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 *AMICUS CURIAE* NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES IN SUPPORT OF PETITIONER

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, *Amicus* National Association of Home Builders of the United States ("NAHB") states that it is a non-profit 501(c)(6) corporation incorporated in the State of Nevada, with its principal place of business in Washington, D.C. NAHB has no corporate parents, subsidiaries or affiliates, and no publicly traded stock. No publicly traded company has a ten percent or greater ownership interest in NAHB.

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INTEREST OF *AMICUS CURIAE*[1]

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 is providing and expanding opportunities for all people to have safe, decent, and affordable housing. Founded in 1942, NAHB is a federation of more than 800 state and local associations. About one-third of NAHB's more than 140,000 members are home builders or remodelers, and construct 80% of all new homes constructed in the United States. NAHB's Multifamily Builders Council represents the specific interests of builders, developers, owners, and managers of all sizes and types of condominiums and rental apartments.

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.

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae's* intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

A self-proclaimed compliance "tester" alleging discrimination under the Americans with Disabilities Act ("ADA") must demonstrate a cognizable injury-in-fact to survive a facial challenge to its standing. Like any plaintiff, a "tester" is entitled to certain safeguards so that meritorious claims are not dismissed prematurely.

However, even with those safeguards intact, Plaintiff tester Deborah Laufer ("Laufer") has failed to plead facts that establish a cognizable Article III injury. U.S. Const., art. III. Unlike other informational statutes, the ADA does not require the disclosure of information that Laufer claims. In addition, purged of any intent to travel, Laufer's actions are simply efforts she took to support her litigation tactics.

ARGUMENT

I. AT THE PLEADING STAGE PLAINTIFFS HAVE A LOW BAR TO ESTABLISH STANDING, BUT IT IS MATERIAL

This case comes to the Court as a facial challenge to Deborah Laufer's ("Laufer") standing under 12(b)(1). *Laufer v. Acheson Hotels*, LLC, 50 F.4th 259, 265 (1st Cir. 2022). As such, Laufer has a low bar to establish her standing. *Attias v. Carefirst, Inc.,* 865 F.3d 620, 622 (D.C. Cir. 2017). She has not met that bar. Laufer has stated a cause of action, but not provided why a violation of the statute personally injures her.

A. Federal Rule of Civil Procedure 8 and Article III Govern Standing Allegations

Federal Rule of Civil Procedure 8(a)(2) provides that a complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). That statement must simply provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Yet, "[s]pecific facts are not necessary; the statement need only give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atl. Corp.,* 550 U.S. at 555) (internal quotation marks omitted). As this Court has explained:

> This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. . . . Other provisions of the Federal Rules of Civil Procedure are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(e)(1) states that "[n]o technical forms of pleading or motions are required," and Rule 8(f) provides that [a]ll pleadings shall be so construed as to do substantial justice.

Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512-14 (2002) (internal quotation marks omitted). The Federal Rules of Civil Procedure

> were designed in large part to get away from some of the old procedural booby traps which

> common-law pleaders could set to prevent unsophisticated litigants from ever having their day in court. If rules of procedure work as they should in an honest and fair judicial system, they not only permit, but should as nearly as possible guarantee that bona fide complaints be carried to an adjudication on the merits.

Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 373 (1966).

However, Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It requires enough factual content for a court to draw reasonable inferences. *Id*. Moreover, Rule 8 does not relieve the plaintiff of its responsibility to demonstrate Article III standing to the court's satisfaction. U.S. Const. art. III, § 2.

With respect to standing, the plaintiff's complaint must provide "general factual allegations of injury resulting from the defendant's conduct . . .." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *Warth v. Seldin*, 422 U.S. 490, 518 (1975). However, the plaintiff need not "allege all of the facts supportive of the chain of causation upon which his allegation of injury rests" because that "would return [the courts] to the unpredictable and fact-laden system of code pleading." *American Soc'y of Travel Agents, Inc. v. Blumenthal*, 566 F.2d 145, 156 (D.C. Cir. 1977) (Chief Judge Bazelton dissenting). Thus, when combined, Fed. R. Civ. P. 8 and Article III do not require a technical form to plead standing. A plaintiff is simply required to allege enough facts to allow a court (by

making reasonable inferences) to satisfy itself that the plaintiff is entitled to judicial action.

