No. 22-429

In the Supreme Court of the United States

ACHESON HOTELS LLC, PETITIONER,

v.

DEBORAH LAUFER, RESPONDENT.

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

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN RESORT DEVELOPMENT ASSOCIATION, NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES, AND INTERNATIONAL COUNCIL OF SHOPPING CENTERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three

[1] Pursuant to this Court's Rule 37.6, *Amici* affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than *Amici*, their members, or counsel made a monetary contribution to its preparation or submission. Counsel for *Amici* timely notified all parties of its intention to file a brief and all parties have consented to its filing.

million companies and professional organizations of every size, in every industry sector, and from every region of the country.

One of the Chamber's important functions is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the Nation's business community, including at the certiorari and merits stage of *Spokeo, Inc v. Robins*, 578 U.S. 330 (2016), and *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021).

The American Resort Development Association ("ARDA") is the non-profit trade association representing the interests of the time-share and vacation ownership industries. ARDA's membership is comprised of over 500 companies, which house more than 5,000 individual ARDA members, and represents 95% of the timeshare industry. ARDA regularly advocates on behalf of the interest of its members and the industry as a whole.

The National Association of Home Builders of the United States ("NAHB") is a Washington, D.C.-based trade association whose mission is to enhance the climate for housing and the building industry. Chief among NAHB's goals are providing and expanding opportunities for all people to have safe, decent, and affordable housing. Founded in 1942, NAHB is a federation of more than 700 state and local associations. Onethird of NAHB's 120,000 members are home builders, multifamily developers, and remodelers. Each year, its members construct approximately 80% of all new homes built in the United States. NAHB is a vigilant advocate in the nation's courts. It frequently participates as a

party litigant and *amicus curiae* to safeguard the constitutional and statutory rights and business interests of its members and those similarly situated.

The International Council of Shopping Centers, Inc. ("ICSC") is the global trade association of the shopping center and retail real estate industry. Founded in 1957, the association represents developers and operators of retail properties across the globe, as well as the tenants who occupy them, ranging from shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, as well as academics and public officials. Comprised of nearly 50,000 members, ICSC's mission is to advance the industry by promoting and elevating the marketplaces and spaces where people shop, dine, work, play and gather as foundational and vital ingredients of communities and economies. In furtherance of this mission, ICSC represents its members through advocacy on important public policy issues and through filing *amicus curiae* briefs in pending appeals on issues of importance to the retail real estate industry.

This case presents a question of Article III standing that extends far beyond the specific circumstances of this case, the resolution of which is important to the Nation's entire business community. Respondent is a self-avowed "tester"—a private individual who has taken it upon herself to file hundreds of lawsuits under Title III of the Americans with Disabilities Act ("ADA"), including (as here) against businesses that she has never visited or has any intention of visiting. As a direct result of such artificial lawsuits, businesses nationwide face litigation over technical violations of the ADA brought by persons who suffered no injury whatsoever. Such abusive litigation tactics subvert rather than advance the purposes of the ADA, and put the federal courts in the

impossible position of adjudicating non-existent controversies. *Amici*, as representatives of the American business community, have an interest in ensuring that Article III's actual-injury requirement is followed and thus that lawsuits are brought only by persons with a genuine stake in the outcome.

INTRODUCTION

As the petition observes (at 5), lawsuits brought by Respondent have generated a conflict of appellate decisions on the Article III standing of ADA "tester" plaintiffs, and this self-generated circuit split is itself a compelling reason to grant review. Moreover, the standing issue is both squarely presented and potentially dispositive here. *Amici* respectfully submit this brief not to repeat those points, but to make clear that the import of the question presented—whether a "tester" plaintiff has Article III standing to challenge the failure to provide disability accessibility information, even if she lacks any intention of visiting that place of public accommodation—extends far beyond the parties to this particular lawsuit, and is tremendously significant to the millions of other businesses nationwide that can (indeed, do) face similar lawsuits.

