

IN THE SUPREME COURT OF THE UNITED STATES

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No. 22-429

ACHESON HOTELS, LLC, PETITIONER

v.

DEBORAH LAUFER

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

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting neither party and that the United States be allowed 10 minutes of argument time, with both parties allowed 25 minutes of argument time. Petitioner and respondent consent to this motion.

This case presents the question whether respondent, a self-described "tester," has Article III standing to sue petitioner under Title III of the Americans with Disabilities Act of 1990

(ADA), 42 U.S.C. 12101 et seq. Title III prohibits disability discrimination by places of public accommodation, and it defines discrimination to include failing to make "reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford" a covered entity's "goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities," unless the modifications would "fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C. 12182(b)(2)(A)(ii).

Respondent specifically seeks to enforce the ADA as interpreted in a regulation known as the Reservation Rule, which the Department of Justice promulgated pursuant to the Attorney General's authority under the ADA. See 42 U.S.C. 12186(b). The Reservation Rule governs hotel reservation services and, as relevant here, requires that a hotel or other place of lodging "[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 [their] accessibility needs." 28 C.F.R. 36.302(e)(1)(ii). Respondent alleges that when she visited the website for the Coast Village Inn and Cottages, which petitioner owned, the website did not satisfy the Reservation Rule's requirements. The lower courts determined that respondent had no intention to make a reservation

or visit the Inn, but the court of appeals held that she nonetheless had Article III standing. See Pet. App. 11a n.3, 47a; see generally id. at 11a-32a. Respondent defends that ruling before this Court, while petitioner argues that respondent's lack of intent to visit the Inn defeats her Article III standing.

The United States has filed a brief as amicus curiae supporting neither party. The brief argues that the court of appeals correctly determined that a plaintiff who suffers a violation of a statutory right to be free from discrimination has Article III standing even if she subjected herself to the violation to test the defendant's compliance with the statute. But the brief further argues that the court erred in applying that principle to hold that respondent has standing because it misunderstood the nature of the right conferred by Title III and the Reservation Rule. The court took the view that the Reservation Rule gives respondent a right to accessibility information about the Inn even though she does not seek to use that information to reserve, or consider whether to reserve, a room. But in the view of the United States, Title III and the Rule do not create such a freestanding informational right; rather, they give individuals with disabilities a right of equal access to a hotel's reservation services, which respondent did not attempt to use. Thus, the brief argues, respondent lacks standing, though petitioner's broader attacks on tester standing lack merit. Finally, the brief argues that even

if respondent had standing when this suit was filed, her claims may now be moot.

The United States has a substantial interest in this Court's resolution of the question presented. Congress authorized the Attorney General to promulgate regulations to carry out the relevant provisions of Title III, and the Department of Justice issued the Reservation Rule on which respondent's suit relies. In addition, private suits -- including suits by testers -- are an essential complement to the federal government's enforcement of Title III and other antidiscrimination laws.

The United States has previously presented oral argument in cases raising Article III questions related to those presented here. See, e.g., TransUnion LLC v. Ramirez, 141 S. Ct. 2190 (2021) (No. 20-297); Spokeo, Inc. v. Robins, 578 U.S. 330 (2016) (No. 13-1339); First Am. Fin. Corp. v. Edwards, 567 U.S. 756 (2012) (No. 10-708) (per curiam). The United States has also presented oral argument in other cases concerning the scope and application of the ADA. See, e.g., PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) (No. 00-24) (Title III); Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999) (No. 98-536) (Title II); Murphy v. United Parcel Serv., Inc., 527 U.S. 516 (1999) (No. 97-1992) (Title I). The United States' participation in oral argument in this case accordingly may be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

AUGUST 2023