B. A Plaintiff's Injuries Need Not Be Significant

This Court has explained that while an "interest" in a problem does not suffice as an injury, the harm incurred by a plaintiff need not be "significant." It has "allowed important interests to be vindicated by plaintiffs with no more at stake in the outcome of an action than a fraction of a vote, *see Baker v. Carr*, 369 U.S. 186 (1962); a $5 fine and costs, *see McGowan v. State of Maryland*, 366 U.S. 420 (1961); and a $1.50 poll tax, *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966)." *United States v. Students Challenging Regulatory Agency Procedures* (*SCRAP*), 412 U.S. 669, 690 n.14 (1973) (additional citations omitted). "'The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.'" *SCRAP,* 412 U.S. at 690 n.14. (quoting Kenneth C. Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968)). In other words, "[i]njury-in-fact is not Mount Everest." *Danvers Motor Co., Inc. v. Ford Motor Co.,* 432 F.3d 286, 294 (3d Cir. 2005).

Furthermore, plaintiffs do not need to allege monetary harm to support the injury-in-fact requirement. The injury only needs to be concrete and particularized. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), *as revised* (May 24, 2016). This Court has recognized injuries based on such things as recreation, aesthetics, electoral districts, and unfair competition.

Friends of the Earth, Inc. v. Laidlaw Env'tl Servs. (TOC), Inc., 528 U.S. 167, 183 (2000); *Northeastern Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville,* 508 U.S. 656, 666 (1993); *United States v. Hays,* 515 U.S. 737, 744–745 (1995). And those injuries can be intangible. *Spokeo*, 578 U.S. at 340 (explaining that "intangible injuries can . . . be concrete.").

II. THE STANDARDS OF REVIEW FOR FACIAL AND FACTUAL CHALLENGES TO STANDING SHOULD NOT BE MERGED

In responding to a complaint, a defendant that wishes to challenge a plaintiff's standing has two options. The defendant may make either a *facial* or a *factual* challenge to the allegations. The judicial standards of review differ depending on the nature of the defendant's challenge. *See Constitution Party of Pennsylvania v. Aichele,* 757 F.3d 347, 357 (3d Cir. 2014) ("A district court has to first determine, however, whether a Rule 12(b)(1) motion presents a "facial" attack or a "factual" attack on the claim at issue, because that distinction determines how the pleading must be reviewed.").

If a defendant makes a facial challenge, then a court need only "look to the complaint and see if the plaintiff has sufficiently *alleged* a basis of subject matter jurisdiction." *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009) (emphasis in original); *Lawrence v. Dunbar*, 919 F.2d 1525, 1528 (11th Cir. 1990); *Menchaca v. Chrysler Credit Corp.,* 613 F.2d 507, 511 (5th Cir. 1980). Furthermore, "courts must accept as true all material allegations of the complaint, and must construe the

complaint in favor of the complaining party." *Warth,* 422 U.S. at 501. Additionally, at this stage, the courts "presume[] that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 889 (1990).

In contrast, a defendant may also challenge the plaintiff's standing factually by attacking the underlying assertion of jurisdiction in the complaint. A factual attack "allows the defendant to present competing facts." *Hartig Drug Co. Inc. v. Senju Pharm. Co. Ltd.,* 836 F.3d 261, 268 (3d Cir. 2016); s*ee also Houston v. Marod Supermarkets, Inc.,* 733 F.3d 1323, 1336 (11th Cir. 2013) (providing that a court can review extrinsic evidence); *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991) (explaining that a court may "consider evidence outside the pleading."). Furthermore, a court "need not presume the truthfulness of the plaintiffs' allegations." *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

