guaranteeing a right to information. She is suing under the ADA, which "protects an entirely different interest." *Casillas*, 926 F.3d at 338. Further, she "allege[s] no material risk of harm to that interest" and does "not allege that she would have used the information at all." *Id.* This Court's informational-standing precedents do not support her standing.

III. LAUFER CANNOT ESTABLISH STANDING BASED ON HER ALLEGED STIGMATIC INJURY.

As an alternative to her informational-injury theory, Laufer contends that Acheson inflicted a stigmatic injury upon her. Laufer advances two related theories of stigmatic injury. First, she maintains that when she visited Coast Village's website and did not obtain accessibility information, she was the victim of discrimination, which, she claims, is itself a stigmatic injury. *E.g.*, BIO 4 ("Art. III is satisfied where that deprivation constitutes discriminatory treatment because discrimination is a real world harm."). Second, she contends that visiting Coast Village's website caused her to subjectively experience "humiliation and frustration." J.A. 19a, ¶ 7. Laufer further alleges that she will experience these injuries again when she returns to Coast Village's website and again fails to obtain accessibility information.

Laufer's arguments lack merit. Laufer did not experience a concrete Article III stigmatic injury when she visited Coast Village's website in the past, and will not experience such an injury if she again returns to the website. Likewise, Laufer's anticipation of emotional injury does not satisfy Article III.

A. Laufer has not experienced, and will not experience, the type of discrimination that gives rise to Article III standing.

Discriminatory treatment can, in some cases, inflict a stigmatic injury that gives rise to Article III standing. As this Court explained in *Heckler v.*

Mathews, 465 U.S. 728 (1984), "discrimination itself, by perpetuating archaic and stereotypic notions or by stigmatizing members of the disfavored group as innately inferior and therefore as less worthy participants in the political community, can cause serious noneconomic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group." *Id.* at 739-40 (internal quotation marks omitted). *TransUnion*, too, stated that "intangible harms can also be concrete" and cited *Allen v. Wright*, 468 U.S. 737, 757 n.22 (1984), for the proposition that "discriminatory treatment" can constitute an actionable injury. 141 S. Ct. at 2204-05. In the cited footnote, *Allen* observed that a stigmatic injury "is judicially cognizable to the extent that [the plaintiffs] are personally subject to discriminatory treatment." 468 U.S. at 757 n.22.

Havens Realty may well have been a case in which the victim of discrimination sustained a legally actionable stigmatic injury. Havens Realty lied to Sylvia Coleman because Coleman is Black. Coleman was therefore "personally subject to discriminatory treatment." *Id.* Indeed, the discriminatory treatment was particularly egregious: Havens Realty lied to her because of her race for the purpose of preventing her from finding a place to live. "[T]he Court recognized this kind of racial discrimination as an intangible injury that Congress has the authority to identify as legally cognizable." *Casillas*, 926 F.3d at 338.

But although Coleman may have suffered legally actionable stigmatic injury, Laufer did not. Unlike Coleman, Laufer was not "personally subject to

discriminatory treatment." *Allen*, 468 U.S. at 757 n.22. Acheson did not treat Laufer differently from anyone else. Indeed, Acheson had no idea who Laufer was. Laufer simply visited Acheson's website, observed that accessibility information was absent, and then sued.

It is true, as Laufer claims, that the ADA defines "discrimination" to include not only "outright intentional exclusion," but also "the discriminatory effects of architectural, transportation, and communication barriers," and "failure to make modifications to existing facilities and practices." 42 U.S.C. § 12101(a)(5). The ADA recognizes the reality that for a person who uses a wheelchair, the failure to provide a wheelchair ramp has the same practical effect as a facially discriminatory "no persons who use wheelchairs allowed" sign—it prevents people who use wheelchairs from accessing the property. And so, when a disabled person *tries* to access a property and is prevented from doing so, the ADA characterizes that person as the victim of discrimination.

