Legal Update Article

‘Tester’ Needs Standing to Sue Under ADA, Jackson Lewis Says in Amicus Brief to U.S. Supreme Court

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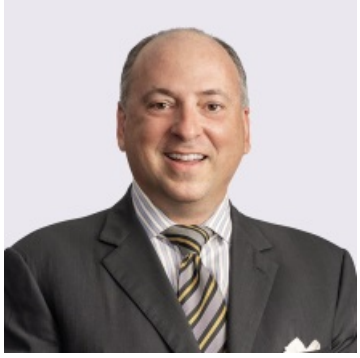
Meet the Authors



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Self-appointed “testers” need to establish their legal right to sue under the Americans With Disabilities Act (ADA) by showing a concrete and particularized injury, Jackson Lewis attorneys wrote in an amicus brief submitted to the U.S. Supreme Court on behalf of The Restaurant Law Center in *Acheson Hotels, LLC v. Laufer,* No. 22-429.

The Court will hear the case in its 2023-24 term to resolve a split among the U.S. Courts of Appeals over whether self-appointed ADA “testers” have standing to challenge a failure of a place of public accommodations to provide disability accessibility information on its website, even when the testers had no intention of visiting that place of public accommodations.

Reservation Rule; Title III

The issue stems from the Reservation Rule, a Department of Justice regulation requiring places of lodging to identify and describe accessible features in the hotels and guest rooms offered through its reservations service. The information must have enough details to allow individuals with disabilities to determine whether a given hotel or guest room meets their accessibility needs.

Title III of the ADA requires hotels to make reasonable modifications to reservations policies, practices, or procedures when necessary to ensure that individuals with disabilities can reserve accessible hotel rooms with the same efficiency, immediacy, and convenience as those who do not need accessible guest rooms.

The Case

As a self-appointed tester, Deborah Laufer has sued more than 600 hotels by searching the internet for hotel websites and finding those that lack such accessibility information. Although Laufer has no intention of accessing the hotels she sued, she claims to enforce the law on behalf of other disabled persons.

In response to Laufer’s suits, the hotels correctly argue Laufer lacks standing to bring these lawsuits. Allowing Laufer and other self-appointed testers to sue thousands of hotels across the United States on behalf of every disabled person in the country simply by visiting their websites would cause a flood of litigation from other testers, the hotels warn.

Jackson Lewis Amicus Brief

Jackson Lewis attorneys argue in the amicus brief that Laufer must establish standing in her lawsuits by showing a concrete and particularized injury in accordance with the Constitutional requirements for standing. Moreover, tester standing should be denied because litigation under the Reservation Rule “involves the question of whether a hotel or place of lodging *sufficiently* identifies and describes accessible features in the hotels and guest rooms in enough detail to reasonably permit individuals with disabilities to

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assess independently whether a given hotel or guest room meets his or her accessibility needs."

Tester standing disadvantages defendants, who must litigate hypothetical needs for nonexistent patrons.

Finally, the amicus brief explains that this issue extends beyond just Acheson Hotels or the hotel industry — it also affects food-service providers, lodgings, and restaurants.

The U.S. Courts of Appeals for the Second, Fifth, and Tenth Circuits have rejected the tester theory, dismissing any claim that relies on it. The amicus brief urges the U.S. Supreme Court to do the same.

Please contact a Jackson Lewis attorney with any questions about this case or Title III.

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