Consequently, when faced with a factual Fed. R. Civ. P. 12(b)(1) motion to dismiss for standing, a plaintiff is forced to provide a factual response. The Court recognized this in *Warth* when it explained there are instances where the trial court may allow the plaintiff to provide evidence beyond the complaint to further its assertion of standing. *Warth*, 422 U.S. at 501. Finally, when a defendant raises a factual challenge to standing a court is naturally free to weigh the evidence. *See Land v. Dollar*, 330 U.S. 731, 735 n.4, (1947) (explaining that "[w]hen a question of the District Court's jurisdiction is raised, . . . [a] court may inquire by affidavits or otherwise, into the facts as

they exist."); *Houston,* 733 F.3d at 1336 (explaining that when faced with a factual challenge a court may weigh the evidence and is free to weigh the facts.); *see also Laurens v. Volvo Cars of N. Am., LLC*, 868 F.3d 622, 625 (7th Cir. 2017) (explaining that if "a defendant raises a factual challenge to standing, the plaintiff bears the burden of proving standing by a preponderance of the evidence."); *Superior MRI Servs., Inc. v. All. Healthcare Servs., Inc.*, 778 F.3d 502, 504 (5th Cir. 2015) (same); *McCrory v. Adm'r of Fed. Emergency Mgmt. Agency of U.S. Dep't of Homeland Sec.,* 600 F. App'x 807, 808 (2d Cir. 2015) (same); *United States v. $8,440,190.00 in U.S. Currency*, 719 F.3d 49, 57 (1st Cir. 2013) (same).

Thus, plaintiffs confronting facial 12(b)(1) challenges to standing are provided certain safeguards (*i.e.*, the allegations are presumed true and that they embrace specific facts to support the claim) that are not available when faced with a factual challenge. These safeguards are at risk if courts do not respect the differences between facial and factual challenges to standing. If a court were to weigh each party's arguments or require a plaintiff to provide evidence in response to a facial challenge, then many proper lawsuits would be dismissed before the discovery phase.

As this case comes to the Court as a facial challenge to the plaintiff's standing[2], the Court must recognize the safeguards that come with it. However,

[2] *Laufer*, 50 F.4th at 265.

even with those safeguards in place, the plaintiff has failed to state a sufficient injury in this matter.

III. THE ADA DOES NOT SUPPORT LAUFER'S CLAIMED INFORMATIONAL INJURY

Title III of the ADA prohibits discrimination on the basis of disability in places of public accommodation. 42 U.S.C. §12182(a). Title III does not require businesses to disclose information online detailing the accessibility features found at their places of public accommodation. Nevertheless, Laufer claims discriminatory conditions on Defendant Acheson Hotels, LLC's ("Acheson") website "deprive her of the information required to make meaningful choices for travel." Am. Compl. ¶ 14 (J.A. 10a). With no statutory right to online information identifying and describing accessibility features and no intention to use that information in her travels, Laufer has suffered no injury.

This Court has consistently held that the denial of access to information subject to disclosure qualifies as an injury-in-fact when coupled with a credible claim that the information would be helpful to the plaintiff. In *Public Citizen v. Dep't of Justice*, 491 U.S. 440 (1989), plaintiffs were denied access to information under the Federal Advisory Committee Act ("FACA"). FACA stipulates that federal advisory committee minutes, records, reports, and other documents "shall be available for public inspection." 5 U.S.C. App. 2 § 10(b). The information plaintiffs requested, if disclosed, would have helped them to "participate more effectively in the judicial selection process."

Public Citizen, 491 U.S. at 449. The adverse effects plaintiffs experienced from the denial of that information supported their Article III standing. *Public Citizen,* 491 U.S. at 449.