But Laufer herself did not experience even that type of discrimination. Laufer does not claim to have been denied access to Coast Village because she has never been, and has no plans to go, to Coast Village. Labeling Laufer's experience as "discrimination" does not alter the reality that Laufer did nothing more than search for, and find, a website lacking information that is useless to her—an experience bearing no resemblance to Coleman's experience. Indeed, the irony of this case is that Coast Village website has been updated to say it is *inaccessible*. *See infra* at 51-53. Yet Laufer does not claim to have standing to sue over

actually *finding out* that Coast Village is inaccessible. Instead, she solely seeks standing to sue over the *prior lack of information* about Coast Village's accessibility. Nothing in the ADA suggests this constitutes a stigmatic injury giving rise to standing.

Indeed, Laufer's experience resembles the experience of the plaintiffs in *Allen* who were held *not* to have standing. In *Allen*, several plaintiffs challenged the IRS's grant of tax-exempt status to racially discriminatory schools that their children did not attend. This Court held that those plaintiffs did not sustain an Article III injury. The *Allen* Court recognized that "the stigmatizing injury often caused by racial discrimination … is one of the most serious consequences of discriminatory government action and is sufficient in some circumstances to support standing." 468 U.S. at 755. Yet, standing requires a "stigmatic injury suffered as a direct result of having personally been denied equal treatment." *Id.* Because the plaintiffs alleged that other people's children, rather than their children, had been victims of racial discrimination, they merely alleged an "abstract stigmatic injury" insufficient to establish standing. *Id.* If such an "abstract stigmatic injury" were actionable, a "black person in Hawaii could challenge the grant of a tax exemption to a racially discriminatory school in Maine." *Id.* at 756. "Constitutional limits on the role of the federal courts preclude such a transformation." *Id.*

Laufer's asserted injury is equivalent to the "abstract stigmatic injury" that did not establish standing in *Allen*. As a "tester," she is trying to protect the rights of third parties—disabled people who

want to go to hotels like Coast Village but cannot obtain accessibility information. But as in *Allen*, Laufer herself has not been denied access to Coast Village, because she does not intend to go. Laufer's goal of protecting third parties from discrimination does not give her standing.

Laufer's asserted stigmatic injury differs in an additional respect from the injury in *Havens Realty*. Coleman's injury took place in the past—she relied on the Fair Housing Act's backward-looking damages remedy. 455 U.S. at 373-74 (citing § 804(d)). *Havens Realty* did not address whether Coleman could have obtained forward-looking relief. *Id.* at 371 ("Irrespective of the issue of injunctive relief, respondents continue to seek damages to redress alleged violations of the Fair Housing Act."). Laufer, by contrast, seeks solely forward-looking relief. Her claim is not premised on a stigmatic injury she has already experienced; it is premised on a future stigmatic injury she intends to intentionally inflict on herself. Laufer alleges that she has *already seen* that Coast Village's website lacks accessibility information and plans to go to the website precisely *because* she has already seen it. She intends to return to the website in order to re-experience the purported stigma she has already allegedly experienced, solely for purposes of ensuring this litigation can continue.

Nothing in *Havens Realty* or any other case suggests that a litigant can establish Article III injury by threatening to deliberately inflict stigma on herself for stigma's sake. To the contrary, this Court has rejected the view that a plaintiff can establish standing

via such self-inflicted injuries. In *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), the plaintiffs challenged a provision of the Foreign Intelligence Surveillance Act allowing surveillance of communications between Americans and individuals in foreign countries. However, they could not prove that *their* communications with foreign individuals would be monitored. Hence, they spent their own money seeking to avoid surveillance and alleged that these expenditures constituted an Article III injury. *Id.* at 415. This Court held that the expenditures did not give rise to Article III standing. It explained that the plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 416.

Like the injuries in *Clapper*, Laufer's asserted stigmatic injury is self-inflicted. Just as the *Clapper* plaintiffs could not manufacture standing by spending money to protect against future harm that was not impending, Laufer cannot manufacture standing by intentionally visiting a website that she knows lacks information she does not need.

B. Laufer's emotional injuries do not give rise to Article III standing.

In addition to her allegation of discriminatory treatment, Laufer claims that she subjectively experienced emotional injury following her visit to Coast Village's website. Laufer's asserted emotional injury does not give rise to standing.