Litigation under Title III of the ADA (which prohibits discrimination on the basis of disability in places of public accommodation) has exploded over the past several years. Case filings have more than tripled since 2013 and now count more than 10,000 filings annually. These cases are unique not only in their explosive growth, but also in their geographic distribution. More than half of ADA Title III cases are filed in just three states: California, New York, and Florida. These cases are also unique because the exponential growth is driven by a small set of "tester" plaintiffs, like Respondent, and their counsel

who bring these cases. Respondent herself has filed approximately 600 cases, and other testers have filed more than 1,000.

The ADA was enacted in 1990 to create clear standards to eliminate discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(2). *Amici* and businesses nationwide support this anti-discrimination principle and have adopted robust accessibility programs. Three decades later, much ADA litigation has nothing to do with accessibility, but rather has become characterized by abusive lawsuits run by tester plaintiffs and their counsel who seek automatic attorneys' fees. Small businesses are disproportionately harmed by these litigation tactics, and often settle lawsuits of even questionable merit to avoid litigation expenses and a judgment that would throw them into bankruptcy.

The decision below, along with a second from the Eleventh Circuit considering another of Respondent's tester cases, pose a new threat for even more litigation. Each court held that a tester plaintiff who had no intention of ever visiting the defendant's hotel had standing to sue the hotel for failing to provide her information she did not need. Both found the emotional injury alleged by the plaintiff sufficient to confer standing (although for different reasons). Yet, as the Second, Fifth, and Tenth Circuits have recognized, this holding is incompatible with the Court's current standing jurisprudence. *See Spokeo, Inc v. Robins*, 578 U.S. 330 (2016); *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021). If tester plaintiffs could sue for not receiving information they did not need and had no reason to use, the Article III standing requirement would be rendered a mere formality. This Court should intervene to correct the lower courts' mis-

application of the current Article III standing test. Absent intervention, similar lawsuits against countless businesses are likely to continue the explosive growth of abusive litigation.

ARGUMENT

Respondent and her fellow "tester" plaintiffs have developed a litigation industry that intentionally flirts with the boundaries of standing doctrine. Through their lawsuits, tester plaintiffs are responsible for exponential growth in ADA Title III cases. This suit, and the hundreds more like it, seek to stretch the bounds of Article III's "case or controversy" requirement to include individuals that have no desire to use any of the information they are purportedly deprived of. Courts have responded with split decisions, and even divergent rationales. The circuit split creates intolerably inconsistent interpretations of Article III across the country, and encourages forum shopping. This Court's intervention is necessary to provide businesses—particularly frequently targeted small businesses—guidance sooner rather than later.

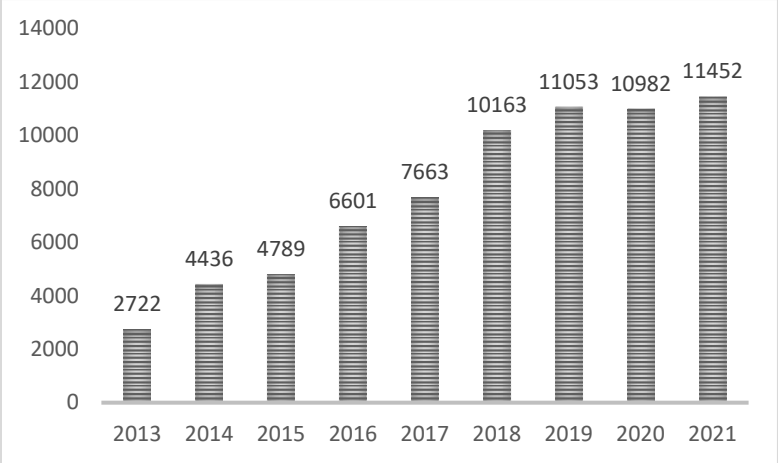
I. Businesses Nationwide Have Faced Increased ADA Lawsuits Driven by Tester Plaintiffs and Their Counsel

1. The number of federal lawsuits under Title III of the ADA has exploded over recent years. In 2013, there were 2,722 such lawsuits.[2] That number has increased to more than 10,000 annually over the past several years. *Id*. Last year, that number was 11,452—a 320%

[2] *See* Minh Vu, Kristina Launey, and Susan Ryan, *ADA Title III Federal Lawsuit Filings Hit An All Time High*, Seyfarth Shaw LLP (Feb. 17, 2022), tinyurl.com/2021-ADA.

increase in eight years. *Id*. The vast majority of these lawsuits come from federal courts in three states: California, New York, and Florida. In 2021, 5,930 ADA Title III lawsuits were filed in California alone. *Id*.