In *FEC v. Akins*, 524 U.S. 11 (1998), plaintiff voters filed suit against the Federal Election Commission charging the Commission with failing to make public "political committee" donor lists and campaign-related contributions and expenditures. The Federal Election Campaign Act of 1971 ("FECA") reads "a political committee shall keep an account of…all contributions," "shall file reports of receipts and disbursements," and "shall file a statement of organization." 2 U.S.C §§ 432(c), 434(a)(1), 433(b), respectively.[3] "Any person" who believes a violation of the reporting requirements has occurred may file a complaint." 2 U.S.C. § 437g(a)(1).[4] This court explained that FECA "is a statute which, . . . does seek to protect individuals such as respondents from the kind of harm they say they have suffered, *i.e.*, failing to receive particular information about campaign-related activities" *Akins,* 524 U.S. at 22. Because the information would have helped plaintiffs "evaluate candidates for public office," the inability to access that public information resulted in a "concrete and particular" injury. *Id.* at 21; *see also Spokeo*, 578 U.S. at 341 (holding that "Congress' role 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

[3] Now codified at 52 U.S.C. § 30104, *et seq.* (June 6, 2023).
[4] *Id.*

to sue to vindicate that right. Article III standing requires a concrete injury even in the context of a statutory violation.").

Public Citizen and *Akins* make clear that Congress uses explicit language[5] when creating a public right to certain information, the denial of which may give rise to an informational injury. *See Wilderness Soc'y, Inc. v. Rey*, 622 F.3d 1251, 1259 (9th Cir. 2010) (concluding that Congress must articulate a clear right to certain information to sustain standing on the grounds of an informational injury); *Animal Legal Defense Fund, Inc. v. Espy*, 23 F.3d 496, 502 (D.C. Cir. 1994) (holding that Article III standing by virtue of informational injury comes about only where a statute "explicitly create[s] a right to information.").

Laufer claims the "plain and unambiguous language" of ADA sections 12182(a) and

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[5] Examples of other federal statutes with public disclosure requirements include the Freedom of Information Act, 5 U.S.C. § 552(a), § 552(a)(3)(A), § 552(b) ("Each agency *shall make available to the public*" records and materials in the possessions of federal agencies on demand unless the requested materials fall within a statutory exemption) (emphasis added)); the Endangered Species Act, 16 U.S.C. § 1539(c) ("Information received by the Secretary as a part of any [permit] application *shall be available to the public* as a matter of public record at every stage of the [permit] proceeding") (emphasis added)); and The Government in the Sunshine Act, 5 U.S.C. § 552b(b), § 552(b)(f)(2) ("[E]very portion of every [open] meeting of an agency *shall be open to public observation*" and for closed meetings the agency shall "make promptly available to the public . . . the transcript, electronic recording, or minutes") (emphasis added)).

12182(b)(2)(A)(ii) are "directly on point and unambiguously spell out all the elements of a cause of action" for an informational injury. Pl.'s Mem. Opp'n Def.'s Mot. Dismiss at 7, 10 (D. Me. Feb. 25, 201, ECF No. 16). The statutory text of neither section supports Laufer's position.

Section 12182(a) of the ADA lays out the "[g]eneral 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). This non-discrimination rule is not the all-encompassing information disclosure provision Laufer makes it out to be. Though the ADA's purpose is "sweeping" and its mandate is "comprehensive," its reach is not unlimited. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001); *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011). Unlike the statutes in *Public Citizen* and *Akins*, nowhere does Section 12182(a) mandate that the accessibility features found at Acheson's Coast Village Inn and Cottages be publicly disclosed. Thus, she had no right to the information she claims and suffered no cognizable injury for being denied it.

Laufer's reliance on ADA section 12182(b)(2)(A)(ii) to make out an informational injury also fails because she never asked Acheson to modify its reservation practices prior to filing suit. *See Mass. v. E*Trade Access Inc.*, 464 F. Supp. 2d 52, 58 (D. Mass. Feb. 21, 2006) (Plaintiff bears the burden of establishing a request for a reasonable modification was made).

Under section 12182(b)(2)(A)(ii), discrimination includes "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary[.]" If Acheson had rebuffed a "reasonable modification" request from Laufer to disclose online the accessibility features available at the Coast Village Inn and Cottages she may have suffered an injury. However, because a modification request was never made her informational injury theory under section 12182(b)(2)(A)(ii) also must fail.