Laufer's declaration states that when she encountered Coast Village's website, she "suffered humiliation and frustration at being treated like a second class citizen, being denied equal access and benefits to the goods, facilities, accommodations and services." J.A. 19a, ¶ 7. The First Circuit declined to decide whether this harm was "sufficient stigmatic injury to give rise to Article III standing." Pet. App. 26a. It concluded, however, that these feelings satisfied *TransUnion*'s requirement of "downstream consequences from failing to receive the required information." 141 S. Ct. at 2214 (internal quotation marks omitted). The Eleventh Circuit, meanwhile, has held that emotional harm alleged by Laufer in a case against a different hotel was a sufficient stand-alone injury to give rise to Article III standing. *Laufer v. Arpan LLC*, 29 F.4th 1268, 1273-75 (11th Cir. 2022).

These holdings are wrong. Laufer's asserted emotional injury is neither a downstream consequence supporting her claim of informational standing nor a stand-alone harm sufficient to establish standing.

First, because Laufer seeks forward-looking relief, she must allege future harm, not just past harm, to establish standing. And she does not actually allege impending emotional harm from her anticipated return trip to Coast Village's website. Although she states she "suffered humiliation and frustration" when she encountered Coast Village's website in the past, she does not state that she will re-experience those feelings in the future. Instead she states: "I am deterred from returning to the websites because I understand that it would be a futile gesture to do so unless I am willing to

suffer further discrimination." J.A. 19a, ¶ 7. Nor is it clear she could credibly allege such anticipatory "humiliation and frustration" from a repeat visit to a website she has already seen and that would impart no new information.

Even if Laufer's declaration did adequately allege forward-looking "humiliation and frustration," this asserted stigmatic injury would not be actionable under Article III. Although *some* emotional injuries are legally actionable, it does not follow that an allegation of emotional harm is invariably actionable.

The touchstone of standing is a "harm with a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 141 S. Ct. at 2213. Although the law has sometimes characterized emotional distress as a sufficient injury to be legally actionable, it has done so in unusual circumstances that are not even close to the facts of this case.

The common-law tort of intentional infliction of emotional distress requires "extreme and outrageous conduct" that causes "severe emotional harm." *Restatement (Third) of Torts*: *Liability for Physical and Emotional Harm* § 46 (2012). "Severe" means "no reasonable [person] could be expected to endure it," and "in many cases the extreme and outrageous character of the defendant's conduct is itself important evidence bearing on whether the requisite degree of harm resulted." *Id.* § 46, cmt. j. The Restatement offers the example of a man who sexually abused his 13-year-old stepdaughter and then threatened to send videotapes of the abuse to the child's mother, causing

the child to attempt suicide. *Id.* § 46, illus. 10. Meanwhile, the common-law tort of negligent infliction of emotional distress similarly requires "serious emotional harm" and applies only in very unusual circumstances, such as when the defendant places the plaintiff in physical danger or seriously injures the plaintiff's family member while the plaintiff is watching. *Id.* §§ 47-48. The asserted harm here—anticipated humiliation and frustration from failing to receive unneeded accessibility information—does not resemble the sorts of emotional injuries historically actionable in American courts. *Cf. Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982) ("[T]he psychological consequence presumably produced by observation of conduct with which one disagrees … is not an injury sufficient to confer standing under Art. III.").

Laufer's claim of emotional harm is particularly weak in view of its self-inflicted nature. Laufer claims that she will intentionally inflict emotional harm on herself by re-visiting a website and that she requires an injunction to prevent that harm. If Laufer's emotional harm was so severe as to be actionable, it is unlikely she would intentionally inflict it on herself. To Acheson's knowledge, no court has held that a plaintiff can establish standing by threatening to intentionally inflict emotional harm upon herself.