Chart 1: ADA Title III Cases 2013-2021[3]



The Administrative Office of the U.S. Courts has itself commented on the explosion of ADA litigation. It calculated a 395% increase in ADA case filings between 2005 and 2017.[4] The burden on district court dockets is substantial. In the final year of the Administrative Office study, ADA cases amounted to four percent of the total civil docket. *Id*. But this impact is not shared equally. District courts in California, New York, and Florida handle more than half of these cases. *Id*.

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[3] Vu, Launey and Ryan, *supra* n.2.

[4] *See Just the Facts: Americans with Disabilities Act*, U.S. Courts, (July 12, 2018), https://www.uscourts.gov/news/2018/07/12/just-facts-americans-disabilities-act.

What explains the exponential increase in Title III lawsuits? Are places of public accommodation 320% *less* accessible than they were in 2013? Of course not. Are California, New York, and Florida disproportionately home to non-compliant businesses? Doubtful. Rather, the reason for this explosion in ADA Title III litigation—and its geographic distribution—is the advent of "tester" plaintiffs, like Respondent, and their counsel who often consider themselves a "private attorney general." *Laufer v. Arpan LLC*, 29 F.4th 1268, 1290 (11th Cir. 2022) (Newsom, J., concurring). Respondent admits that, in her view, ADA enforcement depends on "a small number of private plaintiffs" who "bring serial litigation" across the country. *Id.*

The statistics bear this out. Since January 1, 2013, five tester plaintiffs have filed more than 1,000 ADA lawsuits and another 12 have filed more than 500.[5] Dozens of others have filed more than 100 suits. This matches the observations of courts and commentators that the dramatic increase in ADA lawsuits is due to a small number of serial filers, who are able to drive disproportionate case filings in the jurisdictions they target. *See, e.g.*, *Arpan*, 29 F.4th at 1295 (Newsom, J., concurring) (commenting that Laufer has filed more than 600 suits in 16 states and the District of Columbia since 2018 and identifying hundreds of filings from two other tester plaintiffs, often represented by the same counsel); *Shayler v. 1310 PCH, LLC*, 51 F.4th 1015, 1018 (9th Cir. 2022) (collecting cases describing serial plaintiffs filing "abusive ADA litigation"); Administrative Office of U.S.

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[5] Based on a search of all ADA Civil Rights filings in federal court from January 1, 2013 through December 6, 2022 using Lexis' Lex Machina database. *See* https://law.lexmachina.com.

Courts, *supra* n.4 ("In Florida, 'testers' may be contributing to the growth in ADA case filings.").

2. Cases alleging violations of the Reservations Rule at issue in this case, 28 C.F.R. § 36.302(e)(1)(ii), are emblematic of the tester-litigation phenomenon. Since 2011, owners of "hotels and guest rooms" have been required by federal regulation to provide "enough detail to reasonably permit" disabled individuals to "assess independently whether a given hotel or guest room meets his or her accessibility needs." *Id.*; *see also* 75 F. Reg. 56236-01, at 56275 (Sept. 15, 2010). Yet in the first six years of the Reservation Rule's existence, only 10 complaints alleging a violation of the rule were filed in federal court.[6] Like other ADA cases, litigation exploded to 161 such cases in 2017, 651 in 2018, 914 in 2019, and topping out at 1,003 cases in 2020.[7]

The prevalence of tester plaintiffs is starkly apparent among the 3,499 total complaints identified as alleging

