

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 SOUTHWESTERN LAW STUDENT
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RODRIGUEZ-FEE AND MICHAEL M. EPSTEIN,
IN ASSOCIATION WITH THE AMICUS PROJECT
AT SOUTHWESTERN LAW SCHOOL, AS AMICI
CURIAE IN SUPPORT OF THE RESPONDENT

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QUESTION PRESENTED

WHETHER A DISABLED CONSUMER'S INJURY UNDER THE AMERICANS WITH DISABILITIES ACT IS CONCRETE WHEN A HOTEL'S COMMERCIAL WEBSITE IS VOID OF CRITICAL ACCESSIBILITY INFORMATION, RESTRICTING INFORMED DECISIONS TO PLAN INTERSTATE TRAVEL.

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INTEREST OF AMICI CURIAE¹

Amici curiae respectfully submit this brief pursuant to Supreme Court Rule 37 in support of Respondent, Deborah Laufer. Jenny Rodriguez-Fee is a Clinical Professor of Law at Southwestern Law School and Director of the Children's Rights Clinic. Michael M. Epstein is a Professor of Law and the Director of the pro bono Amicus Project at Southwestern Law School. He is the Supervising Editor of the Journal of International Media & Entertainment Law, published by the Biederman Institute in cooperation with the American Bar Association. Amicus Philip Schuler is an upper-division J.D. candidate at Southwestern Law School with an extensive academic and professional interest in appellate and education law. Amici has no interest in any party to this litigation, nor do they have a stake in the outcome of this case other than their interest in the correct and consistent interpretation of constitutional law. Amici shares a strong interest in clarity and certainty in the lower courts' evaluation of standing for people with disabilities as they seek an equal footing in a world

¹ No counsel for any party has authored this brief in whole or in part, and no counsel or party has made any monetary contributions intended to fund the preparation or submission of this brief. Southwestern Law School provides financial support for activities related to faculty members' research and scholarship, which helped defray the cost of preparing this brief. (The school is not a signatory to the brief, and the views expressed here are those of the amici curiae). Otherwise, no person or entity other than the amici curiae or its counsel of record has made a monetary contribution intended to fund the preparation or submission of this brief.

where physical and informational obstacles have persisted over most of this nation's history.

SUMMARY OF THE ARGUMENT

The parties in this case dispute whether a person with disabilities, acting as an Americans with Disabilities Act (ADA) tester, has standing to sue for a hotel's omission of accessibility information on their website in violation of Title III of the ADA and Department of Justice's Reservation Rule. In determining standing, the Court looks to the personal stake of an individual. In support of Respondent, Deborah Laufer, this brief argues that Ms. Laufer suffered a concrete and particularized injury through the deprivation of her opportunity to plan, as a person with disabilities, interstate travel to the Acheson Hotel, LLC (petitioner) property. The restriction of her right to interstate travel injured Ms. Laufer, runs afoul of the ADA, violates an established social policy of truthful and accurate advertising, and erodes decades of progress since the ADA's enactment.

The ADA has served for over three decades to mandate equity in access and opportunities in nearly every facet of life from staying at a hotel, going to a restaurant, riding the bus, to opportunities in the workplace. 42 U.S.C. § 12182(b)(2)(iii). Activities, such as booking a hotel room for a person with mobility and visual challenges, require a personalized approach and strategy that differs from an individual who does not require the assistance of a wheelchair or who has higher visual acuity. Matthew Kwai-Sang Yau, et al., *Traveling with a Disability: More Than an Access Issue*, 31 ANNALS OF TOURISM RSCH., 946, 948

(2004). A person with disabilities relies on accessibility information to determine the facility suitability, feasibility, and practicability to support their needs. *Id.* Petitioner stripped Ms. Laufer of the ability to go through this planning process by omitting critical accessibility information on their Online Reservation System (ORS). Even though the petitioner later announced through a dismissive and overbroad website banner they “do not have the capabilities to provide pet-friendly or ADA compliant lodging,” this earlier withholding of information denied Ms. Laufer the ability to have a choice of their facility as a travel destination. The petitioner’s omission narrowed Ms. Laufer’s world, in contradiction to the ADA, and ultimately denied her the enjoyment of the right to plan interstate travel as a person with disabilities.