Laufer's theory of emotional harm, if accepted by this Court, would create an end-run around this Court's standing cases. The plaintiffs in *Allen*, for instance, could establish standing merely by alleging that they

experienced emotional injury from observing that the IRS granted tax-exempt status to racially discriminatory schools. Likewise, the plaintiffs in *Summers* could establish standing to challenge the procedural injury *in vacuo* merely by declaring they were humiliated and frustrated by being unable to submit agency comments. The Court should not water down Article III in this manner.

IV. LAUFER'S INTEREST IN ENFORCING THE ADA DOES NOT GIVE HER STANDING.

The reality of this case is that Laufer is not really seeking to remedy her own injuries. She is seeking to enforce the law.

Laufer has filed over 600 lawsuits against hotels who allegedly failed to provide accessibility information on their websites. She is pursuing this litigation program because she feels that too many hotels break the law, and it is her job to bring them into compliance. Her declaration is candid on this point: "I am an advocate on behalf of both myself and other similarly situated disabled persons and consider myself a tester. As a tester, I visit hotel online reservation services to ascertain whether they are in compliance with the Americans With Disabilities Act. In the event that they are not, I request that a law suit be filed to bring the website into compliance with the ADA so that I and other disabled persons can use it." J.A. 17a, ¶ 3.

A wall of cases from this Court, however, holds that a plaintiff's abstract interest in enforcing the law does not confer standing. "No matter how deeply

committed" Laufer is to upholding the ADA, "or how zealous [her] advocacy," "that is not a 'particularized' interest sufficient to create a case or controversy under Article III." *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (internal quotation marks omitted); *accord Diamond v. Charles*, 476 U.S. 54, 62 (1986) (noting that Article III standing "is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests'" (citation omitted)); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 223 n.13 (1974) (the "abstract injury in nonobservance of the Constitution" is not actionable).

Article III bars such suits for good reason. Article III's case-or-controversy requirement prevents Congress from "transfer[ing] from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed,' Art. II, § 3." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 577 (1992). As this Court elaborated in *TransUnion*, "the 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)." 141 S. Ct. at 2207. "Private plaintiffs 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.*

Laufer may feel that the Justice Department is doing a poor job enforcing its regulations. But it is not her job to take matters into her own hands. "[A]n

agency's refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor in the Executive Branch not to indict—a decision which has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed.'" *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (quoting U.S. Const. art. II, § 3)).

It is easy to see why the decision to pursue enforcement actions should be vested in the Attorney General rather than in Laufer and her counsel. The Attorney General is accountable to the President, who is accountable to the People. His mission is to serve the public interest. And there are powerful reasons for him to conclude that the public interest does not warrant suing hundreds of hotels over their failure to provide accessibility information on their websites.

Many hotel companies, including Acheson, are small businesses. They do not have in-house counsel and may be unaware of their obligation to provide accessibility information on their websites. Ignorance of the law is no excuse. But there are often better ways of ensuring compliance with the law than filing a lawsuit. A simple phone call reminding a hotel owner of its obligations may be more appropriate—and more likely to ensure that disabled persons receive the information they need—than haling the hotel owner into court. COVID-19 ravaged the tourism industry, and the Attorney General may feel that small bed-and-breakfasts already on the brink of bankruptcy should not have to pay thousands of dollars in attorney's fees based on their

alleged failure to comply with a regulation they may have never heard of. Moreover, a polite phone call or email will frequently be more effective at persuading a bed-and-breakfast to update its website than a lawsuit that will cause it to dig in its heels.

Laufer claims she is serving the public interest by bringing her lawsuits. But she is not a presidential appointee. She is accountable to no one. She has no basis for assessing whether a particular enforcement action is in the public interest. Even if she had such a basis, making that assessment is not her job.

Notably, moreover, Laufer seeks attorney's fees in all of her lawsuits. When she settles her suits, she obtains fees as part of her settlements. She and her counsel therefore have a financial interest in pursuing this litigation campaign, which may color their assessment of whether the lawsuits are in the public interest. Indeed, every time Laufer finds a website lacking accessibility information, her purported injury is really a victory—it opens the door to a lawsuit and potential fee award, which was the purpose of searching for the website in the first place.