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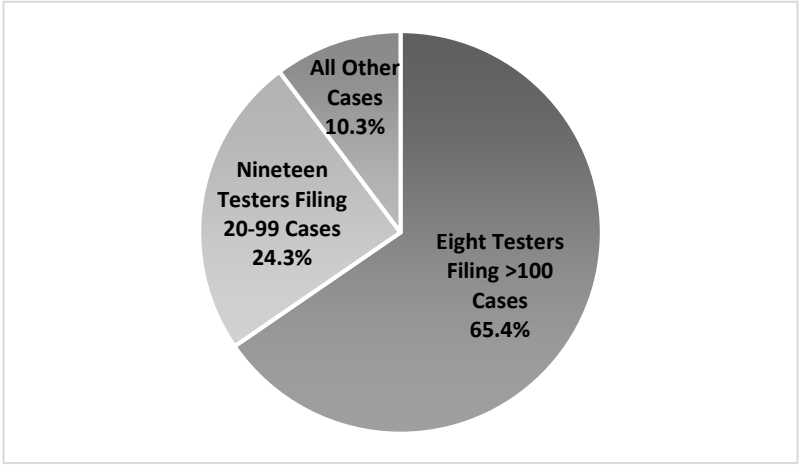
[6] Based on a search using Lexis' Lex Machina database for federal district court complaints citing 28 C.F.R. § 36.302(e)(1)(ii) and containing the Reservation Rule's language "enough detail to reasonably permit", filed between January 1, 2011 and December 6, 2022. Specifically, the totals were: 2011 (0 cases), 2012 (0 cases), 2013 (2 cases); 2014 (2 cases); 2015 (2 cases); 2016 (4 cases). *See* https://law.lexmachina.com/cases (last visited Dec. 8, 2022).

[7] This number likely undercounts the actual number of cases alleging violations of the Reservations Rule as it is limited to those specifically alleging the failure to provide "enough detail" to assess accessibility and citing the regulation. Courts have recognized that many tester plaintiffs file boilerplate "form complaints" which may not make the specific bases of each alleged ADA violation clear. *E.g.*, *Peters v. Winco Foods, Inc.*, 320 F. Supp. 2d 1035, 1040-41 (E.D. Cal. 2004).

a violation of the Reservations Rule since 2011. Respondent (with 574 cases) leads the pack of tester plaintiffs, but seven others have filed more than 100 such cases.[8] Together, these eight frequent-filers account for 2,291 of the filed cases—an astounding 65.4%. Nineteen others have filed 20 or more cases, for a total of 849. As such, these 27 individuals accounted for nearly 90% of all Reservations Rule cases nationwide. Likewise, these tester plaintiffs are routinely represented by the same small group of counsel. Nine firms filed more than 100 cases. Respondent's counsel alone accounted for 526.[9]

Chart 2: Plaintiffs in Reservations Rule Cases



[8] Lex Machina, *supra* n.6; https://law.lexmachina.com/reports/entities?cases_key=lx6XRXJvAgc. This data is also reflected in Chart 2.

[9] Lex Machina, *supra* n.6; https://law.lexmachina.com/reports/firms?cases_key=lx6XRXJvAgc.

II. Tester Plaintiffs' Abusive Litigation Strategy Disproportionately Harms Small Businesses

1. The ADA was passed in 1990 to create "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(2). Title III of the ADA accordingly requires 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.* § 12182(a). *Amici* and businesses nationwide strongly support this anti-discrimination principle.

The problem, however, is that the "unintended consequences" of the ADA has been a proliferation of "widespread abuse" by a small cadre of tester plaintiffs and their counsel responsible for serial litigation. *Shayler*, 51 F.4th at 1017. The impetus of these serial lawsuits is not to benefit disabled patrons who actually intend to frequent businesses. Rather, given the statutory fee-shifting provision, 42 U.S.C. §§ 2000a-3(a)-(b), the "current ADA lawsuit binge is driven by the economics of attorney's fees." *Shayler,* 51 F.4th at 1018 (alteration adopted, citation omitted); *see also* H.R. Rep. 115-539 at 6 (2018) (surveying court decisions remarking that "the ADA's statutory scheme … has resulted in an explosion of private ADA-related litigation that is primarily driven by the ADA's attorneys' fee provision").[10] As many courts have commented, "[t]his type of shotgun

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[10] *See also* U.S. Chamber of Commerce, Institute for Legal Reform, *How Small Businesses are Targeted with Abusive ADA Lawsuits*, (Oct. 12, 2022), https://instituteforlegalreform.com/blog/small-businesses-targeted-with-ada-lawsuits/.

litigation undermines both the spirit and purpose of the ADA" because "the means for enforcing the ADA (attorney's fees) have become more important and desirable than the end (accessibility for disabled individuals)." *Brother v. Tiger Partner, LLC*, 331 F. Supp. 2d 1368, 1375 (M.D. Fla. 2004).