Thus, sections 12182(a) and 12182(b)(2)(A)(ii) do not provide Laufer with the basis to claim an informational injury.

IV. LAUFER DISCLAIMED THE FACTS THAT PROVIDED HER STANDING

Even if the Court finds the ADA provides for an informational injury, Laufer has not claimed a particularized injury sufficient for Article III standing. The "irreducible constitutional minimum" for standing is well established: (1) the plaintiff "must have suffered an 'injury in fact'–an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) 'actual or imminent, not 'conjectural or hypothetical[;]'" (2) "there must be a causal connection between the injury and the conduct complained of"; and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be redressed by a favorable decision.'" *Lujan,* 504 U.S. at 560-561 (1992) (internal citations omitted).

In *TransUnion,* the Court emphasized that "Congress's creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III." *TransUnion LLC v. Ramirez,* ___ U.S. at ___, 141 S. Ct. 2190, 2205 (2021). This Court noted that "under Article III, an injury in law is not an injury in fact. Only those plaintiffs who have been *concretely harmed* by a defendant's statutory violation may sue that private defendant over that violation in federal court." *Id.* Even a "self-appointed representative of the public interest; . . . must show that the defendant's conduct has affected [it] in a 'personal and individual' way." *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 266 F. Supp. 3d 297, 306 (D. D.C. July 24, 2017) (quoting *Lujan*, 504 U.S. at 560, n.1). Consequently, a plaintiff cannot be a mere bystander or interested third-party, or a self-appointed representative of the public interest; he or she must show that defendant's conduct has affected them in a "personal and individual way." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

In her initial Complaint, Laufer provided facts illustrating her disability and asserted that she "visited the websites for the purpose of reviewing and assessing the accessible features at the Property and ascertain whether they meet the requirements of 28 C.F.R. Section 36.302(e) and her accessibility needs." Compl. ¶ 10, *Laufer v. Acheson Hotels, LLC*, No. 2:20-cv-00344 (Sept. 24, 2020). Moreover, she explained how the websites failed to provide the necessary information. *Id.* Finally, she asserted that "[t]he

violations present at Defendant's websites infringe Plaintiff's right to travel free of discrimination and deprive her of the information required to make meaningful choices for travel. Plaintiff has suffered, and continues to suffer, frustration and humiliation as the result of the discriminatory conditions present at Defendant's website." *Id.* ¶ 13. In the initial Complaint, Laufer provided no specific facts pertaining to her plans to travel.

Subsequently, Laufer amended her Complaint. In her Amended Complaint, Laufer added particularized facts pertaining to her travel. She explained how she planned "to drive from Florida to Maine, then westward through the Northern States to Colorado, then through the Southern States to Florida." Am. Compl. ¶ 10 (J.A. 6a). Further, while in Maine she might have looked for a bed and breakfast to own. *Id.* Moreover, while in Maine she would need some place to stay, and she was allegedly harmed because the hotel failed to provide the accessibility information she needed to make an informed decision about where to stay. *Id.* Finally, like the initial Complaint, Laufer provided that

> [t]he violations present at Defendant's websites infringe Plaintiff's right to *travel free of discrimination* and deprive her of the information required to *make meaningful choices for travel.* Plaintiff has suffered, and continues to suffer, frustration and humiliation as the result of the discriminatory conditions present at Defendant's website. By continuing to operate the websites with

> discriminatory conditions, Defendant contributes to Plaintiff's sense of isolation and segregation[.]

Id. ¶ 14 (emphasis added) (J.A. 10a).

Accordingly, her need for information, "frustration and humiliation" and "sense of isolation and segregation" are all tied to her claims of traveling to Maine. Laufer, however, has disclaimed her intent to travel. *Laufer*, 50 F.4th at 267, n.3. Therefore, she has disclaimed any particularized harm due to not being able to make "meaningful choices" and any "frustration," "humiliation," "sense of isolation" or "segregation" due to the website's lack of information.