There are good reasons that Justice Department officials who enforce the law are not permitted to have personal financial stakes in their lawsuits. This ensures that the officials can assess the public interest in an unbiased fashion. There are no such assurances with regard to Laufer and similar testers and their counsel.

By limiting the jurisdiction over federal courts to traditional cases and controversies, Article III ensures that enforcement actions are the exclusive province of

the Executive Branch. Indeed, this case is a perfect illustration of how watering down Article III opens the door to private enforcement of the laws that is antithetical to the separation of powers.

V. AT A MINIMUM, THERE IS NO LONGER A CASE OR CONTROVERSY BECAUSE LAUFER HAS RECEIVED THE INFORMATION SHE SEEKS.

"Although rulings on standing often turn on a plaintiff's stake in initially filing suit, Article III demands that an 'actual controversy' persist throughout all stages of litigation." *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1950-51 (2019) (internal quotation marks omitted). For the reasons explained in Parts I-IV, Laufer's complaint does not adequately allege an Article III injury. Even if it did, however, Laufer no longer faces an imminent Article III injury because she has now obtained the information she seeks.

As both lower courts noted, Coast Village's website now states that it does not provide ADA-accessible lodging. Pet. App. 32a, 47a-48a. Hence, although this information is not in the complaint, Laufer is now on notice that Coast Village is not ADA-accessible. The First Circuit nonetheless concluded that Laufer still has standing, and the case is not moot, based on Laufer's allegation that she intends to visit third-party booking websites like Hotels.com, which still lack accessibility information. Pet. App. 32a, 33a-34a. That holding is incorrect. Either as a matter of lack of standing or mootness, Laufer's asserted intent to visit

third-party booking websites does not give rise to an Article III case or controversy.

To begin, Laufer does not face a forward-looking informational injury because she has received the information she seeks. A litigant does not experience an Article III injury by failing to obtain information already in her possession from a different source. In *TransUnion*, for instance, this Court held that the plaintiffs were not injured from failing to receive information in a second mailing that they had already received in a prior mailing. 141 S. Ct. at 2213. Here, likewise, Laufer will not be injured by failing to receive information from Hotels.com that she has already received from Coast Village's website.

Laufer's claim of a future stigmatic injury from visiting third-party websites similarly fails. Laufer claims that discrimination inflicts a stigmatic injury, but she will not experience discrimination in her anticipated visit to Hotels.com. Laufer is already aware that Coast Village has architectural barriers. Because she does not intend to visit Coast Village, she does not assert that these architectural barriers render her the victim of discrimination. As such, the absence of information on Hotels.com *confirming* the existence of these architectural barriers will have no impact on her ability to access Coast Village.

Nor can Laufer establish a forward-looking emotional injury. Given that Laufer is already aware that Coast Village is not ADA-accessible, it is implausible that she will experience any additional emotional injury by viewing a third-party website that is silent on Coast Village's accessibility. It is equally

implausible that an injunction that would direct third-party websites to state that Coast Village is *inaccessible* would remedy any emotional injury that Laufer anticipates experiencing when she visits Hotels.com.

In reaching a contrary conclusion, the First Circuit asserted that because "Acheson hasn't persuaded the third-party reservation services" to include accessibility information, Laufer's "likelihood of future injury is far from conjectural or hypothetical; it's sufficiently imminent." Pet. App. 32a. However, the First Circuit did not explain *why* a plaintiff experiences an Article III injury when she fails to obtain information that she not only does not need, but also already has. Laufer's sought-after injunction cannot possibly benefit her, so this case should be dismissed.

CONCLUSION

The judgment of the First Circuit should be reversed.

Respectfully submitted,

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STATUTORY APPENDIX

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42 U.S.C. § 12182(a) provides: "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."

42 U.S.C. § 12182(b)(1)(A)(ii) provides in relevant part:

> It shall be discriminatory to afford an individual … on the basis of a disability or disabilities of such individual … 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.

42 U.S.C. § 12182(b)(2)(A)(ii) provides in relevant part:

> [D]iscrimination includes … 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.

28 C.F.R. § 36.302(e)(1)(ii) provides in relevant part:

> 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]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.