2. The Nation's small businesses have been disproportionately impacted by the litigation tactics of tester plaintiffs and their counsel. Small business owners often learn of alleged (unknown) non-compliance when they get notice that they have been sued by a tester plaintiff, because the ADA does not provide attorneys' fees absent a complaint. *See Molski v. Mandarin Touch Restaurant*, 347 F. Supp. 2d 860, 863 (C.D. Cal. 2004); *Rodriguez v. Investco, L.L.C.*, 305 F. Supp. 2d 1278, 1281-82 (M.D. Fla. 2004); U.S. Chamber, Institute for Legal Reform, *supra* n.10 (describing "monetary incentive for plaintiffs' lawyers to quickly file claims instead of notifying business owners that they are not in compliance with the ADA").

Many small business owners lack the time and resources necessary to defend a fact-intensive litigation and, accordingly, quickly pay to settle these cases. *See, e.g.*, *Molski*, 347 F. Supp. 2d at 863 (describing "cottage industry" of ADA litigants filing lawsuits "requesting damage awards" under state law "that would put many of the targeted establishments out of business"). These quick settlements even occur where multiple ADA inspectors cannot "agree on what, if anything" a business had done wrong, making it "impossible for the restaurant to provide any remedies" in response to the alleged violation. U.S. Chamber, Institute for Legal Reform, *supra* n.10. Given the prospect of "quick cash settlements," tester plaintiffs and their attorneys are incentivized to

target small businesses. This creates a repeating cycle responsible for the proliferation of this litigation. *E.g.*, Cal Civ. P. Code § 425.55(a)(2) (finding that "these lawsuits are frequently filed against small businesses on the basis of boilerplate complaints, apparently seeking quick cash settlements rather than correction of the accessibility violation").[11]

The proliferation of ADA lawsuits has not been good for anyone, other than a small number of opportunistic plaintiffs' attorneys who file hundreds of these lawsuits on behalf of tester plaintiffs. These cases are almost never resolved on the merits. Rather, given the threat of attorneys' fees and expensive litigation, these cases routinely settle for "quick cash" rather than correction. Cal Civ. P. Code § 425.55(a)(2); *see also Rodriguez*, 305 F. Supp. 2d at 1281 n.12. This litigation strategy increases case filings and funds more abusive lawsuits, but it does little if anything to actually improve access for disabled patrons. Indeed, under the decision below and others like it, businesses face these threats not from their own patrons, but a small group of testers at home armed with a laptop and internet connection (potentially thousands of miles away), seeking out businesses to sue without any desire to even visit.

III. The Existing Circuit Split Encourages Forum Shopping

1. The lower courts' struggle to resolve tester plaintiffs' efforts to push the boundaries of Article III standing has resulted in a circuit split and forum shopping.

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[11] *See also* Amy Yee, *U.S. Businesses Get Hit With Record Numbers of Disability Lawsuits*, Bloomberg (April 14, 2022), https://tinyurl.com/Bloomberg041422.

As the Second, Fifth, and Tenth Circuits have rejected Article III standing under circumstances like those here,[12] tester plaintiffs have shifted their attention and used their opportunistic leverage to file suits and gain settlements in the First and Eleventh Circuit, which have approved of Article III standing.[13]

Recent Reservations Rule cases serve as a stark example. Since the Eleventh Circuit's March 2022 decision in *Arpan*, 72% of Reservations Rule cases were filed in Florida federal courts.[14] Nearly all of the remaining cases (24% total) were filed by tester plaintiffs in the District of Massachusetts and have all settled (many after the decision below, which aligned the First Circuit with the Eleventh Circuit). This disparity has no explanation rationally related to any measure of actual accessibility of public accommodations. It defies belief that nearly all hotels purportedly failing to provide "enough detail" about accessibility are located in Florida and Massachusetts (two states which account for less than nine percent of both the country's population and of hotel properties nationwide).[15]

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[12] *See* Pet. 5 (citing *Harty v. W. Point Realty, Inc.*, 28 F.4th 435, 434-44 (2d Cir. 2022); *Laufer v. Looper*, 22 F.4th 871, 879-81 (10th Cir. 2022); *Laufer v. Mann Hospitality L.L.C.*, 996 F.3d 269, 273 (5th Cir. 2021)).