While the petitioner grasps the notion that Ms. Laufer never had any intention of travelling to the hotel property, the Court looks to the personal stake of an individual in support of a standing question. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2197 (2021). When *any* person browses options for travel or vacation destinations, definitive travel plans may not exist until a location, activity, or event attracts the person to reserve transportation and lodging. Ms. Laufer’s personal right to browse and research accessibility information is absolute to ensure safety and comfort in ingress, occupation, and egress from the facility. Ms. Laufer’s need to have the opportunity for research and review is above and beyond the leisure and luxury of selecting fun or interesting destinations. The informational void on the

petitioner's website left Ms. Laufer without any option to plan a stay at the property.

The Department of Justice promulgated the "Reservation Rule" which mandates informational requirements for hotel websites and ORS content. 28 C.F.R. § 36.302(e)(2). Beyond statutory and regulatory mandates, the lodging industry has established recommended criteria for best practices in the dissemination of accessibility information on websites to fulfill the requirement of the ADA and the Reservation Rule. *See e.g.*, Expedia Group, *Lodging Accessibility Guide* (June 18, 2023), bit.ly/3DrDiPh. Even with these resources at their disposal, the petitioner failed to comply with industry common practices. Booking a room without accessibility information would have placed Ms. Laufer in a situation where there may or may not have been adequate features to support her as a person with limited mobility and visual capability. Ms. Laufer's safety, comfort, and peace of mind would be in jeopardy if she had booked the hotel, as she could not determine the suitability of the facility without appropriate information.

Interstate travel is a well-established right guaranteed to people through the Constitution and is reinforced by this Court's jurisprudence. U.S. CONST. amend. XIV. § 1; U.S. CONST. art. IV, § 2; *United States v. Guest*, 383 U.S. 745, 758 (1966). Additionally, statutory protections of interstate travel emanate from congressional commerce power. *See e.g.*, 42 U.S.C. § 12101(b)(4). This Court has held race-based restrictions on a person's ability to stay at a hotel or to eat in a restaurant violated the Civil Rights Act of 1964. *Heart of Atlanta Motel Inc. v. United States*, 379

U.S. 241, 258 (1964). Just as a hotel's policy to deny service based on race is a violation of statute and a person's civil rights, the omission of information regarding the accessibility of a hotel, in violation of the ADA, also violates Ms. Laufer's civil rights. While petitioner did not post a policy denying service to people with disabilities, the withholding of information prevented Ms. Laufer from formulating accommodation plans and resulted in the same discriminatory effect as a posted denial of service policy.

Beyond Ms. Laufer's civil rights, truthful and complete advertising emanates as a social policy from this Court's jurisprudence. *Virginia State Bd. Of Pharm. v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976). Accurate and non-misleading commercial speech is protected against government regulations, in part, due to the social policy of the message giving consumers critical information about a purchase or transaction. The petitioner's omission of information to consumers is contrary to this social policy as the omission of information impedes consumer decisions, such as with Ms. Laufer as a person with disabilities.

Ms. Laufer's need for complete and accurate hotel accessibility information must be examined with a lens focusing on her needs as a person with mobility and visual impairments. She cannot exercise her enjoyment of interstate travel without accessibility information. While petitioner spends considerable time arguing about intentions to travel, the focus should be on the deprivation of Ms. Laufer's right to have the information necessary to formulate her plan to travel. The ADA opened doors over three decades

ago, and denying Ms. Laufer her day in court, closes the doors upon the progress we have made to create equal opportunity for all.

ARGUMENT

I. Restricting Deborah Laufer’s standing when accessibility information is withheld erodes the protections of the ADA and ignores the personal stake of a person with disabilities to plan and exercise the right of interstate travel.

Title III of the Americans with Disabilities Act (ADA) of 1990 provides expansive protections against discrimination to people with disabilities and creates equal access to “...goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation...” 42 U.S.C. § 12182(a). The congressional intent behind the ADA was to open doors, increase access, and provide expansive opportunities into the mainstream of American life for individuals, regardless of ability or disability. H.R. REP. NO. 101-485, pt. 2 at 22 (1990). The congressional record notes that “[t]ransportation is the linchpin which enables people with disabilities to be integrated and mainstreamed into society.” *Id.* at 37. Congressional leaders viewed transportation accessibility and transportation’s role in freedom of movement as a requisite for equity and access to all areas protected by the ADA. *Id.* Lodging facilities play an integral role in channels of travel and movement and should be examined with the same lens of importance as instruments of transportation.

