Lawsuits for Revenge and Profit?

By Paul Engel

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- What happens when people use the judicial system not to redress a grievance, but to attack others?
- Does a person have standing to sue, even thou they suffered no harmed?
- What are the costs to others when people engage in such "law fare"?

One of the most common ways for an American to seek a redress for some grievance is to file a law suit. This has made the United States a very litigious society. I was not able to determine the number of lawsuits filed, but in 2023 there were more attorneys in the United States (1.33 million) than doctors (1.08 million). As you might imagine, it's unlikely that all of these lawsuits are legitimate.

Take for examples the case of Acheson Hotels, LLC v. Laufer. In this case, Acheson Hotels claims that Deborah Laufer filed a lawsuit against them not because she was harmed by their hotel, but because she is an activist using the Americans with Disability Act to harass companies who do not advertise whether or not they have handicapped accessible rooms. While the Supreme Court found that the case was moot, both the facts of the case and the courts decision points to what appears to be a case of Ms. Laufer using lawsuits for both revenge and profit.

The fundamental question the Supreme Court was asked to decide in Acheson Hotels, LLC v. Laufer was standing. Did Ms. Laufer have standing to sue Acheson Hotels? The Free Legal Dictionary defines standing as:

Standing, sometimes referred to as standing to sue, is the name of the federal law doctrine that focuses on whether a prospective plaintiff can show that some personal legal interest has been invaded by the defendant. It is not enough that a person is merely interested as a member of the general public in the resolution of the dispute. The person must have a personal stake in the outcome of the controversy.

A person cannot sue simply because they see something wrong; they have to have a personal stake in the issue at hand. Which brings us to the opinion in this case.

Deborah Laufer has sued hundreds of hotels whose websites failed to state whether they have rooms accessible to the disabled. As the sheer number of lawsuits suggests, she does not focus her efforts on hotels where she has any thought of staying, much less booking a room. Instead, Laufer systematically searches the web to find hotels that fail to provide accessibility information and sues to force compliance with the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 327, 42 U. S. C. §12101. Ordinarily, the hotels settle her claims and pay her attorney's fees, but some have resisted, arguing that Laufer is not injured by the absence of information about rooms she has no plans to reserve. Only plaintiffs who allege a concrete injury have standing to sue in federal court. Laufer, these hotels have argued, is suing to enforce the law rather than to remedy her own harms.

It appears rather obvious that Ms. Laufer had no intention to book rooms at most of these hotels, or any at all. As Justice Barrett, who wrote the opinion, noted, it seems Ms. Laufer was looking to force hotels to comply with the Americans with Disabilities Act. In other words, Ms. Laufer was acting as a

federal vigilante, and quite a prolific one at that.

Laufer has singlehandedly generated a circuit split. The Second, Fifth, and Tenth Circuits have held that she lacks standing; the First, Fourth, and Eleventh Circuits have held that she has it. We took this case from the First Circuit to resolve the split.

In fact, Ms. Laufer has brought so many suits, in so many jurisdictions, that she has created her own circuit split regarding her standing. The Supreme Court took the case in order to resolve said split.

After we granted review, the case took an unusual turn. In July, the United States District Court for the District of Maryland suspended Laufer's lawyer, Tristan Gillespie, from the practice of law for defrauding hotels by lying in fee petitions and during settlement negotiations. … It based the suspension on a report finding that Gillespie demanded $10,000 in attorney's fees per case even though he used "boilerplate complaints."…

Following these revelations, Laufer voluntarily dismissed her pending suits with prejudice, including her complaint against Acheson in the District of Maine. … She then filed a suggestion of mootness in this Court. At this point, Acheson had already filed its principal brief on the standing issue, and we deferred a decision on mootness until after oral argument.

It seems that Ms. Laufer's original attorney, Tristan Gillespie, was "cooking the books" and defrauding the companies that agreed to settle rather than go through the time and expense of a trial. After Mr. Gillespie was suspended, Ms. Laufer dismissed her pending suits, including the one against Acheson, with prejudice, meaning she could not refile the case. She then suggested that, since she had no case pending against Acheson Hotels, the case they filed

against her was moot, i.e., no longer meaningful. Since the plaintiffs had already filed their briefs, the court decided to hold their decision on mootness until they heard oral arguments.