[13] *See Arpan*, 29 F.4th at 1273-75; Pet. App. 19a.

[14] Lex Machina*, supra* n.6. Specifically, of 98 cases, 33 were filed in the Southern District of Florida, 30 in the Middle District of Florida, and 8 in the Northern District of Florida.

[15] United States Census Bureau, *State Population Totals*, https://www.census.gov/data/tables/time-series/demo/popest/2020s-

The reason for the disparity is forum shopping. The results speak for themselves. Following circuit precedent, district courts in some parts of the country have denied motions to dismiss that would have been granted had they been filed in other jurisdictions. *Compare, e.g.*, *Lugo v. Island Harbor Beach Club, LLC*, 2022 WL 1773973, *2 (M.D. Fla. June 1, 2022) ("Lugo's standing turns on whether the emotional injury he suffered from visiting the reservation systems is a sufficient injury in fact. Under *Laufer v. Arpan, LLC*,[ ] it certainly is."), *with Laufer v. Red Door 88, LLC*, 2022 WL 474698, *3 (D. Colo. Feb. 16, 2022) (granting motion to dismiss for lack of standing, holding that "[t]his case is no different [than *Laufer v. Looper*]"). This forum shopping problem is made even worse because theories of standing now approved by the First and Eleventh Circuits do not require tester plaintiffs to allege (let alone prove) a desire to actually visit the businesses they sue. Tester plaintiffs and their counsel can simply locate new defendants in vulnerable jurisdictions through the internet.

Left unconstrained, tester plaintiffs will continue to target new defendants in these regions from elsewhere. Under the rationale of the First and Eleventh Circuits, these testers have standing to sue defendants in those circuits even if they have no intention of ever traveling there. At the same time, businesses located within the Second, Fifth, and Tenth Circuits are largely protected from such suits. This leaves businesses in some states subject to a different interpretation of the limits of Article III than those in other states. But it is a "necessity"

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state-total.html (last visited Dec. 6, 2022); American Hotel & Lodging Association, *Morning Consult Intelligence*, https://ahla.morningconsultintelligence.com/ (last visited Dec. 6, 2022).

that the Constitution be applied uniformly "throughout the whole United States." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347-48 (1816). This Court's review is urgently needed to harmonize the law.

IV. This Court's Review is Needed to Clarify Tester Standing

1. The proliferation of abusive ADA Title III litigation and ease of forum shopping in light of the circuit split is reason enough for this Court to grant review. That review also presents an opportunity to provide much-needed clarity on the requirements for tester plaintiffs to have standing under Article III.

In *Spokeo*, this Court rejected the Ninth Circuit's determination that a violation of statutory rights (under the Fair Credit Reporting Act ("FCRA")) could confer standing. *See* 578 U.S. at 342 ("Robins cannot satisfy the demands of Article III by alleging a bare procedural violation."). This made clear that "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* at 341. To determine whether a particular harm meets this injury in fact requirement, lower courts were instructed to consider "both history and the judgment of Congress." *Id.* at 340-341. But, the judgment of Congress in "identifying and elevating intangible harms does not mean 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." *Id.* at 341.

Just last year, this Court's decision in *TransUnion* expanded upon these Article III requirements. The plaintiff there again alleged violations of certain provision of the FCRA. This Court emphasized that "under

Article III, an injury in law is not an injury in fact." *TransUnion*, 141 S. Ct. at 2205. This Court was clear: "An 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'" *Id*. at 2214 (citation omitted). A plaintiff asserting an informational injury must identify "'downstream consequences' from failing to receive the required information." *Id*. (citation omitted). Based on these principles, the Court held that TransUnion's failure to provide a summary-of-rights form and other credit information which allegedly "deprived [class members] of their right to receive information in the format required by statute" did not confer standing to sue because the alleged violation did not "cause them a harm with a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." *Id*. at 2213 (citing *Spokeo*, 578 U.S. at 341).