Discrimination under the ADA is defined, in part, as “a failure to make reasonable modifications in policies, practices, or procedures... to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities.” 42 U.S.C. § 12182(b)(2)(iii). The three decades since the enactment of the ADA has seen tremendous progress for equal opportunity for all people; however, today, the Court is faced with yet another dimension to this progress: Does a person with disabilities have standing to sue if they are denied critical accessibility information required to create plans for interstate travel?

Article III’s case or controversy requirement looks to a plaintiff’s personal stake in a matter. U.S. CONST. art. III, § 2; *TransUnion*, 141 S. Ct. at 2197; *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016); *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Justice Kavanaugh’s *TransUnion* majority opinion expounds upon the Court’s definition of personal stake through emphasizing the personalized subjective perspective in answering the question, “[w]hat’s it to you?” as posed by the late Justice Scalia. *TransUnion*, 141 S. Ct. at 2203 (citing Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK UNIV. L. REV. 881, 882 (1983)). In answering this central question, the Court may look to the person’s individualized circumstance, their unique needs, and the nature of the injury in relation to the plaintiff.

The reasonable informational modification requested by Ms. Laufer is enshrined within the “Reservation Rule” requiring hotels to “[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)(2). Here, there is no question of the petitioner’s violation of the Reservation Rule. The question here focuses on the personal stake of Ms. Laufer with the petitioner’s failure to follow the law. The petitioner’s failure to provide information placed Ms. Laufer in a position restricting her access to the property. In answering Justice Scalia’s question, Ms. Laufer, as a person with disabilities, was precluded from evaluating the property for suitability in support of her needs, this in turn narrowed her world and limited her ability to consider interstate travel to the petitioner’s property.

The petitioner argues Ms. Laufer lacks standing due to the absence of her intent to travel. Pet’r’s Br. at 17. Petitioner’s argument must fail. First, empirical research shows a person with disabilities requires accessibility information to meticulously plan for travel for both personal safety and comfort. Kwai-Sang Yau, *supra*, at 954. Thus, plans are an impossibility without information detailing a facility’s accessibility capacity. Second, the petitioner’s restraint of Ms. Laufer’s planning process narrows and restricts her ability to move about the country, running afoul of both the ADA and the fundamental right of a person to interstate travel. Under these circumstances, created by the petitioner’s violation of the law, Ms. Laufer was forced to make the choice of staying at her home and forfeit her enjoyment of the freedom of interstate travel *or* she could risk her health, safety, and personal comfort

to book a lodging accommodation with unknown accessibility. This Hobson's choice is the heart of Ms. Laufer's injury: forfeit her rights or chance unknown peril, risk, or obstacles.

A. The determination of an individual's particularized and concrete injury is based on a subjective standard.

Ms. Laufer presents characteristics which must be considered in understanding the personal nature of her injury, namely, mobility and visual impairments. *Laufer v. Acheson Hotels, LLC.*, No. 2:20-cv-00344-GZS, slip op. at 2 (D. Me. May 18, 2021). A plaintiff must demonstrate a "personal stake" in the case to answer a question of standing. *TransUnion*, 141 S. Ct. at 2203. Ms. Laufer's personal stake includes life experiences as a person with disabilities, personal needs to participate within society, and the obstacles she fights to overcome while planning travel. Although Ms. Laufer's disability status is not argued here, standing consideration necessitates an understanding of her personal needs, limitations, and difficulties. *Spokeo*, 578 U.S. at 340.

Disabilities are highly personal, requiring individuals to learn specialized lifestyles, strategies, and techniques to be safe and successful within daily living. Dana S. Dunn & Shane Burcaw, *Disability Identity: Exploring Narrative Accounts of Disability*, 58 REHAB. PSYCH. 148, 151 (2013). Ms. Laufer's mobility difficulties pose significant challenges to her daily living as she must use a "wheelchair, cane or other support to ambulate." *Laufer v. Acheson Hotels, LLC.*, No. 2:20-cv-00344-GZS, slip op. at 2 (D. Me.

May 18, 2021). She primarily uses a wheelchair, even within her own home setting. *Id.* She also experiences visual impairment and has limited use of her hands. *Id.* While one cannot place themselves completely within the life experiences of another, a general description of Ms. Laufer's difficulties allows the Court to ascertain a subjective perspective of the personal stake and life experiences in this matter. Examined through a subjective lens, Ms. Laufer arguably has significant impairments which make basic everyday life tasks challenging to complete. Applied here, a person with disabilities does not have the luxury of spontaneously clicking on a room reservation but must use information provided on the reservation system to ensure their own safety during their hotel stay.