Ms. Laufer did not say the court must dismiss for mootness, but that it could, if it wished, decide the jurisdictional issue at hand. Acheson Hotels on the other hand, stated it was quite important for the court to deal with the matter, since mooting the case would leave untold hotels exposed to potential malicious prosecution from Ms. Laufer and others. Justice Barrett stated that the court was sensitive to Acheson's concerns, but had no proof that Laufer dropped her case to avoid their review. For that reason, the court decided:

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the First Circuit with instructions to dismiss the case as moot.

In addition to the opinion of the court, Justices Thomas and Jackson offered concurring opinions.

Deborah Laufer has filed hundreds of lawsuits against hotels she has no intention of visiting, claiming that their websites lack accessibility information mandated by a federal regulation. At both parties' request, this Court agreed to answer a question that has divided the Courts of Appeals: whether plaintiffs like Laufer have standing to bring these claims. The Court decides not to decide that question because, after briefing began, Laufer voluntarily dismissed her claim in the District Court. I would answer this important and recurring question, which, as all agree, we have the authority to do. And, I conclude that Laufer lacks standing.

Justice Thomas noted that the court agreed it has the authority to decide if Ms. Laufer, along with plaintiffs like her, have standing to sue. The court decided to punt on that

question, simply because Ms. Laufer voluntarily dismissed her claim against Acheson Hotels. In Justice Thomas' opinion, Ms. Laufer lacks the standing necessary to pursue such litigation.

The District Court concluded that Laufer lacked standing and dismissed her complaint. The First Circuit reversed, relying primarily on this Court's holding in Havens Realty Corp. v. Coleman, 455 U. S. 363 (1982), that a tester had standing to sue under the Fair Housing Act. …

Laufer lacks standing because her claim does not assert a violation of a right under the ADA, much less a violation of her rights. Her claim alleges that Acheson Hotels violated the ADA by failing to include on its website the accessibility information that the Reservation Rule requires. Yet, the ADA provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the . . . services . . . of any place of public accommodation." 42 U. S. C. §12182(a). In other words, the ADA prohibits only discrimination based on disability—it does not create a right to information.

While agreeing that the case was moot, Justice Jackson disagreed with the other part of the opinion of the court.

I agree with the Court that this case is moot and that it should be resolved on that basis. But the Court goes further, ordering vacatur of the judgment of the Court of Appeals under United States v. Munsingwear, Inc., 340 U. S. 36 (1950). … In my view, when mootness ends an appeal, the question of what to do with the lower court's judgment, if anything, raises a separate issue that must be addressed separately.

In Justice Jackson's view the question of vacating the opinion of the First Circuit Court of Appeals was not decided as a separate fact.

So what are we to make of all of this? Let me start with a question the court did not even consider: That the Americans

with Disabilities Act is unconstitutional. The ADA states…

It is the purpose of this chapter-

- to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Stopping discrimination against individuals with disabilities is not a power delegated to the United States by the Constitution, which is required for Congress to act under the Tenth Amendment.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

While the constitutionality of the ADA was not a question before the court, the question of a Ms. Laufer's right to sue under that law was. Since the stated purpose of the act was not to implement a power delegated to the United States, but instead "to invoke the sweep of congressional authority", not only was it unnecessary and improper for Congress to pass it, but a violation of George H. W. Bush's duty when he signed it, and a violation of the justices' oaths of office to uphold it.

Don't get me wrong, I do not believe people with disabilities

should not be discriminated against. My wife and I regularly have to deal with disabled access to buildings both private and public, due to her disability. That does not mean the United States has the authority “to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities.” Perhaps I’ll write an article one day on the problems with the ADA, but that is not the focus of this article.

Another item not considered, except possibly by Justice Thomas, is that Ms. Laufer’s attacks not only harmed the companies she has sued, but by taking up time in the judicial system, may have prevented legitimate suits from being heard in a timely manner, if at all. Not only are the owners of these hotels having to bear the cost of litigation, but the shear number of suits, combined with the obvious purpose of using them to enforce the law, may have enriched Ms. Laufer and her attorneys, but at the cost of justice to others.

By both mooting the case and vacating the First Circuit’s decision that Ms. Laufer had standing, the court does restore some sense of justice by restricting the use of malicious prosecution. However, by not deciding the question of Ms. Laufer’s standing, the court also allows her, and others like her, to act as federal vigilantes. I hope you’ll think of this case the next time you hear of some outrageous lawsuit being filed to promote an agenda.

E-Mail Paul Engel: paul@constitutionstudy.com