2. The court below acknowledged *Spokeo* and *TransUnion*, but determined that it was bound by *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), which briefly addressed tester standing in the context of a racial steering claim. *See* Pet App. 13a-15a. There, this Court held that a black tester named Sylvia Coleman had standing to sue for discrimination under the Fair Housing Act. *See Havens Realty*, 455 U.S. at 373-74. Because she was falsely told on four occasions that apartments were not available for her, whereas white persons were told that apartments were available for them, the Court held Ms. Coleman had suffered "specific injury" under the applicable statutory provision (which required landlords to provide truthful information regarding the availability of housing) even though she did not have "any intention of buying or renting a home." *Id*. at 374.

The abbreviated reasoning of *Havens Realty* may be in some tension with the more robust analytical framework of modern standing jurisprudence insofar as the Court's opinion can be read as grounding standing in an alleged "specific injury" based only on violation of a statutory right, without also considering *concrete* harm. *See* Pet. App. 18a-19a (finding *Havens Realty* "in tension with newer" decisions); *Arpan*, 29 F.4th at 1276 (Jordan, J., concurring) ("*Havens Realty* may be inconsistent (in whole or in part) with current standing jurisprudence.").

But regardless of methodology, the *holding* in *Havens Realty* is readily distinguishable from the decision below because Ms. Coleman visited a housing complex four times and personally suffered discriminatory treatment on the basis of race at each visit. *See Looper*, 22 F.4th at 879 (distinguishing *Havens Realty* on this basis). Respondent, in contrast, never visited Petitioner's property, was never provided false information by Petitioner, and never suffered discriminatory treatment on the basis of her disability. She received the same information available to everyone who would access Petitioner's website—disabled or not. Her claim to an "informational injury"—which the decision below found sufficient (Pet. App. 18a-19a)—is worlds apart from the actual discrimination experienced by Ms. Coleman in *Havens Realty*, and no different than the informational injury in *TransUnion* in which class members claimed they were deprived of information that they had a right to receive from the reporting agency. *See* 141 S. Ct. at 2205. In the absence of differential treatment, the failure to provide even legally required information does not alone suffice to create injury in fact.

3. "Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions." *TransUnion*, 141 S. Ct. at 2205 (quoting *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 332 (7th Cir. 2019) (Barrett, J.)). In its attempt to harmonize its ruling with this fundamental principle, the court below pointed to Respondent's allegation that she suffered "frustration and humiliation" at Petitioner's alleged failure to provide adequate information about the inn's accessibility features. Pet. App. 26a. The Eleventh Circuit similarly characterized Respondent's "emotional" injury as "stigmatic harm" that sufficed for standing purposes at the pleading stage. *See Arpan*, 29 F.4th at 1274-75.

But Respondent chose to go searching for websites that purportedly failed to provide "enough detail" about accommodations she did not want to use. She was looking for alleged regulatory violations. Petitioner's website provided the same information to everyone, regardless of ability or disability. Respondent's subjective reactions to website disclosures do not bear a "close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *TransUnion*, 141 S. Ct. at 2204; *see also Arpan*, 29 F.4th at 1272-73 (explaining why "neither intentional nor negligent infliction of emotional distress is a sufficiently close analogue"). And her frustration that Petitioner and other businesses have, in her view, failed to follow the ADA's implementing regulations is insufficient because the abstract desire to seek "vindication of the rule of law . . . does not suffice" to establish standing. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 106 (1998).

The lower courts' contrary conclusion denigrates *Havens Realty* (in which the plaintiff actually was a victim

of racially discriminatory treatment) while rendering Article III a dead letter. If merely identifying the alleged failure of a business to follow the law were sufficient to confer standing on any person who is an intended beneficiary of a statutory or regulatory provision, *TransUnion* would have been resolved differently by the mere pleading that class members suffered emotional harm in receiving incorrectly formatted credit information. Tester plaintiffs cannot so easily evade the *concrete* injury requirement that is well-established in this Court's modern Article III jurisprudence. Simply put, the court below failed to heed this Court's admonishment that "courts must be more careful to insist on the formal rules of standing, not less so." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011).

This Court should intervene to resolve this important dispute on an issue of frequent, and likely growing, litigation that disproportionately affects small businesses.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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