It is amici's position that the petitioner's violation of the ADA and Reservation Rule prevented any possibility of travel plan formation for Ms. Laufer. This is where her concrete and particularized injury begins. As a person with disabilities, Ms. Laufer has a right to accessibility information to plan and exercise her right to interstate travel, and without this information, plans cannot become definite, and the right to interstate travel cannot be enjoyed. To assist people with disabilities make well-researched and informed decisions, leading hotel companies and reservation systems have published industry norms needed by people with disabilities to reserve travel accommodations.

B. The hotel industry has established accessibility guides and listing standards as best practices and information norms.

Hotel operators have access to guides which highlight recommended informational needs for patrons with disabilities. Understanding these recommendations and empirical research into the needs of people with disabilities allows for a better understanding of Ms. Laufer's injury caused by the petitioner's withholding of information. Obstacles created by omitted or poor-quality accessibility information pose just as significant a threat to people with disabilities as physical barriers. Melanie Randle & Sara Dolnicar, *Enabling People With Impairments To Use Airbnb*, 76 ANNALS OF TOURISM RSCH. 278, 279 (2019). The rise of variable short-term travel rental facilities within the market has created a significant rise in informational barriers. *Id.* at 288. Denial of accessibility information causes a reduction in enjoyment, increase in cancelation of travel plans, low levels of travel confidence, and heightened threats to the personal safety of the disabled. *Id.* at 280. These byproducts of informational omission create disincentive to book travel and a general reluctance to create travel plans. *Id.*

The Department of Justice has provided guidance on ORS information by noting "specific information concerning accessibility features is essential to travelers with disabilities" but stopped short of prescribing an exact list due to the complexities and variances of people's accessibility needs. 28 C.F.R. § Pt. 36, App. A. While the Department of Justice does not provide specific line-

item requirements of accessibility information, a hotel operator does not need to look far for guides to recommended website content.

Hotel industry leaders have created standards of common practice and industry expectations within informational content frameworks which address the needs of patrons with disabilities. *See e.g.*, Guest Touch, *ADA Compliance for Hotel Websites: A Simple Guide* (June 18, 2023), bit.ly/3OpcmQH. These standards have been formulated into online guides of recommended information to assist disabled patrons in making informed decisions on travel plans. *See e.g.*, Expedia Group, *Lodging Accessibility Guide*, bit.ly/3DrdiPh. These free resources are available online and provide invaluable guidance to proprietors in listing their accommodations.

While not legal standards, hotel and lodging accommodation leaders provide a social norm for appropriate information for the traveler with disabilities. Expedia, home to over 590,000 properties on over 200 booking sites, is one of the largest hotel and travel booking websites in the world. Expedia Group, *About Us* (June 18, 2023), bit.ly/46ZmPKY. Expedia emphasizes the importance of unique photos of hotel rooms to capture room features and layout, including sink space, desk space, bed positioning, light switch location, and bathroom layout with shower or bathtub. Expedia Group, *Lodging Accessibility Guide* (June 18, 2023), bit.ly/3DrdiPh. These photographic details provide visual depictions to allow a person with disabilities the opportunity to evaluate the setting to determine whether it will accommodate their needs. *Id.* Second, textual outlining of the accessible elements of the room,

including roll-in showers, hearing accommodations, and other features opening access to the hotel provisions and amenities, allow for additional modalities of informational provision. *Id.* Under Expedia's recommendations, website listings are urged to move from sheer compliance to inclusive designs. *Id.* Rich informational website content moves the facility away from overbroad labeling of ADA-accessible or ADA-inaccessible rooms to an exacting description of accessibility capability. *Id.* For example, if a room is not wheelchair accessible, a patron with a hearing impairment may be able to stay in the accommodation safely and comfortably. Additionally, even if a hotel labels a room as wheelchair accessible, the potential patron should have access to photographs or diagrams to better understand the room dimensions in support of their mobility equipment. Expedia's stance errs on the side of transparency and thoroughness to fully inform potential customers about the room conditions, capacity, and features. This inclusive and detailed philosophy allows patrons to understand the facility and whether traveling to and staying at the facility is safe and practical for their personal needs.