V. LAUFER'S ACTIONS IN SUPPORT OF LITIGATION FAIL TO PROVIDE A COGNIZABLE INJURY

Once purged of its facts pertaining to her travel to Maine, Laufer's Amended Complaint simply provides information pertaining to her system for maintaining lawsuits around the country. At the point that an injury shifts from particularized to merely an interest, a plaintiff no longer has a justiciable case. Furthermore, a plaintiff "must maintain their personal interest in the dispute at all stages of litigation. *TransUnion,* ___ U.S. at ___, 141 S. Ct. at 2208.

This Court has found repeatedly that to meet Article III's requirements, a plaintiff "must show that [she] personally suffered some actual or threatened injury as a result of the putatively illegal conduct of

the defendant." *Gladstone Realtors v. Vill. of Bellwood,* 441 U.S. 91, 99 (1979) (citing *Duke Power Co. v. Carolina Env'tl Study Group, Inc.*, 438 U.S. 59, 79 (1978)); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 260-261 (1977); *Warth v. Seldin,* 422 U.S. 490, 499 (1975); *Linda R.S. v. Richard D.,* 410 U.S. 614, 617 (1973)). "Otherwise, the exercise of federal jurisdiction 'would be gratuitous and thus inconsistent with the Art. III limitation." *Gladstone Realtors,* 441 U.S. at 99 (citing *Simon v. E. Kentucky Welfare Rts. Org.,* 426 U.S. 26, 38 (1976).

But Laufer cannot demonstrate she has suffered a concrete harm in this case once she disclaimed any intention of visiting Acheson's Coast Village Inn and Cottages.[6] Laufer has brought over 600 federal lawsuits against hotel owners and operators nationwide. *Laufer v. Rasmus,* 2023 WL 2754710, *1 (7th Cir., April 3, 2023) (Order staying appeal pending outcome of the Supreme Court's decision in *Acheson Hotels, LLC v. Laufer*, No. 22-429). Moreover, her Amended Complaint provides that she has a "system" in place to periodically check the websites of all the defendants she has sued.[7] Thus, her "system" and routine checks are accurately described as efforts taken to support this and future litigation.

A party, however, cannot create an injury necessary to maintain a lawsuit from its "expenditure of resources on that very suit." *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990). Stated another

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[6] *Laufer*, 50 F.4th at 267, n.3.

[7] Stmt. of Deborah Laufer at ¶ 8 (Statement Made Pursuant to 28 U.S.C. § 1746) (J.A. 9a-10a).

way, the D.C. Circuit explained that the "diversion of resources to litigation or investigation in anticipation of litigation does not constitute an injury in fact sufficient to support standing." *Equal Rts. Ctr. v. Post Properties, Inc.*, 633 F.3d 1136, 1140 (D.C. Cir. 2011); s*ee e.g. El Paso Cnty., Texas v. Trump*, 982 F.3d 332, 343 (5th Cir. 2020); *Kennedy v. Ferguson*, 679 F.3d 998, 1002 (8th Cir. 2012); *Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers*, 141 F.3d 71, 79 (3d Cir. 1998).

Here, Laufer's "system" and checks are simply efforts (resources) expended in the "anticipation of litigation." *Equal Rts. Ctr.*, 633 F.3d at 1140. They are not an injury sufficient to support standing.

Similarly, an injury that is self-inflicted cannot establish standing under Article III because "[a] self-inflicted injury, by definition, is not traceable to anyone but the plaintiff." *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 866 (6th Cir. 2020). Here, Laufer's checks on the hotel website are efforts she has chosen to take. Such conduct, however, breaks the chain of causation since it is no longer "fairly traceable" to the alleged conduct of the Defendant.

Thus, once purged of facts pertaining to her travel, Laufer's Complaint is simply a recitation of actions taken to support her serial litigation tactic. Performing these tasks is not an injury that supports Article III standing.

CONCLUSION

Laufer faced a low bar to establish her Article III standing. Her Amended Complaint fails to reach that bar and should be dismissed for lack of standing.

Dated: June 12, 2023

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