Airbnb provides an extensive list of accessibility elements for accommodation advertising. These items include notations of accessible parking spot(s), lit paths, step-free paths, step-free guest entrance, step-free access to rooms, room entrances wider than 32 inches, step-free shower, grab bars, as well as pool and hot tub hoists. Airbnb, *Help Center* (July 31, 2023), bit.ly/3rP7MU6. Accommodations listed on Airbnb include a variety of settings, beyond those of traditional hotels, including private rooms

within a person's home, shared rooms, or an entire condominium. Airbnb, *Types of Places to Stay* (July 31, 2023), bit.ly/3YjsuaW. Like the Expedia guide, Airbnb guidelines allow detailed location-specific information to assist in meaningful planning for patrons with disabilities.

The preeminent modalities for accessibility information include iconic symbols, textual descriptions, spatial representations through room diagrams, digital photography of rooms, and photos of ingress and egress pathways. Simon Darcy, *Inherent Complexity: Disability, Accessible Tourism and Accommodation Information Preferences*, 31 TOURISM MGMT., 816, 818 (2010). Preference of informational modality is contingent upon the person's disability. *Id.* at 821. For example, visually impaired individuals have the highest preference for narrative and textual depictions of the room and surrounding facility while wheelchair confined people find additional value in photographs of the hotel. *Id.*

Technology advancements in the modern age create opportunities for expansive marketing and broader audience reach. Chul Jeong, et al., *Enhancing Destination Image through Travel Website Information*, 14 INT. J. TOURISM RES. 16, 18 (2012). While amici do not propose a specific marketing strategy, empirical research indicates correlation of increased positive destination image with increased website information. *Id.* at 23. Specifically, exposure to travel information, through both textual narrative and images, increases the attractiveness of the destination image for potential travelers. *Id.* Robust accessibility information, in accordance with travel website guidance and researched best practices,

allows individuals to make meaningful personal decisions on their travel itineraries. *Id.* at 824. These informational features and modalities in totality provide a basis for an ideal accommodation listing for a person with disabilities as they engage in a personalized travel planning and research process.

C. Deborah Laufer must meticulously research hotel accessibility features when planning travel as a person with disabilities.

The lower court analyzed the role of *Havens Realty* in informational injury when Ms. Laufer was deprived accessibility information on the ORS. *Laufer v. Acheson Hotels, LLC*, 50 F.4th 259, 269 (1st Cir. 2022). *Havens Realty* involved the conveyance of false information to a black tester who posed as potential apartment renter, thereby denying the opportunity to establish housing. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 374 (1982). The *Havens Realty* Court held the black tester had standing even though the sole purpose of the tester's interaction was to check compliance with the Fair Housing Act of 1968. *Id.* The Court also held actual or threatened injury may exist solely under statutes creating legal rights. *Id.* at 373 (citing *Warth v. Seldin*, 422 U.S. at 500).

While *Haven's Realty* involved a tester's injury and standing to sue, amici analyze of injury here where the petitioner's information omission deprived Ms. Laufer, an ADA tester with disabilities, of the benefit and enjoyment of planning, reviewing, and deliberating travel. While her standing as a tester is supported by *Haven's Realty*, Ms. Laufer's injury

must also be viewed in conjunction with her need for information as a person with disabilities.

Travelers with disabilities have expressed concern over deprivation of information, frustration over a lack of compliance with the law, and fear of the peril a person with disabilities may be placed in without adequate information. Kristen L. Popham et al., *Disabling Travel: Quantifying the Harm of Inaccessible Hotels to Disabled People*, 55 COLUM. HUM. RTS. L. REV. F. ____ (2023). People with disabilities risk their health when booking rooms without adequate information. *Id.* With unclear information, travelers with disabilities risk reserving rooms which are too small for their required ambulatory devices or may be forced to forfeit enjoyment of a hotel shower which cannot accommodate a wheelchair. *Id.* A recent survey noted, only 35% (75 of 212) of respondents indicated they received adequate information regarding room accessibility. *Id.* Information for travelers with disabilities is essential for their safety, wellbeing, and enjoyment of lodging facilities, and these data illustrate the prevalence of facilities that do not adequately provide this information.

Information is the lifeblood of tourism and an absence of information limits consumer travel motivation. Peter O'Connor & Andrew J. Frew, *The Future of Hotel Electronic Distribution: Expert and Industry Perspectives*, 43 THE CORNELL HOTEL AND REST. ADMIN. Q. 33, 34 (2002). Accessibility information to patrons with disabilities allows for ease of identifying obstacles and impediments to safety and comfort during a potential hotel stay. Kwai-Sang Yau, *supra*, at 954. People who use

wheelchairs or who require other ambulatory tools must engage in detailed research in their travel planning. Margaret J. Daniels, et al., *'Travel Tales': An Interpretive Analysis of Constraints and Negotiations to Pleasure Travel as Experienced By Persons with Physical Disabilities*, 26 TOURISM MGMT. 919, 928 (2005). The body of empirical research establishes the vital importance of accessibility information presented through websites to allow individuals with disabilities an opportunity to research and make informed decisions. *Id.*

Travel embarkation for people with disabilities is not a simple hotel website visit and selection of a room, rather it is a complicated and deliberative process. Kwai-Sang Yau, *supra*, at 948. The requirement of planning includes, “the person gather[ing] information, plan[ing] the trip, and determin[ing] possible strategies for coping with the physical act of travel.” *Id.* at 957. Five main stages in the travel experience have been identified: reconnection and exploration, analysis and searching for information, the physical journey itself, and reflection and experimentation. *Id.* at 950.

To better understand the travel planning process, the first two stages are examined more closely. Prior to detailed travel planning, individuals with disabilities must establish a connection with the community which involves “a period of self-discovery, personal empowerment, and growth.” *Id.* at 952. This period of connection includes the mental preparation and anticipatory establishment of the potential traveler into the social construct of the world. *Id.* This world includes both physical barriers and social

expectations placed on them as individuals with disabilities. *Id.*

After a person with disabilities makes a personal decision to travel, detailed pre-planning is a requirement. *Id.* at 954. Researchers categorize accessibility information into, “scenic spots, toilets, hotel accommodation, and transportation.” *Id.* Beyond the accessibility within the destination itself, travelers with mobility challenges must also research routes and connections to these features. *Id.* If information is lacking, preplanning to ensure that their travel efforts are safe cannot occur. *Id.* Central to all travel planning elements is the hotel, as this location serves as a temporary home and refuge for people with disabilities.

Travel preparation and planning requires a conduit through which the disabled traveler must retrieve and analyze information. Russell Williams et al., *Online Accessibility and Information Needs of Disabled Tourists: A Three Country Hotel Sector Analysis*, 8 J. OF ELEC. COM. RSCH. 152, 162 (2007). Websites are an instrument with potential high audience reach and conveyance of rich information to this audience. Russell Williams, et al., *Meeting the On-line Needs of Disabled Tourists: An Assessment of UK-based Hotel Websites*, 8 INT. J. TOURISM RSCH. 59, 60 (2016). Research of website users shows an absence of accessibility information on a facility’s website effectively renders the facility’s physical accessibility obsolete due to the deterrence of visitors with disabilities. *Id.* at 66. Applied to a potential patron with disabilities, such as Ms. Laufer, website informational voids serve to detract from any appeal

of staying at a facility due to unknown accessibility factors.

The beginning of Ms. Laufer's injury was the restriction of her ability to plan for travel to the petitioner's property, as one without information cannot carry out the planning process. Research provides ample evidence that this process of investigation is more extensive, time consuming, and required for a person with disabilities. The petitioner's argument attempts to force a tunnel vision perspective on the assessment of Ms. Laufer's status as a tester and her lack of established travel plans. Ms. Laufer was denied the opportunity to establish these plans due to the petitioner's omission of information. Ms. Laufer's denial of meaningful travel planning to the petitioner's property closed off her world and denied her the opportunity of interstate travel.

D. The freedom of interstate travel is infringed upon when accessibility information is withheld from people with disabilities.

The right to interstate travel is well-established, emanating from multiple locations of the Constitution and upheld by this Court's jurisprudence. U.S. CONST. amend. XIV. § 1; U.S. CONST. art. IV, § 2; *Williams v. Fears*, 179 U.S. 270, 274 (1900); *United States v. Guest*, 383 U.S. 745, 758 (1966). While examples focus on state action, the power of Congress to regulate commerce allows for the enforcement of federal statute on private actors who may impact interstate commerce. *See e.g.*, 42 U.S.C. §

2000a. This Court, as well as Congress, have deemed hotels and restaurants as centers of interstate commerce and channels through which people exercise their right to travel between the states. See 42 U.S.C. § 12181(7)(A); 42 U.S.C. § 2000a(b); *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241, 258 (1964); *Katzenbach v. McClung*, 379 U.S. 294, 297 (1964). Specifically, this Court noted it does not matter how locally centralized a hotel operation may be, interstate commerce is impacted by the actions of even less expansive entities. *Heart of Atlanta Motel Inc.*, 379 U.S. at 258. Thus, the determination of a hotel’s impact on interstate commerce is at a low bar in which even minimal commercial activity can impact commerce and interstate travel.

In *Heart of Atlanta*, the Court noted “uncertainty stemming from racial discrimination had the effect of discouraging travel.” *Id.* at 253. This uncertainty thus impedes a person’s freedom to travel out of their fear of reprisal and denial of service from hotels. *Id.* at 253. Congressional hearings before the enactment of the Civil Rights Act of 1964 provide evidence that congressional intention behind the Act included the preservation of interstate travel and the freedom of movement for all, regardless of race. *Civil Rights Public Accommodations: Hearings on S. 1732 Before the S. Comm. on Commerce*, 88th CONG. 744 (1963).

Running parallel to congressional intent from the Civil Rights Act of 1964, the ADA’s language and comments from the House floor support congressional intent for this legislation to allow for a person’s freedom of movement in support of this basic right of travel. 42 U.S.C. § 12101(b)(4); 136 CONG. REC. 11424,

11468 (1990). In the development of the goals behind the ADA, Harris polls were cited from the floor of the House, providing data that people with disabilities were largely precluded from essential parts of life, such as, the use of public accommodations, employment, and travel. *Id.* These poll data provided strong statistical evidence to further support the bipartisan efforts to pass the ADA.

Harris poll data indicated people with disabilities tend to lead lives of isolation with a hesitancy to participate in the simplest of leisure activities. Lowell P. Weicker Jr., *Historical Background of the Americans with Disabilities Act*, 64 TEMP. L. REV. 387, 390-1 (1991); Nat'l Couns. On Disability, *On the Threshold of Independence* (1988). Social activities, prior to the ADA, were limited, with two-thirds of Americans with disabilities never enjoying movie theatres or sporting events and being three times less likely as an able-bodied individual to eat in a restaurant. Nat'l Couns. On Disability, *On the Threshold of Independence* (1988). This data highlights the restrictive life of a person with disabilities prior to the ADA and can be extrapolated to gain a perspective of the rarity of a person with disabilities traveling between the states or using hotel facilities. *Id.*

The *Heart of Atlanta* motel solicited interstate travelers through magazines of national circulation as well as interstate billboards. *Heart of Atlanta Motel Inc.*, 379 U.S. at 350. Modern trends in advertising have only increased the ability to reach wider audiences over time, casting a net to more potential customers both nationally and internationally. Ramza Sama, *Impact of Media Advertisements on*

Consumer Behaviour, 14 J. OF CREATIVE COMMUN, 54, 63 (2019). Today, the internet allows hotels to advertise with ease to potential customers from around the globe, largely replacing magazines and billboard efforts to promote services. Ambarish Chandra & Ulrich Kaiser, *Targeted Advertising in Magazine Markets and the Advent of the Internet*, 60 MGMT. SCI. 1829 (2014). The internet creates a national platform through which an establishment advertises to a diverse audience, many of which require critical accessibility information in considering the use of the advertised facility. Russell Williams, et al., *Meeting the On-line Needs of Disabled Tourists: an Assessment of UK-based Hotel Websites*, 8 INT. J. TOURISM RSCH. 59, 68 (2016).

Modernly, the State of Maine, home of petitioner's hotel establishment, garners 11,431,200 annual visits from non-resident tourists bringing the state \$8,068,759,800 in revenue from these visits. Maine Off. of Tourism, *Maine Office of Tourism Highlights* (2022) bit.ly/43Dyufm. These state tourism data highlight the dependency of the tourism industry revenue on interstate travelers.

The petitioner's withholding of information had a direct impact on the decisions Ms. Laufer must make prior to traveling. Ms. Laufer's injury is the equivalent to placing a notice on the website or on the hotel property that disabled people are not allowed in the facility, or at the very least, expressing they are not welcomed patrons. The petitioner has not created an explicit policy or refusal of service to the disabled, as did the motel in *Heart of Atlanta*, but the result is similar. Just as *Heart of Atlanta's* racial policies impeded the access rights of black people from

enjoying their freedom of interstate travel due to a race-based policy, the petitioner's act of information omission impeded Ms. Laufer's enjoyment of her freedom of interstate travel. These restrictions create significant infringements on basic constitutional rights and cause concrete and particularized injury. By denying Ms. Laufer her day in court, it goes against the core intent of Congress in enacting the ADA to protect the fundamental right of interstate travel.

II. Complete and truthful advertising is a social policy emanating from this Court's jurisprudence.

Outside of the petitioner's restriction of Ms. Laufer's right to interstate travel, the omission of accessibility information violates the core principles of commercial speech and advertising. Social policy emanating from this Court's jurisprudence has created an implied responsibility for accurate and non-misleading information in commercial speech. *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 562 (1980). Commercial speech has garnered protections from restrictions imposed by government regulations as the Court noted "the free flow of commercial information is indispensable." *Virginia State Bd. Of Pharm. v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. at 765. The free flow of information leads to a strong public social interest in the value of receiving accurate and complete commercial information. *Id.* at 764. Commercial information is valued by the

consumer and an omission of information runs contrary to the social norms of commercial speech.

In the Court's consideration of pharmaceutical price advertisements, it noted "people will perceive their own best interests if only they are well enough informed." *Id.* at 770. While *Virginia State Board of Pharmacy* dealt with government regulation of commercial speech, the Court considered individual consumers of pharmaceuticals and their need to receive information about medication prices. *Id.* at 754. The Court reasoned consumers could not determine pharmaceutical prices from region to region without complete and accurate information regarding the costs of medical treatment. *Id.* Four years later, the Court's *Central Hudson* test's first step was to consider whether the speech "concern lawful activity and not be misleading." *Central Hudson*, 447 U.S. at 566. *Central Hudson* again reinforced the value and necessary protections of accurate and non-misleading information conveyed to a product's consumer.

Social policy of complete and accurate commercial speech does not end at product pricing but should extend here to information presented on the petitioner's website. First, the accessibility information omitted is commercial information as it details the product, price, and terms of a hotel room rental transaction. Second, the omission denied assurances of Ms. Laufer's safety, comfort, and complete information about the rental transaction. The petitioner created a void of information for the consumer, just as a restriction of drug prices would create, going against the social policy this Court established nearly four decades ago.

III. Petitioner's argument preemptively forecloses upon standing where the defendant maintains silence.

Notice of rights is a cornerstone of numerous statutory provisions. For example, under the Equal Opportunity Credit Act, lenders must provide notice to customers who experience adverse action identifying the federal agency responsible for enforcing the creditor's compliance with the act. 12 C.F.R. § 1002.9(a)(2). The Fair Labor Standards Act requires the posting of notice in the workplace regarding topics such as employee rights, the Family and Medical Leave Act, and the Occupational Safety and Health Act. *See e.g.*, 29 C.F.R. § 516.4. These examples provide notice and information regarding the rights of individuals under federal law as a consumer or an employee. An employer's or lender's failure to post these notices does not remove statutory protections for the people they are designed to inform. Additionally, withholding posts does not absolve the entity of liability for violating the rights of people. If an omission of these legally mandated notices were to provide shelter from potential lawsuits, this protection would strip an individual's recourse to bring suit to enforce their personal rights in court.

The petitioner's deflection manifested itself into animus as demonstrated by the petitioner's brief which states "[i]f 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." Pet'r's Br. at 6. Shielding an entity from liability when they remain silent, such as within the petitioner's website, erodes protections of the

individual guaranteed by statute. A movement to absolve potential defendants of liability for informational omission creates precedent where plaintiffs would be stripped of avenues of recourse to protect their rights. The petitioner here deflected their lack of compliance with the ADA onto Ms. Laufer by questioning her intent to travel. At the same time, the petitioner ignores Ms. Laufer's need for information to consider and form interstate travel plans. Following petitioner's faulty logic would allow employers, financial institutions, public transportation agencies, or other hotels to continuously side-step liability. Instead of risking liability, these entities would seek refuge from the law for their statutory violations through silence.

CONCLUSION

Ms. Laufer has suffered a concrete and particularized injury. The petitioner's fixation on Ms. Laufer's intent to travel ignores the nature of her injury. The denial of information narrowed Ms. Laufer's freedom of interstate travel through an informational encroachment on meaningful travel planning. Ms. Laufer's injury makes it incumbent upon the Court to find that she does have standing, as these omissions violate the heart of the ADA, social policies from this Court's precedent, and her fundamental rights guaranteed by the Constitution.

The judgment of the Court of Appeals should be affirmed.

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Respectfully submitted,

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